

Canadian Artists and Producers  
Professional Relations Tribunal



Tribunal canadien des relations  
professionnelles artistes-producteurs

CANADA

Ottawa, December 13, 1996

File No. 95-0006-A

### **Decision No. 018**

#### **IN THE MATTER OF AN APPLICATION FOR CERTIFICATION FILED BY THE PLAYWRIGHTS UNION OF CANADA**

#### **Decision of the Canadian Artists and Producers Professional Relations Tribunal**

The application for certification is granted.

***Date of hearing:*** October 8, 1996 and December 12, 1996

***Date of decision:*** December 13, 1996

***Quorum:*** Ms. Meeka Walsh, Presiding Member  
Mr. J. Armand Lavoie, Member  
Mr. David P. Silcox, Member

REASONS FOR DECISION

95-0006-A: In the matter of an application for certification filed by the Playwrights Union of Canada

---

STATEMENT OF FACTS

[1] This decision concerns an application for certification submitted to the Canadian Artists and Producers Professional Relations Tribunal (hereinafter “the Tribunal”) pursuant to section 25 of the *Status of the Artist Act* (S.C. 1992, c.33, hereinafter “the Act”) by the applicant, the Playwrights Union of Canada (“PUC”) on January 14, 1996. The application was dealt with on the basis of the written material filed by the applicant and the intervenors.

[2] PUC applied for certification to represent a sector composed of:

“Playwrights who are Canadian citizens or landed immigrants, with respect to works created in any language other than French for theatres subject to the *Status of the Artist Act*.”

[3] Public notice of the application was given in the *Canada Gazette* of Saturday April 6, 1996. The notice also appeared in the *Globe and Mail* and *La Presse* on April 10, 1996 and in the Canadian Conference of the Arts INFO-FAX of May 1, 1996. The public notice set a deadline for notices of intervention of May 17, 1996.

[4] Expressions of interest were received from the Professional Association of Canadian Theatres (PACT) and the Writers Guild of Canada. On May 23, 1996, the Union des Artistes indicated some concern about a possible overlap between the PUC application and its own pending application for certification.

[5] PACT represents a number of Canadian theatres, of which only the English Theatre Section of the National Arts Centre is in federal jurisdiction. PACT and PUC are parties to a scale agreement which covers playwrights who are members of PUC. PACT wanted it understood that its member theatres also contract with Canadian and international playwrights who are not members of PUC. In a response to the interventions dated July 14, 1996, PUC acknowledged that its current agreement with PACT applies only to PUC members.

[6] The Writers Guild of Canada was certified by the Tribunal on June 25, 1996 to represent a sector composed of independent contractors engaged by any producer subject to the *Status of the Artist Act* as:

- (a) an author of a literary or dramatic work in English written for radio, television, film, video or similar audiovisual production including multimedia; or
- (b) an author who adapts or translates literary or dramatic works originally written in a language other than English, as an English language script for radio, television, film, video or similar audiovisual production including multimedia; but excluding directors acting in their capacity as directors.

[7] The Guild's concern was that, if not clarified, the PUC sector could overlap with theirs, in that it might be interpreted to apply to the creation of scripts for feature films and/or videos that are shown in movie theatres. They therefore requested that the sector definition be clarified to apply only to those artists whose works are written for live performance. By letter dated July 14, 1996, PUC affirmed that its application applied only to artists whose works are written for live performance.

[8] The Union des Artistes (UdA) was also concerned about a possible overlap with the sector it is seeking to represent, namely performers, choreographers and directors of works presented in Quebec or intended for a French speaking audience outside Quebec. UdA requested assurances from PUC that no overlap existed and PUC confirmed that this is the case. Accordingly, UdA withdrew its intervention.

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

- (1) The suitability, for bargaining purposes, of the sector proposed by PUC;
- (2) Whether PUC is representative of the artists in the sector.

#### *The Status of the Artist Act*

[10] 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 PUC a sector that is suitable for bargaining?**

[11] PUC has proposed a sector composed of:

Playwrights who are Canadian citizens or landed immigrants, with respect to works created in any language other than French for theatres subject to the *Status of the Artist Act*.

