

Canadian Artists and Producers
Professional Relations Tribunal



Tribunal canadien des relations
professionnelles artistes-producteurs

CANADA

Ottawa, January 30, 1996

File No. 95-0003-A

Decision No. 004

**IN THE MATTER OF AN APPLICATION FOR CERTIFICATION FILED
BY THE SOCIÉTÉ DES AUTEURS, RECHERCHISTES,
DOCUMENTALISTES ET COMPOSITEURS (SARDeC)**

Decision of the Canadian Artists and Producers Professional Relations Tribunal

The application for certification is granted.

Place of hearing: Montréal (Québec)

Date of hearing: January 30, 1996

Decision rendered from the bench

Quorum: Mr. André Fortier, Chairperson
M. Armand Lavoie, member
M. David P. Silcox, member

Appearances: Castiglio & Associés, Robert Castiglio and Stéphane Lacoste; and Yves Légaré, Director General, for the applicant.
Alarie, Legault, Beauchemin, Paquin, Jobin & Brisson, Dominique Jobin; and Martine Maltais, Director General, for l' Association québécoise des réalisateurs et réalisatrices de cinéma et de télévision (AQRRT).
Martineau Walker, Stéphane Gilker for the Society of Composers, Authors and Music Publishers of Canada (SOCAN) and the Société des auteurs et compositeurs dramatiques (SACD).
Brodeur Matteau Poirier, Colette Matteau for the Société du droit de reproduction des auteurs, compositeurs et éditeurs au Canada (SODRAC) inc. and the Société professionnelle des auteurs et compositeurs du Québec (SPACQ).

[TRANSLATION]

REASONS FOR DECISION

95-0003-A: In the matter of an application for certification filed by the Société des auteurs, recherchistes, documentalistes et compositeurs (SARDeC)

STATEMENT OF FACTS

[1] This decision relates to an application for certification submitted under section 25 of the *Status of the Artist Act* (S.C. 1992, c. 33, hereinafter "the Act") by the applicant Société des auteurs, recherchistes, documentalistes et compositeurs (hereinafter "SARDeC") on July 14, 1995. The application was heard at Montréal on January 30, 1996.

[2] SARDeC applied for certification to represent a sector composed of:
(a) authors of original French language literary or dramatic works intended for radio, television, cinema or audio-visual media; and
(b) authors who adapt, in the form of French language scripts for radio, television, cinema or audio-visual media, literary or dramatic works originally intended for another form of public broadcast;
with respect to all producers subject to the *Status of the Artist Act* throughout Canada.

[3] Public notice of this application was given in the Canada Gazette on Saturday, August 19, 1995 and in the Globe and Mail and La Presse on September 11, 1995. The public notice set a closing date of October 20, 1995 for the filing of notices of intervention by artists, artists' associations and producers.

[4] On October 17, 1995, the Société professionnelle des auteurs et compositeurs du Québec (SPACQ) filed a notice of intervention, expressing its concern that SARDeC's application might be in conflict with its own insofar as the creation of French language song lyrics is concerned.

[5] On October 19, 1995, the Association québécoise des réalisateurs et réalisatrices de cinéma et de télévision (AQRRECT) informed the Tribunal that its interpretation of SARDeC's application was that it did not include artists who direct audio-visual works.

[6] Three artists' associations representing Francophone writers from outside Quebec filed notices of intervention in the case: the Association acadienne des artistes professionnel.le.s du Nouveau-Brunswick, the Association des artistes acadiens de la Nouvelle-Écosse and the Association des auteures et auteurs de l'Ontario français. Furthermore, the Conseil culturel acadien de la Nouvelle-Écosse and the Association des artistes acadiens de la Nouvelle-Écosse filed joint representations.

[7] The Fédération culturelle canadienne-française also filed representations, and the Tribunal granted it intervenor status in an interim decision (#002) rendered on December 8, 1995.

[8] In that interim decision, the Tribunal also granted intervenor status to three copyright collectives that had applied for such status. The Société du droit de reproduction des auteurs, compositeurs et éditeurs au Canada (SODRAC) inc., the Society of Composers, Authors and Music Publishers of Canada (SOCAN) and the Société des auteurs et compositeurs dramatiques (SACD) were granted limited status as intervenors to make representations to the Tribunal on the determination of the sector for bargaining and the representativeness of the applicant.

