Canadian Artists and Producers Professional Relations Tribunal

CANADA

Tribunal canadien des relations professionnelles artistes-producteurs

Ottawa, December 30, 1997

File Nos.: 95-0020-A
95-0016-A
95-0021-A

Decision No. 024

IN THE MATTER OF AN APPLICATION FOR CERTIFICATION FILED BY THE ASSOCIATION DES RÉALISATEURS ET RÉALISATRICES DU QUÉBEC; THE UNION DES ARTISTES (No. 2 - directors/metteurs en scène and choreographers); AND THE ASSOCIATION DES PROFESSIONNELS DES ARTS DE LA SCÈNE DU QUÉBEC (directors/metteurs en scène)

Place of hearing: Montreal, Quebec
Dates of hearing: September 9, 10, 11 and 12, 1997; October 21 and 22, 1997

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

Appearances:

Re: Association des réalisateurs et réalisatrices du Québec:
Alarie, Legault, Beauchemin, Paquin, Jobin & Brisson, Avocats; Dominique Jobin for the Association des réalisateurs et réalisatrices du Québec.
Lafortune, Leduc; Louise Cadieux for the Union des Artistes.
Sauvé et Roy, Avocat-e-s; Serge Lavergne for the Association des professionnels des arts de la scène du Québec.
Mr. Guy Gauthier for the National Film Board of Canada.

Re: Union des Artistes (No. 2 - directors/metteurs en scène and choreographers):

Lafortune, Leduc; Louise Cadieux for the Union des Artistes.
Alarie, Legault, Beauchemin, Paquin, Jobin & Brisson, Avocats; Dominique Jobin for the Association des réalisateurs et réalisatrices du Québec.
Sauvé et Roy, Avocat-e-s; Serge Lavergne for the Association des professionnels des arts de la scène du Québec.
Mr. Guy Gauthier for the National Film Board of Canada.
Martineau Walker, Avocats; Guy Gagnon for the Fight Directors, Canada.

Re: Association des professionnels des arts de la scène du Québec (directors/metteurs en scène):

Sauvé et Roy, Avocat-e-s; Serge Lavergne for the Association des professionnels des arts de la scène du Québec.
Lafortune, Leduc; Louise Cadieux for the Union des Artistes.
Alarie, Legault, Beauchemin, Paquin, Jobin & Brisson, Avocats; Dominique Jobin for the Association des réalisateurs et réalisatrices du Québec.

REASONS FOR DECISION

95-0020-A: In the matter of an application for certification filed by the Association des réalisateurs et réalisatrices du Québec;
95-0016-A: In the matter of an application for certification filed by the Union des Artistes;
95-0021-A: In the matter of an application for certification filed by the Association des professionnels des arts de la scène du Québec.

INTRODUCTION

[1] These reasons for decision concern the following three applications heard jointly in Montreal from September 9 to 12, 1997 and on October 21 and 22, 1997 by the Canadian Artists and Producers Professional Relations Tribunal (the "Tribunal"):

a) the application for certification of the Association des réalisateurs et réalisatrices du Québec ("ARRQ") (formerly called the Association québécoise des réalisateurs et réalisatrices de cinéma et de télévision);
b) the part of the application for certification of the Union des Artistes ("UDA") covering the positions of metteur en scène (director) and choreographer, known as "UDA No. 2";
c) the part of the application for certification of the Association des professionnels des arts de la scène du Québec ("APASQ") covering metteurs en scène (directors).

[2] Having regard to subsection 19(1) of the *Status of the Artist Act* ("the *Act*"), which requires the Tribunal to proceed as informally and expeditiously as the circumstances and considerations of fairness permit, it was decided to combine these applications in the interest of the parties concerned.

[3] In the file involving the ARRQ, the Tribunal heard all the evidence concerning the sector proposed in the application for certification, i.e., a sector composed of directors of audio-visual works ("réalisateurs").

[4] With respect to the file known as UDA No. 2, the Tribunal dealt with the question of metteurs en scène and choreographers. In December 1995, the UDA submitted an application for certification to represent a sector composed of performers, directors ("metteurs en scène") and choreographers. Following a hearing held in June 1996, the Tribunal granted the UDA an interim certification to represent a sector composed of performers on August 29, 1996 (Decision No. 017). Consideration of whether metteurs en scène and choreographers should be included in this sector was deferred to a subsequent hearing. As well, in its

Reasons for Decision, the Tribunal indicated its intention to deal with the intervention by the Fight Directors, Canada at the subsequent hearing.

[5] In the APASQ file, the Tribunal considered the part of the application for certification covering metteurs en scène. In March 1996, APASQ filed an application for certification to represent a sector composed of metteurs en scène and various designers in the performing arts field. Because of the overlap with the UDA's application to represent metteurs en scène, the Tribunal decided to hear this part of APASQ's application. The remainder of APASQ's application will be dealt with at a later date.

[6] In these reasons, the Tribunal will examine the issues before it in the following order:

I Directors (réalisateurs)
II Directors (metteurs en scène)
III Choreographers
IV Fight directors

I DIRECTORS (RÉALISATEURS)

STATEMENT OF FACTS

[7] The Association québécoise des réalisateurs et réalisatrices de cinéma et de télévision ("AQRRCT") submitted an application for certification to the Tribunal under section 25 of the *Status of the Artist Act* (S.C. 1992, c. 33, hereinafter the "*Act*") on February 27, 1996. The hearing in this application, scheduled for September 11 and 12, 1996, was postponed until April 15 and 16, 1997, and had to be postponed a second time. On August 14, 1997, AQRRCT became the Association des réalisateurs et réalisatrices du Québec ("ARRQ") and will be referred to as such in these reasons.

[8] ARRQ applied for certification to represent, with respect to all producers subject to the *Status of the Artist Act*, a sector composed of:

a) any director domiciled in or a resident of the province of Quebec who directs an audiovisual production in the French language or in any language other than an original English-language production;
b) any director who directs an audiovisual production in the French language or in any language other than an original English-language production where all or part of the shooting takes place in the province of Québec;

including all double shooting, any international shooting and any audiovisual work without dialogue.

[9] Public notice of this application was given in the *Canada Gazette* on Saturday, March 30, 1996 and in the *Globe and Mail* and *La Presse* on April 3, 1996. This notice also appeared in the April 1996 issue of the INFO-FAX bulletin

of the Canadian Conference of the Arts. The public notice set a closing date of May 13, 1996 for the filing of expressions of interest by artists, artists' associations, producers and other interested persons.

[10] As provided in subsections 26(2) and 27(2) of the *Act*, artists and artists' associations may intervene in certification proceedings before the Tribunal on the questions of the definition of the sector that is suitable for bargaining and the representativeness of the applicant. In accordance with these provisions, Mr. Bruce Hill and the UDA notified the Tribunal of their intention to intervene in the proceedings. Mr. Hill's representations did not deal with the issues that were before the Tribunal.

[11] One producer, the National Film Board of Canada (the "NFB"), also made known its interest in the application. Subsection 26(2) of the *Act* provides that producers may intervene as of right on the definition of the sector that is suitable for bargaining, but may not intervene on the issue of the representativeness of an artists' association without the Tribunal's permission. The NFB did not ask to intervene on the issue of ARRQ's representativeness.

[12] ARRQ's application for certification raises the following issues:

1) Is the sector proposed by ARRQ a sector that is suitable for bargaining?

2) Is ARRQ representative of the artists in the sector?

THE ISSUES

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

[13] ARRQ initially applied to represent, with respect to all producers subject to the *Status of the Artist Act*, a sector composed of:

a) any director domiciled in or a resident of the province of Québec who directs an audio-visual production in the French language or in any language other than an original English-language production;
b) any director who directs an audio-visual production in the French language or in any language other than an original English-language production where all or part of the shooting takes place in the province of Québec;

including all double shooting, any international shooting and any audio-visual work without dialogue.

[14] At the hearing, ARRQ proposed clarifications to its proposed sector. The sector description would therefore read as follows:

a) any director domiciled in or a resident of the province of Québec who directs an audio-visual production in the French language or in any language other than an original English-language production; or
b) any director who directs an audio-visual production in the French language or in any language other than an original English-language production where all or part of the shooting takes place in the province of Québec.

For purposes of clarification, all double shooting, all international filming and all audio-visual work without dialogue or with an invented language are deemed to be in a language other than English.

