Canada Industrial Relations Board Conseil canadien des relations industrielles

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Reasons for decision

Keith Russell,

complainant,

and

Writers Guild of Canada,

respondent.

Board File: 033732-C
Neutral Citation: 2022 CIRB **1004**
January 21, 2022

The panel of the Canada Industrial Relations Board (the Board) was composed of Ms. Annie G. Berthiaume, Vice-Chairperson, and Messrs. Richard Brabander and Daniel Thimineur, Members.

Parties' Representatives of Record

Mr. Keith Russell, on his own behalf;
Mr. Joshua Phillips, for the Writers Guild of Canada.

[1] The Board may decide any matter before it without holding an oral hearing. Having reviewed all of the material on file, the Board is satisfied that the documentation before it is sufficient for it to determine this complaint without an oral hearing.

I. Nature of the Complaint

[2] On May 11, 2020, Mr. Keith Russell (the complainant) filed a complaint alleging that the Writers Guild of Canada (the WGC or the respondent) breached its duty of fair representation (DFR) under section 35 of the *Status of the Artist Act* (the SAA), which governs the relationship between a certified artists' association and the artists it represents. Section 35 reads as follows:

> **35** An artists' association that is certified in respect of a sector, or a representative thereof, shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the artists in the sector in relation to their rights under the scale agreement that is applicable to them.

[3] More specifically, the complainant contends that the WGC acted in a manner that was arbitrary, grossly negligent, superficial, capricious and in bad faith in handling his interests in connection with a contract he had entered into with a producer for the production of a film based on a screenplay he had written.

[4] In response to the complaint, the respondent requested that the matter be dismissed summarily on the basis that the Board lacks jurisdiction over the matter given that the SAA, and, by extension, the Board's authority, is confined to matters under federal constitutional jurisdiction. As the WGC states that this matter involves the independent production of a film, it takes the position that it falls within provincial jurisdiction. As such, before the Board can address the merits of the complaint, it must consider whether it has the necessary authority to entertain and adjudicate it.

[5] The Board has carefully considered the record before it and, based on that consideration, is satisfied that it does not have jurisdiction to deal with this matter as the SAA does not apply to the relationship between the parties in this case. Consequently, the Board must dismiss this complaint. The Board's decision will therefore not deal with the merits of the complaint but only with the issue of whether the Board has constitutional jurisdiction to deal with this matter. As such, the Board will only summarize the parties' submissions that are relevant for the purposes of its analysis. The following are the reasons for the Board's decision.

II. Parties to the Dispute and Background

[6] The WGC is an artists' association and has been recognized as such both provincially in Quebec under the *Act respecting the professional status and conditions of engagement of performing, recording and film artists*, CQLR c S-32.1, and federally under the SAA.

[7] More specifically, in Quebec, the WGC has been certified under the *Act respecting the professional status and conditions of engagement of performing, recording and film artists* as the exclusive bargaining agent of screenwriters in a province-wide sector described as "all freelance writers of texts in the film sector in languages other than French in the province of Quebec" (translation provided by the respondent). The WGC concluded an Independent Production

Agreement (IPA) with the Association québécoise de la production médiatique (AQPM), which represents Quebec-based producers. The IPA is a scale agreement that sets out the minimum terms and conditions of engagement of screenwriters by Quebec-based producers.

[8] The WGC is also certified under the SAA as the exclusive bargaining agent of screenwriters in a sector described in part as "independent contractors engaged by a producer… as (a) an author of a literary or dramatic work in English written for radio, television, film."

[9] The WGC also represents professional screenwriters in independent productions in the rest of Canada through a form of voluntary recognition with the Canadian Media Producers Association (CMPA).

[10] The complainant is a screenwriter who wrote a screenplay entitled "The Black Echo." In November 2017, he signed an Option Agreement with a producer located in Quebec, MCP Productions Inc. (MCP or the producer), with regard to the rights to his script. On February 12, 2018, Mr. Russell also signed a Writing Agreement with MCP that provided for his writing services for the production of the script, more specifically to "re-write, polish and revise the Screenplay."