[9] In the weeks prior to the hearing, the Tribunal was notified that the applicant had signed agreements with a number of intervenors. The following agreements were filed with respect to the application:

- (a) a letter of intent between the Société des auteurs, recherchistes, documentalistes et compositeurs (SARDeC) and the Alliance culturelle de l'Ontario, the Association des auteures et auteurs de l'Ontario français, the Association acadienne des artistes professionnel.le.s du Nouveau-Brunswick, the Association des artistes de la Saskatchewan, the Conseil culturel acadien de la Nouvelle-Écosse, the Fédération culturelle canadienne-française, the Nouvelle assemblée des cinéastes franco-ontariens and the Regroupement des arts médiatiques du Canada (Exhibit 34);
- (b) an agreement between the Société professionnelle des auteurs et compositeurs du Québec (SPACQ) and the Société des auteurs, recherchistes, documentalistes et compositeurs (SARDeC) (Exhibit 37);
- (c) an agreement between the Society of Composers, Authors and Music Publishers of Canada (SOCAN) and the Société des auteurs, recherchistes, documentalistes et compositeurs (SARDeC) (Exhibit 38A);
- (d) an agreement between the Société du droit de reproduction des auteurs, compositeurs et éditeurs au Canada (SODRAC) inc., the Société des auteurs et compositeurs dramatiques (SACD), the Société civile des auteurs multimédia (SCAM) and the Société des auteurs, recherchistes, documentalistes et compositeurs (SARDeC) (Exhibit 38B); and

(e) an agreement between the Société du droit de reproduction des auteurs, compositeurs et éditeurs au Canada (SODRAC) inc. and the Société des auteurs, recherchistes, documentalistes et compositeurs (SARDeC) (Exhibit 38C).

[10] SARDeC's application for certification raises the following issues:

(1) Is the sector proposed by SARDeC a suitable sector for the purposes of professional relations?

(2) Is SARDeC representative of the artists in the sector?

THE STATUS OF THE ARTIST ACT

[11] The provision of the *Status of the Artist Act* regarding certification are found in sections 25 to 28:

25. (1) An artists' association may, if duly authorized by its members, apply to the Tribunal in writing for certification in respect of one or more sectors

(a) at any time, in respect of a sector for which no artists' association is certified and no other application for certification is pending before the Tribunal;

(b) in the three months immediately preceding the date that the certification or a renewed certification is to expire, where at least one scale agreement is in force in respect of the sector; or

(c) after one year, or such shorter period as the Tribunal may fix on application, after the date of the certification or a renewed certification, where no scale agreement is in force in respect of the sector.

(2) An application for certification must include the membership list of the artists' association, a certified copy of its by-laws, and any other information required by the Tribunal.

(3) The Tribunal shall give public notice of any application for certification in respect of any sector without delay, indicating any period in which another application may be made by any other artists' association, notwithstanding subsection (1), for certification in respect of that sector or any part of it.

(4) No application for certification in respect of a sector may be made, except with the consent of the Tribunal, after expiration of the period indicated by the Tribunal in any public notice given pursuant to subsection (3).

26. (1) After the application period referred to in subsection 25(3) has expired, the Tribunal shall determine the sector or sectors that are suitable for bargaining, taking into account

(a) the common interests of the artists in respect of whom the application was made;

(b) the history of professional relations among those artists, their associations and producers concerning bargaining, scale agreements and any other agreements respecting the terms of engagement of artists; and

(c) any geographic and linguistic criteria that the Tribunal considers relevant.

(2) Notwithstanding subsection 19(3), only the artists in respect of whom the application was made, artists' associations and producers may intervene as of right on the issue of determining the sector that is suitable for bargaining.

(3) The Tribunal shall give the artists' association concerned and any intervenors notice of its determination under subsection (1) without delay, and that determination is deemed to be interlocutory, notwithstanding section 21.

27. (1) After determining the sector pursuant to subsection 26(1), the Tribunal shall determine the representativity of the artists' association, as of the date of filing of the application for certification or as of any other date that the Tribunal considers appropriate.

(2) Notwithstanding subsection 19(3), only artists in respect of whom the application was made and artists' associations may intervene as of right on the issue of determining the representativity of an artists' association.

