

Canadian Artists and Producers
Professional Relations Tribunal



Tribunal canadien des relations
professionnelles artistes-producteurs

CANADA

DECISION No. 017

95-0016-A: In the matter of an application for certification filed by the Union des Artistes (UdA)

Interim decision of the Canadian Artists and Producers Professional Relations Tribunal: August 29, 1996

STATEMENT OF FACTS

[1] This is an interim decision relating to the application for certification submitted pursuant to section 25 of the *Status of the Artist Act* (S.C. 1992, c. 33, hereinafter “the Act”) by the Union des Artistes on December 14, 1995. The application was heard in Montreal on June 5, 6 and 7, 1996.

[2] The applicant applied for certification to represent a sector composed of all performers, choreographers and directors who perform, sing, recite, direct or act in any manner whatsoever, in a literary, musical or dramatic work, or in a mime, variety, circus or puppet show:

i) broadcast, presented or performed in Quebec;

ii) broadcast, presented or performed in Canada, outside Quebec, to a French-speaking audience;

with respect to all producers subject to the *Status of the Artist Act* throughout Canada, save and except:

a) the sector recognized by l’Union des Artistes as being within the jurisdiction of the Canadian Actors’ Equity Association pursuant to an agreement between the two unions;

b) the sector recognized by l’Union des Artistes as being within the jurisdiction of the Alliance of Canadian Television and Radio Artists pursuant to an agreement between the two unions;

c) artists who play musical instruments in all areas of artistic production, including persons who sing while playing a musical instrument for the instrumental portion of their performance.

[3] Public notice of this application was given in the *Canada Gazette* of Saturday, February 3, 1996, and in the *Globe and Mail* and *La Presse* on February 14, 1996. This notice also appeared in the March edition of the

Canadian Conference of the Arts *INFO-FAX* and in the February 26, 1996 edition of *Playback*. The public notice set a closing date of March 19, 1996 for the filing of expressions of interest by artists, artists' associations and producers.

[4] As provided in subsections 26(2) and 27(2) of the *Act*, artists and artists' associations may intervene as of right on any question related to the suitability of the sector and on the representativeness of the applicant for certification. In this regard, the Tribunal received notices of intervention from Mr. Claude Latrémouille, the Association des professionnels des arts de la scène du Québec (APASQ-CSN), the ACTRA Performer's Guild (APG), Fight Directors, Canada (FDC) and the Association québécoise des réalisateurs et réalisatrices de cinéma et de télévision (AQRRECT).

[5] The Union des écrivaines et écrivains québécois (UNEQ) and the Canadian Actors' Equity Association (CAEA) also filed notices of intervention. UNEQ informed the Tribunal that it wished to intervene in this case for the sole purpose of asking that the Tribunal give effect to an agreement that was to be made between the Uda and UNEQ. The CAEA advised the Tribunal that it supported the application and that it wished to be informed of any developments in the case.

[6] The National Film Board (NFB) also advised the Tribunal that it wished to intervene in this case. Pursuant to subsection 26(2) of the *Act*, a producer may intervene as of right on issues related to the definition of the sector. However, it may not intervene on the issue of representativeness without the Tribunal's permission. The NFB did not ask to intervene on the issue of representativeness.

[7] The Canadian Association of Professional Dance Organizations (CAPDO) filed a request for permission to intervene pursuant to subsection 19(3) of the *Act*. Following discussions with the applicant, CAPDO withdrew its request on April 19, 1996.

[8] In the weeks preceding the hearing of the application, the Tribunal was informed that the applicant had signed agreements with APG and UNEQ.

[9] The Uda application for certification raises the following issues:

- 1) Is the sector proposed by the applicant a suitable one for bargaining, and in particular:
 - (a) should choreographers be included in the sector;
 - (b) should directors be included in the sector;
 - (c) should fight directors be included in the sector.
- 2) Is the applicant representative of artists in the sector.

