

Canadian Artists and Producers  
Professional Relations Tribunal



Tribunal canadien des relations  
professionnelles artistes-producteurs

CANADA

Ottawa, January 4, 2002

File Nos.: 1310-95-0021-A  
1310-95-0007-A

### Decision No. 037

**In the matter of an application for certification filed by the  
Association des professionnels des arts de la scène du Québec (APASQ-CSN)  
and in the matter of an application for certification filed by the  
Associated Designers of Canada**

*Decisions of the Tribunal :*

The application for certification is granted to the Association des professionnels des arts de la scène du Québec (APASQ-CSN) in modified form.

The application for certification is granted to the Associated Designers of Canada in modified form.

*Place of hearing:* Montréal, Quebec; Toronto, Ontario.

*Dates of hearing:* March 20 and 21, 2001; June 27, 28 and 29, 2001;  
November 1, 2001.

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

*Appearances:* Éric Lévesque and David Gaucher, for the Association  
des professionnels des arts de la scène du Québec

Sherri Helwig and Dennis Horn, for the Associated Designers of Canada

Chantal Poirier and Francine Bertrand-Venne, for the Société professionnelle des auteurs et des compositeurs du Québec

Louise Cadieux, for the Union des artistes

James Wood, Sean McGee and Sylvain Bisailon, for the International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States and Canada

Jacques Béland, Pierre Rousseau and Alexandre Gazalé, for the National Arts Centre and Théâtres Associés Inc.

Pat Bradley, for the Professional Association of Canadian Theatres

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## *Reasons for Decision*

1310-95-0021-A: In the matter of an application for certification filed by the Association des professionnels des arts de la scène du Québec (APASQ-CSN)

1310-95-0007-A: In the matter of an application for certification filed by the Associated Designers of Canada

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### *Background*

[1] This decision deals with two applications for certification heard by the Canadian Artists and Producers Professional Relations Tribunal (the “Tribunal”) under section 25 of the *Status of the Artist Act* (S.C. 1992, c. 33, hereinafter “the *Act*”). The Tribunal was first going to consider the application submitted by the Association des professionnels des arts de la scène du Québec (APASQ-CSN) (“APASQ”), and then consider the Associated Designers of Canada’s (“ADC”) application. Following the hearing held in Montréal on March 20 and 21, the Tribunal decided that it would be more efficient to hear the applications jointly, since they were competing in part. Accordingly, consideration of these two applications was continued in Montréal on June 27, 28 and 29 and in Toronto on November 1, 2001.

[2] The Tribunal received APASQ’s application for certification on March 14, 1996. Originally, APASQ sought to represent a sector composed of:

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.\*

\*In the Public Notice, the term ‘assistants metteurs en scène’ was incorrectly translated by the term ‘production assistants’. For the purposes of this proceeding and the resulting decision, ‘assistants metteurs en scène’ will be referred to as ‘assistant stage directors’, notwithstanding the wording in the Public Notice.

[3] A public notice of this application was published in the *Canada Gazette* on Saturday, April 6, 1996, and in *La Presse* and *The Globe and Mail* on Tuesday, April 9, 1996. The public notice set a closing date of May 17, 1996 for the filing of expressions of interest by artists, artists’ associations, producers and other interested parties.

[4] The following artists’ associations gave notice of their interest in APASQ’s application:

- the Union des artistes (“UDA”),
- the Canadian Actors’ Equity Association (“CAEA”),
- the Association des réalisateurs et réalisatrices du Québec (“ARRQ”),
- the Société professionnelle des auteurs et des compositeurs du Québec (“SPACQ”),
- the Associated Designers of Canada (“ADC”);

the following producers:

- the Professional Association of Canadian Theatres (“PACT”),
- the Théâtres Associés Inc. (“TAI”),
- the National Arts Centre (“NAC”);

and the artist Tibor Egervari.

[5] In September 1996, the Tribunal allowed the intervention application by the International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States and Canada (“IATSE”) and granted it limited intervenor status.

[6] APASQ’s application for certification was dealt with in part in 1997 and 1998, when the Tribunal defined a separate bargaining sector for stage directors and ordered that a representation vote be held [see *Association des réalisateurs et réalisatrices du Québec et al.*, 1997 CAPPRT 024]. The UDA won the vote and the Tribunal certified it on July 24, 1998, to represent a sector composed of any “director in a French-language stage production of a literary, musical or dramatic work or a mime, variety, circus or puppet show.” [see *Union des Artistes and Association des professionnels des arts de la scène du Québec*, 1998 CAPPRT 027].

[7] The sector proposed by APASQ was subsequently amended on February 19, 2001, in response to the Tribunal’s decision certifying the UDA to represent the stage directors and to exclude technical directors and production managers. The amended sector reads as follows:

All set, costume, lighting, sound, props and puppet designers, stage managers, set painters, all costume and set assistants and assistant stage directors working within Quebec or at the National Arts Centre in the areas of performing arts, dance and variety entertainment.

[8] The ARRQ withdrew its intervention on March 8, 2001. Tibor Egervari did not intervene at the public hearings.

[9] The Tribunal received ADC’s application for certification on September 14, 1995. ADC applied to represent “a sector composed of set, costume, lighting and sound designers working within the live performing arts industry”.

[10] Public notice of the application was given in the *Canada Gazette* on Saturday, January 20, 1996 and in *The Globe and Mail* and *La Presse* on January 31, 1996 as well as in the February edition of the Canadian Conference of the Arts’ *Info-fax* bulletin and the winter edition of *Qui-Vive*. The public notice set a closing date of March 8, 1996 for the filing of expressions of interest by artists, artists’ associations, producers and other interested parties.

