

Canadian Artists and Producers
Professional Relations Tribunal



Tribunal canadien des relations
professionnelles artistes-producteurs

CANADA

Ottawa, September 27, 2001

File No.: 1310-95-0019-A

Decision No. 036

**In the matter of an application for certification
filed by the Editors' Association of Canada /
Association canadienne des réviseurs**

Decision of the Tribunal:

The application for certification is granted in modified form.

Place of hearing: Ottawa, Ontario

Date: September 14, 2001

Quorum: David P. Silcox, presiding member
Curtis Barlow, member
Moka Case, member

Reasons for decision

1310-95-0019-A: In the matter of an application for certification filed by the Editors' Association of Canada / Association canadienne des réviseurs

Background

[1] On February 28, 2001, the Canadian Artists and Producers Professional Relations Tribunal (the "Tribunal") rendered an interim decision [2001 CAPPRT 033] in the matter of an application for certification filed by the Editors' Association of Canada / Association canadienne des réviseurs ("EAC"). In that decision the Tribunal defined a sector composed of freelance editors who are artists within the meaning of the *Status of the Artist Act* (the "Act") suitable for bargaining and found that the EAC was the organization most representative of artists in that sector. The Tribunal decided to stay the application because the EAC's by-laws did not meet all the requirements set out in subsection 23(1) of the *Act*. The Tribunal stated the following:

[77] Subsection 23(1) of the *Status of the Artist Act* creates a clear prohibition: the Tribunal may not certify an artists' association unless its by-laws, *inter alia*, give its regular members the right to participate in a ratification vote on any scale agreement and provide members with the right to access a copy of its financial statements. The EAC's by-laws do not meet these requirements.

[78] Subsection 23(1) prevents the Tribunal from certifying the EAC at this time. However, the EAC has indicated that it will amend its by-laws in order to bring them into conformity with subsection 23(1) of the *Act*. Accordingly, the Tribunal considers it appropriate to stay this application for certification pending satisfactory proof that the EAC has made the required changes.

[2] In Decision No. 033, the Tribunal defined the sector suitable for bargaining as follows:

[...] a sector composed of professional freelance editors who are authors within the meaning of the *Copyright Act* and who are engaged by a producer subject to the *Status of the Artist Act* to:

- (a) prepare original works in the form of compilations or collective works, or
- (b) prepare original works of joint authorship, where the editor's contribution constitutes the work of a joint author;

in either French or English, but excluding

- (a) authors covered by the certification granted to the Periodical Writers Association of Canada by the Tribunal on June 4, 1996,
- (b) authors covered by the certification granted to the Writers Guild of Canada by the Tribunal on June 25, 1996,
- (c) authors covered by the certification granted to the Société des auteurs, recherchistes, documentalistes et compositeurs (SARDeC) (renamed the Société des auteurs de radio, télévision et cinéma (SARTeC)) by the Tribunal on January 30, 1996, and

- (d) authors covered by the certification granted to the Writers' Union of Canada by the Tribunal on November 17, 1998.

[3] On June 21, 2001, the EAC informed the Tribunal that its membership had voted to amend the constitution to add the following by-laws:

Each member of EAC/ACR shall receive a copy of the audited financial statement of EAC/ACR each year.

It shall be the right of every voting member of EAC/ACR to participate in a ratification vote by mail-in or vote at AGM, on any scale agreement or schedule that affects him or her.

Applications for reconsideration

[4] Prior to receiving notice that the EAC had amended its constitution, the following organizations each filed an application for reconsideration of Decision No. 033:

- a) The Union des écrivaines et écrivains québécois (UNEQ) (May 7, 2001);
- b) The Directors' Guild of Canada (DGC) (May 29, 2001);
- c) The Playwrights Union of Canada (PUC) (June 15, 2001).

[5] A different panel of the Tribunal has been seized with these three reconsideration applications. However, given that all of the applications are inextricably linked to Decision No. 033, the original panel was provided with a copy of the parties' submissions. The panel seized with the reconsideration applications has decided to adjourn the proceedings of the three applications *sine die* pending the issuance of this decision [2001 CAPPRT 036]. If required, that panel will then consider the merits of each of the applications and render its decision respecting same.

[6] In light of the perceived confusion surrounding the EAC sector definition, the original panel has decided to rely on its power under section 20 of the *Act* to amend *proprio motu* Decision No. 033. Subsection 20(1) states that "The Tribunal may uphold, rescind or amend any determination or order made by it, and may re-hear any application before making a decision."