[15] In its presentation, ARRQ states that this description "includes members in all areas of production : fictional and documentary cinema, television, advertising and corporate films, as well as *video art*".[Our italics] With regard to video art, it should be noted that on April 15, 1997, the Tribunal certified the Regroupement des artistes en arts visuels du Québec (see Decision No. 021) to represent authors of original artistic works of research or expression, either in single copy or a limited number of copies, expressed in the form of, among other forms of expression, video art. Consequently, any sector composed of réalisateurs must exclude artists represented by the Regroupement des artistes en arts visuels du Québec who create video art.

The terminology used

Double shooting

[16] ARRQ defines double shooting as audio-visual works that are made simultaneously, in two different languages, with the same sets and usually with the same actors.

International filming

[17] ARRQ explained that this refers to original audio-visual works in a version considered "international" that are made for a number of markets. These works often take the form of documentaries and are conceived so that each market can insert new footage in the parts of the work where there is a narrator. During postsynchronization, the narrator is replaced in each version by a narrator who is well known in the language of the translation. Normally the content of the documentary remains the same, but certain changes may be made for a particular country.

[18] ARRQ gave as an example the documentary series *Les Grands Défis de l'An 2000*. In Quebec, this series might be hosted by Pierre Nadeau, who would narrate the segments and the vignettes. When this documentary is aired in Italy, it

would contain the same segments and vignettes, but the narrator would be a personality well known in Italy who would speak in Italian.

[19] In the NFB's written submissions, there was confusion as to the meaning of the expression "international filming". The NFB defined international filming as filming done in a number of countries. It wanted to ensure that the definition of "international filming" did not cover a foreign director invited to participate in a co-production. ARRQ confirmed that international versions did not cover co-productions in the ordinary sense of that term.

[20] For the purposes of this decision, the Tribunal accepts that "international filming" refers to the type of filming defined by ARRQ, as explained above.

Audio-visual works without dialogue or with an invented language

[21] The sector proposed by ARRQ also covers audio-visual works without dialogue. ARRQ defines these works as audio-visual works made without words or with an invented language.

[22] The NFB indicated that it produces a significant number of films without dialogue. Normally these are animation films in which the characters speak unintelligible words or sounds, which makes these works universal products.

The duties of a director (réalisateur)

[23] ARRQ submitted in evidence a document that lists the many duties of a réalisateur. According to the applicant, besides being responsible for the direction, the staging and all the recordings that are necessary to deliver the finished audio-visual product, the réalisateur performs more specifically, but without restricting their generality, the following duties:

a) he selects the key members of the production team, the technical team and the postproduction team;
b) he selects all performers, participants and hosts;
c) he determines the focus of the content and approves visual, sound and content research;
d) he selects all shooting, transfer, editing and master copy ("0" copy) support;
e) he is consulted on the choice of video support, technical services, and postproduction facilities and studios;
f) he determines the shooting techniques;
g) he determines how the making of the audio-visual work will proceed and prepares the detailed work plan and the shooting script;
h) he selects and approves the shooting locations and participates in the selection of the sound stages;

i) he determines and approves the artistic choices such as computer graphics, sets, costumes, make-up and props;
j) he is in charge of rehearsals;
k) he is responsible for organizing the creative and technical elements of the production;
l) he determines the camera angles and the blocking;
m) he has exclusive responsibility for staging;
n) during shooting, he directs the host, the performers, the participants and the technical team;
o) he chooses the composer and approves the music;
p) he is in charge of visual and sound editing and all the finishing work required to produce the master copy, including mixing of the international version, if required.

It should be noted that depending on the type of production, the duties, or some of the duties, of the réalisateur are subject to the producer's approval.

[24] ARRQ called the following réalisateurs as witnesses: André Mélançon, François Côté, Robert Desfonds, Claude Fournier, Jean Beaudin, Claude Maher, Pierre Paiement and Régent Bourque. These witnesses all testified that, taken together, the duties listed in the preceding paragraph accurately describe the role of a director in audio-visual productions. They stressed the importance of an overall vision, through which a director places his or her own stamp on the audio-visual work. They also testified that, apart from exceptional cases where duties are shared with an executive producer or a co-director, the director of an audio-visual work has sole and final responsibility for the production.

[25] ARRQ argued that directing actors and staging are inherent duties of the director of an audio-visual work and that in cinema and television in Quebec, the terms *metteur en scène* and *réalisateur* are synonyms. The applicant further argued that, on a set, the authority of a réalisateur could not be questioned.

[26] In support of these arguments, the testimony of the réalisateurs was to the effect that the role of a director in cinema and television (a *réalisateur*) is equivalent to that of a stage director in theatre (a *metteur en scène*) in terms of artistic vision and final authority. When asked to describe more specifically the role of the réalisateur in relation to staging and directing actors on the set of a television production, the witnesses pointed out that, for the vast majority of programs produced for television (some 3,000 to 4,000 annually), the réalisateur alone was in charge of staging and directing actors. With regard to cinema, the witnesses also affirmed that directing actors and staging are the responsibility of the réalisateur.

[27] The witnesses testified that, although such cases were rare and exceptional, for tapings of stage productions, television adaptations of stage

productions, or recordings of scripted variety programs or galas produced simultaneously on stage before a live audience and for television, a metteur en scène from the theatre could be associated with the audio-visual production. In the case of certain galas and especially in the case of scripted variety programs, final authority for the production was sometimes shared between the réalisateur and the metteur en scène, such that a "bicephalous" direction existed. In the case of dramatic programs (television soap operas or serials), the witnesses identified only two cases where metteurs en scène had been associated with a production.

[28] In its arguments, ARRQ contended that where the direction of actors or staging is shared, there is co-direction because the work is in fact shared 50/50 and the production could not exist without the participation of both. According to ARRQ, genuine staging or directing of actors must be connected and coordinated at the highest level and there cannot be a hierarchical chain of command.

[29] ARRQ explained that it made a distinction between, on the one hand, "pure and simple" taping, where, for example, cameras are installed to videotape a play and the réalisateur does not participate in mounting the play and his role in staging it (lighting, minor changes to the costumes or the entrances of the actors) is minimal and, on the other hand, tapings of galas or scripted variety programs. In the former case, the metteur en scène created a work based on his or her artistic vision. Taping of this work is prohibited without obtaining authorization to do so, and this authorization takes the form of a contractual agreement. In the second case, i.e., galas or scripted variety programs, ARRQ's position is that a gala presented both on stage and on television is an audio-visual work and not just a theatrical show because as soon as plans are made to televise it, the presentation is different in terms of staging, lighting, costumes, sets and the way the actors play their roles. ARRQ also submitted that a television adaptation of a work presented on the stage makes it a new audio-visual work because the changes made to the work are often major.

[30] The UDA does not contest ARRQ's application as it pertains to the réalisateurs, but wishes to represent the metteurs en scène, in their capacity as metteurs en scène and not réalisateurs, when they are called upon to share the staging of an audio-visual production with a réalisateur. UDA argues that even if staging or directing actors are duties that could be performed by a réalisateur, the metteur en scène has a separate and specific expertise, even when a broadcaster tapes an audio-visual work or records a work originally intended for the stage. UDA rejects ARRQ's contention that a metteur en scène working in television automatically becomes a réalisateur.

[31] As a result, UDA seeks to have the description of any sector granted to ARRQ specify that persons working as metteurs en scène are excluded from the sector when their services are used in directing actors or staging during the recording of any work for distribution by means of television, radio, video,

compact disc, CD-ROM or any other similar medium or media; or when their services are used in staging or in directing actors in a play, operatic or musical production, variety show, gala, etc. that is originally mounted as a stage production and also taped for distribution on television, radio, video, compact disc, CD-ROM or any other similar medium or media, including cases where the original staging is modified to permit such taping.

[32] UDA witnesses André Montmorency and André Brassard testified that metteurs en scène occasionally participated in the making of audio-visual productions, and that in certain cases, principally galas and scripted variety programs, they shared responsibility for the television production with the réalisateur and were listed in the credits as the metteur en scène. There was general agreement among the witnesses that this sharing of responsibility is limited to specific cases and is not common.

[33] In its arguments, UDA maintained that metteurs en scène from the stage who are required to collaborate with réalisateurs on audio-visual works are in fact metteurs en scène and that nowhere in the profession does the notion of co-réalisateur exist, as claimed by ARRQ. UDA further argued that taping or adaptation of a play for television does not make it a new work because in many cases the work has the same performers in the same roles, despite any changes to the sets, lighting or the way in which the actors play their roles. The nature of the work and the signature of the metteur en scène do not change.

