

Canadian Artists and Producers
Professional Relations Tribunal



Tribunal canadien des relations
professionnelles artistes-producteurs

CANADA

Ottawa, June 4, 1997

File No. 96-0025-A

Decision No. 023

**IN THE MATTER OF AN APPLICATION FOR CERTIFICATION FILED
BY THE CONSEIL DES MÉTIERS D'ART DU QUÉBEC**

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

The application for certification is granted in modified form.

Place of hearing: Montreal, Quebec

Date of hearing: May 23, 1997

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

Appearances: Yvan Gauthier and Louise Chapados for the Conseil des
métiers d'art du Québec.

REASONS FOR DECISION

96-0025-A : In the matter of an application for certification filed by the Conseil des métiers d'art du Québec

STATEMENT OF FACTS

[1] This decision concerns an application for certification submitted to the Canadian Artists and Producers Professional Relations under section 25 of the *Status of the Artist Act* (S.C. 1992, c. 33, hereinafter the “*Act*”) by the Conseil des métiers d'art du Québec (“CMAQ”) on July 25, 1996. The application was heard in Montreal on May 23, 1997.

[2] CMAQ applied for certification to represent a sector composed of all independent professional artists and artisans in the field of arts and crafts in Quebec who produce original artistic works, either in single or multiple copies, intended for a utilitarian or decorative purpose or as a form of expression, through the use of a craft associated with the transformation of wood, leather, textiles, metals, silicates or any other material, commissioned or distributed by a producer subject to the *Status of the Artist Act*.

[3] Public notice of this application was given in the *Canada Gazette* on Saturday, October 26, 1996 and in the *Globe and Mail* and *La Presse* on October 30, 1996. This notice also appeared in the November 1996 issue of the INFO-FAX bulletin of the Canadian Conference of the Arts. The public notice set a closing date of December 13, 1996 for the filing of expressions of interest by artists, artists' associations, producers and other interested persons.

[4] As provided in subsections 26(2) and 27(2) of the *Act*, artists' associations may intervene in application for certification proceedings before the Tribunal on the issues of determining the sector that is suitable for bargaining and the representativeness of the applicant. In accordance with these provisions, the Canadian Artists' Representation/Le front des artistes canadiens (“CARFAC”) notified the Tribunal of its intention to intervene in the CMAQ application.

[5] In the intervention it filed with the Tribunal, CARFAC did not specify the nature of its interest in CMAQ's application and, on May 13, 1997, CARFAC notified the Tribunal that it would not intervene in the proceedings.

[6] CMAQ's application raises the following issues:

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

THE ISSUES

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

[7] The sector proposed by CMAQ is a sector composed of independent professional artists and artisans in the field of arts and crafts in Quebec who produce original artistic works, either in single or multiple copies, intended for a utilitarian or decorative purpose or as a form of expression, through the use of a craft associated with the transformation of wood, leather, textiles, metals, silicates or any other material, commissioned or distributed by a producer subject to the *Status of the Artist Act*.

[8] Because the description of the sector speaks of “original artistic works, either in single or *multiple copies*, intended for a *utilitarian* purpose (...)”, the Tribunal must satisfy itself that the artists covered by CMAQ’s application are authors of artistic works within the meaning of subparagraph 6(2)(b)(i) of the *Status of the Artist Act* which reads as follows:

6(2) This Part applies:

...

(b) to independent contractors determined to be professionals according to the criteria set out in paragraph 18(b), and who:

(i) are authors of artistic, dramatic, literary or musical works within the meaning of the *Copyright Act*, or directors responsible for the overall direction of audiovisual works,

(...)

[9] Section 2 of the *Copyright Act* (R.S.C. 1985, c. C-42) defines “artistic work” as follows:

“artistic work” includes paintings, drawings, maps, charts, plans, photographs, engravings, sculptures, works of artistic craftsmanship, architectural works, and compilations of artistic works. [Emphasis added]

[10] The applicant argued that artists and artisans conceive the works, whether in single or multiple copies, that each one is an original work and that each work bears the artist’s signature. The works do not constitute industrial production and are not machine-made. The Tribunal accepts these arguments and is of the view that it has jurisdiction to define a sector composed of artists and artisans in the field of arts and crafts.

[11] When the Tribunal grants certification to an artists' association, this association obtains the exclusive right to bargain on behalf of all artists in the sector with producers under federal jurisdiction. Consequently, there must not be any overlap between bargaining sectors.

