

Canadian Artists and Producers  
Professional Relations Tribunal



CANADA

Tribunal canadien des relations  
professionnelles artistes-producteurs

Ottawa, January 8, 2001

File No. 1310-96-0026-A

**Decision No. 032**

**IN THE MATTER OF AN APPLICATION FOR CERTIFICATION FILED  
BY THE FEDERATION OF THE ASSOCIATION DES  
PROFESSIONNELLES ET DES PROFESSIONNELS DE LA VIDÉO DU  
QUÉBEC (APVQ) AND THE SYNDICAT DES TECHNICIENS DU  
CINÉMA ET DE LA VIDÉO DU QUÉBEC (STCVQ)**

**Interim decision of the Canadian Artists and Producers Professional  
Relations Tribunal**

The application to intervene is dismissed.

*Place of hearing:* Ottawa, Ontario

*Date of hearing:* January 8, 2001

*Decision rendered with Reasons to follow.*

*Quorum:* Robert Bouchard, presiding member  
David P. Silcox, member  
Moka Case, member

## REASONS FOR DECISION

1310-96-0026A : In the matter of an application for certification filed by the Federation of the Association des professionnelles et des professionnels de la vidéo du Québec (APVQ) and the Syndicat des techniciens du cinéma et de la vidéo du Québec (STCVQ)

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### BACKGROUND

[1] This decision deals with a request to intervene made by the Confédération des syndicats nationaux, the Fédération nationale des communications, and the Conseil central de Montréal métropolitain (hereafter, “the applicants”), pursuant to subsection 19(3) of the *Status of the Artist Act* (“the Act”). The applicants wish to intervene in the application for certification of the federation formed by the Association des professionnelles et des professionnels de la vidéo du Québec (“APVQ”) and the Syndicat des techniciens du cinéma et de la vidéo du Québec (“STCVQ”) (hereafter, “APVQ-STCVQ” or “the federation”).

[2] The federation has applied to be certified to represent a sector in the province of Quebec composed of:

all professional independent contractors engaged by a producer subject to the *Status of the Artist Act* who practise professions that contribute directly to the creative aspects of the production, in all languages, in all audiovisual productions, in all forms and in all mediums, including film, television, video, multimedia and the recording of commercials. These functions include:

(1) camera work, lighting and sound design, in particular the following positions: assistant director, first assistant director, second assistant director, third assistant director, director of photography, camera operator, cameraman (including steady-cam, baby-boom, and camera operated through a specialized system [C.O.S.S.]), assistant cameraman, first assistant cameraman, second assistant cameraman, video assist operator, still photographer, lighting director, chief lighting technician, chief electrician, electrician, lighting console operator, motorized projector operator, sound man, boom man, sound assistant, sound technician, sound effects technician, key grip, grip, rigger, computer graphics designer, computer graphics special effects technician;

(2) costume, coiffure and make-up design, in particular the following positions: make-up designer, supervising make-up artist, make-up artist, make-up assistant, special effects make-up artist, prosthetic make-up technician, prosthetic make-up assistant, hair stylist designer, assistant hair stylist, hair dresser, assistant hair dresser, wig-maker, assistant wig-maker, hairpiece technician, costume designer, costumer, assistant costumer, specialized costume technician, costume technician, wardrobe mistress, assistant wardrobe mistress, wardrobe assistant, dresser, propsman specialist, cutter, seamstress, puppet designer, puppet handler, transportation co-ordinator; but excluding art directors

and production designers;

(3) set design, in particular the following positions: art co-ordinator, assistant art director, set designer, assistant set designer, set co-ordinator, set technician, set decorator, propsman specialist, props designer, propsman crewleader, studio propsman, location propsman, props assistant, chief studio stagehand, studio stagehand, head painter, painter, scenic painter, assistant painter, sculptor-molder, draughtsman, head carpenter, carpenter, assistant carpenter, studio special effects technician, assistant studio special effects technician, weapons specialist, transportation co-ordinator;

(4) editing and continuity, in particular the following positions: production co-ordinator, floor director—excluding dubbing directors—, production assistant, floor manager, location manager, logistics manager, assistant logistics manager, script-clerk, script assistant, production secretary, production assistant, assistant co-ordinator, safety co-ordinator, transportation co-ordinator, driver, caterer, technical director, assistant technical director, switcher, ISO switcher, image controller (CCU), videotape operator, slow motion operator, cue prompter operator, video credits designer, video projectionist (including giant screen and video wall), key video grip, video grip, editor, off-line editor, in-line editor, sound editor, sound mixer, assistant editor, videographer, airwave transmission operator, satellite transmission operator, microwave transmission operator.