28. (1) Where the Tribunal is satisfied that an artists' association that has applied for certification in respect of a sector is the most representative of artists in that sector, the Tribunal shall certify the association.

(2) Certification is valid for a period of three years after the date that the Tribunal issues the certificate and, subject to subsection (3), is automatically renewed for additional three year periods.

(3) Where, in the three months immediately before the date that the certification or renewed certification of an artists' association is to expire, an application for certification in respect of the same or substantially the same sector, or an application for revocation of certification, is filed, the period of validity of the association's certification is extended until the date that the application is accepted or rejected and, where it is rejected, renewal of the association's certification takes effect from that date.

(4) The Tribunal shall keep a register of all certificates that it issues and of their dates of issue.

(5) After certification of an artists' association in respect of a sector,

- (a) the association has exclusive authority to bargain on behalf of artists in the sector;
- (b) the certification of any association that previously represented artists in the sector is revoked in so far as it relates to them; and
- (c) the association is substituted as a party to any scale agreement that affects artists in the sector, to the extent that it relates to them, in place of the association named in the scale agreement or its successor.

THE ISSUES

Issue 1: Is the sector proposed by SARDeC a suitable sector for the purposes of professional relations?

[12] The sector proposed by SARDeC is composed of:

- (a) authors of original French language literary or dramatic works intended for radio, television, cinema or audio-visual media; and
 - (b) authors who adapt, in the form of French language scripts for radio, television, cinema or audio-visual media, literary or dramatic works originally intended for another form of public broadcast;
- with respect to all producers subject to the *Status of the Artist Act* throughout Canada.

[13] Under subsection 26(1) of the *Act*, the Tribunal must consider the common interests of the artists in respect of whom the application was made; the history of professional relations among those artists, their associations and producers concerning bargaining, scale agreements and any other agreements respecting the terms of engagement of artists; and any geographic and linguistic criteria that the Tribunal considers relevant.

Common interests of the artists

[14] The applicant was founded on February 8, 1949 as the Société des auteurs dramatiques. In March 1966 it became the Société des auteurs et compositeurs, and in August 1978 it became the Société des auteurs, recherchistes, documentalistes et compositeurs (SARDeC). Its mandate is to promote the study, defence and development of the economic, social and moral interests of its members.

[15] SARDeC offers a number of services to its members, including a Caisse de Sécurité to which its members and the producers contribute and which has been used to establish a pension fund and a group insurance plan. The applicant also offers a manuscript filing service, whose purpose is to protect works from plagiarism, and a consultation service on contracts where there is no collective agreement in place. These last two services are also offered to non-members.

[16] According to the applicant, the sector is divided first on the basis of language. SARDeC's membership consists of authors of audio-visual works who work in French, while that of the Writers Guild of Canada consists of English language authors. There is also a division on the basis of media, which relates to the medium for which the work is intended. Authors are often members of more than one association, and the division is based on the medium used.

[17] SARDeC contributes to various cultural activities in the sector, including

the Rendez-vous du cinéma, at which it gives an award for the year's best script, the Centenaire du cinéma, the Festival du court métrage and a symposium on television for authors, which it organized in co-operation with the Academy of Canadian Cinema. It has permanent relationships with most of the artists' associations in the sector: the Canadian Conference of the Arts, the Coalition of Creators and Copyright Owners and the Writers Guild of Canada. Internationally, it is a member of the International Affiliation of Writers Guilds and the International Confederation of Societies of Authors and Composers.

[18] In light of the above, the Tribunal concludes that the artists in the sector proposed by the applicant do in fact have common interests.

History of professional relations

[19] SARDeC signed a collective agreement with the Canadian Broadcasting Corporation (CBC) in 1956 pursuant to a voluntary recognition but had to wait until the 1980s for other producers to follow suit. The applicant further stated that in that same period, venues for creation became more diverse and new cultural policies gave greater recognition to the contribution of creators to culture.

[20] On this subject, the applicant noted the provincial status of the artist legislation enacted in 1988 [the *Act respecting the professional status and conditions of engagement of performing, recording and film artists* (R.S.Q., c. S-32.1)]. In 1989, the Quebec Commission de reconnaissance des associations d'artistes recognized the applicant (file No. R-10-88) as representative of a sector including [TRANSLATION] "all authors of texts working in French in the film sector in the province of Quebec".