[34] UDA disputed ARRQ's argument that the participation of a metteur en scène in certain audio-visual productions was the exception. On the contrary, UDA viewed this development as a trend. In other words, the likelihood of metteurs en scène being required to collaborate with réalisateurs was increasing.

[35] The Tribunal believes that in the case of galas or scripted variety programs, the final product is an audio-visual work because these events probably would not take place if they were not televised. Although the evidence showed that individuals who have worked in the staging of certain galas or scripted variety programs have been listed in the credits as "metteur en scène", this is not determinative of the actual function of the individual in a given situation.

[36] Based on the evidence presented to it, the Tribunal concludes that the functions of directing actors and staging are inherent in the work of a réalisateur, but that in certain cases a metteur en scène may collaborate with a réalisateur in producing an audio-visual work. The following are examples of such collaboration:

a) the adaptation for television of a work that was a stage production;

b) the taping of performances, scripted variety programs and galas produced both on the stage before a live audience and for television, regardless of when the work is broadcast.

[37] In these cases, the evidence shows that the réalisateur and the metteur en scène must collaborate and continue to be jointly responsible for the final product. In these cases, the Tribunal is of the opinion that when the work done by the réalisateur and the metteur en scène is a genuine collaboration, these persons are co-réalisateurs covered by the sector proposed by ARRQ.

[38] UDA presented evidence that the services of certain metteurs en scène have been engaged in the television industry using the title "metteur en scène". The Tribunal does not doubt that such cases exist. The evidence established that for the purposes of a particular production, some réalisateurs have associated themselves with a person known as a metteur en scène. Usually this person possesses exceptional expertise and experience. Without wishing to detract from the importance of the contribution of these metteurs en scène, it cannot, however, be said that this person has the same authority on the set as the réalisateur, or that this person is, in the final analysis, responsible to the producer in the same way as the réalisateur. The Tribunal therefore concludes that when the services of a metteur en scène are used to work on a particular aspect of a television production, and this person works under the supervision of the réalisateur, he or she is not covered by the sector proposed by ARRQ. The case of metteurs en scène who work from time to time in the field of television will be dealt with in greater detail in the second part of these Reasons.

[39] The Tribunal also finds that in the case of "pure and simple" taping, where the stage production undergoes only minor changes to permit its broadcast, this process does not make the work a collaboration. Even though the metteur en scène and the réalisateur must work together, the work does not become a new work because it stills bears the signature of the metteur en scène. The role of the réalisateur is to "adapt the work for broadcast", but the work remains whole and in keeping with the artistic vision of the metteur en scène. Consequently, in cases of "pure and simple" taping, the metteur en scène cannot be equated with a réalisateur and is not covered by the sector proposed by ARRQ.

[40] The Tribunal finds that the duties of a réalisateur described in paragraph [23], including staging, clearly and exhaustively define the work of such directors. The Tribunal wishes to point out that a person's job title does not necessarily determine the sector to which that person belongs; one must examine the duties that the person actually performs. As the Tribunal explained earlier, a person with the title "metteur en scène" must be considered a réalisateur/co-réalisateur included in any sector granted to ARRQ because this person exercises full authority equivalent to that of the réalisateur, whereas someone else with the title "metteur en scène" would not be included in the sector proposed by ARRQ

because they work under the supervision of a réalisateur or because his or her participation is limited to a single aspect of the production. For these reasons, the Tribunal believes that the definition of the proposed sector should make reference to the "duties of a director" and not merely to the title "director" (réalisateur).

Common interests and history of professional relations

[41] Over the years, ARRQ has undergone several name changes. First established on April 3, 1973 as the Association des réalisateurs de film du Québec, in 1981 the Association was incorporated under the *Professional Syndicates Act* (R.S.Q. c. S-40) under the legal name Association des réalisateurs et réalisatrices de film du Québec. In 1991, it became the Association des réalisateurs et réalisatrices de cinéma et de télévision du Québec. In 1997, it changed its name to the Association des réalisateurs et réalisatrices du Québec.

[42] According to ARRQ, réalisateurs have common interests because of the uniqueness of the creative environment in which they work. As an example, the applicant cites the method of compensation which is often based on the type of production, budget and experience, working conditions and the production context. ARRQ points out that réalisateurs share common moral and social interests, such as recognition of their status as artists and protection of their copyrights.

[43] ARRQ represents the interests of réalisateurs on such questions as copyright, distribution policies and promotion of their professional status in relations with various organizations including the NFB, Telefilm Canada, the Institut québécois du cinéma and federal and provincial government departments. ARRQ also deals with other artists' associations such as the UDA, the Société des auteurs, recherchistes, documentalistes et compositeurs and the Société des auteurs et compositeurs dramatiques.

[44] On November 14, 1995, ARRQ obtained recognition from the Commission de reconnaissance des associations d'artistes for a sector composed of all réalisateurs of audio-visual works in Quebec, excluding those réalisateurs who direct works in the English language.

[45] ARRQ states that the clientele of réalisateurs has changed and diversified significantly in the past 15 years. Recent cuts to the budgets of producers in the federal jurisdiction and major changes in the structure of production will mean that in future a larger number of réalisateurs will have to work as self-employed professionals.

[46] ARRQ signed a first collective agreement with the Association des producteurs de films et de télévision du Québec on November 21, 1989. This agreement covered dramatic feature films for movie theatres and television. The

agreement was signed on the basis of voluntary recognition. Other agreements covering television are now being negotiated with private sector producers. ARRQ stated that it is awaiting federal certification to begin collective bargaining with producers in the federal jurisdiction.

[47] The Tribunal concludes that self-employed réalisateurs do in fact have common interests that have developed over the past two decades in their relations with government departments and agencies and in negotiations with producers.

Linguistic and geographic criteria

[48] In its decision concerning La Guilde des musiciens du Québec (decision No. 020), the Tribunal set out its position regarding the application of linguistic and geographic criteria in defining a sector. In summary, the Tribunal believes that it is preferable to limit the number of sectors to avoid potential overlap or conflicts. Where language is not part of artistic expression, as is the case with music, dance and the visual arts, the Tribunal believes that national sectors are more suitable for bargaining with producers in the federal jurisdiction, provided there is a national artists' association with the infrastructure necessary to serve its membership in both official languages. However, when language is part of the artistic expression as in the case of authors, linguistic criteria assume greater importance and the Tribunal takes them into account when defining the sector.

[49] In the instant case, the sector proposed by ARRQ is not a national sector, ARRQ having chosen to propose a sector based on the following combination of geographic and linguistic criteria:

a) the residence or domicile of the director;
b) the location of the filming;
c) the language of the production.

[50] In ARRQ's opinion, it is clear that réalisateurs living or domiciled in Quebec are a homogenous group and that all filming in Quebec, in whole or in part, other than in English, should be covered by a single sector. ARRQ points out that, at the provincial level, there is a division based on language and that réalisateurs who work in English are represented by a different association. To the applicant, it would appear logical to take this factor into consideration in defining the sector, even though ARRQ believes that a distinction based on language is not an essential element in this sector.

[51] ARRQ states that it is not in a position at this time to extend its services to directors of audio-visual works in French who are not resident or domiciled in Quebec, because it could not provide them with a level of services comparable with those it provides to réalisateurs in Quebec.

[52] On the question of linguistic and geographic criteria, the NFB submitted that the sector definition should be based on language, not geography, so that a federal producer such as the NFB will not have to negotiate with as many associations as there are provinces. The NFB points out that the language criterion is recognized historically among authors and performers and that there are major advantages to having a sector composed of all directors in Canada who negotiate agreements with the NFB for French-language productions, whether or not these productions are filmed in Quebec. The NFB reiterated this argument for double shooting and audio-visual works without dialogue. From the standpoint of efficiency, the NFB believes that only one jurisdiction is necessary. If there must be more than one jurisdiction, the NFB suggests that the choice of jurisdiction should be left to the producer.

[53] The Tribunal is of the view that in the case of audio-visual productions, language is an essential element of artistic expression and that it would have been preferable for the proposed sector to include all directors of French-language audio-visual productions in Canada. However, in addition to linguistic and geographic criteria, the Tribunal is required to take into account other criteria, including the history of professional relations between directors and producers.