[3] On August 19, 2000, the Tribunal published Public Notice 2000-2, announcing the federation's application for certification and requesting individuals and organizations wishing to make submissions regarding the application to do so in writing no later than September 29, 2000.

[4] On November 22, 2000, the Tribunal received the applicants' request to intervene. Since the request was made outside the time limits established in the public notice, the Tribunal gave the federation the opportunity to file submissions, following which the applicants were given the opportunity to reply.

### SUBMISSIONS OF THE APPLICANTS AND THE FEDERATION

#### *Applicants*

[5] The applicants submit that the APVQ has been affiliated to them since February 25, 1993. They also allege that for more than a year, the APVQ has been trying to disaffiliate itself, by various methods which they say are illegal. It is in this context that the applicants have presented a request for an injunction to the Québec Superior Court to challenge the methods used by the APVQ. Furthermore, they submit that by forming a federation with the STCVQ, the APVQ is attempting to avoid the financial obligations it owes them. The applicants oppose the certification application and ask that the Tribunal stay its proceedings either until the APVQ has settled with them or a judicial decision has been rendered to decide on the issues, in particular, on the question of the legality of the disaffiliation process.

*APVQ-STCVQ Federation*

[6] The federation opposes the request to intervene. According to the federation, the APVQ was created in 1992 and, in 1993, entered into an agreement with the Confédération des syndicats nationaux (hereafter, “the CSN”), whereby the latter would provide services to it, [translation:] “notably, the assistance of labour relations advisors and representation by the law firm Sauvé et Roy”. In 1999, the APVQ took steps to end its contractual relationship with the applicants, which were contested by the CSN. According to the federation, the only real issues between the applicants and the APVQ are determining when the contractual relations ended and what sums may be due by one party or the other for services rendered or the failure to render services.

[7] The federation maintains that this is a private dispute which is not within the jurisdiction of the Tribunal and has no relevance to the application for certification. The Federal Court of Appeal decision, *Canada (Attorney General) v. The Writers Union of Canada*, [2000] F.C.J. No. 1875 (F.C.A.), stands for the proposition that, in the context of an application for certification, the Tribunal’s jurisdiction is limited to determining the appropriate sector and the representativeness of the association.

*Applicants’ reply*

[8] In their reply, the applicants submit that the Tribunal should extend the time for making a request to intervene. They plead that the Tribunal has the power to do so by virtue of paragraph 17(k) of the *Act* and submit that it should exercise this power, since the request to intervene is serious and the issues important, and taking into account the fact that the Tribunal proceeds in an informal manner. However, the applicants did not offer an explanation for the delay in making their request to intervene.

[9] The applicants submit that since the APVQ is one of their affiliates, they clearly have an interest in intervening. They state that the APVQ’s constitution and by-laws provide for the affiliation to be maintained and establish the process of disaffiliation. The APVQ tried to disaffiliate on May 23, 2000, without respecting its own constitution and by-laws, in particular, in relation to the disaffiliation vote. Since the APVQ continues to be their affiliate, by virtue of its own constitution and by-laws, it must respect those of the CSN, a copy of which were included with the reply. If the applicants are successful before the Québec Superior Court, the federation’s application for certification [translation:] “would be irremediably undermined, since the APVQ would remain affiliated to the CSN...”. Consequently, the applicants reiterate that the Tribunal should stay the application for certification pending the conclusion of the court proceedings.

ISSUES

[10] This matter raises the following issues:

- (a) Does the request to intervene raise an important question within the meaning of the *Act* (in other words, are the applicants “interested persons”)?
- (b) If so, should the Tribunal extend the time so as to allow them to intervene?

### THE STATUS OF THE ARTIST ACT

[11] The following provisions of the *Act* apply in the present circumstances:

**17.** The Tribunal may, in relation to any proceeding before it,  
[...]  
(k) abridge or extend the time for instituting the proceeding or for doing any act, filing any document or presenting any evidence;

[...]

**19.** (1) In any proceeding before it, the Tribunal  
(a) shall proceed as informally and expeditiously as the circumstances and considerations of fairness permit;  
(b) is not bound by legal or technical rules of evidence; and  
(c) may receive and decide on any evidence adduced that the Tribunal believes to be credible.

[...]

(3) Any interested person may intervene in a proceeding before the Tribunal with its permission, and anyone appearing before the Tribunal may be represented by counsel or an agent.

[...]