[21] The applicant negotiated agreements with the National Film Board (NFB) in 1984 and Radio-Québec in 1987. In 1992, the applicant signed an agreement with the Association des producteurs de films et de télévision du Québec for the television sector. Negotiations are currently under way in respect of the cinema sector. According to the applicant, once these negotiations in the cinema sector are completed, the only major producers with which it will not have agreements are Télé-Métropole and TV Ontario. The applicant further declared that certification under the *Status of the Artist Act* will enable it to complete the work it has undertaken since 1949 to ensure adequate working conditions for all authors in the proposed sector.

[22] In its written representations and at the hearing, the Association québécoise des réalisateurs et réalisatrices de cinéma et de télévision (AQRRT) asked the Tribunal to note that the category or categories of artists concerned and the activity or activities concerned should generally be clearly specified in the description of each sector.

[23] With respect to the AQRRT's intervention regarding directors of audio-visual works, the applicant confirmed, as stated in its letter of December 1, 1995 (Exhibit 25), that the sector proposed in its application for certification does not include directors in their capacity as directors. It further informed the Tribunal that it did not object to adding a clarification to that effect to the definition of its sector.

[24] The Tribunal takes official notice of the agreement of January 10, 1996 between SARDeC and SPACQ, in which the parties agreed as follows:

[TRANSLATION]

The sector in respect of which SARDeC has applied for certification includes a songwriter working in French only if he or she is also the author of a dramatic or literary work commissioned by a producer within SARDeC's jurisdiction.

The sector in respect of which the SPACQ has applied for certification includes songwriters who are not authors of dramatic or literary works within SARDeC's jurisdiction.

[25] As for the agreements between SARDeC and the copyright collectives, notably SOCAN, SACD and SODRAC, the Tribunal takes official notice thereof and cites their main clauses:

Agreement between SARDeC and SOCAN (January 11, 1996):

[TRANSLATION]

1. SARDeC hereby declares that the following are excluded from the sector concerned in the application for certification referred to in Public Notice 1995-3 (hereinafter "the sector"):
 - 1.1 any musical or dramatico-musical work written or composed by an artist in the sector that does not result from the provision of services by such an artist to a producer to whom the sector applies;
 - 1.2 the musical part of any musical or dramatico-musical work composed by an artist in the sector that results from the provision of services by such an artist to a producer to whom the sector applies; and
 - 1.3 the right to negotiate or agree to any assignment, grant of licence or other authorization concerning the right of public performance or communication to the public by telecommunication, including royalties or other terms and conditions related to such assignments, grants of licences or other authorizations, of the lyrics of a song or extracts from a dramatico-musical work;

Agreement between SARDeC and SODRAC, SACD and SCAM (January 22, 1996):

[TRANSLATION]

2. The application for certification concerns bargaining in respect of the provision of services by the authors referred to in paragraphs 1.1 and 1.2 of this document and of the rights related to the provision of those services;
3. The application for certification in no case concerns literary or dramatic works that do not result from the provision of services to a producer subject to the *Act respecting the status of the artist and professional relations between artists and producers in Canada*;
4. SODRAC, SACD and SCAM hereby declare that no rights they hold or will hold either do or will impair or impede SARDeC's ability to bargain, as it is already doing, in respect of the provision of services referred to in paragraph 2, or the whole of the rights related to those services and the rates of remuneration or other related terms and conditions, with producers subject to the *Act respecting the status of the artist and professional relations between artists and producers in Canada*;
5. SARDeC hereby declares that its certification in no way does nor will impair or impede the exercise, in its current form, by SODRAC, SACD or SCAM of any copyright they own or will own;

Agreement between SARDeC and SODRAC (January 23, 1996):

[TRANSLATION]

1. SARDeC hereby declares that the following are excluded from the sector concerned in the application for certification referred to in Public Notice 1995-3 (hereinafter "the sector"):
 - 1.1 any musical or dramatico-musical work written or composed by an artist in the sector that does not result from the provision of services by such an artist to a producer to whom the sector applies;
 - 1.2 the musical part of any musical or dramatico-musical work composed by an artist in the sector that results from the provision of services by such an artist to a producer to whom the sector applies; and
 - 1.3 the right to negotiate or agree to any assignment, grant of licence or other authorization concerning the right of reproduction, including royalties or other terms and conditions related to such assignments, grants of licences or other authorizations, of the lyrics of a song or extracts from a dramatico-musical work;

[26] The Tribunal is of the opinion that the professional relations between the applicant and the producers and its professional relations with other artists' associations have been and continue to be important to the authors of the proposed sector.