[54] Paragraph (a) of the sector description proposed by ARRQ introduces the notion of the place of residence of the director. In the past, the Tribunal has certified sectors based on the artist's place of residence: for example, see the certification granted to the Société professionnelle des auteurs et des compositeurs du Québec (Decision No. 013, issued May 17, 1996). Even though, in the Tribunal's opinion, a sector composed of all directors of French-language audio-visual works in Canada would appear to be more functional, the evidence presented by ARRQ established that the association is not in a position to make this proposition viable. ARRQ stated that its existing personnel and resources would not permit it to offer services elsewhere in Canada. For these reasons, the Tribunal is prepared to consider a limitation, for the time being, that includes place of residence as an element of the sector definition.

[55] Paragraph (b) of the proposed sector description introduces the notion of location of the filming. The NFB stated that it had a problem with this paragraph, principally with the words *"where all or part of the shooting takes place in the province of Quebec"*. According to the NFB, the majority of filming, not only a small part, should take place in Quebec. The NFB suggested to the Tribunal that in the event that the Tribunal does not define a national bargaining sector based on the language of production, it should accept only paragraph (a) of the proposed sector description, in order to avoid any uncertainty that would make the sector difficult for a producer to administer.

[56] Contrary to the NFB's position, ARRQ argued that very few French-language audio-visual productions are made by directors residing or domiciled

outside Quebec. In fact, ARRQ claimed that the sector that it is proposing would cover 95 percent of French-language audio-visual productions in Canada. ARRQ also claimed that in the event a réalisateur is not included in the sector, he or she would probably benefit from any agreement negotiated by ARRQ without having to negotiate it himself/herself.

[57] The Tribunal accepts the NFB's suggestion that paragraph (b) of the description of the proposed sector be limited to audio-visual works that are filmed primarily in Quebec. The Tribunal therefore concludes that the words "*where all or part of the shooting takes place in the province of Quebec*" in paragraph (b) of the proposed sector description must be replaced by the words "*when the shooting takes place primarily in the province of Quebec*".

[58] Both paragraphs of the proposed sector description, namely (a) and (b), refer to the language of the production. It should be noted that ARRQ wishes to represent not only directors of French-language works, but also directors of works in any language other than an original English-language production. ARRQ notes that this request reflects the division that now exists provincially where ARRQ has obtained recognition under the *Act respecting the professional status and conditions of engagement of performing, recording and film artists* (R.S.Q., c. S-32.1) for a sector composed of all directors of audio-visual works excluding original English-language works, and where, under this same Act, the Quebec Council of the Directors Guild of Canada represents directors of original English-language audio-visual works.

[59] When one combines the part of the application that refers to languages other than English with the geographic considerations outlined above, the proposed sector would cover:

a) all audio-visual works, in a language other than English, created anywhere in Canada for a producer in the federal jurisdiction, when the director is resident or domiciled in Quebec; and
b) all audio-visual works, in a language other than English, created for any producer in the federal jurisdiction, when the filming takes place primarily in Quebec, without regard to the place of residence of the director.

[60] The Tribunal did not receive comments from directors or producers as to the practical effect of the sector proposed by ARRQ. In order to maintain some comparability with existing professional relations in Quebec and to facilitate negotiations that might be undertaken with various producers, the Tribunal is prepared to consider a sector that would reflect the geographic and linguistic criteria requested.

[61] ARRQ asked the Tribunal to make it clear that double shooting, international filming and audio-visual works without dialogue or with an invented

language “are deemed to be works in a language other than English”. In support of its request, ARRQ cited the fact that no objection was raised to this request.

[62] The public notice of ARRQ’s application for certification expressly stated that double shooting, international filming and audio-visual works without dialogue were included in the proposed sector. No one objected to the inclusion of these types of works in the proposed sector. With regard to double shooting, an examination of the evidence reveals that very few productions of this type are made by producers in the federal jurisdiction. For this reason and given that there was no objection to including these works, the Tribunal concludes that all double shooting is included in the proposed sector, even if part of the shooting is in English. However, the Tribunal does not deem it necessary to specify in the sector description that double shooting “is deemed to be in a language other than English”.

[63] ARRQ also asked the Tribunal to make a clarification concerning audio-visual works without dialogue by adding the phrase “or with an invented language” to the proposed description. The Tribunal must ask itself whether this clarification would have the effect of enlarging the scope of the original application. To this end, it must examine the meaning of the expression “an audio-visual work *without dialogue” (“sans parole”).* At first glance, this expression brings to mind silent films or films with a musical score only. Can an audio-visual work without dialogue (“sans parole”) include works with an invented language? According to *Le petit Robert* (*Le nouveau petit Robert : Dictionnaire alphabétique et analogique de la langue française*, nouvelle éd. du Petit Robert, Paris, Dictionnaires Le Robert, 1996), “parole” is defined as “un élément simple du langage articulé”(a basic element of spoken language). “Articulé” (spoken) is defined as “formé de sons différents *reconnaissables*” (composed of different *recognizable* sounds). “Parole” (words) are thus recognizable sounds that can be understood. An audio-visual work with invented language contains terms or sounds that are unintelligible and hence are *sans parole* (without words). Consequently, adding the words “or with an invented language” does not enlarge the scope of the proposed sector. In the instant case, the Tribunal concludes that works without dialogue or with an invented language may be considered works in a language other than English, but does not consider it necessary to specify this in the description, as requested by ARRQ.

[64] ARRQ made certain clarifications concerning what it means by international filming, and the Tribunal took note of these clarifications earlier in these Reasons. ARRQ asked the Tribunal to specify that all international filming is “deemed to be a work in a language other than English”. The Tribunal understands that these works could include any filming, whether in French, English or another language, provided it is done in a manner considered as “international filming”. It appears that the requested clarification could enlarge the scope of the sector originally proposed by ARRQ and understood by the

Tribunal. The Tribunal therefore does not deem it appropriate to make the clarification sought by ARRQ and limits the works covered by the proposed sector to filming where the segments and vignettes presented by the narrator are filmed in a language other than English.

Conclusion regarding the sector

[65] Having considered all the evidence and 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 independent contractors engaged by a producer subject to the *Status of the Artist Act* to perform the functions of a director, and who:

a) are domiciled or resident in the province of Quebec and who direct an audio-visual production in the French language or in any language other than English; or
b) direct an audio-visual production in the French language or in any language other than English when the shooting takes place primarily in the province of Quebec;

excluding professional independent contractors in the field of visual arts engaged in video art who are covered by the certification granted by the Canadian Artists and Producers Professional Relations Tribunal to the Regroupement des artistes en arts visuels du Québec on April 15, 1997.

[66] For purposes of clarification, the sector defined above includes any international filming when the segments and vignettes presented by the narrator are filmed in a language other than English, all double shooting and any audio-visual work without dialogue or with an invented language.

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

[67] In its application for certification, the applicant estimated that of the 175 independent professional artists working in the sector, 155 are members of ARRQ. At the hearing, ARRQ provided more accurate figures, reporting that its membership now numbers 159 of a possible 214 freelance réalisateurs who could be members. To substantiate these figures, ARRQ submitted in evidence the breakdown of the production activities of eligible réalisateurs who have not yet become members of ARRQ. No association contested the representativeness of the applicant.

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

DECISION

[69] For all these reasons and given that the Association des réalisateurs et réalisatrices du Québec 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 all independent contractors engaged by a producer subject to the *Status of the Artist Act* to perform the functions of a director, and who:

a) are domiciled or resident in the province of Quebec and who direct an audio-visual production in the French language or in any language other than English; or
b) direct an audio-visual production in the French language or in any language other than English when the shooting takes place primarily in the province of Quebec;

excluding professional independent contractors in the field of visual arts engaged in video art who are covered by the certification granted by the Canadian Artists and Producers Professional Relations Tribunal to the Regroupement des artistes en arts visuels du Québec on April 15, 1997.

Declares that the Association des réalisateurs et réalisatrices du Québec is the association most representative of artists in the sector.

An order will be issued to confirm the certification of the Association des réalisateurs et réalisatrices du Québec to represent this sector.

II DIRECTORS (METTEURS EN SCÈNE)

STATEMENT OF FACTS

[70] This decision concerns the application for certification submitted to the Tribunal by the UDA on December 14, 1995, under section 25 of the *Status of the Artist Act*. The UDA had applied for certification to represent a sector composed of performers, directors (*metteurs en scène*) and choreographers. An initial hearing in the case was held in Montreal on June 5, 6 and 7, 1996.

[71] The sector originally proposed by the applicant was as follows:

> 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 the 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 the 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.

