

Canadian Artists and Producers  
Professional Relations Tribunal



Tribunal canadien des relations  
professionnelles artistes-producteurs

CANADA

Ottawa, June 26, 1998

File No. 97-0025-E

### Decision No. 026

#### IN THE MATTER OF A REQUEST FOR REVIEW FILED BY THE CONSEIL DES MÉTIERS D'ART DU QUÉBEC

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

The request is granted.

*Place of hearing:* Montreal, Quebec

*Date of hearing:* May 28, 1998

*Quorum:* Robert Bouchard, Presiding Member  
David P. Silcox, Member  
André Fortier, Member  
Curtis Barlow, Member  
Armand Lavoie, Member

*Appearances:* Yvan Gauthier, Louise Lemieux-Bérubé and François  
Coderre for the Conseil des métiers d'art du Québec.

## REASONS FOR DECISION

97-0025-E : In the matter of a request for review filed by the Conseil des métiers d'art du Québec

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### BACKGROUND

[1] This decision concerns a request for review filed by the Conseil des métiers d'art du Québec ("CMAQ" or the "Conseil") on October 10, 1997 under subsection 20(1) of the *Status of the Artist Act* (S.C. 1992, c. 33, hereinafter the "*Act*"). The hearing was held in Montreal on May 28, 1998.

[2] On June 4, 1997, the Canadian Artists and Producers Professional Relations Tribunal (the "Tribunal") certified CMAQ to represent the following sector:

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

[3] The applicant is now asking the Tribunal to amend this certification in order to include in the definition of the sector all artists and artisans in the field of arts and crafts in Quebec, and not only members of CMAQ.

[4] In November 1997, the Tribunal established the procedure it would follow in dealing with this request for review. Because the effect of CMAQ's request was to expand the sector it had been certified to represent, the Tribunal decided that it was important to seek the views of artists and producers who might be affected by the request. Public notice was therefore given in *La Presse*, *Le Soleil* and *The Globe and Mail* on December 3, 1997. This notice also appeared in *Le Devoir* on December 13, 1997 and in the December 1997 issue of the INFO-FAX bulletin of the Canadian Conference of the Arts. The notice set a closing date of January 15, 1998 for the filing of expressions of interest by artists, artists' associations and producers.

[5] The organizations and individuals who made known their interest in the request for review were invited to make written submissions. These submissions were provided to CMAQ to enable it to reply to them. On March 26, 1998, the Tribunal met in plenary session to consider the submissions of the applicant and the intervenors.

[6] After examining the intervenors' submissions and CMAQ's reply, the Tribunal determined that it was not able to render a decision based solely on the written submissions. It therefore decided to hold a public hearing. The intervenors were invited to participate in this hearing if they wished to clarify the written submissions they had filed. None of the intervenors made additional representations to the Tribunal at the public hearing.

## ISSUE

### **Should the Tribunal amend its decision to include all artists and artisans in the field of arts and crafts in Quebec in the bargaining sector for which CMAQ has been certified?**

#### *Concerns raised by the Tribunal and the intervenors*

[7] It should be noted that when CMAQ filed its original application for certification with the Tribunal in 1996, the proposed sector included all artists and artisans in the field of arts and crafts in Quebec. After hearing this application in May 1997, the Tribunal decided to limit the sector to members of CMAQ. The Tribunal's reasons for this decision are found in paragraphs 35 to 37 of Decision No. 023, reproduced below:

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

[36] The Tribunal's second concern relates to the dual role played by CMAQ vis-à-vis those involved in the field of arts and crafts in Quebec. Although CMAQ meets the criteria to be considered an "artists' association" since it has among its objectives the management and promotion of the professional and socio-economic interests of its members, it is also a commercial corporation that engages in the distribution of its members' work. In this capacity, CMAQ signs "distribution contracts" with individual artisans, operates galleries that display their work and receives a commission when these works are sold. At present, an artisan has the choice as to whether or not to enter into a distribution contract with CMAQ. As stated earlier, once certified, the applicant has the exclusive right to bargain on behalf of all artists in the proposed sector with producers under federal jurisdiction. The Tribunal is concerned that artisans who are not members of the association could also be obliged to sign these distribution contracts.

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

[8] The submissions made by the various intervenors, which included artists and artisans, artists' associations, educational institutions and other individuals or organizations interested in the field of arts and crafts, raised the following arguments in opposition to the request for review:

- CMAQ's representativeness in the field of arts and crafts;
- the potential overlap affecting artists who work in two fields: arts and crafts and visual arts;
- a concern that an artist might be forced to join an association.