[11] When the Option Agreement and the Writing Agreement were executed, Mr. Russell was not a member of the WGC. He also alleges that he was unaware of the IPA at the time. In fact, he only learned of the WGC later and then decided to join as a member.

[12] As required with his membership application to the WGC, Mr. Russell provided the respondent with a copy of the Writing Agreement on March 2, 2018. On March 6, 2018, Mr. Russell became a member of the WGC. In May 2018, a representative of the WGC inquired about the Writing Agreement. Mr. Russell alleges that the WGC did not then raise any concerns with it.

[13] On September 23, 2019, the WGC contacted the producer to set out the minimum terms required to comply with the IPA.

[14] In his complaint, Mr. Russell claims that it was only some 16 months after having received a copy of the Writing Agreement that the WGC informed him of the need to ensure that the producer would respect the minimum terms of the IPA. As a result, he alleges that he performed a significant

amount of work for the producer before the WGC advised him that the Writing Agreement did not comply with the minimum terms of the IPA.

[15] According to Mr. Russell, the WGC advised him that, based on the work he had completed, he was owed a significant amount of money in writing and option fees and instructed him not to complete any more work for MCP until the matter was resolved. The WGC further advised Mr. Russell that it would likely need to file a grievance. The WGC, however, first attempted to resolve the matter through negotiation with the producer.

[16] While negotiations were underway between the producer and the WGC, Mr. Russell was informed by MCP that the financing that had been secured to produce The Black Echo had expired, as it was not possible to close financing without the final, required polished script that had not been provided in light of the respondent's advice to the complainant. As a result, MCP dropped The Black Echo from production. The complainant contends that it was the WGC's gross negligence and arbitrary conduct that led to the cancelling of his first feature film as well as the termination of his services with MCP.

[17] Mr. Russell also alleges in his complaint that the WGC acted in a reckless, uncaring and capricious manner when it repeatedly encouraged him to file a grievance against MCP, which it ultimately did on January 3, 2020, only for it to later take the position that it could not take the grievance to arbitration and encourage Mr. Russell to settle for less than what was due under the IPA. According to the respondent, the grievance, which alleges violations of the IPA, remains outstanding and is scheduled for arbitration on May 26, 2022.

[18] In response to the instant complaint, the respondent raised a preliminary objection to the Board's constitutional jurisdiction to deal with this matter. It submitted that the application of the SAA is restricted to federal entities such as broadcasters and that, in the present case, there is no connection between the complainant's work with an independent, Quebec-based producer and a federal broadcasting undertaking. As a result, the respondent submits that the SAA does not apply, as Mr. Russell's working relationship with MCP falls within provincial jurisdiction.

[19] A panel of the Board composed of Ms. Annie G. Berthiaume, Vice-Chairperson, sitting alone, considered the procedural issues stemming from the WGC's objection and the parties'

submissions. The parties were advised that the Board would first deal with the issue of its constitutional jurisdiction. Further, on March 30, 2021, MCP was invited, as an interested party, to file submissions on this issue. The producer did not file any response further to the Board's March 30, 2021, letter. The Board also sought additional submissions in relation to its constitutional jurisdiction over the matter. Both parties filed detailed submissions in response to the Board's request, which are summarized below.

III. Statutory Framework and Application of Part II of the SAA

[20] The SAA applies to matters involving professional relations between producers in the federal jurisdiction and artists who are independent contractors (see *Conseil des métiers d'art du Québec*, 1998 CAPPRT 026). Under Part II of the SAA, the Board is responsible for determining sectors suitable for collective bargaining and certifying artists' associations to represent each of these sectors. The Board also deals with complaints arising under Part II of the SAA, including DFR complaints against artists' associations under section 35, cited earlier.