[72] On August 29, 1996, the Tribunal rendered an interim decision (Decision No. 017) in which it granted UDA certification to represent the following sector:

> 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.

[73] In its decision, the Tribunal indicated that it would postpone consideration of the part of UDA's application that related to directors and choreographers, and that it would at a later hearing also address the issue of whether fight directors should be included in the sector proposed by UDA. In this part of these Reasons, the Tribunal will examine UDA's application as it relates to directors (*metteurs en scène*) in all areas of production: literary, musical and dramatic works, and mime, variety, circus or puppet shows (the file known as "UDA No. 2").

[74] The public notice of UDA's application for certification provided that any artists' association that wished to make a competing application for certification in respect of the same sector or any part of the same sector had to do so no later than March 19, 1996. On February 19, 1996, the Association des professionnels des arts de la scène du Québec (APASQ) informed the Tribunal that it intended to intervene in the file because APASQ also represents directors (*metteurs en scène*) and that it intended to contest UDA's representativeness in respect of this profession.

[75] On March 8, 1996, APASQ submitted to the Tribunal an application for certification to represent the following sector:

All set, costume, lighting, sound, accessory and puppet designers, *stage directors*, stage managers, set painters, technical directors, production managers and all costume assistants, set designer assistants and production assistants working in the province of Québec and at the National Arts Centre in the areas of the performing arts, dance and variety entertainment. [Our italics]

[76] These two applications for certification raise the following issues:

1) Should directors (metteurs en scène) be included in a sector with performers, in a sector with designers or in a separate sector?

2) Which association is most representative of directors (metteurs en scène) ?

THE ISSUES

Issue 1: Should the directors (metteurs en scène) be included in a sector with performers, in a sector with designers or in a separate sector?

The duties of a director (metteur en scène)

[77] UDA submitted in evidence a document which defines directing ("la mise en scène") as follows:

> [translation]
>
> Directing is the art of conceiving and staging a performance.
>
> This art is practised equally in theatre, opera, mime, musical comedy and variety performances. Directing is an art because it presupposes an intuitive vision of works and hence the process of recreating. It is both intellectual and practical; practitioners of this art must combine intellectual faculties that are constantly stimulated, with a solid sense of material realities.
>
> Directing, in its present form, has existed for only about a century, even though there has always been a organizer of performances down through the ages. Sophocles, Shakespeare and Molière staged their own plays, but always in keeping with the aesthetic vision of their time, which reflected firmly established social and cultural conventions. The fragmentation of society has gradually led people in the theatre to strive for originality and distinctiveness, qualities with which their predecessors did not concern themselves. The creation of repertoires and the resulting repeated presentation of the same works have led people in the theatre to find ways of adapting old works to modern times. There is an infinite variety of these choices, and they constitute the personal visions of directors and the foundation of their art.

[78] This same document lists what, according to UDA, are the duties of a director (metteur en scène):

Conception:

a) choosing a work, or accepting the choice of an artistic director, because this work stimulates a deep-seated creative energy;
b) choosing a translation or a translator, if the original work is in a foreign language;
c) reading the text of the work repeatedly and identifying its main elements;
d) placing the work in its historical, social, political and aesthetic context;
e) determining the modern-day relevance of the work and its connection with the place where and the public to whom it will be presented;
f) developing an overall vision of the production based on his or her intuition and research;
g) selecting the ideal cast, based on his or her conception of each character, and providing for alternative choices, should the first choices not be available, ensuring that there is no incompatibility between performers;
h) choosing the production team that can best execute the overall vision;

Staging:

a) contacting the participants chosen and explaining to them the main features of the production so that they begin work on it knowing what is expected of them;
b) establishing a timetable for rehearsals and production meetings;
c) establishing with the actors and the production team an atmosphere of trust and enjoyment, so that each can freely give the best of himself/herself;
d) directing rehearsals and production meetings, taking into account labour standards and budgetary considerations;
e) keeping an open mind to the suggestions of individual participants, without losing sight of his or her initial overall vision;
f) maintaining an ongoing dialogue with the office of the artistic director to ensure that it provides its valued support throughout the production and especially when difficulties arise;
g) writing, for inclusion in the program, the "message from the director", as evidence of his or her interest in and commitment to the work being staged;
h) agreeing to interviews with the media and taking advantage of all forums to stimulate people's interest in going to see the production.

Metteurs en scène (directors) in theatre

[79] UDA called three metteurs en scène as witnesses: André Montmorency, André Brassard and Gilles Marsolais. The testimony of Mr. Montmorency and Mr. Brassard dealt primarily with their experience as theatre directors, but they also testified concerning their experience with the taping or recording of a production in which they had participated. This second aspect of their testimony was dealt with in the first part of these Reasons.

[80] When asked to explain the work of a metteur en scène, Mr. Montmorency explained that it is the metteur en scène who determines the vision to be given the work and how the characters will be portrayed. The metteur en scène always has the "last word". According to the witness, the metteur en scène has a comprehensive artistic approach, which is not the case in television and private productions. Mr. Montmorency explained his approach to a production:

a) he is contacted by an artistic director
b) there is discussion about casting and the choice of actors
c) there is communication with the actors chosen
d) he and the artistic director choose the various designers (stage, costumes, sets, lighting, etc.)
e) there are rehearsals in the rehearsal hall
f) there are dress rehearsals and there is work with the technical team.

[81] The steps in Mr. Brassard's approach are similar to those described by Mr. Montmorency. However, Mr. Brassard stated that he sometimes met with the designers before he met with the actors. According to Mr. Brassard, the metteur en scène must select and form the teams; this is the most crucial part of the process. He must nurture his vision of the work in the actors – some metteurs en scène impose their direction, while others work with the actor to foster their vision, but he would have several meetings with the designers. In the final analysis, the metteur en scène is responsible for the coherence of the production. Mr. Brassard also stressed that other factors, such as budgetary considerations, can impact on the work of a metteur en scène.

[82] Mr. Brassard also testified that he has worked as a metteur en scène on productions for singers or comedians and on variety programs. According to him, there are different levels of involvement encompassed by the term "directing". Some productions require genuine direction, while others merely require the metteur en scène to "organize" the presentation and there is not necessarily any conception or vision on the part of the metteur en scène.

[83] Mr. Marsolais testified that the metteur en scène not only has control over how the actors play their roles, but also gives direction with respect to sets, costumes, lighting, music, etc. According to him, the same production staged by two different metteurs en scène would produce completely different results.

[84] There was general agreement among the witnesses that the document listing the duties of the metteur en scène, reproduced in paragraph [78], accurately describes the work of a director.

[85] APASQ called two metteurs en scène as witnesses: Martin Faucher and Jacques Rossi. Mr. Rossi's testimony focused more on another aspect of the case and will be examined later. Mr. Faucher explained to the Tribunal the steps that he follows in his capacity as a metteur en scène. In the case of a potential production, he conceives images, sets, atmosphere, music, and the period of the piece. He will have meetings with potential set and costume designers and with those who could produce the sound track, in order to impart to them his overall vision. Mr. Faucher's first concern is not the actors. He sets the production in a specific time and place, synthesizes its various components and structures it. It may be six months to a year before this work is completed and the first rehearsal takes place. According to him, this approach makes working with the actors in the rehearsal hall easier because the work has had time to develop.

[86] APASQ did not object *per se* to and did not seek to clarify the document describing the duties of a metteur en scène which was submitted by UDA, reproduced in paragraph [78]. It is clear from the testimony of the various metteurs en scène that each has his own approach to directing and that it would be impossible to develop a common approach. In the Tribunal's opinion, the

approach followed or the method of working chosen by an individual to bring his or her vision to life does not fundamentally change the work or duties of a metteur en scène.

Metteurs en scène in television

[87] In the first part of these Reasons, the Tribunal concluded that certain metteurs en scène have collaborated with réalisateurs on television adaptations of works produced for the stage, tapings of performances, scripted variety programs and galas produced on the stage for a live audience and for television. In these cases, the evidence revealed that the nature of the duties performed by these metteurs en scène was such that they actually co-directed the work and they were therefore co-directors (*co-réalisateurs*) covered by the certification granted to ARRQ.

[88] The evidence presented by UDA also established that persons known as "metteurs en scène" have participated in television programs. In these cases, the evidence tended to show that these persons usually had very specific expertise and that their services had been used for a specific purpose. Certain réalisateurs who testified for ARRQ also stated that they had used the services of "specialists" to ensure the authenticity of certain scenes.