[11] As of that date, expressions of interest were received from APASQ and PACT.

**Evidence**

*APASQ*

[12] The first witness to testify was David Gaucher, president of APASQ for the past year. Mr. Gaucher has worked as a set designer in theatre since about 1987. In addition to theatre, Mr. Gaucher has worked in television, for the circus and in film, where he designed sets and costumes. He has also worked as an assistant set designer.

[13] He testified that after the États généraux du théâtre in 1981, the Quebec theatrical milieu began to divide itself up into associations and, in 1983, APASQ was born. The association's objective was to represent all set professionals who were not covered by the UDA. APASQ's members work mainly in Quebec, but some also work at the NAC in Ottawa.

[14] On July 6, 1993, the Commission de reconnaissance des associations d'artistes et des associations de producteurs du Québec certified APASQ to represent:

[TRANSLATION] All set, costume, lighting and sound designers in the following fields of artistic production: sets, including the theatre, musical theatre, music, dance and variety. However, when a natural person is used to stage a production of that nature and, for the purposes of that production, is otherwise an employee within the meaning of the Labour Code, whether or not the person is covered by a collective labour agreement or contract, the person shall be excluded from the bargaining sector covered by this certification.

[15] At the hearing, APASQ produced four collective agreements negotiated with producers' associations under Quebec's status of the artist legislation. The list is as follows:

- a) (APASQ - Théâtres unis enfance jeunesse inc. ("TUEJ"))
- b) (APASQ - Association des compagnies de théâtre ("ACT"))
- c) (APASQ - Théâtres associés Inc. ("TAI"))
- d) (APASQ - Association des producteurs de théâtre privé ("APTP")) (a copy of the arbitration award was filed)

[16] Mr. Gaucher stated that since APASQ was certified provincially, its efforts have been devoted mainly to bargaining with the French-language theatrical producers' associations. More recently, it served notices to bargain on a number of independent French and English-language theatres. In Quebec, there is no producers' association for English-language theatres, and consequently bargaining must take place with each theatre individually. No bargaining in the dance, musical theatre and variety entertainment sectors has yet taken place, the reason being a lack of resources and time: it took four to seven years to negotiate each of the agreements mentioned above.

[17] APASQ offers its members a number of services. Among them is a toolkit that is defined as a list of the fees paid by producers in the last ten years to designers and other performing arts professionals in Quebec. This toolkit was created to assist members in their individual contract negotiations. APASQ also offers consulting and advisory services for the negotiation of contracts, and information to its members respecting the various applicable statutes that affect them. In addition, the performing arts social security plan offers an RRSP and a service for refunding medical bills.

[18] APASQ operates an information, publication and distribution service. Continuing education and upgrading courses are also available to interested members. APASQ has also been involved in the preparation of two occupational and professional studies, one concerning the profession of assistant stage director and the other pertaining to the profession of stage manager.

[19] APASQ is involved in a number of cultural and artistic activities, such as the Centre d'archives scénographiques project, the Fondation Jean-Paul Mousseau and the Prague Quadriennial. With respect to this last project, which will be held next in 2003, APASQ's stated objective is to highlight works that reflect the diversity and uniqueness of design in Quebec.

[20] APASQ's mandate, as articulated in its annual report, is to promote and recognize designers and all performing arts professionals in Quebec so that they may improve their working conditions. To that end, APASQ offers them support in their professional and personal lives.

[21] APASQ's proposed sector includes Quebec and the NAC, a member of TAI. APASQ has negotiated a collective agreement with TAI for French theatre. During the hearing, APASQ specified that it is seeking to represent all artistic activities at the NAC, with the exception of the English theatre activities.

[22] The second witness, Monique Corbeil, a stage manager and assistant stage director, has been APASQ's executive director since 1993. She testified that APASQ has 110 active members, and four apprentice members. There are also approximately 100 associate members, who may be, for example, foreign designers working in Quebec for a producer who has entered into an agreement with APASQ. By category, APASQ has about 50 set designers, 30 costume designers, 10 sound designers, 20 lighting designers, 10 assistant stage directors, 10 stage managers, 10 technical production directors and an unspecified number of props designers. A number of members work in more than one profession. On cross-examination, Ms. Corbeil stated that no set painters were listed in its membership list, and that set painters are not usually mentioned in the advertisements for performances.

[23] Ms. Corbeil testified that a number of APASQ members took part in the Summit of the Americas, Canada Day celebrations, and the Jeux de la Francophonie. On the list of designers who have worked at the NAC, filed by ADC, she identified 17 APASQ members. An APASQ contract was signed for only one of those productions: the coproduction between the Théâtre de l'Île in Hull and the NAC. Ms. Corbeil explained that APASQ contracts are not signed with the NAC directly as the French theatre department does not presently hire designers.

[24] However, Fernand Déry, the Administrator of the French theatre department at the NAC, testified that the NAC's objective for the immediate future is to resume in-house production in the French theatre department. That is the objective proposed by Denis Marleau, the NAC's Artistic Director.

[25] Ms. Corbeil confirmed that APASQ's application covers the performing arts, dance and variety entertainment. The APASQ witnesses described variety entertainment

productions as including musical theatre, dance, opera, humour, popular music, circus and special events. Ms. Corbeil explained that there are few designers who are independent contractors working in opera, as these companies hire designers as employees and in many cases the sets and costumes already exist and are moved from one place to another.

### *Props designers*

[26] Patricia Ruel and David Gaucher testified for APASQ concerning the duties of a props designer, and his or her contribution to a production. Four other witnesses – Fernand Déry, Dennis Horn, Pierre Rousseau and Alexandre Gazalé – described their understanding of this position to the Tribunal.