[21] Section 6(2) of the SAA outlines the application of Part II of the SAA as follows:

> **6 (2)** This Part applies
>
> > **(a)** to the following organizations that engage one or more artists to provide an artistic production, namely,
> >
> > > **(i)** government institutions listed in Schedule I to the *Access to Information Act* or the schedule to the *Privacy Act*, or prescribed by regulation, and
> >
> > > **(ii)** broadcasting undertakings, including a distribution or programming undertaking, under the jurisdiction of the Canadian Radio-television and Telecommunications Commission; and
> >
> > **(b)** to independent contractors determined to be professionals according to the criteria set out in paragraph 18(b), and who
> >
> > > **(i)** are authors of artistic, dramatic, literary or musical works within the meaning of the *Copyright Act*, or directors responsible for the overall direction of audiovisual works,
> >
> > > **(ii)** perform, sing, recite, direct or act, in any manner, in a musical, literary or dramatic work, or in a circus, variety, mime or puppet show, or

> **(iii)** contribute to the creation of any production in the performing arts, music, dance and variety entertainment, film, radio and television, video, sound-recording, dubbing or the recording of commercials, arts and crafts, or visual arts, and fall within a professional category prescribed by regulation.

[22] Further, pursuant to section 35 of the SAA, the DFR of an artists' association is owed to artists who have rights under a scale agreement that is applicable to them.

[23] A scale agreement is defined at section 5 of the SAA as "an agreement in writing between a producer and an artists' association respecting minimum terms and conditions for the provision of artists' services and other related matters." Further, the SAA defines a producer as "a government institution or broadcasting undertaking described in paragraph 6(2)(a)" and states that this definition "includes an association of producers."

[24] Consequently, the SAA governs the professional relations between an artist and a federal institution as indicated in section 6(2)(a)(i) and between an artist and a broadcasting undertaking as indicated in section 6(2)(a)(ii).

[25] It should also be noted that when determining any question under Part II of the SAA, the Board is guided by the applicable principles of labour law (section 18 of the SAA) (see *Christopher*, 2002 CAPPRT 038).

[26] In light of the preliminary objection raised by the WGC, the Board must consequently first determine whether Part II of the SAA is applicable to the parties in the present case and, more specifically, whether the WGC had an obligation under section 35 of the SAA towards Mr. Russell. Considering the statutory framework described above, the question that the Board must answer is whether MCP, which acquired Mr. Russell's script, is considered a producer within the meaning of the SAA.

IV. Analysis and Decision

[27] The WGC argues that its obligation to represent Mr. Russell arises solely because it is a certified bargaining agent under Quebec's *Act respecting the professional status and conditions of engagement of performing, recording and film artists*. It submits that MCP is a Quebec-based independent producer of film and television and is a member of the AQPM. By virtue of its certification under the Quebec legislation, the WGC negotiated an IPA with the AQPM that

establishes minimum terms for the contracting of screenwriters by producers situated in the province of Quebec. The WGC submits that MCP is thus bound by that IPA between the WGC and the AQPM, by virtue of its membership in the AQPM. The WGC notes that, at all material times, Mr. Russell was aware that both the Option Agreement and the Writing Agreement were signed with a Quebec-based producer and governed by the laws of Quebec.

[28] The WGC admits that it has negotiated several scale agreements in the federal jurisdiction, including with broadcasters such as the Canadian Broadcasting Corporation, the CTV Television Network, the Ontario Educational Communications Authority (TVOntario) and the National Film Board of Canada. However, the WGC submits that none of those agreements apply to Mr. Russell.

[29] Instead, the WGC submits that the only scale agreement applicable to Mr. Russell is the IPA between it and the AQPM. It also contends that MCP is not a broadcaster or federal government institution.

[30] Since Mr. Russell worked solely for MCP, the WGC argues that the IPA was the only applicable scale agreement. It adds that all of the claims advanced on behalf of Mr. Russell were predicated on alleged breaches of the IPA and not of any scale agreement under federal jurisdiction. Given that the IPA at issue was negotiated with a Quebec-based producers' association, in accordance with the laws of Quebec, the WGC argues that no scale agreement subject to federal jurisdiction applied to Mr. Russell at any time.