[89] Mr. Montmorency testified that when his services as a metteur en scène are used by television producers, he functions as a specialist, just like a set designer or choreographer working in the theatre. For example, he explained that he participated in the production of a television program where the actors were required to use the style of acting known as *commedia dell'arte*, which is not as well known among young actors and réalisateurs. His reason for being on the set was to communicate his knowledge to the actors in order to impart to them this style of acting.

[90] On the question of metteurs en scène in television, the Tribunal accepts Mr. Brassard's testimony that the term "metteur en scène" is often exaggerated, despite the fact that a metteur en scène may perform a broad range of duties.

[91] As explained earlier, the metteur en scène has an overall vision and must be considered to be in charge of the production. In television, his or her counterpart is the réalisateur. Even though the services of a metteur en scène may be used, the majority, if not all, of the artistic decisions have already been made by the réalisateur. Although metteurs en scène who have worked in television may have helped develop or clarify the vision of the réalisateur, they did not have full control of the artistic process, as does a metteur en scène in theatre. These individuals instead play a "consulting" role and cannot be considered directors in the same sense as directors in theatre. For these reasons, the Tribunal concludes

that it is not appropriate to include metteurs en scène who work in television in the same sector as metteurs en scène in theatre.

Metteurs en scène in radio

[92] The Tribunal believes that the sector proposed by UDA could include metteurs en scène if their services were used in radio. In all the oral evidence presented, there were only two references to radio. Mr. Brassard stated that in 1971, the French network of the Canadian Broadcasting Corporation (the "CBC") mounted a radio production of the play *À toi pour toujours, ta Marie-Lou* by Michel Tremblay, that Mr. Brassard had directed on the stage. When it mounted the radio production, the CBC did not ask Mr. Brassard to participate in any way and he did not receive any compensation. In the second example, a witness for APASQ, Mr. Faucher, testified that in 1989, the CBC taped *À quelle heure on meurt?*, a production he had directed on the stage which was subsequently broadcast on CBC radio. This was simple taping, with no adaptation for radio. Mr. Faucher stated that he was paid for his services, but he could not recall in what capacity.

[93] UDA did not present any other arguments to the Tribunal on this question and APASQ is not seeking to represent radio directors. Without further evidence, the Tribunal is not in a position to determine whether there are situations where producers in the federal jurisdiction might use the services of a metteur en scène. The Tribunal therefore is of the view that, for the time being, any sector covering metteurs en scène should not include radio directors.

Conclusion regarding metteurs en scène in radio and television

[94] In light of the foregoing, the Tribunal finds that, generally speaking, the duties or functions of a metteur en scène as set out in paragraph [78] accurately and exhaustively describe the work of a director in theatre, but that these duties do not describe the work of individual who might be engaged as a metteur en scène in television or radio. Accordingly, the Tribunal concludes that any sector composed of "metteurs en scène" must exclude metteurs en scène working in radio and television.

[95] The Tribunal wishes to point out that even though persons with the title "metteur en scène" in radio or television are excluded from the sector, this does not mean that a certified association that represents theatre directors could not negotiate terms and conditions for the payment of fees when their works are recorded and broadcast, regardless of the form. As UDA witness Mrs. Erika Marcus explained, there are already agreements covering performers that provide for compensation when a work in which they have performed is recorded and broadcast. According to APASQ, it would be possible to honour the copyrights

of metteurs en scène when their works are recorded by producers through collective agreements negotiated in the performing arts sector.

Common interests and history of professional relations

[96] The metteurs en scène who testified for UDA stated that the vast majority of metteurs en scène are, or at one time were, actors. They all agreed that the metteur en scène spends on average 75 percent of the total amount of time allotted to preparation of a production working with the actors, as compared with approximately 25 percent of the allotted time with the designers. Mr. Montmorency testified that metteurs en scène usually have no managerial responsibilities *per se*, although they must occasionally report certain problems to the producer's designated representative or exert pressure on the latter to replace an actor or another person involved in a production.

[97] UDA argued that a sector composed of performers and directors is a natural grouping that reflects the reality of these artists' professional relations, the interaction between them and their relations with producers in the different fields of artistic production. UDA noted that the composition of its membership has changed: a number of its members now practise more than one profession in the artistic world.

[98] UDA further contended that the strongest evidence that performers and directors have common interests is in the amount of time they spend working together. UDA was founded in 1937 by performing artists. Over the years it has negotiated numerous collective agreements covering performing artists and choreographers in both the federal and provincial jurisdiction.

[99] As for APASQ, Mr. Faucher testified that on one hand, acting experience can be an asset in the job of metteur en scène, but that on the other hand, insofar as anything relating to the visual or conceptual aspect of directing is concerned, acting experience is of little use to a metteur en scène because this is an entirely different field. According to the witness, directing require other attributes. He also stated that it is not unusual to find directors and designers in the same association since directing largely involves working with designers. Mr. Faucher acknowledged that, all in all, directors spend less time working with designers than with actors. However, he pointed out that during the week preceding a première, the director works more with the designers than with the actors. Generally speaking, the director and the designers each do their work concurrently, but are not in constant contact, whereas the director and the actor work directly with one another, daily.

[100] The testimony of APASQ witness Jacques Rossi dealt with the history of APASQ and why it was established. He explained that following general conferences on the theatre in Quebec held in 1981, the theatre community decided

to form the Conseil québécois du théâtre because it was felt there was a need for an association for artists who were neither actors nor dancers. The Association des professionnels des arts de la scène (APAS) was therefore formed in February 1984. APAS was composed of designers, directors (metteurs en scène) and technicians. According to the witness, designers have obvious common interests because they consider themselves designers first and performers second in the field of stage production. Directors choose their actors and their designers. The various designers must then chose their team. Each designer oversees the work of his or her team, just as the director brings to life his or her vision of the work through the actors. Each has a leadership role. According to Mr. Rossi, actors have no one to supervise; they supervise their own work and are accountable to the director.

[101] In its arguments, APASQ urged the Tribunal to either allow its application for certification or establish a separate sector for directors (metteurs en scène). APASQ argued that the sector proposed by UDA, which includes both performers and directors, is not appropriate in this case. Directors, like designers, are the heads of teams, which is not the case for performers. APASQ further argued that even though UDA was founded in 1937, it was not until the 1990s that it amended its constitution and by-laws to open its ranks to metteurs en scène, whereas APASQ has had designers and metteurs en scène in its ranks since 1984.

[102] On the question of professional relations with producers, neither APASQ nor UDA has negotiated collective agreements covering metteurs en scène. However, APASQ has in place a standard form contract used for design and directing (“la mise en scène”).

[103] Metteurs en scène do not necessarily discipline their teams, whether actors, designers or technicians. However, they must ensure that their production, in all its aspects, is ready for its première. If a metteur en scène believes that a person is not working well with the team, he or she may resolve the problem personally or inform the producer, who is responsible for settling the problem. Although metteurs en scène do not perform managerial duties in the traditional sense, the Tribunal believes that, as the persons in charge, their power is significant enough to conclude that their interests differ from those of performers and designers.

[104] Both sides presented persuasive and valid arguments. The fact that a number of metteurs en scène have acting experience confirms that they have interests in common with performers. Metteurs en scène work with actors daily, whereas they work concurrently with designers. The time they spend with actors, compared with the time they spend with designers, is an important consideration. However, the creativity and vision that directing entails means that the work of a metteur en scène more closely resembles the process that a designer must follow. The metteur en scène stages the production and directs the work of the actors.

The evidence shows that metteurs en scène do not have managerial responsibilities, within the ordinary meaning of this labour relations expression. They nevertheless have considerable power, i.e., the "final word", over the work of actors and designers. Designers, for their part, head their design teams and collaborate with the director.

[105] In light of the evidence it has heard, the Tribunal is unable to conclude that metteurs en scène have more interests in common with performers than they do with designers. In fact, the probability that the interests of metteurs en scène differ from those of each of these two groups leads the Tribunal to conclude that it would be more appropriate to create a separate sector for metteurs en scène. The Tribunal recognizes that this conclusion differs from the one it reached in the case of the Canadian Actors' Equity Association (see Decision No. 010, rendered on April 25, 1996), where it determined that stage directors should be included in the same sector as performers. However, the Tribunal notes that, in that case, the applicant established that it had historically represented stage directors and that its scale agreements covered both performers and directors.