[27] Patricia Ruel has worked as a props designer since 1998, but she has also worked as a key propsman, props assistant, set designer and costume assistant in some thirty productions.

[28] She stated that the services of a props designer are engaged by the producer, in consultation with the set designer. The contracts that Ms. Ruel signs as a props designer are identical to the ones she signs as a set designer, with the exception of the job description. The contracts provide that the props used in a production are the property of the producer but that the producer may not use them again, in their entirety, without her consent. However, the models used to create the props remain her property.

[29] The witness explained that “realist” productions, such as period pieces, call for research at the library because the furniture, dishes, paint, etc. must be reconstructed and the details must be accurate. Objects must be adapted and sometimes created, when it is too difficult to find the necessary props. In productions that she described as “imaginary” (e.g. science fiction), Ms. Ruel stated that the props designer may be asked to create completely new props, these creations being comparable to sculptures. The designer must also prepare models, samples or prototypes for the props. Sometimes, props can be purchased or rented.

[30] The props designer must read the script to determine what work will be required. He or she must be familiar with the production’s budget before negotiating the contract with the producer. In big-budget productions, the designer must supervise contract workers in the workshop. Sometimes the designer may work with an assistant. According to Ms. Ruel, the props designer must work closely with the stage director and assistant stage director, and must demonstrate creativity in interpreting the vision of the stage director. The designer’s work may continue right up to the opening night.

[31] On cross-examination, Ms. Ruel explained that the set designer conceives and imagines the set elements, while the props designer must imagine, create and produce the props. She confirmed that sometimes the same person is responsible for set design and props. She noted, however, that the contract will reflect that fact, and the designer will be paid accordingly. To her knowledge, the costume designer will not combine his or her duties with the duties of the props designer. Ms. Ruel stated that the person that handles props during a performance is called the stage propsman, whose job is completely different from the job of the props designer. She also noted that a distinction exists between designing costume accessories such as shoes, gloves and hats, and designing props.

[32] Ms. Ruel testified that the props designer does research, produces drawings and plans, and he or she must be attuned to the stage director. The person who makes the props will be a cabinetmaker or painter. In her experience, a props designer reports to the stage director, not the set designer. The director always has the final word.

[33] Mr. Gaucher's testimony confirms Ms. Ruel's, overall, in terms of the role and work of the props designer.

[34] Fernand Déry testified for the NAC and TAI. According to Mr. Déry, there is a difference between a props designer and a propsman. Being a designer involves creativity, while being a propsman is limited to acting as a stock room clerk or carrying out directions. He gave the example of a set designer who draws a lamp, and the propsman who then produces the lamp. On cross-examination, Mr. Déry admitted that for the last 20 years he has worked mainly in administration, and that he was testifying on the basis of his general experience in theatre.

[35] Dennis Horn, who has been a costume and set designer for 20 years, testified for ADC. Mr. Horn stated that any thing or object that is handled by an actor on the set is a prop, including any object on which the actor may sit. He also testified that he has designed props in the past, but always as part of his work as a set designer. According to him, props design is part of the set designer's job, and does not exist as a separate function.

[36] Pierre Rousseau, the Artistic Director of the Théâtre Denise Pelletier ("TDP") in Montréal, testified for TAI. Mr. Rousseau stated that at the TDP, a person in charge of props is not always hired. If this position is filled, that person's work starts after the set and costume designers. When a production is being staged, the stage director is chosen first, then the set designer and the costume designer. Normally, the stage director asks to work with an assistant, who then becomes the stage manager. The costume and set assistants are then selected, if necessary. At that point a decision respecting props is made. An individual may be assigned to locate existing props elsewhere, or may simply go to the theatre's stock of props. At the TDP, he does not remember having hired anyone to carry out the function of "props design".

[37] According to Mr. Rousseau, the set designer is responsible for everything that is seen on the set, and the person who makes the props liaises primarily with the set designer. The props designer is not involved in the creative aspect of the production.



[38] Alexandre Gazalé, who testified for TAI and the NAC, described his experience with props designers to the Tribunal. Mr. Gazalé is the Production Director at the NAC where he has worked since 1989. Mr. Gazalé explained that in both the French and English theatre at the NAC, the set designer will create a model with directions pertaining to props. There may be discussions between the designer and the propsman, a list is prepared and the props are selected from the NAC warehouse or elsewhere.

[39] On cross-examination, Mr. Gazalé stated that he had never worked directly with a props designer, but confirmed that he had worked for companies where a person was assigned to that function. He admitted, however, that he was not in a position to comment on the specific relationship that might exist between the props designer and the other designers. According to him, the props designer's work is similar to what is done by the head of the NAC's props workshop.

#### *Puppet designers*

[40] Richard Lacroix testified for APASQ concerning the duties carried out by a puppet designer. Mr. Lacroix has been a designer/set designer since 1984. His main activity is set design, but he also considers himself to be a puppet designer. He works primarily in theatre and modern dance.

[41] As a puppet designer, Mr. Lacroix is hired on contract, in the same way as other designers. His duties are to design the environment for the puppet, which is called the puppet-theatre ("*castelet*"), and to design the puppet, which is comparable to costume design. Mr. Lacroix noted that a puppet designer differs from a costume designer in that he creates the puppet's character, in terms of its image.

[42] According to him, the creative source for a puppet designer is the same as for any other designer: intuition. Puppet design may be done using existing scripts, or it may be an entirely creative project, that is, an idea that is developed from scratch. The creative process generally involves a research (intuitive, factual or historical), analysis and discussion phase with the other participants in the production. This phase provides the designer with the inspiration that is needed for drawing the puppet, its movements and body language. Mr. Lacroix characterizes this work as the designer investing the object – the puppet – with a soul.