[31] In response to the WGC's preliminary objection, Mr. Russell suggests that he is an independent contractor as described in section 6(2)(b) of the SAA, which does not in any way specify that the independent contractor must be engaged in a broadcasting undertaking. As such, the complainant contends that all independent contractors who are deemed to be artists are entitled to protection under the SAA.

[32] Mr. Russell also argues that Part I of the SAA clearly recognizes that artistic contributions are themselves "federal undertakings" in that they enrich Canadian society culturally and economically and are fundamental to sustaining Canada's quality of life. Along with section 91 of the *Constitution Act, 1867*, Mr. Russell contends that this provides "a nexus for the Board to take jurisdiction" over his complaint. Mr. Russell further argues that a feature film is not strictly a provincial matter, as it

is “inter-provincial and federal, for the betterment of Canadian society as a whole,” adding that to confine it to provincial status ignores the realities of film production.

[33] The Board recognizes that the WGC is an artists’ association that has been recognized as such under both the SAA and Quebec’s *Act respecting the professional status and conditions of engagement of performing, recording and film artists*. As such, it has negotiated scale agreements with various producers or producers’ associations, some of which are subject to the SAA and some of which are subject to Quebec’s *Act respecting the professional status and conditions of engagement of performing, recording and film artists*.

[34] In this case, the WGC negotiated the IPA at issue with the AQPM to establish minimum terms applicable to the contracting of screenwriters by producers situated in the province of Quebec. The AQPM is a producers’ association that represents and assists independent film, television and web production corporations that produce audiovisual works in Quebec.

[35] For Part II of the SAA to apply in this case, the Board must be satisfied that MCP is a producer within the meaning of the SAA. As stated above, Parliament has given the Board jurisdiction over government institutions or broadcasting undertakings described in section 6(2)(a) of the SAA.

[36] Based on the evidence, MCP is a film production company located in Quebec. It is not a government institution or a broadcasting undertaking under the jurisdiction of the Canadian Radio-television and Telecommunications Commission as described in section 6(2)(a). Mr. Russell did not submit any evidence demonstrating that MCP is a producer as defined under section 6(2)(a) of the SAA, nor did he make any arguments to that effect. Rather, Mr. Russell argued that his status as an independent contractor, pursuant to section 6(2)(b) of the SAA, creates the requisite nexus for the Board to take jurisdiction over his complaint.

[37] The Board does not agree with Mr. Russell’s argument that it has jurisdiction over this matter because he is an independent contractor as described in section 6(2)(b) of the SAA. Mr. Russell’s complaint alleges a violation of section 35 of the SAA, which specifically requires that a nexus exist between the scale agreement applicable to the artist and a federally regulated producer. As such, the focus of this analysis is not solely on the artist, in this case Mr. Russell, but also on whether the producer at issue is an organization described in section 6(2)(a) of the SAA.

[38] Based on the evidence, MCP is not itself a government institution as indicated in section 6(2)(a)(i) of the SAA or a broadcasting undertaking as indicated in section 6(2)(a)(ii) of the SAA. That being said, the Board recognizes that circumstances could exist in which an otherwise provincially regulated producer could be federally regulated and subject to the SAA. The Board will therefore examine the facts of this case to determine if any such circumstances exist.

[39] In keeping with the applicable principles of constitutional law, when the Board does not have direct jurisdiction over an entity, such as in the instant case, it will consider whether the entity's activities are vital, essential or integral to a federal undertaking to such a degree that it becomes necessary to apply federal legislation to the entity's labour and employment relationships.

