

Canadian Artists and Producers
Professional Relations Tribunal



Tribunal canadien des relations
professionnelles artistes-producteurs

CANADA

Ottawa, April 26, 1996

File No. 95-0010-A

Decision No. 011

IN THE MATTER OF AN APPLICATION FOR CERTIFICATION FILED BY THE ASSOCIATION QUÉBÉCOISE DES AUTEURS DRAMATIQUES

Decision of the Canadian Artists and Producers Professional Relations Tribunal

The application for certification is granted.

Place of hearing: Montreal, Quebec

Date of hearing: April 10, 1996

Quorum: André Fortier, Chairperson
Armand Lavoie, Member
David P. Silcox, Member

Appearances: Castiglio et Associés, Stéphane Lacoste; Anne Legault, Executive Secretary; Robert Guric and Joël Richard for the applicant.
Sylvie Forest for the National Film Board of Canada.
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, Collette Matteau for the Société du droit de reproduction des auteurs, compositeurs et éditeurs du Canada (SODRAC) inc.

REASONS FOR DECISION

95-0010-A: In the matter of an application for certification filed by the Association québécoise des auteurs dramatiques (AQAD)

STATEMENT OF FACTS

[1] This decision relates to an application for certification under section 25 of the *Status of the Artist Act*, S.C. 1992, c. 33 (hereinafter referred to as "the Act"), submitted to the Canadian Artists and Producers Professional Relations Tribunal (hereinafter referred to as "the Tribunal") by the Association québécoise des auteurs dramatiques on October 10, 1995. The application was heard at Montreal on April 10, 1996.

[2] The applicant filed an application to represent, throughout Canada, a sector composed of:

- a) authors of original French-language dramatic works and original librettos for French-language dramatico-musical works created for the stage, in respect of the public performance of such work or the recording of that performance on any medium; and
- b) authors of French-language translations or French-language adaptations, intended for the stage, of dramatic works or librettos originally written in another language or in another variant of the French language, or based on a work intended for another medium of distribution, in respect of the public performance of such translation or adaptation or the recording of that performance on any medium.

[3] Public notice of this application was given in the *Canada Gazette* on Saturday, November 4, 1995 and in the *Globe and Mail* and *La Presse* on November 15, 1995. The public notice set a closing date of December 15, 1995 for the filing of notices of intervention by artists, artists' associations and producers.

[4] As provided in subsection 26(2) of the *Act*, notwithstanding subsection 19(3) of the *Act*, producers affected by an application for certification may intervene as of right on the issue of determining the sector that is suitable for bargaining. Pursuant to this subsection, the Tribunal received notices of intervention from the National Film Board (NFB), the Canadian Broadcasting Corporation (CBC) and the Réseau de Télévision Quatre Saisons inc. (TQS). The NFB informed the Tribunal that it wished to intervene only in the event that the proposed sector definition was changed. The CBC and TQS did not file any written submissions and did not send a representative to the hearing.

[5] Three copyright collectives, the Société du droit de reproduction des auteurs, compositeurs et éditeurs du Canada (SODRAC) inc., the Society of Composers, Authors and Music Publishers of Canada (SOCAN) and the Société des auteurs et compositeurs dramatiques (SACD) filed requests for intervenor status in this case. In Interim Decision No. 006, dated February 13, 1996, the Tribunal gave SODRAC, SOCAN and the SACD limited intervenor status pursuant to subsection 19(3) of the Act, entitling them to make representations regarding the determination of the sector for bargaining and the representativeness of the applicant.

[6] In the time period preceding the hearing of the application, the Tribunal was informed that the applicant had signed an agreement with SODRAC, SOCAN and SACD.

[7] The applicant's application for certification raises the following questions:

- 1) Is the sector proposed by the applicant suitable for bargaining?
- 2) Is the applicant representative of the artists in the sector?

THE STATUS OF THE ARTIST ACT

[8] The provisions 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

Question 1: Is the sector proposed by the applicant suitable for bargaining?

[9] The sector proposed by the applicant is composed of, throughout Canada:

a) authors of original French-language dramatic works and original librettos for French-language dramatico-musical works created for the stage, in respect of the public performance of such work or the recording of that performance on any medium; and

b) authors of French-language translations or French-language adaptations, intended for the stage, of dramatic works or librettos originally written in another language or in another variant of the French language, or based on a work intended for another medium of distribution, in respect of the public performance of such translation or adaptation or the recording of that performance on any medium.

[10] On March 28, 1996, an agreement was reached by the applicant and the three copyright collectives having intervenor status — the Société du droit de reproduction des auteurs, compositeurs et éditeurs du Canada (SODRAC) inc., the Society of Composers, Authors and Music Publishers of Canada (SOCAN) and the Société des auteurs et compositeurs dramatiques (SACD). This agreement provides that the applicant will remove the words "on any medium" from the wording of the proposed sector. The agreement also provides that the application for certification applies only to the negotiation of payments for services rendered by authors in the sector. The Tribunal accordingly takes notice of this agreement.