A number of intervenors did not comment, but indicated that they agreed with the reasons given by the Tribunal in Decision No. 023 for limiting the sector to members of CMAQ.

[9] With respect to representativeness, a number of artists' associations and individual artists argued that CMAQ is not the only organization capable of representing artisans in the field of arts and crafts. The principal arguments of these intervenors were that CMAQ's selection criteria are too strict, that certain categories of artisans are not represented, that a majority of artisans are not members of CMAQ and finally, that artists must be free to choose whom they want to represent them.

[10] It should be noted that one intervenor, the Canadian Artists Representation/Le Front des artistes canadiens ("CAR/FAC"), filed an application for certification to represent a sector that would include artists and artisans in Quebec who are not members of CMAQ. CAR/FAC opposed CMAQ's request for review on the grounds that the association has a significant number of members in Quebec who work in the field of arts and crafts and that neither CMAQ, the Regroupement des artistes en arts visuels du Québec ("RAAV") nor CAR/FAC have the resources necessary to represent artists in both official languages. In its submission, CAR/FAC stressed that it is interested in cooperating with CMAQ to provide the best possible representation to all artists in the field of visual arts in Canada. CAR/FAC's Quebec section also argued that CMAQ's desire to represent all artists in the sector compromises artists' freedom by forcing them to belong to a single association.

[11] A number of intervenors pointed out that there is overlap between artists in the field of arts and crafts and those in the field of visual arts because many artists work in both fields. These intervenors were of the view that there is a risk of confusion, duplication and disputes. RAAV, which was certified by the Tribunal on April 15, 1997 to represent artists in the field of visual arts, suggested that CMAQ's request be granted, on condition that the description of the bargaining sector specify that artists covered by RAAV's certification are excluded from CMAQ's sector.

[12] With regard to membership in CMAQ, one intervenor was concerned about the benefits that non-members would obtain without being required to belong to CMAQ. However, the majority of those who commented on this matter were concerned that non-members would be forced to join CMAQ if the request for review were granted. In their opinion, this would compromise their freedom of association and create a kind of monopoly in the field of arts and crafts.

[13] A few intervenors pointed out that CMAQ could take advantage of its role as a distributor in negotiations with producers under federal jurisdiction. At least one intervenor expressed its approval of the request for review if this meant being able to negotiate the creator's status and copyrights, but without giving CMAQ the exclusive right to negotiate distribution contracts with producers in federal jurisdiction.

*CMAQ's written and oral reply to the concerns of the Tribunal and the intervenors.*

[14] In its written reply, CMAQ first addressed the concerns expressed by the Tribunal in Decision No. 023 (see paragraph 7 of this decision). CMAQ acknowledged that its resolution of June 14, 1997, limiting membership to Canadian citizens or landed immigrants resident or domiciled in Quebec, unnecessarily limited membership of artists and artisans in its association. It therefore sent the Tribunal a resolution proposing an amendment to its general by-laws that would allow any professional artisan practising an art or craft in Quebec to belong to CMAQ. CMAQ subsequently informed the Tribunal that this amendment was adopted at its general meeting held on June 19, 1998.

[15] As to the second concern expressed by the Tribunal, regarding CMAQ's dual role - as both an artists' association interested in promoting the professional and socio-economic interests of its members and a commercial corporation that engages in the distribution of its members' work - CMAQ replied that its associated corporations such as the arts and crafts shows, shops and the gallery are not commercial enterprises but rather non-profit corporations whose operations are completely separate from its own. At the hearing, the applicant informed the Tribunal that CMAQ and its associated corporations do not subsidize one another and that the negotiations that it envisages with producers in the federal jurisdiction would not include individual distribution contracts; each

artist would remain free and responsible for entering into contracts with producers under federal jurisdiction or not.

[16] In its written reply, CMAQ also pointed out that its role as an association of artists and artisans includes not only making representations to governments and providing training and services to its members, but also assisting in the promotion and distribution of their work. According to CMAQ, representing a sector involves negotiating to ensure that the rights of all the artists in a sector are respected through the establishment, among other things, of model contracts, rate schedules and group scales. Indeed, if CMAQ succeeds in negotiating agreements advantageous to artists in the field of arts and crafts, all artists in the field of arts and crafts will reap the benefits.