[12] Specific concerns were raised by the Writers Guild of Canada with respect to the sector for which it has been certified and the potential for confusion. Given the assurances provided by the applicant, the Tribunal finds that it would be appropriate to modify the sector definition to specify that it applies only to live performances in theatres subject to the *Status of the Artist Act*.

### Community of interest of the artists

[13] The documents filed by the applicant indicate that it addresses the following common interests of playwrights:

- marketing and distributing the work of members;
- distributing all Canadian drama published in Canada;
- publishing the *Canadian Plays Catalogue* which includes copyscripts and PUC's imprint, Playwrights Canada Press;
- producing an annual catalogue of copyscripts and books;
- producing a members' directory titled *Who's Who in the Playwrights Union of Canada*;
- administering amateur production rights on behalf of members;
- negotiating a set of standard clauses and contract forms with PACT and publishing a *Contracts Handbook* which is also available to members of the public;
- advising members and non-members on matters related to contracts with theatres;

- publishing a bi-monthly newsletter *Canplay*.

*History of professional relations*

[14] The Playwrights Circle, a predecessor to the Playwrights Union of Canada, was formed in 1971 and in 1972 changed its name to Playwrights Co-op and began activities such as publishing Canadian plays and dealing with amateur performance rights. In 1977, members of Playwrights Co-op founded the Guild of Canadian Playwrights for purposes of lobbying and to negotiate industry contracts. In 1979, the Co-op officially incorporated as Playwrights Canada. In 1984, the two groups merged to form Playwrights Union of Canada.

[15] PUC has negotiated a *Contracts Handbook* with the Professional Association of Canadian Theatres to cover different types of theatre productions. PUC encourages non-members to use the contracts in achieving industry standards. The Chair of PUC's contract committee negotiates between its members and PACT in disputes.

*Geographic, linguistic and other relevant considerations*

[16] The applicant is seeking a nation-wide sector based on language of work. The proposed sector respects the jurisdiction of the Association québécoise des auteurs dramatiques ("AQAD"), which was certified by the Tribunal on April 26, 1996 to represent 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."

PUC has not sought to include in its request for certification authors of English language translations of dramatic works originally written in another language.

[17] The applicant has limited itself to requesting the right to represent only playwrights who are Canadian citizens or landed immigrants. The proposed sector mirrors PUC's Constitution, which contains a similar limitation on membership in the organization. This means that playwrights who are not citizens or landed immigrants, who write in languages other than French, would not be included in the sector and would be free to form their own association and apply for certification on their own behalf. Until such time, the Tribunal hopes that PUC will continue its practice of assisting these individuals on an ad hoc basis.

Conclusion regarding the sector

[18] After having considered all of the foregoing factors, the Tribunal finds that the following sector would be suitable for collective bargaining:

Playwrights who are Canadian citizens or landed immigrants, with respect to works created in any language other than French for live performance in theatres subject to the *Status of the Artist Act*.

**Issue 2: Is PUC representative of the artists in the sector?**

[19] The applicant estimated the size of the sector to be composed of approximately 500 independent professional playwrights. In its application for certification, the applicant indicated that its membership totalled 350 playwrights. No contrary evidence was presented, nor has any other organization applied to the Tribunal to represent the sector.

[20] The Tribunal therefore finds that the applicant is the organization most representative of artists in the above-described sector.

DECISION

[21] For all these reasons, and in view of the fact that the applicant is in compliance with the requirements of subsection 23(1) of the *Status of the Artist Act*, the Tribunal:

**Declares** that the sector suitable for bargaining is a sector composed of playwrights who are Canadian citizens or landed immigrants, with respect to works created in any language other than French for live performance in theatres subject to the *Status of the Artist Act*.

**Declares** that the Playwrights Union of Canada is the association most representative of artists in the sector.

An order will be issued to confirm the certification of the Playwrights Union of Canada to represent the said sector.

Ottawa, December 13, 1996

Meeka Walsh, Presiding Member

J. Armand Lavoie, Member

David P. Silcox, Member