[43] The puppet designer's work is accomplished with the assistance of drawings, but puppets may also be created from sculptures. Generally, a contract provides for the design of individual characters, which includes drawing each character and its movements. When the contract also covers the *castelet*, this design takes the form of drawings and three-dimensional models. The contract also provides for supervising work on the design in the workshop.

[44] The puppet designer attends production meetings, like the other designers, and prepares preliminary sketches that are referred to in the workshop. As with set design, the *castelet* is often built in the workshop. For making the puppet, Mr. Lacroix selects his team, which is then hired by the producer. The team consists of the head of the workshop, the sculptor and the painters. As well, he specifies the costumes, fabric, hair and finishing elements for the puppet. In order to select the material that will be used to

make the puppet, Mr. Lacroix hires an assistant who does the required research. This research work can take as long as a month to complete.

[45] Mr. Lacroix also noted that his contracts with producers are written in such a way that he retains the design rights, copyright and residual rights for his puppets. He explained that he receives a fee after every show, like other theatre designers.

[46] Mr. Lacroix has worked at the NAC on several occasions, where all puppet shows were presented in the NAC's youth section. As well, he worked at the NAC on a modern dance production.

[47] In reply to questions from TAI, Mr. Lacroix stated that a puppet designer is not necessarily a costume designer or a set designer. According to him, puppet design is a very specific activity that calls for specific research, but if a comparison had to be made, it would be to the costume designer. In most cases, when his services are retained for more than one function, the contract indicates same and he is paid accordingly.

[48] In reply to questions from ADC, Mr. Lacroix indicated that he has worked as a puppet designer in instances where he was not the costume designer as well. According to him, producers now hire individual designers for each area of design. This new situation has prevailed since organizations representing designers have been trying to define the tasks of each designer and the requirements for these designers have become more specific.

#### *Assistant set and costume designers*

[49] Three witnesses testified for APASQ concerning the functions of set and costume assistants: David Gaucher, Patricia Ruel and Daniel Fortin. Two other witnesses also gave evidence concerning these functions: Dennis Horn and Pierre Rousseau. In this decision, for simplicity purposes, the functions of assistant costume designer and assistant set designer will be referred to as "costume assistants and set assistants".

[50] Mr. Gaucher explained the creative process of staging a production to the Tribunal. In general, the producer hires a stage director, who puts together a team of designers. The producer and stage director meet to discuss the stage director's artistic vision and the budget. Once the team has been assembled, the costume, set, lighting and sound designers, along with the assistant stage director, the costume assistant, and sometimes the set assistant, participate in preproduction meetings. The evidence was that most productions have an assistant stage director, but only larger productions have costume and set assistants. The assistants are normally hired by the producer.

[51] According to Mr. Gaucher, the costume assistant translates into action, and gives life to, the general idea envisioned by the designer. For instance, the assistant interprets the script and models in order to choose the fabrics and colours that best express the designer's vision, a task that requires significant artistic skill. The assistant's work depends on the designer's style. Some designers give their assistants very specific instructions, others less, which provides more room for creativity. The assistant's work is much more closely connected with developing the model or looking for a prototype, and may even involve building the model. The assistant is often responsible for supervising work in the workshop. He may play a coordinating role. He may communicate with the

production coordinator. In some cases, the assistant may share an idea or make a suggestion, which may be accepted. In other cases, the assistant will have to find the solution to a problem.

[52] During rehearsals, the costume assistant performs the same role as the designer, by carefully noting imperfections in the costumes worn by the actors. Mr. Gaucher noted that the assistant's role is not to produce the costumes in the workshop, but to oversee the work being done in the workshop. The set assistant's functions relate more to researching, developing and building the model (which includes the materials to be used), and then presenting it to the stage director or producer. On the other hand, there is inevitably an administrative component to the assistants' functions.

[53] Mr. Gaucher testified that a number of APASQ members perform the duties of set and costume assistants as independent contractors, although they are occasionally performed by employees. As a costume assistant, Mr. Fortin generally received a fee from the producer as an independent contractor, which was rarely negotiable.

[54] Mr. Fortin noted that the designers for whom he has worked as a costume assistant constructed their models using the research he had done. He noted, however, that the final artistic decisions are made by the designer. Nonetheless, the initial choices in terms of fabric, buttons and embroidery are made by the assistant, and the designer's decisions are substantially influenced by those initial decisions. The assistant may not assert any copyright interest. Mr. Fortin left the occupation of costume assistant because, notwithstanding the fact that his creative side was being satisfied, he never received recognition from his peers for the work he was doing. According to Mr. Fortin, the assistant has to listen to the stage director at the production meetings and try to understand what he or she wants. The assistant then tries to understand the designer's wishes, all of which has the effect of creating a symbiosis between the designer and the assistant.

[55] Ms. Ruel testified that based on her experience, the assistants contribute directly to the creative aspect of a production. In her view, the level to which they contribute depends on the size of the production and when the assistants begin their work in the production.

[56] For ADC, Dennis Horn testified concerning the creative aspect of the assistants' duties. He worked as an assistant for a season at the Stratford Festival. He stated, however, that this work had to be calculated in terms of hours rather than weeks. As an assistant, Mr. Horn essentially performed administrative duties, and did very little artistic work. He added that no artistic choices are made by an assistant without first obtaining the approval of the designer. He has no doubt that some assistants are "artists", but they do not carry out artistic functions when they work as assistants. In his view, the effect of a bargaining sector that recognizes assistants as artists would be to negate the responsibility and professionalism of designers.