THE ISSUES

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

[10] The sector proposed by the applicant is composed of all performers, choreographers and directors who perform, sing, recite, direct or act in any manner whatsoever, in a literary, musical or dramatic work, or in a mime, variety, circus or puppet show:

i) broadcast, presented or performed in Quebec;

ii) broadcast, presented or performed in Canada, outside Quebec, to a French-speaking audience;

with respect to all producers subject to the *Status of the Artist Act* throughout Canada, save and except:

a) the sector recognized by l'Union des Artistes as being within the jurisdiction of the Canadian Actors' Equity Association pursuant to an agreement between the two unions;

b) the sector recognized by l'Union des Artistes as being within the jurisdiction of the Alliance of Canadian Television and Radio Artists pursuant to an agreement between the two unions;

c) artists who play musical instruments in all areas of artistic production, including persons who sing while playing a musical instrument for the instrumental portion of their performance.

[11] In the course of the hearing, it became apparent that the evidence on the record relating to directors and fight directors was incomplete. The three intervenors (APASQ-CSN, AQRRT and FDC) were therefore not in a position to make full answer to the applicant's claims, and without this information the Tribunal could not come to a conclusion as to whether these professions should be included in the sector or not. Because of time constraints, the Tribunal decided to defer consideration of those aspects of the proposed sector relating to directors and fight directors until a later hearing. Accordingly, these reasons will deal only with the portions of the application related to performers and choreographers.

[12] The applicant asked the Tribunal to take official notice of the agreements it has concluded with UNEQ and CAEA. The agreement with UNEQ signed in April 1996 provides that the UdA's application does not relate to authors of literary or dramatic works who are represented by UNEQ in circumstances where the author reads or recites his or her work in public, except where the work is staged at the same time as the reading or recital. The agreement between CAEA and the UdA is an inter-union agreement made on April 1, 1976, and renewed on November 6, 1992. This agreement clarifies the respective jurisdictions of CAEA and the UdA for the purposes of determining members, negotiating collective agreements and representing sectors of artistic activities. We note that another panel of this Tribunal has already taken official notice of the agreement between

the UdA and CAEA, in Decision No. 010 dated April 25, 1996 relative to the CAEA's application for certification.

[13] The applicant also asked the Tribunal to take official notice of the agreement it concluded with the ACTRA Performer's Guild (APG) on May 17, 1996. Although the Association québécoise des réalisateurs et réalisatrices de cinéma et de télévision (AQRRT) had indicated that it had no objection to the agreement on the merits, it asked the Tribunal not to take official notice of the agreement until it could make submissions regarding the broadcasting of live performances. We note that another panel of this Tribunal has already taken official notice of the agreement between the UdA and APG in Decision No. 015, dated June 15, 1996, in the context of APG's application for certification. The issues that are of concern to the AQRRT regarding terminology can be dealt with at the subsequent hearing to finalize the UdA's sector that will be held in the coming months.

[14] In accordance with subsection 26(1) of the *Act*, when the Tribunal defines a bargaining sector, it 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.

Interventions with respect to the wording of the sector definition

[15] Mr. Claude Latrémouille intervened in this case as an artist affected by the application. According to Mr. Latrémouille, the wording proposed by the applicant may exclude persons who have traditionally, enjoyed the benefit of agreements negotiated voluntarily with producers. He also submitted that the representation of members by the UdA has never been subject to segmentation according to the type of activities in which the members are engaged. He wished to see the definition of the sector correspond as closely as possible to the historical relationship between the applicant and the Canadian Broadcasting Corporation.

[16] Mr. Latrémouille asked the Tribunal to define the sector in a residual manner by including all artists, subject to certain exceptions or, if it were more advantageous, to have regulations promulgated including all areas of artistic activities. He also proposed that the artistic activities not yet regulated be mentioned in these reasons, so that the sector could be expanded when regulations eventually come into force.

[17] The applicant denied Mr. Latrémouille's contention that some artists might be excluded from the bargaining sector. It submits, rather, that the

definitions of “dramatic works” and “cinematographic works” set out in the *Copyright Act* (S.C. 1985, c. 42) mean that the Tribunal may interpret the similar expressions set out in subparagraph 6(2)(b)(ii) of the *Act* sufficiently broadly so that all artists currently represented by the UdA will be included in the sector.

[18] The Tribunal takes note of Mr. Latrémouille’s concerns. Although the approach suggested by Mr. Latrémouille is a valid one, due to the fact that professional relations under the *Status of the Artist Act* are still in an embryonic stage the Tribunal prefers, for the time being, to use the more definitive approach to sector definition proposed by the applicant.