[17] With regard to its distribution role, CMAQ stated that it organizes a display of expressive arts and crafts from Quebec and other provinces at the SOFA (Sculpture, Object and Functional Art) events in Chicago and New York. As part of this event, it encourages participation by Quebec artisans, whether or not they belong to CMAQ. It also organizes group participation in a number of exhibitions and fairs, both domestic and foreign. In Quebec, CMAQ's associated but distinct corporations are responsible for arts and crafts shows that benefit members and non-members. Moreover, CMAQ is now attempting to establish a network of accredited shops in order to promote the sale of arts and crafts while at the same time respecting the rights of artists in accordance with the provisions of the *Status of the Artist Act* and the *Copyright Act*. According to CMAQ, these concrete actions benefit both members and non-members who also have access to events organized, supported or accredited by CMAQ, the essential difference between members and non-members being that non-members cannot influence CMAQ's directions and policies if they refuse to belong to it.

[18] In its written reply, CMAQ also responded to the intervenors' submissions. On the issue of representativeness, CMAQ maintained that it is the only professional artists' organization that integrates all the disciplines in the field of arts and crafts in a representative manner and noted that its representativeness was also determined by the Quebec *Commission de reconnaissance des associations d'artistes* nine years ago. At the hearing, CMAQ acknowledged that its standards respecting professional qualifications might have the effect of excluding amateur artisans and that certain disciplines cannot be considered an art or craft because they do not involve the intrinsic transformation of a material. CMAQ pointed out that it now has 580 professional members and indicated that in 1993, Quebec's Ministère de la Culture estimated the total number of artisans working in the field of arts and crafts to be 800 (excluding working artisans who limit themselves to producing a unique product). CMAQ also confirmed that it offers services in both official languages.

[19] Addressing the fears expressed by intervenors that artists might be forced to become members if its request for review is granted by the Tribunal, CMAQ

stated that it has never forced artists and artisans to belong to its association and strongly expressed its commitment to artists' freedom of association. It stated that the power that the *Status of the Artist Act* would confer on it, if its request is granted, would enable it to negotiate group rates for all artists and artisans, but would not prevent them from joining the association of their choice.

[20] With regard to the overlap between artists in the field of visual arts and the field of arts and crafts, and the intervention of RAAV, CMAQ acknowledged that, traditionally, the arts and crafts sector had been identified with mass production, and the visual arts with creators of unique works. According to CMAQ, this situation has changed and the arts and crafts sector also encompasses creators of works that embody a unique expression. CMAQ asserted the legitimacy of the sector defined by the Tribunal in its decision of June 4, 1997, i.e., a sector composed of "artists and artisans in Quebec ... who produce original artistic works, either in single or multiple copies ...". At the hearing, CMAQ recognized that certain artists belong to both CMAQ and RAAV, but that in order to avoid duplication, disputes or confusion, it is up to the individual artist to determine the sector in which he or she belongs for each of his or her different types of production.

[21] The applicant strongly opposed the portion of CAR/FAC's application for certification that would include artists and artisans from Quebec who are not members of CMAQ. It maintained that if the Tribunal certifies CAR/FAC in respect of the sector it is proposing, there will be a lot of confusion among artists and artisans in Quebec. In this regard, CMAQ stated that one would be hard pressed to explain how an organization that is practically non-existent in Quebec could assume a representation role when it is principally associated with the visual arts. To illustrate its argument, CMAQ noted that when RAAV filed its application for certification, CAR/FAC intervened and concluded an agreement with RAAV, but that it did not contest CMAQ's original application for certification. However, if the Tribunal did not certify CAR/FAC to represent the part of the sector composed of artists from Quebec, CMAQ submitted that certain artists and artisans in Quebec could not count on any organization to defend their rights as artists.

#### *Analysis and conclusions of the Tribunal*

[22] The purpose of the *Status of the Artist Act* is to establish a framework to govern professional relations between producers in the federal jurisdiction and artists who are independent contractors. To this end, the Tribunal is responsible for determining sectors suitable for bargaining and certifying artists' associations to represent each of these sectors, having regard to the common interests of the artists, the history of their professional relations, and any geographic and linguistic criteria that the Tribunal considers relevant. Under paragraph 28(5)(a) of the Act, the certified association has exclusive authority to negotiate on behalf of artists in the sector.