[57] Lastly, Pierre Rousseau testified concerning the functions of costume and set assistants for TAI. In his view, the assistants perform strictly research or support work. He noted that a designer often has preferences concerning the assistant that he or she hires. The theatre therefore tends to honour those choices, because they contribute to the artistic quality of the designers' work. However, the designer is the person who is accountable to the theatre, the assistants reporting to the designers and not the producer.

*Set painters*

[58] Mr. Gaucher testified that the set painter's work is an art that calls for considerable skill. The set painter must interpret the model that he or she is given by the set designer. Set painters are often chosen for their artistic touch or area of specialization. They report to the set designer and the production coordinator. On cross-examination, Mr. Gaucher explained that the "set painter or scenic artist" (the term used in the public notice is "set painter/ *peintre de décors*") will retouch the sets, while the "*peintre en bâtiment*" [painter] will apply a coat of paint to a surface, the colour and luster of which have been predetermined. He noted that APASQ is seeking to represent only set painters – the people who interpret the model, create the patinas, do the aging, make wood look like marble, and so on. The sector does not cover the individuals who might be characterized as "building painters". In Quebec, when a set is installed in the theatre, the practice is to have a scenic artist retouch the set. He admitted that entire walls may be painted by "technicians".

[59] It is the producer who retains the services of the set painter, but the set painter is selected in consultation with the set designer. The set painters may work in a workshop, and may be employees. According to Mr. Gaucher, in smaller productions the set designer may also be the set painter. Early in their careers, most set designers are required to paint their sets, but this phenomenon is less common among set designers who have acquired a certain level of experience.

[60] Pierre Rousseau testified for TAI. He confirmed that the TDP does not hire set painters, as it hires specialized workshops to do the work. However, in practice, the workshop has to submit the names of the people whom it is proposing to paint the set. The theatre then has to give its approval. On cross-examination, Mr. Rousseau confirmed that some set painters are recognized for their specific skills. In reply to a question from IATSE, Mr. Rousseau noted that the set painter must comply with the theatre's requirements, that is, he or she may not decide to paint a set pink if the creative forces on the team have decided that the set should be a dark colour; in those circumstances, the set would be rejected.

*Stage managers and assistant stage directors*

[61] Monique Corbeil and David Gaucher testified concerning the functions of stage manager and assistant stage director. Alexandre Gazalé described his experience pertaining to those functions at the NAC.

[62] APASQ introduced a document prepared by the Conseil québécois des ressources humaines en culture ("CQRHC") entitled *Les faits saillants du résultat de l'analyse de la profession - régisseur* [key facts in the occupational analysis – stage manager]. Ms. Corbeil explained to the Tribunal that APASQ was the driving force behind that study. She was involved in all stages of the development of the project, on behalf of APASQ. In addition, she was a member of the committee of experts on the function of stage manager. The work was carried out in accordance with 'Emploi Québec' standards.

[63] Specifically, the CQRHC deals with stage managers working in the “performing arts” or the “live arts”. The document defines the stage manager’s duties as follows:

[TRANSLATION] The stage manager is responsible for the performance of a show, from opening night to the final performance, following the instructions of the stage director (choreographer, ringmaster, etc.), the stage director’s assistant and the designers. The stage manager checks and strictly applies, or has someone apply, all the elements of a performance.

The stage manager is the person who prepares a stage management book and manages the performance, by ensuring that the show’s team performs on cue with precision, or by personally giving the go and cues.

[64] The CQRHC concludes, among other things, that the stage manager must be familiar with the language used in the milieu, be knowledgeable about and familiar with all aspects of the performance of the show, and be familiar with the work done by each member of the team. He or she is the liaison between the stage director and the team working on the show. The CQRHC notes that in the French theatre, one person often combines the positions of assistant stage director and stage manager. In those cases, there may be genuine collaboration and complementarity between the director and the stage manager. Lastly, the study confirms that the work of stage managers is generally carried out by independent contractors.

[65] A similar study was produced by the CQRHC for the functions of stage director and assistant stage director. It is entitled *Les faits saillants du résultat de l’analyse de la profession - metteur en scène et assistant-metteur en scène* [key facts in the occupational analysis – stage director and assistant stage director]. That document was also introduced in evidence. The duties of the assistant stage director are described as follows:

[TRANSLATION] The assistant stage director assists the stage director from the beginning of the project until the end of the production (preproduction, production, postproduction). Using his or her skills and technical, artistic and general knowledge, the assistant stage director contributes to the development, the direction and the finalizing of the production. For some productions in the French theatre, the assistant stage director sometimes combines the positions of assistant and stage manager.

[66] David Gaucher testified that the stage manager has to interpret the script and, at another level, interpret the actor’s performance. The stage manager commences work at the time the production is presented to the public, his or her role being analogous to the orchestra conductor who puts all the components and elements of the score together. The stage manager controls lighting and sound effects, and carries out these functions based on the actor’s performance, or the tensions existing in the room. The stage manager’s role is to give cues, but also to observe the relationship created between the actors and the spectators during the performance, to understand the exact moment when a lighting or sound cue must be given in order to have maximum effect on the audience.

[67] The assistant stage director also has to interpret the script. To do his or her job, he or she must have an excellent understanding of the script. The assistant stage director works more closely with the stage director in the theatre. He or she acts as an advisor to the stage director, and is known as the “second pair of eyes”, taking very detailed and

technical notes. Mr. Gaucher admits that the assistant stage director's work also includes an administrative side, such as organizing rehearsal schedules.

[68] Alexandre Gazalé explained that a significant difference exists between the duties of the stage manager and assistant stage director in English and French-language theatre. From what he has observed at the NAC and in English-language theatres in Montréal, he has never seen a stage manager in the French language theatre give *ad hoc* directions to the actors. The stage manager acts more like a technician, not an artist, when he or she makes note of an actor's movement that the technicians cannot follow.