[19] In order to clarify the scope of the proposed sector, the Tribunal asked the applicant to provide it with a list enumerating the professional categories included in the proposed sector. Without limiting the generality of its application, the applicant indicated that the following positions would be included in what it considers to be the “performer” category: actor (including principal actor, supporting actor, bit player, non-speaking role, extra), host, announcer, guest performer, circus performer, variety artist, stunt performer, assistant stunt performer, stunt coordinator, singer (including soloist, duettist, chorister/soloist, chorister, singer who plays a musical instrument for the vocal, non-instrumental portion of his/her performance), chorus director (unless he/she performs the function of orchestra conductor), group leader, troupe leader, orchestra conductor (if he/she performs the function of actor), columnist, clown, commentator, dancer (including soloist, duettist, chorister/soloist, chorister), demonstrator, coach, story teller, understudy, folklorist, illustrator, impersonator, interviewer, reader, magician, master of ceremonies, puppet player, model, puppeteer, mime artist (including soloist, duettist, chorister), musician (if he/she performs the function of actor), monologist, narrator, panellist, applicant, presenter, stand-in, cue person and reporter.

The list filed by the applicant also included the positions of choreographer and director. The position of choreographer is discussed in paragraphs 25 to 28 of these reasons, and the position of director will be addressed in the final decision of the Tribunal.

[20] The NFB asked the Tribunal to amend the wording of the proposed sector to include performers “who work in French” rather than the present wording, which reads as follows:

- ...
- i) broadcast, presented or performed in Quebec;
- ii) broadcast, presented or performed in Canada, outside Quebec, to a French-speaking audience; ...

The NFB is of the view that certification should be based on occupational title and not on the place where the work will be broadcast or performed, and that

certification should be tied not to whether the work is presented before a French-speaking audience, but rather to the fact that the work is in French.

[21] On this issue, the applicant indicated, as an example, that opera is almost always presented in a language other than French and that the UdA may in certain cases represent these artists despite the fact that the production is in Italian or German. As well, some French as a second language educational programs presented on television are produced by English-speaking radio broadcasters for an English-speaking audience and the UdA does not represent those artists even though the broadcast is presented “in French”. It further pointed out that the reciprocal agreements entered into with the Canadian Actors’ Equity Association (CAEA) and the ACTRA Performers’ Guild (APG) establish distinct jurisdictions. These agreements have been in place for a very long time and are operating well. The UdA must therefore look to those agreements and that is why the expression “to a French-speaking audience” was used in the wording of the proposed sector.

[22] The Tribunal is of the opinion that there is no reason to disrupt a situation that is operating to the satisfaction of all the associations and artists involved. The inter-union agreements that the UdA has entered into with CAEA and APG establish the respective jurisdictions of the three associations with respect to language of production and representation. However, the Tribunal is of the opinion that it would be preferable to use the expression “*intended for a French-speaking audience*” in the wording of the proposed sector.

[23] The NFB also asked the Tribunal to specify in the sector definition that employees of producers are excluded from the sector. On this point, the applicant stated that an employee of a producer, when acting in that capacity, is not included in the proposed sector because the *Status of the Artist Act* applies only to independent contractors. It also indicated that a person may both be an employee and work in the artistic community as an independent contractor, and that the UdA wishes to represent employees of producers in the event that such a person takes on a role as a contract performer in a particular production that is not related to their usual employment.

[24] The *Status of the Artist Act* covers only professional artists who are found to be independent contractors in accordance with the criteria in subsection 18(b) of the *Act*. The Tribunal is therefore of the opinion that there is no need to specify that employees of producers are excluded from the sector. Any professional artist who meets the criteria established by the *Act* and who works in a sector for which a certified artists’ association has negotiated a scale agreement must be able to claim the benefit of the terms of that scale agreement, even though in a different context the individual in question may be an “employee”. The Tribunal finds that it is not necessary to specify this in the definition as

requested by the NFB. However, to avoid any ambiguity, the Tribunal will add the expression “independent contractors” to the wording of the proposed sector.

Choreographers

[25] The NFB objected to the inclusion of the verb “direct” in the sector proposed by the applicant. The NFB is of the opinion that there is a major difference between performing an art and directing artists’ work. It submits that the Tribunal must ensure that the integrity of the group is preserved by distinguishing performers from those who direct. For this reason, the NFB also objected to the inclusion of the position of choreographer in the proposed sector. The NFB noted that in all of the collective agreements that it has negotiated voluntarily with the Uda since 1979, the position of choreographer has been excluded. In fact, the NFB hires its choreographers individually under a contract for services, there being no other agreement between the NFB and any artists’ association for this profession.