Linguistic and geographic criteria

[106] The application for certification submitted by UDA includes certain linguistic and geographic criteria. UDA is seeking to represent persons who direct a literary, musical or dramatic work or a mime, variety, circus or puppet show presented or performed in Quebec or outside Quebec to a French-speaking audience. Under an agreement signed on November 6, 1992, UDA expressly recognized the jurisdiction of the Canadian Actors' Equity Association (the "CAEA") with respect to English-language stage productions both inside and outside Quebec.

[107] There is no specific reference in APASQ's application to linguistic criteria. With regard to geographic criteria, APASQ seeks to represent directors working in Quebec and at the National Arts Centre in the areas of the performing arts, dance and variety entertainment.

[108] On April 25, 1996, the Tribunal certified the CAEA to represent directors of English-language productions. Consequently, any sector composed of directors, which both UDA and APASQ wish to represent, must respect this earlier certification.

[109] As the Tribunal indicated in paragraph [48], it believes that national sectors are preferable wherever possible. In the instant case, the Tribunal considers it appropriate to have a national sector composed of metteurs en scène who direct works presented or performed in French. The evidence reveals that the majority of stage productions are within provincial jurisdiction. To the extent that there are French-language productions by producers in the federal

jurisdiction, the Tribunal believes that there should be only one association to represent the metteurs en scène concerned, irrespective of the location where the production is presented or performed.

Conclusion regarding the sector

[110] Having considered the evidence and all the oral and written submissions, the Tribunal finds that the sector that is suitable for bargaining is a sector composed of all independent contractors engaged by a producer subject to the *Status of the Artist Act* to perform the duties of director in a French-language stage production of a literary, musical or dramatic work or a mime, variety, circus or puppet show.

Issue 2: Which association is most representative of directors (metteurs en scène)?

[111] Each association submitted its membership list in support of its position that it is most representative of the metteurs en scène in the sector proposed in its application. However, the sector that the Tribunal has found to be suitable for bargaining in the instant case, described above, differs from the sectors proposed by the two applicants. Under the circumstances, the Tribunal concludes that it cannot rely solely on the membership lists to determine representativeness and that there should be a representation vote so that the artists themselves can decide which association should represent them.

DECISION

[112] The Tribunal therefore orders that a representation vote be conducted among the members of the two applicants who practise the profession of metteur en scène. An order setting forth the procedures for this representation vote will be issued with these Reasons.

III CHOREOGRAPHERS

[113] As mentioned above, in Interim Decision No. 017, issued August 29, 1996 concerning the UDA's application for certification, the Tribunal decided to defer consideration of the inclusion of choreographers in the sector proposed by UDA.

[114] This case raises the following issues:

1) Should choreographers be included in the same sector as performing artists?

2) Is UDA representative of choreographers?

ISSUES

Issue 1 : Should choreographers be included in the same sector as performing artists?

[115] The UDA filed with the Tribunal a document prepared by the Société québécoise de développement de la main d'oeuvre entitled *Rapport de l'analyse de la profession chorégraphe* (Government of Quebec, 1995). The document provides a detailed examination of the various functions and areas of knowledge required of a choreographer, whether working for themselves in their own company or when engaged by a producer. These functions include:

a) putting in place the process for creation of the choreographic work, and the actual creation of the work itself (defining the project; forming a team for the project or participating in the formation of the team; designing the choreography or creating the work; presenting the choreographic work);
b) distribution of the work (ensuring the marketing of the show; supervising its presentation; coordinating the staging of the show);
c) artistic and administrative direction of the projects and the in-house dance company (establishing medium term programs, and if necessary , a program of activities for the in-house dance company; ensuring it has proper resources).

[116] The testimony of UDA's witness, Louise Lapierre, confirmed that the range of tasks described in the *Rapport de l'analyse de la profession chorégraphe* accurately reflects the main functions of a choreographer. The witness indicated that with respect to the hiring of performers, a choreographer usually recommends certain individuals but the choice is ultimately that of the producer or director. In some cases, a team of performers has already been selected and the choreographer works with the human potential that is available. The witness also indicated that the choreographer may teach performers how to move, to use the space around them, even in matters not necessarily related to dance.

[117] The Tribunal accepts that, taken together, these functions describe the work of a choreographer from the moment of creation through the various steps of selecting dancers, teaching the movements, conducting rehearsals and looking after all aspects of administering, mounting and promoting a performance or series of performances. Although the crucial part of the work is obviously creative, a number of the functions are clearly administrative and some others involve the direction or supervision of performers. It is these latter functions that require the Tribunal to consider whether it is appropriate to include choreographers in the same sector as performers.

[118] In deciding any question that arises under Part II of the *Status of the Artist Act*, the Tribunal is directed by paragraph 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.

[119] The reasons behind this labour law principle were explained by a panel of the Canada Labour Relations Board ("CLRB") in *Bank of Nova Scotia (Port Dover Branch)* (1977), 21 di 439; [1977] 2 Can LRBR 126; and 77 CLLC 16,090 (CLRB no. 91):

> The basis of the exclusion of certain 'management' persons from the coverage of collective bargaining is the avoidance of conflicts of interest for those persons between loyalties with the employer and the union. This avoidance of conflicts protects both the interests of the employer and the union. The conflict is pronounced when one person has authority over the employment conditions of fellow employees. It is most pronounced when the authority extends to the continuance of the employment relationship and related matters (e.g. the authority to dismiss or discipline fellow employees). (...)

In *British Columbia Telephone Company* (1976), 20 di 239; [1976] 1Can LRBR 273; and 76 CLLC 16,015 (CLRB no. 58), the CLRB also commented on the nature of management exclusions, observing that "the performance of functions of a highly technical or professional nature is not a bar to the inclusion in a bargaining unit." In the same decision, the CLRB rejected the proposition that the power to "recommend" is generally equivalent to the power to decide. In the CLRB's view, an individual must meet a stringent decision-making test before he or she should be excluded from the bargaining unit on the basis of managerial functions.

[120] The Tribunal agrees that a significant level of managerial responsibility must be exercised before a function should be excluded from collective bargaining. The NFB opposed the inclusion of choreographers in the same bargaining unit as performers, on the grounds that their work includes the direction of performers, but provided no detail as to the nature of the directorial responsibilities that a freelance choreographer might exercise at the NFB.

[121] In her testimony, UDA's witness informed the Tribunal that as a freelance choreographer engaged by a producer, she does not have responsibility for the engagement of the performers with whom she will work. Neither does she have the authority to suspend, reprimand or fire them. Although she can correct them with respect to their dance sequences, it is ultimately the responsibility of the producer, who signs the original contract of engagement, to discipline or dismiss an unsatisfactory performer. Similarly, with respect to other aspects of the production such as lighting, costumes, or set design, the choreographer's role is generally limited to making suggestions or recommendations that may or may not be accepted by the director.

[122] The Tribunal is therefore of the opinion that insofar as self-employed choreographers are concerned, these individuals do not exercise a level of supervisory or managerial responsibility sufficient to require that they be excluded from the performing artists' sector.

Common interests and the history of professional relations

[123] The evidence before the Tribunal indicates that choreographers often begin their professional careers as dancers. The success of a choreographer depends in large measure upon his or her intimate artistic relations with those who perform their works. In the Tribunal's view, there is a strong community of interest between choreographers and those who perform dance sequences on stage and in audio-visual works.

[124] UDA filed with the Tribunal a number of the scale agreements that it has negotiated with a variety of producers. An analysis of these scale agreements reveals that UDA has negotiated provisions for choreographers with a number of broadcasting undertakings (e.g. Société Radio-Canada; Télé-Metropole Inc.; and Télévision Quatre Saisons). However, neither the National Arts Centre (a member of the producers' association known as Théâtres Associés Inc.) nor the NFB have to date recognized UDA as the bargaining agent for choreographers.

[125] In Decision No. 010 (Canadian Actors' Equity Association, issued April 25, 1996), the Tribunal recognized that it is sometimes necessary to create sectors that are larger than those for which an artists' association has historically bargained. At paragraph 20 of that decision, the Tribunal stated:

> ... The *Status of the Artist Act* also directs the Tribunal to take into account the history of professional relations among the artists, their associations and producers when determining the suitability of a sector for bargaining. However, the Tribunal is also mindful that if progress is to be made in achieving the objectives of this new *Act*, and particularly in improving the compensation paid to artists for their work, it may sometimes be necessary to go beyond the limits of historical professional relations. (...)