#### *ADC*

[69] Sherri Helwig testified for ADC. Ms. Helwig is an arts administrator who has worked in the arts community for more than 14 years. Since September 1999, she has held the position of Executive Director of ADC. Ms. Helwig admits that she has no professional acting or directing experience. She notes, however, that she has worked closely with many theatre organizations across Canada.

[70] Ms. Helwig explained that ADC is a non-profit organization that was initially formed in order to represent the rights and interests of theatrical designers in set, costume and lighting. Representation of sound designers came a number of years later. ADC primarily focuses on establishing and negotiating contracts for its members. The majority of ADC's contracts are with PACT, but it has developed contracts for members working with independent theatres (non PACT theatres) and producers in other performing arts areas, such as dance and industrial productions. ADC offers mediation services, limited legal services as well as the administration of RSPs and accident insurance. For non PACT contracts, ADC also offers a bond procedure for its members.

[71] In the last two years, Ms. Helwig has received copies of almost 700 contracts in all four design categories. She explained that although ADC contracts contain suggested minimum fees, they are not "true" scale agreements. She advised, however, that this minimum fee structure is known to both designers and theatres and are, in her opinion, usually followed.

[72] A further component of ADC's activities consists of promoting its members and promoting design both as an art form and as a profession. For example, Ms. Helwig drew the Tribunal's attention to the project it undertook with the Toronto Public Library. The project brought together the design collections of the Toronto Public Library and contemporary examples of theatre design from across the country.

[73] ADC's membership consists of 155 professional members, 13 apprentice members and 11 honorary members. A breakdown of this membership reveals that there are 92 costume designers, 76 lighting designers, 103 set designers and 4 sound designers, who reside in a majority of the provinces in Canada. Ms. Helwig also noted that foreign designers will join ADC in order to work on productions that are carried out in Canada.

[74] Ms. Helwig explained that sound design was not initially recognized as a category of design at the time ADC was formed. However, as it has since obtained recognition from the artistic community, ADC's membership in this area is slowly increasing. Although ADC does not officially have a sound design contract, it is negotiating and

concluding contracts on behalf of sound designers, mainly by using the existing lighting designer contract and substituting the term 'sound' for 'lighting'.

[75] ADC members are recognized both nationally and internationally. Ms. Helwig noted that in 1999, nine ADC members participated in the Prague Quadrennial, a prestigious international design exhibition. Further, ADC members have been nominated and have received national and international awards.

[76] ADC has a long history of collective bargaining with PACT. As of March 2001, PACT represented 108 theatre companies across Canada, including six theatre companies in Quebec. The English language theatre department of the NAC is a member of PACT. Ms. Helwig testified that 25 percent of ADC's entire membership has worked at the NAC at least once, although many ADC designers have worked there on more than one occasion. Since the mid 1990s, ADC has received copies of almost 100 contracts that have been signed with the NAC, either as producer or co-producer. In addition, at the federal level, ADC designers have worked on one occasion at the Canadian Museum of Civilization, a federal producer located in Quebec.

[77] ADC has 12 members in Quebec. Ms. Helwig pointed out that some ADC members are also members of APASQ as they work both in French and English language theatre. Ms. Helwig notes that although only 7 percent of ADC's membership is based in Quebec, 15 percent of its entire membership has worked in that province. On cross-examination, she indicated that, in the year 2000, five ADC contracts were signed with English language theatres under provincial jurisdiction in Quebec.

[78] Mr. Alexandre Gazalé, witness for the NAC and a lighting designer, is also a member of ADC. He testified that he has been aware of ADC's presence in Quebec since the mid 1970s, when he was in school, stating that ADC members have always been active in English theatre in Quebec.

[79] ADC has also represented designers in French language productions, primarily outside Quebec, the two main theatres being the Cercle de Molière in Manitoba and the Théâtre français de Toronto. Ms. Helwig noted, however, that the design contracts for these productions were in English.

[80] At the time ADC was created, the intention was that it would be a national organization, and a bilingual organization wherever needed. ADC remains an organization with a national mandate. In practice, however, ADC has clearly worked more closely with English language theatre. It is now preparing itself to better serve its French language designers.

[81] Ms. Helwig explained that ADC is aware that its membership is very low in certain regions of Canada. She advised that this low participation is in part due to the fact, for example in the Maritimes, that most designers in that region work in film, or alternatively, most theatre companies do not hire local designers. In Saskatchewan, many theatre companies hire students who have recently completed their diplomas in order to reduce their costs. ADC recognizes its responsibility to increase its apprentice membership, and one initiative it is putting in place is to offer additional mentoring. Finally, she noted that designers often join ADC as a result of some difficulties they

experience with a producer, believing that membership in ADC is not necessary prior to this occasion.

[82] On cross-examination, Ms. Helwig testified that the majority of ADC contracts are signed with theatre companies. She stated that designers understand ADC to be involved in the performing arts which encompass theatre, opera, dance and industrial areas. Ms. Helwig would also include the category of “variety” in this definition, which she defines as concerts, live music and family entertainment shows. Ms. Helwig stated that most of ADC’s members design in theatre as there are a smaller number of dance productions and even fewer opera productions. She specified that most opera houses hire employees to carry out the work of designers.

[83] ADC’s second witness, Dennis Horn, a set and costume designer for approximately 20 years, has been an ADC Board Member for 12 years and its President for the past three years. Mr. Horn testified that he sees the common interests of designers as first and foremost a desire to obtain good working conditions, a recognition of the artistic contribution made by designers to theatre and the desire to produce work of good quality. In his opinion, ADC contributes to the achievement of these common interests by requiring its members to achieve and maintain a certain quality in their designs.