[26] The applicant pointed out that it represents choreographers under its agreement with the Canadian Broadcasting Corporation and in several other agreements entered into with private broadcasters. On the other hand, the applicant admitted that choreographers are not included in the agreements it has with concert and theatre producers, or in the agreement with the Association des producteurs de films et de télévision du Québec, the NFB and the Association québécoise de l’industrie du disque du spectacle et de la vidéo. It noted, however, that a number of its members work as choreographers while continuing to exercise their profession as performers in a number of areas of artistic activity. It also asserted that not only do performers and choreographers have a substantial community of interest, but it is common for the same person to be hired as a performer and choreographer by the same producer.

[27] The evidence establishes that the applicant has historically represented choreographers in its relations with broadcasters, who are producers within the meaning of paragraph 6(2)(b) of the *Act*, while in its relations with the NFB, which is also a producer subject to the *Act*, choreographers are excluded. In the agreements filed by the applicant relating to concert, film and audiovisual productions, there is no reference to the position of choreographer.

[28] In deciding any question that arises under Part II of the *Status of the Artist Act*, the Tribunal is directed by subsection 18(a) of the *Act* to take into account the applicable principles of labour law. One of these principles is that supervisors should not be included in the same bargaining unit as those whom they supervise. At the present time, the Tribunal is of the opinion that it does not have sufficient information on the record with respect to the specific functions and interests of choreographers in order to make a decision as to whether choreographers should be included in the same sector as performers, or in a separate sector. The

Tribunal therefore invites the applicant and the intervenors to submit additional details regarding the functions of choreographers, their interests relative to those of performers and the history of professional relations involving choreographers and producers in the federal jurisdiction. This evidence may be submitted prior to or in the course of the Tribunal's subsequent proceedings to be held in this case, at which time the Tribunal will make a final ruling as to the sector that is suitable for bargaining.

Performers' community of interest and history of professional relations

[29] The applicant filed several documents with the Tribunal in support of its submission that for more than fifty years it has been the only artists' association that has been working with performers. As examples, we would cite the book by Louis Caron, *La vie d'artiste*, published by Éditions du Boréal, and the booklet entitled *Place à l'Union des Artistes*.

[30] The Union des Artistes was founded by a group of singers whose most fundamental right, the right to be paid, had been violated, and who decided to join the American Federation of Radio Artists (AFRA). AFRA was thus the first legal recognition of the Uda, on November 7, 1937. Later, the scope of the association was extended to allow announcers, actors and sound effects people to join the AFRA.

[31] In January 1938, the first minimum fee scales were voted on, and in February a charter was obtained from the American committee of the AFRA. In November 1942, the Montreal local separated from AFRA and became the "Union des Artistes lyriques et dramatiques" with the legal status of a union constituted to examine, defend and develop the economic, social and moral interests of artists. In 1943, a Caisse d'Entraide [mutual assistance fund] was established to support its needy members. In 1952, the association adopted its present name.

[32] During the 1970s there was a merger with the Société des Artistes de Québec, which became the second regional section, after the Ottawa-Hull section in 1968. In 1976, a third regional section was created in Toronto to contribute to the cultural affirmation of Franco-Ontarians.

[33] The applicant has negotiated a number of collective agreements since it was founded, in fields under both federal and provincial jurisdiction, thereby obtaining *de facto* recognition from producers well before the enactment of federal and provincial legislation respecting the status of the artist.

[34] The applicant filed more than fifteen collective agreements or recognitions of jurisdiction with the Tribunal. In terms of producers to whom the *Status of the Artist Act* applies, the applicant has negotiated collective agreements with the

Canadian Broadcasting Corporation, the National Film Board, Télé-Métropole, the National Arts Centre and the Joint Producers, of which the Canada Post Corporation is a member. In addition, there are recognitions of the UdA's jurisdiction relating to commercials with numerous radio and television stations including Radio Mutuel, Télévision St-Maurice inc. and Télévision Quatre-Saisons.