[12] On April 15, 1997 (Decision No. 021), the Tribunal certified the Regroupement des artistes en arts visuels du Québec ("RAAV") to represent the following sector:

[A]ll professional independent contractors in the field of visual arts in Quebec who are authors of original artistic works of research or expression, either in single copy or a limited number of copies, that are commissioned or distributed by a producer subject to the *Status of the Artist Act* and expressed in the form of painting, sculpture, engraving, drawing, illustration, photography, textile art, installation, performance art, video art or any other form of expression of the same nature, excluding:

- a) independent contractors working in the fields of arts and crafts, film and audio-visual media;
- b) commercial photographers and commercial illustrators covered by the certification granted by the Canadian Artists and Producers Professional Relations Tribunal to the Canadian Association of Photographers and Illustrators in Communications on April 26, 1996 and in accordance with the terms of the agreement concluded between the Regroupement des artistes en arts visuels du Québec and the Canadian Association of Photographers and Illustrators in Communications on March 20, 1997;
- c) artists covered by the certification granted to the Union des Artistes by the Canadian Artists and Producers Professional Relations Tribunal on August 29, 1996 and in accordance with the terms of the agreement concluded between the Regroupement des artistes en arts visuels du Québec and the Union des Artistes on March 20, 1997;
- d) artists who practise the art of set design and costume design for theatrical use.

[13] Because the wording used in the description of the sector proposed by the applicant is in some respects identical to the wording of the description of the sector that RAAV has already been certified to represent, the Tribunal must satisfy itself that there is a fundamental difference between visual artists and artisans in the field of arts and crafts in order to avoid any confusion or overlap.

[14] The applicant argued that an artist or artisan who is identified with the mastery of a material and the techniques associated with that material comes within the arts and crafts sector. Thus, the fundamental difference between arts and crafts and the visual arts rests in the exercise of a craft related to the transformation of a material or a substance. The applicant explained that ordinarily an artisan develops expertise in transforming a particular material, although today we are witnessing a certain intermingling of techniques and materials and artisans are becoming skilled in working with other materials and other techniques. In addition, the applicant submitted that the level of technical skill required to work with materials in the field of arts and crafts is different from that required in the visual arts. A visual artist may use a variety of materials to produce a work without "mastering" these materials.

[15] In the document entitled “Conseil des métiers d’art du Québec - Procédure d’admission”, the applicant defines the product of arts and crafts as follows:

[TRANSLATION]

The product must have a technical quality created by the intervention of the artisan him/herself or of another artisan or technician working under his or her supervision (work that the artisan could do him/herself).

The product of creative arts and crafts must be original and personalized by the artisan’s own work. A traditional object may be recognized as a product of arts and crafts if its production involves artistic creation and reflects a mastery of technique.

The artisan must assume his or her social responsibility as a creator by affixing a signature, stamp or other personal identification mark to each “product of arts and crafts” that is presented to the public.

A product of arts and crafts may take many forms. An artisan may produce and market an object, a mural, an installation or an artifactual material (fabric, ceramic tile, inlay, plaster frieze, moulded glass plate, etc.).

A product of arts and craft may serve one or more of the following functions:
a utilitarian purpose;
a decorative purpose;

a form of artistic expression.

[Emphasis added]

[16] The applicant admitted that an artist who produces a work in single or multiple copies through the use of a craft associated with the transformation of a material could, at the same time, be both a visual artist and an artisan engaging in arts and crafts. However, artists individually make a subjective choice as to how they will identify themselves and to which association they will belong.

[17] In a document entitled “Fiche de renseignements pour une demande d’admission”, candidates applying for membership in CMAQ are asked to identify their occupation. The document contains a list of categories and each category contains the list of occupations generally recognized as belonging to “arts and crafts”. The categories are those that appear in the description of CMAQ’s proposed sector (wood, leather, textiles, etc.). The applicant argued that although the list is not exhaustive, it is recognized by the others players in the fields of culture, education, professional training and industry.

[18] In the list of categories of arts and crafts, and particularly within the “wood” and “textile impression” categories, some of the occupations listed could be equated to functions involving the design of theatrical sets or costumes. Because the Tribunal already has before it applications for the certification of sectors that include the design of sets and costumes, it asked the applicant if it intended to represent the artists who practise these professions. The applicant expressed the view that these individuals were generally employees and not

therefore subject to the *Act* and that it did not wish to represent the artists who work in the field of theatre.