[40] In *Bridges of Canada Inc.*, 2020 CIRB 930 (*Bridges*), the Board, noting that labour relations presumptively fall under provincial jurisdiction, offered a review of those principles. In particular, it explained the following:

> [70] In *Northern Telecom* v. *Communications Workers*, [1980] 1 S.C.R. 115 (*Northern Telecom*), the SCC detailed the type of analysis required to determine constitutional jurisdiction in labour matters involving services provided by a subsidiary operation to a federal undertaking. That case involved the work of installers provided by Northern Telecom and the operation of Bell Canada's telephone system. The SCC set out a functional analysis to determine if an entity, by virtue of its relationship with a core federal undertaking, becomes federal for purposes of triggering federal labour relations jurisdiction. This is what became commonly referred to as the "Northern Telecom test" or the "vital, essential and integral test":

[41] In that decision, the Board further explained how, in *Tessier Ltée* v. *Quebec (Commission de la santé et de la sécurité du travail)*, 2012 SCC 23; [2012] 2 S.C.R. 3 (*Tessier*), the Supreme Court of Canada (SCC) later confirmed that federal jurisdiction over labour relations may apply not only when the employment relates to a work, undertaking or business that falls directly under federal jurisdiction—also referred to as direct jurisdiction—but also "when the employment relates to activities that are found to be integral to a federally regulated undertaking (derivative jurisdiction)." The Board noted that derivative jurisdiction is how an otherwise provincial entity may fall within federal jurisdiction.

[42] In *Tessier*, *supra*, the SCC also explained the type of analysis that must be applied as part of the functional analysis required to determine derivative jurisdiction as follows:

> [38] **The focus of the analysis is on the relationship between the activity, the particular employees under scrutiny, and the federal operation that is said to benefit from the work of those employees: *United Transportation Union*, at pp. 1138–39.** The appeal in *Northern Telecom 1* was dismissed because of the absence of relevant evidence, but the theory behind the framework for assessing derivative labour jurisdiction has been consistently applied by this Court.
>
> (emphasis added)

[43] This approach is also consistent with the decision of the Canadian Artists and Producers Professional Relations Tribunal (CAPPRT), the tribunal previously responsible for administering Part II of the SAA, in *Writers Guild of Canada*, 1996 CAPPRT 016. In its decision, the CAPPRT commented that "productions undertaken by a third party under contract to a broadcasting undertaking could be vital, essential or integral to the broadcaster, and thus within the federal regulatory sphere."

[44] Following the WGC's preliminary objection, and for the purposes of the required derivative analysis, the Board requested additional submissions from the parties on the following questions:

a. Whether the independent producer that had hired Mr. Russell, MCP, was under contract to a broadcasting undertaking or a government institution to produce a production that is vital, essential or integral to the broadcasting undertaking or government institution; and,
b. If MCP was subject to a contract defined in the previous question, whether Mr. Russell's work was undertaken for the purposes of that production.

[45] The WGC argues that there is no evidence that MCP was under contract to a broadcaster or that Mr. Russell's script was acquired for the purpose of fulfilling a contract with a broadcaster. Even if such evidence did exist, the WGC contends that it would not render the production of Mr. Russell's script essential to that federal undertaking so as to bring it within federal jurisdiction. Relying on the SCC's decision in *Canada Labour Relations Board et al.* v*. Paul L'Anglais Inc. et al.*, [1983] 1 S.C.R. 147 (*Paul L'Anglais)*, the WGC argues that the production activity of creating programming that may be broadcast is not subject to federal jurisdiction.

[46] Mr. Russell argues that the WGC's argument based on the decision in *Paul L'Anglais*, *supra*, has already been rejected by a tribunal. He submits that the CAPPRT ruled against a similar argument put forth by the Canadian Broadcasting Corporation in *Writers Guild of Canada*, *supra*.

[47] Mr. Russell further contends that MCP was under contract with two organizations as defined by the SAA at sections 6(2)(a)(i) and (ii): Telefilm Canada and the Canadian Media Fund. He submits that Telefilm Canada is a Crown corporation that reports to the Department of Canadian Heritage, which is listed in Schedule 1 of the *Access to Information Act*. Moreover, Mr. Russell submits that the Canadian Media Fund is composed of contributions made by Canadian broadcasting distribution undertakings and the federal government and reports to the Department of Canadian Heritage as well. Mr. Russell thus contends that Telefilm Canada and the Canadian Media Fund fall under the jurisdiction of the SAA.