[84] Both Ms. Helwig and Mr. Horn emphasized the importance of mobility in the design profession. For example, Mr. Horn has worked in six provinces throughout his 20-year career. He believes that in order for a designer to earn a living in Canada, he or she must be willing to go where the work is.

[85] In addition, Ms. Helwig and Mr. Horn testified that although, at first blush, communication does not appear to be an important aspect of design, the reality is in fact the opposite. Specifically, they cited areas such as labelling costumes, the ability to understand and interpret the text and communicating with the other participants in the production. Mr. Horn stated that he spends the bulk of his time with the people who realize his vision, not at his drafting table. Mr. Horn emphasized that language is an important criteria in design, even if the production itself is not given in English or French, such as operas and dance productions.

[86] ADC’s third witness, Jane Needles, is an arts professional who has worked in that field for 45 years. She is the President of the Quebec Drama Federation (“QDF”). The QDF is mandated to represent the English language theatre community in Quebec. Ms. Needles testified that separate representation in Quebec for English theatre is required as a result of the differences in the work methodology that exists between English and French theatre. Ms. Needles explained these differences in great detail, specifically as they relate to the rehearsal periods.

[87] According to Ms. Needles, there are approximately 55 English theatre companies in Quebec, of which Ms. Helwig advised that six are members of PACT. Of these 55 companies, approximately 10 are also members of French language theatre associations such as TAI and ACT.

[88] Ms. Needles further testified with respect to the Académie québécoise du théâtre awards ceremony entitled *La soirée des masques*. Ms. Needles is Vice-president and Treasurer of the Académie. She testified that the only official categories of design



recognized during this ceremony are set, costume, lighting and sound. She also stated that these are the only categories of design that are recognized at other Canadian award ceremonies for design.

[89] Susan Wallace, Executive Director of the CAEA, gave testimony with respect to the reciprocal agreement negotiated between the CAEA and the UDA. Ms. Wallace explained that the agreement applies only to those functions that are represented by both associations. The reciprocal agreement essentially reflects the historical practice of both associations, wherein the CAEA represents these professions in English language theatre while the UDA represents them in French language theatre, throughout Canada. Opera and dance productions are divided along geographic lines. The UDA has jurisdiction over all representations in Quebec and the CAEA has jurisdiction in the rest of Canada. If a production takes place in either French or English during the run of the production, it is the language of the first public performance of the production that determines the jurisdiction. If it is a bilingual production, it is the language of the audience for which the production is intended that usually determines jurisdiction. In this type of situation, negotiations between the associations would usually ensue and jurisdiction would generally be determined on the basis of geography. A further exception to the reciprocal agreement was recently negotiated with respect to the NAC. For departments other than the English and French language theatres, which are represented by the CAEA and the UDA respectively, the associations alternate jurisdiction on a yearly basis.

### *Issues*

[90] APASQ's application for certification raises the following issues:

- a) Is the sector proposed by APASQ suitable for bargaining, and in particular:
  - i) are the functions of set, costume, lighting and sound designer covered by the *Act*?
  - ii) is the function of props designer covered by the *Act*?
  - iii) is the function of puppet designer covered by the *Act*?
  - iv) are the functions of assistant set and costume designers covered by the *Act*?
  - v) is the function of set painter covered by the *Act*?
  - vi) are the functions of stage manager and assistant stage director covered by the *Act*?

- a) Is APASQ representative of the artists in the sector?

[91] ADC's application for certification raises the following issues:

- a) Is the sector proposed by ADC suitable for bargaining?
- b) Is ADC representative of the artists in the sector?

### *Status of the Artist Act*

[92] The relevant provisions of the *Status of the Artist Act* are as follows:

**5. In this Part,**

...

“artist” means an independent contractor described in paragraph 6(2)(b).

...

**6. (2) This Part applies**

...

(b) to independent contractors determined to be professionals according to the criteria set out in paragraph 18(b), and who :

- (i) are authors of artistic, dramatic, literary or musical works within the meaning of the *Copyright Act*, or directors responsible for the overall direction of audiovisual works;
- (ii) perform, sing, recite, direct or act, in any manner, in a musical, literary or dramatic work, or in a circus, variety, mime or puppet show, or
- (iii) contribute to the creation of any production in the performing arts, music, dance and variety entertainment, film, radio and television, video, sound-recording, dubbing or the recording of commercials, arts and crafts, or visual arts, and fall within a professional category prescribed by regulation.

...

**9. (1) An artist is not excluded from the application of this Part simply by contracting through an organization.**

...

**18. The Tribunal shall take into account**

...

(b) in determining whether an independent contractor is a professional for the purposes of paragraph 6(2)(b), whether the independent contractor

- (i) is paid for the display or presentation of that independent contractor’s work before an audience, and is recognized to be an artist by other artists,
- (ii) is in the process of becoming an artist according to the practice of the artistic community, or
- (iii) is a member of an artists’ association.

...

**25. (1) An artists’ association may, if duly authorized by its members, apply to the Tribunal in writing for certification in respect of one or more sectors**

(a) at any time, in respect of a sector for which no artists’ association is certified and no other application for certification is pending before the Tribunal;

(b) in the three months immediately preceding the date that the certification or a renewed certification is to expire, where at least one scale agreement is in force in respect of the sector; or

(c) after one year, or such shorter period as the Tribunal may fix on application, after the date of the certification or a renewed certification, where no scale agreement is in force in respect of the sector.

...