[19] In the light of the foregoing, the Tribunal concludes that there is a distinction generally known and understood by artists in the field between visual artists and artisans who engage in arts and crafts and that there is no overlap between the arts and crafts sector and the visual arts sector.

[20] When determining the sector that is suitable for bargaining, the Tribunal is required by subsection 26(1) of the *Act* to take into account the history of professional relations among the artists, their associations and producers concerning bargaining, scale agreements and any other agreements respecting the terms of engagement of artists, the common interests of the artists in respect of whom the application was made, and any geographic and linguistic criteria that the Tribunal considers relevant.

History of professional relations and common interests

[21] CMAQ came into being in March 1989, with the merger of previously existing corporations whose mandate was to represent and defend the rights of professional artisans.

[22] The first corporation, the “Association professionnelle des artisans du Québec”, was founded in 1949 and existed until 1970. It was replaced by regional corporations of artisans, whose number increased to 12 during the 1970s. At the end of the 1980s, a corporation operating at the provincial level was again formed.

[23] During this same period, a commercial sector developed in the form of a “Centrale d’artisanat” which was established in 1950 by those in charge of the Association professionnelle des artisans. The Centrale d’artisanat ceased to exist in 1982.

[24] Under the *Act Respecting the Professional Status of Artists in the Visual Arts, Arts and Crafts and Literature and their Contracts with Promoters* (R.S.Q., c. S-32.01), the Quebec “Commission de reconnaissance des associations d’artistes” granted CMAQ recognition to represent “professional artists in the field of arts and crafts in Quebec” in 1990.

[25] CMAQ’s headquarters are in Montreal, but the association also maintains an office in Quebec City. In addition, a regional committee provides representation to artisans in all regions of Quebec.

[26] The applicant stated that for more than 40 years, the corporations of artisans and their successor, CMAQ, have been major players in all areas relating

to the professional life of artisans, including recognition of the sector, defence of their rights, representation of their interests, education and copyright.

[27] CMAQ provides individual and collective services to its members. For example, the applicant pointed out that CMAQ intervenes on a case-by-case basis to assist individual artists who are grappling with questions of copyright, and that it is in the process of establishing a network of certified distributors of arts and crafts in Quebec in order to obtain equitable treatment for artisans throughout Quebec. As well, the applicant develops domestic and international markets for the sale of the works of its members.

[28] In order to represent the interests of its members, the applicant maintains relations and cooperates with a number of municipal, provincial and federal agencies, including federal departments interested in exporting cultural products, as well as with the Cultural Human Resources Council.

[29] According to the applicant, professional artists and artisans in the field of arts and crafts have common interests in the area of copyright with respect to all matters relating to reproduction and, generally speaking, the distribution of their works. They create and sign the works they produce in single or multiple copies and see to their distribution. The specific skills of artists in the field of arts and crafts involve mastery of a material and transformation techniques. With regard to distribution, the concepts of marketing and career promotion are the two fundamental issues for professionals in the field of arts and crafts.

[30] The applicant also told the Tribunal that it serves as a distributor and manages commercial enterprises. These commercial activities, from which the applicant derives the majority of its revenues, include a number of promotional events and distribution sites. As a distributor, the applicant's activities include controlling the conditions for arts and craft shows, the "Plein art" and "Grand prix des métiers d'art du Québec" events, galleries, boutiques and the level of export of products. As a distributor, it also publishes standard form contracts for its members that are used during these events.

[31] In the light of the foregoing, the Tribunal concludes that there is a community of interest among the artists and artisans who work in the field of arts and crafts and a history of professional relations between these same artists and artisans and distributors.

Geographic and linguistic criteria

[32] In the decision it rendered on January 16, 1997 concerning the *Guilde des musiciens du Québec* (Decision No. 020), the Tribunal expressed its preference for national sectors to conduct bargaining with producers under federal jurisdiction when language is not a part of artistic expression and provided there is a national artist's association with an infrastructure capable of serving its members in both official languages.

[33] In its presentation to the Tribunal, the applicant indicated that it would like to represent all professional artists and artisans in Quebec who are Canadian citizens or landed immigrants and who have been resident or domiciled in Quebec for at least one year. The applicant stated that there is no national association representing artists and artisans in this sector and that in the context of this application for certification, no national association for arts and crafts made submissions to the Tribunal. The Tribunal is therefore prepared to limit itself to a geographic sector.