**28.** [...]

(5) After certification of an artists' association in respect of a sector,  
(a) the association has exclusive authority to bargain on behalf of artists in the sector;  
(b) the certification of any association that previously represented artists in the sector is revoked in so far as it relates to them; and  
(c) the association is substituted as a party to any scale agreement that affects artists in the sector, to the extent that it relates to them, in place of the association named in the scale agreement or its successor.

### ANALYSIS AND CONCLUSIONS

[12] The Tribunal has already had the opportunity to address the issue of interventions and has observed that the *Act* establishes two categories of intervenors:

It is the Tribunal's view that the interaction of subsections 19(3), 26(2) and 27(2) establishes two categories of intervenors: those who are intervenors as of right and those who are intervenors by permission of the Tribunal. Since an application for certification is a "proceeding before the Tribunal", the Tribunal finds that it does have authority to grant intervenor status to individuals and organizations who are not an artist affected by the application, an artists' association or a producer, so long as the applicant for intervenor status qualifies as an "interested person".

*Union des écrivaines et écrivains québécois*, 1995 CAPPRT 001 ¶ 10; *Société des Auteurs, Rechercheurs, Documentalistes et Compositeurs*, 1995 CAPPRT 002 ¶ 10; *Writers Guild of Canada*, 1995 CAPPRT 003 ¶ 12.

[13] In the present case, the applicants have not purported to be artists' associations having the right to intervene (subject to obtaining an extension of time) pursuant to subsections 26(2) and 27(2). They made their request to intervene as interested persons, pursuant to subsection 19(3). Accordingly, the Tribunal must determine, based on the criteria which it has established in its caselaw, whether the applicants qualify as "interested persons" to whom the permission to intervene should be granted under subsection 19(3) of the *Act*.

[14] The following caselaw has been established by the Tribunal respecting interested persons:

In determining whether a person has a sufficient interest to warrant granting them intervenor status in a proceeding, the Tribunal will consider the following four factors:

- (1) whether the proposed intervenor is directly affected by the outcome of the proceeding;
- (2) whether the position of the proposed intervenor is adequately represented by one of the parties to the proceeding;
- (3) whether the public interest and the interests of justice would be better served by the intervention of the proposed intervenor; and
- (4) whether the Tribunal could hear and decide the case on its merits without the intervention of the proposed intervenor.

*Union des écrivaines et écrivains québécois*, 1995 CAPPRT 001 ¶ 12; *Société des Auteurs, Rechercheurs, Documentalistes et Compositeurs*, 1995 CAPPRT 002 ¶ 12; *Writers Guild of Canada*, 1995 CAPPRT 003 ¶ 14; *American Federation of Musicians of the United States and Canada*, 1996 CAPPRT 008 ¶ 21.

*Are the applicants directly affected by the outcome of the proceeding?*

[15] The Tribunal is of the view that the dispute between the applicants and the APVQ is an internal matter which is not relevant to the issues raised in the context of the application for certification. Although the Tribunal must examine an association's constitution and by-laws in order to assure itself that the association is an "artists' association" within the meaning of the *Act*, this does not mean that the Tribunal will become involved in the internal disputes of associations. In the present case, there is nothing in the applicants' submissions which suggested that the APVQ or the federation lacked the necessary status to apply for certification. Indeed, the CSN's constitution states [translation]: "Each affiliated organisation forms a distinct entity. [...]". As a distinct entity, the APVQ can apply for certification or form a federation with another artists' association in order to make an application. It should be noted that the APVQ and CSN constitutions require that affiliates must respect the CSN constitution. However, that is an internal matter which is none of the Tribunal's concern and, furthermore, which is outside the scope of the present certification proceedings.

[16] Moreover, the applicants assert that if the Tribunal certifies the federation, this could have an impact on their legal proceedings against the APVQ. However, it is important to understand that the *Status of the Artist Act* establishes a legal framework for collective bargaining with producers specified in paragraph 6(2)(a) and that certification gives rise to the following rights:

**28.** [...]

(5) After certification of an artists' association in respect of a sector,

(a) the association has exclusive authority to bargain on behalf of artists in the sector;

(b) the certification of any association that previously represented artists in the sector is revoked in so far as it relates to them; and

(c) the association is substituted as a party to any scale agreement that affects artists in the sector, to the extent that it relates to them, in place of the association named in the scale agreement or its successor.

[17] The Tribunal is of the view that the applicants have failed to demonstrate that they are directly affected by the application for certification and, consequently, are not "interested persons" within the meaning of the *Act*. It is not necessary to consider the issue of timeliness.



DECISION

[18] For these reasons, the applicants' request to intervene is dismissed.

Ottawa, February 5, 2001

“Robert Bouchard”

“David P. Silcox”

“Moka Case”