[48] Mr. Russell adds that between 2017 and 2021, MCP produced two films that were funded by Telefilm Canada and the Canadian Media Fund. According to Mr. Russell, this illustrates that MCP has a clear pattern of producing films under contract with federal government institutions. Mr. Russell also submits that it was while MCP was under contract with these two organizations that the producer acquired his script, The Black Echo. As such, Mr. Russell argues that MCP, a third-party producer, was under multiple contracts with federal government institutions and that the productions were consequently "vital, essential, or integral" insomuch as MCP received funding from the institutions to produce the films.

[49] Mr. Russell submits that, as a result, MCP was brought under the "ambit" of the SAA when it entered into financial contracts with Telefilm Canada and the Canadian Media Fund. Relying on the CAPPRT's decision in *Writers Guild of Canada*, *supra*, Mr. Russell argues that once MCP was brought under the ambit of the SAA, any and all of its activities that involved artistic production were also included, whether broadcast-related or not. According to Mr. Russell, this includes the production of his script, which therefore provides the required nexus for the Board to take jurisdiction over this matter. The Board cannot agree, for the following reasons.

[50] First, the Board is of the view that Telefilm Canada and the Canadian Media Fund are not themselves government institutions listed in Schedule I to the *Access to Information Act*, in the schedule to the *Privacy Act* or in any other regulation as required by section 6(2)(a)(i) of the SAA. Even if these organizations report to the Department of Canadian Heritage, which is listed in Schedule I to the *Access to Information Act*, the wording at section 6(2)(a)(i) of the SAA is clear in that it must be the government institution **itself** that engages the artist:

> **6 (2)** This Part applies
>
> > **(a) to the following organizations that engage one or more artists** to provide an artistic production, namely,
> >
> > > **(i)** government institutions listed in Schedule I to the *Access to Information Act* or the schedule to the *Privacy Act*, or prescribed by regulation.

(emphasis added)

[51] Second, the Board is of the view that the fact that the Canadian Media Fund receives contributions from Canadian broadcasting distribution undertakings and the federal government does not make it a broadcasting undertaking in and of itself.

[52] Even if Telefilm Canada and the Canadian Media Fund could be considered organizations as defined in section 6(2)(a) of the SAA, the fact that MCP received funding from these organizations does not mean that its productions were vital, integral or essential to them. Funding alone is not determinative of whether an organization is considered a federal undertaking. In its decision in *NIL/TU,O Child and Family Services Society* v. *B.C. Government and Service Employees' Union*, 2010 SCC 45; [2010] 2 S.C.R. 696, the SCC made the following comments:

> [40] And while it is true that NIL/TU,O receives federal funds pursuant to a federal funding directive, an intergovernmental memorandum of understanding and the 2004 Agreement, this does not rise to the level of federal operational involvement necessary to demonstrate that NIL/TU,O is a federal undertaking, service or business. As in *Four B*, where the Court found that federal loans and subsidies did not convert the shoe manufacturing business into a federal activity, federal funding in this case does not change the nature of NIL/TU,O's operations from provincial to federal hands.

[53] These comments were made within the context of determining whether the entity at issue was itself a federal undertaking. However, the Board is of the view that these comments can equally apply in the context of the derivative analysis.

[54] As noted earlier, when determining whether an entity could be subject to derivative federal jurisdiction, the focus of the analysis is on the relationship between the activity, the particular individuals under scrutiny and the federal operation that is said to benefit from the work of those individuals (see *Tessier*, *supra*). More specifically, the analysis will assess the extent to which the federal operation is dependent on the services provided by the provincial entity and whether the activity in question forms a principal part of the provincial entity's activities (see *Tessier*, *supra*). In

this matter, the Board therefore had to determine whether the services provided by MCP could be considered vital, essential or integral to a federal government institution or broadcaster.