[7] Subsection 20(1) of the *Act* is virtually identical to section 18 of the *Canada Labour Code*. The Federal Court of Canada has upheld the Canada Labour Relations Board's (now the Canada Industrial Relations Board) position that it can exercise the review power set out in section 18 of the *Canada Labour Code* on its own motion. More specifically, the Board does not require an application by a party to trigger a review of a decision (see *C.U.P.E. v. Canadian Broadcasting Corp.* (1985), sub. nom. *Latrémouille v. Canada* (Labour Relations Board)) 14 Admin. L.R. 210, 57 N.R. 1888, 17 D.L.R. (4th) 709 (Fed. C.A.)).

Amendment to the sector definition

[8] Accordingly, in an effort to clarify the scope of the sector granted to the EAC and eliminate any perceived confusion, the Tribunal has decided to exclude the authors covered by the UNEQ and PUC certificates in the same manner that authors covered by the Periodical Writers Association of Canada (PWAC), the Writers' Guild of Canada (WGC), the Société des auteurs de radio, télévision et cinéma (SARTEC) and The Writers' Union of Canada (TWUC) certificates have been excluded, notwithstanding that these two associations did not intervene in the EAC's application for certification.

[9] In addition, the sector description as initially defined by the Tribunal in Decision No. 033 included some references to "literary works" although the term was not used consistently throughout the sector description. The Tribunal will therefore add the word "literary" where applicable and appropriate in the sector description.

Decision

[10] The Tribunal finds that the EAC's by-laws, as amended, comply with the requirements of paragraphs 23(1)(b) and (c) of the *Act*. Accordingly, the EAC's application for certification is no longer stayed.

[11] The Tribunal further finds that paragraphs [73] and [79] of Decision No. 033 should be amended as follows:

[73] After considering all of the oral and written representations of the applicant and the intervenors, the Tribunal has determined that the sector suitable for bargaining is a sector composed of professional freelance editors who are authors within the meaning of the *Copyright Act* and who are engaged by a producer subject to the *Status of the Artist Act* to:

- (a) prepare original literary works in the form of compilations or collective works,
or
- (b) prepare original literary works of joint authorship, where the editor's contribution constitutes the work of a joint author;

in either French or English, but excluding

- (a) authors covered by the certification granted to the Periodical Writers Association of Canada by the Tribunal on June 4, 1996,
- (b) authors covered by the certification granted to the Writers Guild of Canada by the Tribunal on June 25, 1996,
- (c) authors covered by the certification granted to the Société des auteurs, recherchistes, documentalistes et compositeurs (renamed the Société des auteurs de radio, télévision et cinéma) by the Tribunal on January 30, 1996,
- (d) authors covered by the certification granted to The Writers' Union of Canada by the Tribunal on November 17, 1998,

- (e) authors covered by the certification granted to the Union des écrivaines et écrivains québécois by the Tribunal on February 2, 1996, and
- (f) authors covered by the certification granted to the Playwrights Union of Canada by the Tribunal on December 13, 1996.

[...]

[79] For all these reasons, the Tribunal:

Declares that editors who are authors of original literary works in the form of compilations or collective works are artists within the meaning of the *Status of the Artist Act*;

Declares that editors who are authors of literary works of joint authorship, *i.e.* who collaborate with other authors and make a significant and original contribution to literary works, are artists within the meaning of the *Status of the Artist Act*;

Declares that the sector suitable for bargaining is a sector composed of professional freelance editors who are authors within the meaning of the *Copyright Act* and who are engaged by a producer subject to the *Status of the Artist Act* to:

- (a) prepare original literary works in the form of compilations or collective works, or
- (b) prepare original literary works of joint authorship, where the editor's contribution constitutes the work of a joint author;

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- (d) authors covered by the certification granted to The Writers' Union of Canada by the Tribunal on November 17, 1998,
- (e) authors covered by the certification granted to the Union des écrivaines et écrivains québécois by the Tribunal on February 2, 1996, and
- (f) authors covered by the certification granted to the Playwrights Union of Canada by the Tribunal on December 13, 1996.

Declares that the Editors' Association of Canada / Association canadienne des réviseurs is the association most representative of artists in the sector.

[15] An order will be issued to confirm the certification of the Editors' Association of Canada / Association canadienne des réviseurs for a sector as amended above.

Ottawa, September 27, 2001

David P. Silcox

Curtis Barlow

Moka Case