[126] In this case, the applicant has demonstrated that it has experience in representing choreographers, although in a somewhat more limited sphere than they are seeking in their proposed sector. Nevertheless, in the interests of ensuring that all freelance choreographers engaged by producers subject to the *Status of the Artist Act* may benefit from the provisions of the *Act*, the Tribunal is of the opinion that it would be appropriate to include choreographers working in television, film and theatre in the same sector.

Linguistic and geographic criteria

[127] By virtue of a certification granted on April 25, 1996, choreographers in English language productions subject to the *Status of the Artist Act* are represented by the Canadian Actors' Equity Association (Decision No. 010). CAEA is party to an agreement with UDA that recognizes the respective jurisdiction of each association according to linguistic criteria. The Tribunal is of the opinion that it is appropriate to continue to respect this linguistic distinction.

Conclusion regarding the appropriate sector for choreographers

[128] With respect to those independent choreographers who may be engaged by producers subject to the *Status of the Artist Act*, the Tribunal is of the view that the administrative and supervisory responsibilities they undertake, while important, are of secondary importance to their artistic responsibilities. In these instances, it is the producer, or the director, who has the ultimate responsibility for the engagement, discipline and dismissal of the performers. Accordingly, the Tribunal finds that the level of supervisory responsibility exercised by an independent choreographer in these circumstances is not sufficient to warrant excluding them from a sector that includes dancers and other performers. Moreover, because choreographers have a demonstrable community of interest with dancers and other performers, the Tribunal concludes that it is appropriate to include them in the same sector as performing artists.

Question 2 : Is the applicant representative of choreographers?

[129] The applicant informed the Tribunal that it is very difficult to estimate precisely the number of choreographers working in Quebec or in French language productions. UDA's witness indicated that she was aware of some 30 choreographers who are registered in the Regroupement québécois de la danse. UDA filed a membership list showing the names of 51 individuals identified as choreographers; some of these people may also work as performers when the opportunity arises.

[130] The applicant demonstrated that the French language broadcasting undertakings with which it has negotiated scale agreements have recognized UDA

to represent choreographers. As well, no other artists' association contested the representativeness of UDA with respect to this profession. The Tribunal therefore concludes that the applicant is the artists' association most representative of choreographers working in French language productions.

DECISION

[131] The Tribunal finds that it is appropriate to include choreographers in the same sector as the performing artists already represented by UDA. The interim certification granted to UDA on August 29, 1996 will be amended accordingly.

[132] At this time, the Tribunal will also take the opportunity to update UDA's certification order to reflect the certifications granted to the American Federation of Musicians of the United States and Canada and La Guilde des musiciens du Québec in January 1997, by replacing the current subsection c) with the following text:

> c) independent contractors covered by the certifications granted to the American Federation of Musicians of the United States and Canada and La Guilde des musiciens du Québec by the Canadian Artists and Producers Professional Relations Tribunal on January 16, 1997.

IV FIGHT DIRECTORS

[133] Fight Directors, Canada ("FDC") intervened in UDA's application for certification when the first hearing was held in June 1996. Because of the potential link between the work of fight directors and that of directors and choreographers, the Tribunal deferred consideration of the issue of fight directors when it issued its Interim Decision in August 1996.

[134] In its presentation, FDC explained to the Tribunal that it is a federally incorporated, not-for-profit professional association with a mandate to promote and maintain a national standard of safety and aesthetics in the art of fight choreography as an integral part of the entertainment industry. To this end, the organization involves itself in safety, education, training and certification in the illusion of physical conflict for stage, screen and television.

[135] The FDC defines the functions of a fight director as being:

> The direction, coaching or arrangement of any dangerous action that may be required of actors to ensure their physical/mental safety and well-being, which includes the conception and staging of such acts in a safe, aesthetic and dramatic manner.

[136] According to the FDC, fight directors are not directors ("metteurs en scène"), choreographers, stunt directors nor stunt performers. FDC submitted that their function is a very specialized one, which should be excluded from the sector represented by UDA.

[137] A number of the witnesses called by UDA in support of its application to represent directors (*metteurs en scène*) and choreographers confirmed that the choreography and direction of fight scenes can be a specialized skill. Certain directors and choreographers may sometimes undertake the fight scenes themselves, if the action is relatively simple. However, when swordplay or hand to hand combat is involved, a specialist in combat or stunts would normally be brought in to choreograph these sequences.

[138] The Tribunal notes that FDC's literature describes a fight director as a "professional fight choreographer". Although FDC uses the title "fight director", the Tribunal is of the view that these individuals are not directors (*réalisateurs* or *metteurs en scène*) within the meaning of those terms as defined earlier in these Reasons for Decision, but rather technical specialists in one aspect of staging a production. Although it recognizes that the functions of a fight director are specialized, the Tribunal, nevertheless, is of the view that they are analogous to those of a choreographer. Earlier in these Reasons for Decision, the Tribunal explained its reasons for including choreographers in the sector represented by UDA. The Tribunal must now examine whether there is sufficient justification to accede to FDC's request that fight directors be excluded from that sector.

[139] The Tribunal takes very seriously the FDC's submissions regarding the importance of ensuring the safety of actors in any scenes involving the illusion of combat and other forms of physical violence. One obvious way to promote the safety of performers is to ensure that those who arrange and direct fight scenes are properly qualified to do so. However, the Tribunal must distinguish between the role of organizations like FDC that train and certify specialists in fight choreography and direction, and the role of artists' associations such as UDA that represent choreographers in collective bargaining with the producers who engage their services. As the Tribunal has no jurisdiction over training and certification, it must concern itself with determining which organization is best suited to represent fight directors for collective bargaining purposes.

[140] In the present case, neither FDC nor UDA has demonstrated a history of representing persons who specialize in choreographing and directing fight scenes in their negotiations with producers. This factor is therefore not determinative.

[141] FDC's desire is to have fight directors expressly excluded from the sector represented by UDA and, presumably, to create a separate sector for this occupation. The Tribunal has serious concerns regarding the viability of a separate sector for fight directors. The membership of FDC is not restricted to fight directors, and thus is not helpful in determining the potential size of a separate sector. No evidence was presented by any of the parties to this proceeding as to the number of individuals engaged in this occupation in Quebec or in French language productions, although FDC's representative stated that he was aware of one person.

DECISION

[142] The Tribunal is of the opinion that notwithstanding the important role a fight director plays in ensuring the safety of performers in scenes involving the illusion of physical conflict, an artists' association representing such a small sector would not have sufficient bargaining power to ensure that the interests of fight directors are protected adequately. The Tribunal therefore is not persuaded that the interests of fight directors would be served by creating a separate sector for this occupation.

[143] The safety of artists engaged in the illusion of combat is a matter to be dealt with conscientiously within the family of performers, all of whom are affected by the standards and practices that are specified as conditions of work. The Tribunal expects UDA, as the certified representative for performers and choreographers, to work diligently to ensure that this issue is addressed in the scale agreements that it negotiates with producers under the *Status of the Artist Act*.

CONCLUSION

[144] For all these reasons, the Tribunal:

I With respect to directors of audio-visual works ("réalisateurs"):

Grants the Association des réalisateurs et réalisatrices du Québec certification to represent, for the purposes of collective bargaining, a sector composed of all independent contractors engaged by a producer subject to the *Status of the Artist Act* to perform the functions of a director, and who:

a) are domiciled or resident in the province of Quebec and who direct an audio-visual production in the French language or in any language other than English; or
b) direct an audio-visual production in the French language or in any language other than English when the shooting takes place primarily in the province of Quebec;

excluding professional independent contractors in the field of visual arts engaged in video art who are covered by the certification granted by the Canadian Artists and Producers Professional Relations Tribunal to the Regroupement des artistes en arts visuels du Québec on April 15, 1997.

II With respect to directors in theatre ("metteurs en scène"):

Orders that a representation vote be conducted among the members of the two applicants who practise the profession of director (metteur en scène). An order setting forth the procedures for this representation vote will be issued with these Reasons.

III With respect to choreographers:

Orders that the interim certification granted to the Union des Artistes on August 29, 1996 be amended to include choreographers and updated to reflect the certifications granted to the American Federation of Musicians of the United States and Canada and La Guilde des musiciens du Québec in January 1997.

IV With respect to fight directors:

Concludes that it is not appropriate to create a separate sector for fight directors.

Ottawa, December 30, 1997

"André Fortier"
Chairperson

"Robert Bouchard"
Member

"David P. Silcox"
Member