[35] Having regard to the foregoing, the Tribunal is of the opinion that the applicant has established that there is a community of interest among performers in the proposed sector who perform in Quebec or for a French-speaking audience elsewhere in Canada, and that there has been a history of professional relations among the artists, artists' associations and producers for more than fifty years.

Linguistic and geographic criteria

[36] The sector proposed by the applicant includes both geographic and linguistic criteria. It corresponds to the field covered by the collective agreements already negotiated and also to the inter-union agreements entered into with CAEA, APG and the Guilde des musiciens du Québec.

[37] If we look to these agreements, the UdA currently represents all performers in Quebec in all areas of production, with the exception of artists who perform instrumental music in all areas of artistic production, including persons who sing while playing a musical instrument for the instrumental portion of their performance, within the province of Quebec, with the exception of productions produced and performed in English and intended primarily for an English-language audience. Elsewhere in Canada, the UdA's jurisdiction includes all areas of production intended for a French-speaking audience.

[38] The Tribunal believes that this linguistic and geographic division is an historic division that should not be altered, since it appears to be acceptable to artists and to the associations and producers who operate within the proposed sector.

Conclusion with respect to the bargaining sector

[39] Having considered all the oral and written submissions of the applicant and the intervenors, the Tribunal finds that the sector that is suitable for bargaining is a sector composed of all performers who are independent contractors who perform, sing, recite or act in any manner whatsoever, in a literary, musical or dramatic work, or in a mime, variety, circus or puppet show:

- i) broadcast, presented or performed in Quebec;
- ii) broadcast, presented or performed in Canada outside Quebec and intended for a French-speaking audience;

with respect to all producers subject to the *Status of the Artist Act* throughout Canada, save and except:

- a) independent contractors who are covered by the certification granted to the Canadian Actors' Equity Association by the Canadian Artists and Producers Professional Relations Tribunal on April 25, 1996 and subject to the agreement made between the Union des Artistes and the Canadian Actors' Equity Association dated November 6, 1992;
- b) independent contractors who are covered by the certification granted to the ACTRA Performers' Guild by the Canadian Artists and Producers Professional Relations Tribunal on June 25, 1996 and subject to the agreement between the Union des Artistes and the ACTRA Performers' Guild dated May 17, 1996;
- c) artists who play musical instruments in all areas of artistic production, including persons who sing while playing a musical instrument for the instrumental portion of their performance.

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

[40] In its application, the applicant estimates the number of professional artists in the proposed sector to be approximately 10,000. The UdA has 8,568 members, a large majority of whom are performers, and submits that it is the association that is most representative of artists in the proposed sector. The representativeness of the UdA with respect to performers was not disputed.

[41] Accordingly, the Tribunal accepts the applicant's submission that it is the most representative of the performers in the sector described above.

DECISION

[42] For all these reasons, and given 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 is a sector composed of all performers who are independent contractors who perform, sing, recite or act in any manner whatsoever, in a literary, musical or dramatic work, or in a mime, variety, circus or puppet show:

- i) broadcast, presented or performed in Quebec;
- ii) broadcast, presented or performed in Canada outside Quebec and intended for a French-speaking audience;

with respect to all producers subject to the *Status of the Artist Act* throughout Canada, save and except:

- a) independent contractors who are covered by the certification granted to the Canadian Actors' Equity Association by the Canadian Artists and Producers Professional Relations Tribunal on April 25, 1996 and subject to the agreement made between the Union des Artistes and the Canadian Actors' Equity Association dated November 6, 1992;
- b) independent contractors who are covered by the certification granted to the ACTRA Performers' Guild by the Canadian Artists and Producers Professional Relations Tribunal on June 25, 1996 and subject to the agreement between the Union des Artistes and the ACTRA Performers' Guild dated May 17, 1996;
- c) artists who play musical instruments in all areas of artistic production, including persons who sing while playing a musical instrument for the instrumental portion of their performance.

Declares that the Union des Artistes is the association most representative of artists in the sector.

An interim order will be issued to confirm the certification of the Union des Artistes for the said sector, affecting only performers in the sector proposed by the applicant. The issue of whether directors, choreographers and fight directors should be included in the sector proposed by the applicant will be addressed at a subsequent hearing and a final certification order will be issued at that time.

Ottawa, August 29, 1996

“André Fortier”
A/Chairperson

“J. Armand Lavoie”
Member

“David P. Silcox”
Member