[23] The Tribunal believes that the framework governing professional relations between producers under federal jurisdiction and artists cannot be effective if there is a multiplicity of certified artists' associations in the same area. For this reason, the Tribunal endeavours to certify the artists' association that it considers the most representative of each artistic sector, granting to this association the exclusive authority to bargain on behalf of all the artists in the sector, whether or not they are members of the association. Apart from CMAQ's case, the Tribunal has made only one exception to this practice, involving the certification granted to the American Federation of Musicians of the United States and Canada (the "AFM"). In that case, it was the AFM that had limited its application for certification solely to its members.

[24] In CMAQ's case, the Tribunal made an exception to its practice by limiting the certification to CMAQ's members, and gave two reasons for its decision. CMAQ filed a request to review this decision. Subsection 20(1) of the *Status of the Artist Act* allows the Tribunal to uphold, rescind or amend any of its determinations or orders.

[25] The Tribunal is of the opinion that the amendment to CMAQ's by-laws that eliminates the restrictions on the membership of artisans from Quebec in the association adequately addresses the first concern expressed by the Tribunal.

[26] As for the Tribunal's second concern, regarding CMAQ's dual role, CMAQ's written reply and the evidence presented at the hearing established that the activities of the associated corporations are separate from CMAQ's activities and that the associated corporations and CMAQ do not subsidize each other. The Tribunal recognizes that promoting artists' professional activities may lead artists' associations to invite the participation of artists in exhibitions, shows or other events that promote the distribution of their work, although it distinguishes this type of activity from the direct operation of boutiques or sales expositions. In the present case, the Tribunal is of the opinion that CMAQ's oral and written replies have established that its activities are sufficiently distinct from those of the associated corporations. In addition, having received assurances from CMAQ that it will not force an artist in the sector to enter into an individual distribution contract, the Tribunal concludes that its second concern has been adequately addressed. If, however, an artist covered by the certification wishes to take advantage of such a service, CMAQ must make it available to non-members on the same terms and conditions as it offers to its members.

[27] The Tribunal is of the opinion that the applicant has addressed in a satisfactory manner, both in writing and at the oral hearing, the various concerns and fears expressed in the intervenors' written submissions. The Tribunal accepts CMAQ's contention that it is the only organization that integrates in a representative manner all of the disciplines in the field of arts and crafts in Quebec, and that it is committed to respecting each artist's freedom of



association. The Tribunal therefore concludes that CMAQ is in fact the association that is most representative of the artists and artisans in the field of arts and crafts in Quebec.

[28] The Tribunal nevertheless wishes to point out that certification to represent all the artists in a sector imposes on the certified association the obligation to negotiate scale agreements with producers in the federal jurisdiction that establish minimum terms and conditions for the provision of services. The association is required to protect the interests of non-members as well as members.

[29] With respect to the potential overlap between the field of arts and crafts and the visual arts, the Tribunal is of the view that there is a possibility for disputes between CMAQ and RAAV. The Tribunal suggests to both parties that they define more clearly, in a written agreement, the types of artistic productions that will come within the scope of one or the other of the two sectors concerned, and notify the Tribunal of this agreement. Such agreements already exist in other artistic disciplines, as the applicant pointed out to the Tribunal. The Tribunal has an obligation to prevent overlap between certified sectors by excluding from the definition of new sectors those it has already defined. Consequently, relying on CMAQ's statement that it is the artist himself/herself who decides, for a given work, whether he/she belongs to the arts and crafts sector or the visual arts sector, the Tribunal will add to the definition of the sector for arts and crafts a provision excluding artists who identify themselves as belonging to the visual arts sector.

DECISION

[30] For all these reasons, the Tribunal grants the Conseil des métiers d'art du Québec's request for review and concludes that the sector suitable for bargaining shall be composed, effective as of the date of this decision, of artists and artisans in Quebec who produce original artistic works, either in single or multiple copies, intended for a utilitarian or decorative purpose or as a form of expression, through the use of a craft associated with the transformation of wood, leather, textiles, metals, silicates or any other material, commissioned or distributed by any producer subject to the *Status of the Artist Act*, with the exception of any artists who identify themselves as a visual artist 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.

[31] A new certification order will be issued to reflect this decision.

Ottawa, June 26, 1998

"Robert Bouchard", Presiding Member

"David P. Silcox", Member

"André Fortier", Member

"Curtis Barlow", Member

"Armand Lavoie", Member