

Canadian Artists and Producers
Professional Relations Tribunal



Tribunal canadien des relations
professionnelles artistes-producteurs

CANADA

Ottawa, July 24, 1998

File No. 95-0016-A
95-0021-A

Decision No. 027

IN THE MATTER OF APPLICATIONS FOR CERTIFICATION FILED BY THE UNION DES ARTISTES AND THE ASSOCIATION DES PROFESSIONNELS DES ARTS DE LA SCÈNE DU QUÉBEC

Decision of the Canadian Artists and Producers Professional Relations Tribunal:

The Union des Artistes is certified to represent 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.

Place of hearing: Ottawa, Ontario

Date of hearing: July 20, 1998

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

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.

REASONS FOR DECISION

95-0016-A and 95-0021-A: In the matter of applications for certification filed by the Union des Artistes and the Association des professionnels des arts de la scène du Québec

BACKGROUND

[1] This decision completes the proceedings of the Canadian Artists and Producers Professional Relations Tribunal (“the Tribunal”) in respect of two applications for certification to represent directors of French language stage productions (“*metteurs en scène*”¹).

[2] In December 1995, the Union des Artistes (“UDA”) submitted an application for certification under the *Status of the Artist Act* (S.C. 1992, c.33, hereinafter the “*Act*”) to represent a sector composed of performers, *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 (Decision No. 017, August 29, 1996). Subsequently, following hearings held in September and October 1997, the Tribunal added choreographers to the sector represented by the UDA (Decision No. 024, December 30, 1997).

[3] In March 1996, the Association des professionnels des arts de la scène du Québec (“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 at the time it considered that portion of the UDA’s application for certification related to *metteurs en scène*. The remainder of APASQ’s application will be dealt with at a later date.

¹ The term “*metteur en scène*” will be used throughout these Reasons for Decision to describe the independent artists who form the sector under consideration. The professional responsibilities encompassed by this term were described at length in paragraphs 77 to 95 of Decision No. 024 (December 30, 1997). There is no precise English equivalent.

[4] In Decision No. 024, issued December 30, 1997, the Tribunal determined, *inter alia*, that it was appropriate to create a distinct sector for *metteurs en scène*, and that this sector would be 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.

[5] The Tribunal further ordered that a representation vote be conducted among those UDA and APASQ members who were *metteurs en scène*, in order to determine which association should represent them in collective bargaining with producers in the federal jurisdiction.

[6] At the joint request of the parties pursuant to subsection 20(1) of the *Act*, the Tribunal subsequently amended Decision No. 024 in order to permit all *metteurs en scène* affected by the two applications for certification to participate in the representation vote (see Decision No. 025, March 10, 1998).

[7] The following procedure was used for the conduct of the vote:

- a) each applicant for certification provided the Tribunal Secretariat with a list of the names and addresses of those of its members who consider themselves to be *metteurs en scène*;
- b) from these lists, the Tribunal Secretariat prepared a preliminary list of potential voters;
- c) the list of potential voters was published in 6 French and 4 English newspapers and bilingually in the Canadian Conference of the Arts' INFO-FAX bulletin, together with a notice inviting *metteurs en scène* whose names were not on the list but who met the eligibility criteria to register with the Tribunal no later than May 15, 1998. A copy of the notice is attached as Annex I to these Reasons for Decision;
- d) the applicants for certification provided the Tribunal Secretariat with the campaign materials that they wished to have sent to the voters;
- e) the Tribunal Secretariat sent each person whose name appeared on the final voters list a voters kit consisting of the following materials:
 - i) voting instructions;
 - ii) a declaration of eligibility;
 - iii) an official ballot with the Tribunal's seal;
 - iv) an envelope marked "scrutin secret";
 - v) a stamped return envelope, addressed to the Tribunal;
 - vi) the UDA and APASQ campaign material;
 - vii) a brochure describing the *Status of the Artist Act* and the Tribunal.

f) voters were requested to return their ballots postmarked no later than June 19, 1998.

[8] The ballots were counted in the Tribunal's offices in Ottawa on Monday, June 29, 1998 in the presence of representatives of the UDA and APASQ. The certificate of results signed by the Registrar of the Tribunal and the representatives of the parties is attached to these Reasons for Decision as Annex II.

ISSUE

Which association is the most representative of artists in the sector?

[9] Subsection 28(1) of the *Status of the Artist Act* provides:

Where the Tribunal is satisfied that an artists' association that has applied for certification in respect of a sector is the most representative of artists in that sector, the Tribunal shall certify the association.

[10] In circumstances such as the present case, where there are two artists' associations that have applied to represent the same artistic sector, the Tribunal must carefully reflect on the factors that it will consider when determining whether it is satisfied that either one of them is the "most representative" of artists in the sector that it has found to be suitable for bargaining.

[11] Clearly, the test is not that which is used in traditional labour relations, where an applicant for certification must demonstrate that it represents a majority of the employees in the bargaining unit (for example, 50% + 1). Had Parliament wished to impose this criteria, it would have included in the *Status of the Artist Act* provisions analogous to sections 28 to 31 of the *Canada Labour Code* (R.S.C. 1985, c. L-2, as am.). It did not.

[12] Nevertheless, the Tribunal must consider a number of the traditional factors used in any democratic system. Among the factors that the Tribunal believes it is appropriate to consider are the overall size of the sector, the total number of votes cast and the number of votes cast for each applicant for certification.

[13] The Tribunal is of the view that Parliament left it with significant discretion to determine representativeness in recognition of the fact that, when dealing with independent contractors, it is often difficult if not impossible to determine the exact size of a sector. This is indeed the situation in the present case. Although there were 379 names on the list of potential voters (i.e. persons claiming that they are professional "*metteurs en scène*"), in order to be entitled to vote, these individuals were required to provide evidence that they met a certain

standard of professionalism. This standard, established by agreement of the applicants, was that the individual either:

- a) had directed three professional productions during the period from September 13, 1994 to September 12, 1997; or
- b) had directed 10 professional productions during his/her career, one of which was during the period of September 13, 1994 to September 12, 1997; or
- c) was recognized as a stage director in the field and continued to practice this profession on a regular basis.

The term “professional production” was defined as meaning those which were publicly presented and for which the artist received remuneration, including productions done for a fee as part of a year end presentation by graduating students at a recognized theatre school.

[14] Although 200 individuals returned their ballots, it is impossible to know whether the other 179 did not vote because they did not consider themselves to meet the required standard of professionalism or for other reasons. However, the Tribunal is of the view that the sector as a whole is composed of fewer than 379 individuals.

[15] Upon examining the declarations of eligibility filed by the 200 individuals who did vote, the two applicants for certification were in agreement that 31 of these individuals did not meet the professional eligibility criteria. This left 169 professional *metteurs en scène* eligible to have their votes counted. The Tribunal considers 169 to be a representative number of voters in the sector.

[16] Of the 169 eligible returned ballots, 112 votes were cast for the UDA, 54 votes were cast for APASQ and there were 3 spoiled ballots. The UDA therefore obtained approval by some 67.5% of those voting. The Tribunal is of the view that this result clearly qualifies the UDA as the association “most representative” of the artists working in the sector.

Conclusion Regarding Representativeness

[17] The Tribunal therefore finds the Union des Artistes to be the artists’ association most representative of the 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.

DECISION

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

Certifies the Union des Artistes to represent 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.

An order will be issued to confirm the certification of the Union des Artistes to represent this sector.

Ottawa, July 24, 1998

André Fortier, Presiding Member

Robert Bouchard, Member

David P. Silcox, Member