[11] Consequently, the sector proposed by the applicant should read as follows:

A sector, throughout Canada, composed of:

a) authors of original French-language dramatic works and original librettos for French-language dramatico-musical works created for the stage, in respect of the public performance of such work or the recording of that performance; and

b) authors of French-language translations or French-language adaptations, intended for the stage, of dramatic works or librettos originally written in another language or in another variant of the French language, or based on a work intended for another medium of distribution, in respect of the public performance of such translation or adaptation or the recording of that performance.

[12] In its notice of intervention, the National Film Board stated its intention to participate in the hearing only in the event that the proposed sector was changed. Its representative, who attended the hearing, confirmed that she had no comment concerning the change made to the proposed sector.

[13] In accordance with subsection 26(1) of the Act, the Tribunal must consider the common interest 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.

The common interests of the artists

[14] The applicant has grouped dramatic authors and theatrical translators and adapters working in the French language in the field of live stage performance. It argued that the reality of this sector is very different from that of sectors covering literary authors or authors who work in the audiovisual field. This reality means that the artists concerned have different needs and interests, which have for many years been recognized by dividing jurisdiction among the various associations of authors, including the applicant, the Union des écrivaines et écrivains québécois (UNEQ) and the Société des auteurs, recherchistes, documentalistes et compositeurs (SARDeC).

The history of professional relations

[15] The applicant is a relatively new association which grew out of the Centre des auteurs dramatiques (CEAD). It was founded in 1990 for the purpose of representing dramatic authors, as a professional association devoted to protecting their rights.

[16] The Commission de reconnaissance des associations d'artistes du Québec has recognized the applicant on two separate occasions for the purpose of representing dramatic authors, librettists and theatrical translators and adapters in sectors under provincial jurisdiction.

[17] The applicant filed with the Tribunal an agreement signed in February 1996 with the ministère de l'Éducation du Québec concerning performances of dramatic works in educational institutions. It has also undertaken negotiations with two associations of producers, the Théâtres Associés (TAI), to which the National Arts Centre belongs, and the Association des producteurs de théâtre professionnels (AFTP). These negotiations relate to the services provided by authors in the context of the stage production of a theatrical text. No artist-producer scale agreement has been negotiated to date.

Relevant geographic and linguistic criteria

[18] The applicant submitted that it is natural for jurisdiction to be divided in Canada along linguistic lines, since language is the essential element of writing. It described its ties, which exist in a spirit of reciprocity, with the Playwrights Union of Canada, which represents dramatic authors working in English.

[19] The applicant also argued that there is French-language theatre throughout Canada, wherever there are large French-speaking communities. It stated that it had a number of active members in Ontario. No interventions were received from any associations representing francophone Canadian writers in respect of AQAD's application for certification.

[20] Although at present the applicant is a small association whose members are mainly from Quebec, it stated that it intends to exploit its Canada-wide potential and hopes to grow in the years to come.

Conclusion with respect to the bargaining sector

[21] After considering all of the oral and written submissions by the applicant and the intervenors, the Tribunal finds that the sector that is suitable for bargaining with all producers subject to the *Status of the Artist Act* throughout Canada is a sector composed of:

- a) authors of original French-language dramatic works and original librettos for French-language dramatico-musical works created for the stage, in respect of the public performance of such work or the recording of that performance; and
- b) authors of French-language translations or French-language adaptations, intended for the stage, of dramatic works or librettos originally written in another language or in another variant of the French language, or based on a work intended for another medium of distribution, in respect of the public performance of such translation or adaptation or the recording of that performance.

Question 2: Is the applicant representative of the artists in the sector?

[22] The application filed by the applicant states that it has 72 members out of a possible 120 authors working in the French language in the sector. The applicant noted that the estimate of the total population in that sector was derived from figures supplied by the Centre des auteurs dramatiques, to which almost all the professional Quebec and Canadian authors working in this field of activity belong. It therefore submitted that it represents a majority of the artists in the sector. No interventions were received from any artists or other associations on this point.

[23] The Tribunal accepts the applicant's argument that it is the most representative of artists in the sector in question.

DECISION

[24] 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 that is suitable for bargaining 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 dramatic works and original librettos for French-language dramatico-musical works created for the stage, in respect of the public performance of such work or the recording of that performance; and
- b) authors of French-language translations or French-language adaptations, intended for the stage, of dramatic works or librettos originally written in another language or in another variant of the French language, or based on a work intended for another medium of distribution, in respect of the public performance of such translation or adaptation or the recording of that performance.

Declares that the Association québécoise des auteurs dramatiques is the most representative of the artists in the sector.

An order will be issued to confirm the certification of the Association québécoise des auteurs dramatiques for this sector.

Ottawa, April 26, 1996

«André Fortier»
A/Chairperson

«J.A. Lavoie»
Member

«David P. Silcox»
Member