[34] The applicant further stated that there is no distinction based on language within the association, since it represents Francophone, Anglophone and allophone artists. The services offered to members are available in French and English, as are publications in most cases. Language is not therefore a criterion for the sector.

Related issues

[35] There are two aspects of CMAQ's application that are of concern to the Tribunal. First, although the applicant indicated that it wished to represent "all artists and artisans. . .", it also advised the Tribunal that at the annual general meeting scheduled for June 14, 1997, an amendment to the association's general by-laws will be proposed that would have the effect of restricting membership to artists and artisans who are Canadian citizens or landed immigrants living in Quebec. The Tribunal's first concern stems from the fact that, once certified, the applicant would obtain the exclusive right to bargain on behalf of artists and artisans who would not be entitled to join the association, to vote on decisions affecting them or to participate in the activities of the association.

[36] The Tribunal's second concern relates to the dual role played by CMAQ vis-à-vis those involved in the field of arts and crafts in Quebec. Although CMAQ meets the criteria to be considered an "artists' association" since it has among its objectives the management and promotion of the professional and socio-economic interests of its members, it is also a commercial corporation that engages in the distribution of its members' work. In this capacity, CMAQ signs "distribution contracts" with individual artisans, operates galleries that display their work and receives a commission when these works are sold. At present, an

artisan has the choice as to whether or not to enter into a distribution contract with CMAQ. As stated earlier, once certified, the applicant has the exclusive right to bargain on behalf of all artists in the proposed sector with producers under federal jurisdiction. The Tribunal is concerned that artisans who are not members of the association could also be obliged to sign these distribution contracts.

[37] For these reasons, the Tribunal is of the view that it is appropriate to limit the scope of the sector that is suitable for bargaining collectively with producers under federal jurisdiction to members of CMAQ.

Conclusion regarding the sector

[38] The Tribunal therefore finds that the sector that is suitable for bargaining is a sector composed of artists and artisans in Québec, members of the Conseil des métiers d'art du Québec, who produce original artistic works, either in single or multiple copies, intended for a utilitarian or decorative purpose or as a form of expression, through the use of a craft associated with the transformation of wood, leather, textiles, metals, silicates or any other material, commissioned or distributed by any producer subject to the *Status of the Artist Act*.

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

[39] In its application for certification, the applicant indicated that the association had 550 members and that there were some 1,000 independent professional artists in the sector. At the hearing, CMAQ provided a more accurate figure, reporting that it had in excess of 555 members, all of whom had to submit to verification of their professional status before being admitted to membership in the association.

[40] The applicant indicated that, in addition to the above-mentioned members, it has an associate member category that includes 110 graduates of schools of arts and crafts who are in the process of becoming professional artisans. The Tribunal also notes that the list of associate members filed by the applicant includes educational institutions, commercial enterprises, arts and crafts centres and boutiques, and that these entities do not constitute "artists" within the meaning of the *Act*.

[41] The applicant informed the Tribunal that the association's by-laws provide that an artisan can be inactive for three to five years without losing his or her status. This clause applies to an artisan who, for a period of time, does not reside in Quebec.

[42] CMAQ stated that various sources estimate the number of professional artisans in Quebec to be approximately 1,000. However, based on a 1992 study of Quebec's Ministère de la Culture et des Communications and extrapolating

from the various calculations contained in this study, the applicant estimates the number of independent artisans in Quebec to be slightly more than 800.

[43] The Tribunal finds that it does not have to determine the applicant's representativeness in respect of all artists in the field of arts and crafts because the sector is limited to members of the association. It is obvious that the applicant is representative of its members.

DECISION

[44] 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 that is suitable for bargaining is a sector composed of artists and artisans in Québec, members of the Conseil des métiers d'art du Québec, who produce original artistic works, either in single or multiple copies, intended for a utilitarian or decorative purpose or as a form of expression, through the use of a craft associated with the transformation of wood, leather, textiles, metals, silicates or any other material, commissioned or distributed by any producer subject to the *Status of the Artist Act*.

Declares that the Conseil des métiers d'art du Québec is the association most representative of the artists in the above-described sector.

An order will be issued to confirm the certification of the applicant to represent this sector.

Ottawa, June 4, 1997

“André Fortier”
Chairperson

“J. Armand Lavoie”
Member

“David P. Silcox”
Member

“Robert Bouchard”
Member