Conclusion respecting the sector

[27] After considering all the oral and written representations of the applicant and the intervenors, the Tribunal agrees that the sector suitable for the purposes of professional relations with all producers subject to the *Status of the Artist Act* throughout Canada is a sector composed of:

(a) authors of original French language literary or dramatic works intended for radio, television, cinema or audio-visual media; and

(b) authors who adapt, in the form of French language scripts for radio, television, cinema or audio-visual media, literary or dramatic works originally intended for another form of public broadcast;

but which does not include directors in their capacity as directors.

Issue 2: Is SARDeC representative of the artists in the sector?

[28] According to the documents filed by the applicant, it represents 547 authors; however, it did not estimate the total number of independent contractors in the proposed sector. At the hearing, the applicant provided further particulars regarding the information contained in its application for certification. Thus, as of January 25, 1996, SARDeC had 722 members, 575 of whom were authors. It submitted that this represents 90 percent of the authors in the proposed sector.

[29] Three artists' associations representing Francophone writers from outside Quebec – the Association acadienne des artistes professionnel.le.s du Nouveau-Brunswick, the Association des artistes acadiens de la Nouvelle-Écosse and the Association des auteurs et auteurs de l'Ontario français – filed representations on the representativeness of SARDeC in respect of French-speaking authors from outside Quebec, while the Conseil culturel acadien de la Nouvelle-Écosse and the Association des artistes acadiens de la Nouvelle-Écosse did so jointly. Finally, the Fédération culturelle canadienne-française (FCCF), to whom the Tribunal had granted intervenor status, made similar representations.

[30] The Sector Profile prepared by Tribunal staff, which has been filed on the record (Exhibit 29), indicates that of the 547 authors who were members of SARDeC in July 1995, only 15 were from outside Quebec. However, the applicant asserted at the hearing that the number of authors from outside Quebec is now 20.

[31] With respect to the scope of the agreements negotiated with the Canadian Broadcasting Corporation (CBC) and the National Film Board (NFB), the applicant drew attention to their national character. For example, according to the applicant, five authors from outside Quebec signed contracts with the NFB between October 1990 and October 1995. At the CBC, 21 authors signed contracts in Moncton, nine in Edmonton, eight in Ottawa, two in Windsor and one in Toronto. The applicant asserted that a large majority of those authors were from outside Quebec.

[32] A letter of intent dated January 11, 1996, which set out a consultation process between SARDeC and the FCCF – which represents nine Francophone cultural organizations from outside Quebec, including the intervenors mentioned in paragraph 6 of these reasons – was filed with the Tribunal. As a result, the FCCF and the associations it represents agreed to support the applicant's application for certification and withdrew their interventions.

[33] The Tribunal accepts the applicant's submission that it is the organization most representative of the artists in the proposed sector.

DECISION

[34] For all these reasons, and in view of the fact that the applicant is in compliance with the requirements of section 23 of the *Status of the Artist Act*, the Tribunal:

Declares that the sector suitable for the purposes of professional relations with all producers subject to the *Status of the Artist Act* (S.C. 1992, c. 33) throughout Canada is a sector composed of:

- (a) authors of original French language literary or dramatic works intended for radio, television, cinema or audio-visual media; and
- (b) authors who adapt, in the form of French language scripts for radio, television, cinema or audio-visual media, literary or dramatic works originally intended for another form of public broadcast;

but which does not include directors in their capacity as directors.

Declares that the Société des auteurs, recherchistes, documentalistes et compositeurs is the organization most representative of the artists in the sector.

An order was issued on January 30, 1996 to confirm the certification of the Société des auteurs, recherchistes, documentalistes et compositeurs in respect of the said sector.

Ottawa, February 9, 1996

“André Fortier”
André Fortier, A/Chairperson

“J. A. Lavoie”
J. A. Lavoie, Member

“David P. Silcox”
David P. Silcox, Member