

Canadian Artists and Producers
Professional Relations Tribunal



CANADA

Tribunal canadien des relations
professionnelles artistes-producteurs

Ottawa, May 15, 1996

File No. 95-0012-A

Decision No. 012

IN THE MATTER OF AN APPLICATION FOR CERTIFICATION FILED BY THE CANADIAN ASSOCIATION OF PHOTOGRAPHERS AND ILLUSTRATORS IN COMMUNICATIONS

Decision of the Canadian Artists and Producers Professional Relations Tribunal

The application for certification is granted.

Place of hearing: Toronto, Ontario

Date of hearing: April 26, 1996

Quorum: Ms. Meeka Walsh, Presiding Member
Mr. André Fortier, Chairperson
Mr. David P. Silcox, Member

Appearances: Canadian Association of Photographers and Illustrators in
Communications: Duncan P. Read, Executive Director; Struan
Campbell-Smith, President; Stephen Quinlan, Past President.

REASONS FOR DECISION

95-0012-A: In the matter of an application for certification filed by the Canadian Association of Photographers and Illustrators in Communications

STATEMENT OF FACTS

[1] This decision concerns 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, the Canadian Association of Photographers and Illustrators in Communications (CAPIC), on October 30, 1995. The application was heard at Toronto on April 26, 1996.

[2] The applicant seeks to represent, throughout Canada, a sector composed of commercial photographers and commercial illustrators.

[3] Public notice of this application was given in the *Canada Gazette* on Saturday, November 25, 1995 and in the *Globe and Mail* and *La Presse* on December 4, 1995. This notice also appeared in the December 1995 editions of the Canadian Conference of the Arts bulletin (INFO-FAX), and the Professional Photographers of Canada magazine. The public notice set a closing date of January 12, 1996 for the filing of notices of intervention by artists, artists' associations and producers.

[4] As provided by subsections 26(2) and 27(2) of the *Act*, other artists' associations have the right to intervene in any application for certification. Accordingly, on January 12, 1996, the Canadian Artists' Representation/Le front des artistes canadiens (CARFAC) notified the Tribunal of its interest in the CAPIC application. Discussions took place between the applicant and CARFAC and on April 17, 1996, the Tribunal Secretariat was advised by telephone that CARFAC had withdrawn its intervention and that it was now in support of CAPIC's application.

[5] CAPIC's application for certification raises the following issues:

- (1) Is the sector proposed by CAPIC a sector that is suitable for bargaining?
- (2) Is CAPIC representative of artists in the sector?

THE STATUS OF THE ARTIST ACT

[6] 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

Issue 1: Is the sector proposed by CAPIC a sector that is suitable for bargaining?

[7] The sector proposed by CAPIC is a nation-wide sector composed of commercial photographers and commercial illustrators.

The community of interest

[8] Subsection 26 (1) of the Act requires that, when considering an application for certification, the Tribunal take into account 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 the Tribunal considers relevant.

[9] CAPIC was established in 1978 as a national, non-profit association. Its stated aims are to protect and promote the interests of photographers and

illustrators, to maintain and promote professional standards and ethics, to provide a basis for cooperation among its members and to enhance the working relationship between its members and commercial art buyers.

[10] In their presentation to the Tribunal CAPIC identified the programs and benefits it provides to its members. These include a national bilingual magazine published annually, a national, bilingual newsletter published bi-monthly, a juried national exhibition, a professional practices manual, insurance programs and a national archives.

[11] CAPIC indicated that their association began in 1978, largely in response to their concerns about copyright issues. They have maintained their interest in this area and noted that they continue to lobby for fair copyright practices. They indicated, as well, their intention to keep their members informed as new electronic technology affects their practices.

[12] In their presentation to the Tribunal CAPIC identified areas of commonality between commercial photographers and commercial illustrators. These include use of computer technology, their business relations with clients and the importance of copyright to both groups.

[13] CAPIC made it clear that it is only seeking to represent photographers and illustrators whose work is sold to clients who use these works for commercial purposes. These purposes include the promoting, advertising, and marketing in visual form of ideas, causes, concerns, entities (corporate or otherwise), products, goods and services. CAPIC distinguishes the work of commercial photographers and illustrators from that of persons whose works are intended for the use of individual consumers (eg. family portrait and wedding photographers), and who should therefore not be included in their sector for bargaining purposes.

[14] In light of these facts, the Tribunal is of the opinion that the artists in the proposed sector form a community of interest with respect to commercial photographers and commercial illustrators.

History of professional relations

[15] In their submission to the Tribunal, CAPIC indicated that historically contracts between their members and producers or clients had not usually been formal. Commercial photographers, commercial illustrators and producers appear to have had a common understanding on which their relationships were based. In the area of copyright, the understanding was that use of material applied just to first printing. CAPIC indicated that current technologies have made its members vulnerable to copyright infringements and that it is cooperating with other artists' associations as part of the Canadian Creators Coalition in an effort to resolve problems concerning unauthorized electronic use of works created for print.

CAPIC has also provided support to individual members when they encounter difficulties with the use of their work; for example, CAPIC has created a fund to assist one of its members in a dispute over copyright. The Tribunal was also informed that CAPIC has recently created a negotiating committee and an advisory group to negotiate with Télémedia. CAPIC indicated that although it has not previously negotiated “scale agreements” on behalf of its members, certification under the *Status of the Artist Act* will allow it to negotiate model agreements with government institutions that it hopes can become industry standards.

Linguistic and geographic considerations

[16] CAPIC is a national association with chapters established across Canada in Quebec, Ontario, British Columbia and the Prairie and Atlantic provinces. It provides services to its members in both the French and English languages. The Tribunal is therefore satisfied that a national sector comprised of both French and English commercial photographers and commercial illustrators is appropriate.

Conclusion regarding the sector

[17] After considering all of the oral and written representations of the applicant, the Tribunal has determined that the sector suitable for bargaining with all producers subject to the *Status of the Artist Act* throughout Canada is a sector composed of commercial photographers and commercial illustrators.

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

[18] The documents filed by the applicant indicate a current membership of 650. The applicant also stated that there are no other similar national organizations of photographers and illustrators. Their application was unopposed.

[19] The Tribunal, therefore accepts the applicant’s submission that it is the organization most representative of artists in the sector described above.

DECISION

[20] 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 bargaining with all producers subject to the *Status of the Artist Act* throughout Canada is a sector composed of commercial photographers and commercial illustrators.

Declares that the Canadian Association of Photographers and Illustrators in Communications is the association most representative of artists in the sector.

An order was issued on April 26, 1996 granting certification to the Canadian Association of Photographers and Illustrators in Communications to represent the said sector.

Ottawa, May 15, 1996

Meeka Walsh, Presiding Member

André Fortier, A/Chairperson

David P. Silcox, Member