[55] In this case, however, none of the evidence submitted suggests that the productions undertaken by MCP were vital, essential or integral to a government institution or broadcaster. Nor does the evidence suggest that Mr. Russell's script was acquired for the purpose of fulfilling any such contract. As such, following the derivative analysis, the Board is unable to conclude that the services provided by MCP fall under federal jurisdiction.

[56] Finally, Mr. Russell alleges that the WGC's members are both federally and provincially regulated and yet it is only the federally regulated members who are entitled to the DFR, according to the WGC. Mr. Russell argues that, as a result, the majority of the WGC's membership does not have any legal recourse for negligence, discrimination and other breaches of the DFR. In his case, Mr. Russell states that Quebec's *Act respecting the professional status and conditions of engagement of performing, recording and film artists* does not contain a DFR provision. He argues that the SAA discriminates against artists who are not employed in broadcasting undertakings in that two members of the same association are not entitled to the same rights; he states that this is contrary to the spirit of justice and Part I of the SAA and is a violation of the right to equality before and under law and equal protection and benefit of law as guaranteed under section 15 of the *Canadian Charter of Rights and Freedoms*, Part I of *The Constitution Act, 1982*.

[57] The Board notes that Mr. Russell, however, also argues later in his submissions that the WGC itself falls under federal jurisdiction by virtue of its multiple contracts with federal government institutions and broadcasting undertakings, as shown by its certification under the SAA. Since the WGC receives monetary compensation from every artistic production of its members, Mr. Russell contends that this payment "involves" the WGC in artistic productions. Consequently, he states that all of the WGC's members involved in artistic productions benefit from the protections under the SAA, like him and his script The Black Echo. Mr. Russell further notes that the WGC does not differentiate between members engaged in broadcasting undertakings and members who are not engaged in broadcasting undertakings as part of the membership application process.

[58] The Board does not agree with Mr. Russell's argument that all of the WGC's members involved in artistic productions benefit from the protections under the SAA or that the DFR under

the SAA must be extended to provincially regulated matters as it would otherwise leave independent contractors in Mr. Russell's situation without any protection. In *Christopher*, *supra*, the complainant in that case raised a similar argument about the scope of the DFR. In particular, he alleged that the absence of a DFR provision in Nova Scotia gave the CAPPRT the required authority to decide his complaint under the SAA. The CAPPRT found that the SAA did not apply to the complainant's situation because Parliament did not have the authority to legislate in the provincial sphere.

[59] As explained earlier, section 35 of the SAA specifically requires that a nexus exist between the scale agreement applicable to the artist and a federally regulated producer. As such, and while artistic contributions benefit the country as argued by Mr. Russell, the focus of this analysis is on whether the producer at issue, MCP, is an organization described in section 6(2)(a) of the SAA. In other words, without a nexus between Mr. Russell and a federal producer, the Board is without authority to consider his DFR complaint under the SAA, regardless of whether the provincial regime offers similar protections.

[60] For all these reasons, the Board finds that MCP is not a producer as defined in the SAA, that is to say, that it is not a government institution or broadcasting undertaking described in section 6(2)(a). Moreover, the Board has concluded that MCP was not under contract to either of these types of organizations to produce a production that is vital, essential or integral to the broadcasting undertaking or government institution. In light of these findings, the Board concludes that it does not have jurisdiction to consider Mr. Russell's DFR complaint under section 35 of the SAA.

V. Conclusion

[61] The Board concludes that it has no jurisdiction to hear this complaint filed pursuant to section 53(1) of the SAA and alleging violation of section 35 of the SAA. The Board must therefore dismiss the complaint.

[62] This is a unanimous decision of the Board.

Annie G. Berthiaume
Vice-Chairperson

Richard Brabander
Member

Daniel Thimineur
Member