**26.** (1) After the application period referred to in subsection 25(3) has expired, the Tribunal shall determine the sector or sectors that are suitable for bargaining, taking into account

(a) the common interests of the artists in respect of whom the application was made;

(b) the history of professional relations among those artists, their associations and producers concerning bargaining, scale agreements and any other agreements respecting the terms of engagement of artists; and

(c) any geographic and linguistic criteria that the Tribunal considers relevant.

(2) Notwithstanding subsection 19(3), only the artists in respect of whom the application was made, artists' associations and producers may intervene as of right on the issue of determining the sector that is suitable for bargaining.

...

**27.** (1) After determining the sector pursuant to subsection 26(1), the Tribunal shall determine the representativity of the artists' association, as of the date of filing of the application for certification or as of any other date that the Tribunal considers appropriate.

(2) Notwithstanding subsection 19(3), only artists in respect of whom the application was made and artists' associations may intervene as of right on the issue of determining the representativity of an artists' association.

**28.** (1) 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.

[93] As well, section 2 of the *Professional Category Regulations*, SOR/99-191 (the “*Regulations*”), which came into force on April 22, 1999, applies:

2. (1) Subject to subsection (2), in relation to the creation of a production, the following professional categories comprising professions in which the practitioner contributes directly to the creative aspects of the production by carrying out one or more of the activities set out in paragraph (a), (b), (c), (d) or (e), respectively, are prescribed as professional categories for the purposes of subparagraph 6(2)(b)(ii) of the Act:

(a) category 1: camera work, lighting and sound design;

(b) category 2: costumes, coiffure and make-up design;

(c) category 3: set design;

(d) category 4: arranging and orchestrating;

(e) category 5: research for audiovisual productions, editing and continuity.

(2) The professional categories prescribed by subsection (1) do not include any profession in which the practitioner of the profession

(a) carries out, in connection with an activity referred to in subsection (1), the activities of accounting, auditing, legal, representation, publicity or management work or clerical, administrative or other support work; or

(b) is a person referred to in subparagraph 6(2)(b)(ii) of the Act or carries out an activity referred to in subparagraph 6(2)(b)(ii) of the Act.

## *Submissions*

### *APASQ*

[94] APASQ submits that the individuals who work in the sector for which it is seeking certification form a homogeneous group that necessarily have common interests because they contribute directly to supporting and creating the entire performing arts production. In addition, each and every one of them creates an identifiable work or part of a work. These individuals claim, or may claim, copyright or residual rights for their part of the creation. This group is distinct from the performers’ group. All of the artists identified contribute creatively to the existence, production and presentation of a performing arts work in a dance, theatre or variety show.

[95] APASQ contends that the status of sound, lighting, set and costume designers is not disputed, since these functions are covered by the *Regulations* made under subparagraph 6(2)(b)(iii) of the *Act*. Likewise, the status of stage managers and assistant stage directors is not contested, as a result of the agreement it reached with CAEA and the fact that the Tribunal has already held, in the CAEA decision [1996 CAPPRT 010], that these individuals “direct” a work within the meaning of subparagraph 6(2)(b)(ii) of the *Act*. APASQ also cites the two studies by the CQRHC describing the involvement and participation in a production of the individuals who perform these functions.

[96] With respect to props designers, APASQ argues that its witness, Patricia Ruel, has a broad experience as a props designer and also, more generally, as a set designer. As a props designer, her services are retained exclusively by the producer or the stage director, in the same way as other artists who contribute to the production. Her testimony

demonstrates that she does not merely “carry out orders”, she contributes to the creation of the entire work on the same basis as the other designers, under the supervision of the stage director. She has to interpret the script in order to design. She transforms, adapts and creates.

[97] Mr. Lacroix’s testimony generally confirms Ms. Ruel’s: props designers are distinct from set designers, although the same person may sometimes perform both functions. Mr. Lacroix testified that when he is hired as a set and props designer for a single production, his remuneration reflects that fact.

[98] APASQ therefore submits that the group composed of props designers is distinct from the set designers group and that a person who designs props is an artist within the meaning of the *Act* because he or she may be an author within the meaning of the *Copyright Act* or be covered by the *Regulations*. He or she contributes to the creation of a performing arts work; this function is therefore included in the set design category.

[99] With respect to puppet designers, Mr. Lacroix’s testimony demonstrates that the designer creates not only the puppet’s environment, but also its character. The designer necessarily interprets the work and contributes to the production, creation and presentation process. APASQ rejects the argument that puppets are merely props.

[100] Set and costume assistants contribute to the production process and, more importantly, to the creative process. They generally report to the stage director, as do the other individuals involved in the production. In some cases, they report to the designer. The testimony given by Mr. Fortin and Ms. Ruel support the argument that assistants incorporate separate and identifiable parts into the overall creative work. The assistants must be very familiar with the work and the artistic instructions given by the stage director. The assistants conduct research, adapt and implement, consequently, they create.

[101] APASQ pointed to the testimony given by Fernand Déry, who testified for TAI and the NAC, to demonstrate that even a performer is under the supervision of the stage director and simply carries out the latter’s vision, just like the designers and assistants. The assistants therefore contribute to the creative process and are also covered by the *Regulations* under the set design category.

[102] Mr. Gaucher’s testimony demonstrates that there is a difference between a set painter and a painter. A set painter brings an element of creativity to his or her work, while necessarily considering the established parameters. A set painter interprets the model and performs his or her work with adeptness. Set painters are chosen for their unique qualities. They have to work closely with the designer and stage director. They do more than merely carry out orders.

[103] The fact that APASQ is the only group seeking to represent all these artists, within Quebec, demonstrates the fundamental difference between the situation in Quebec and the situation in the rest of Canada. APASQ is asking the Tribunal to recognize the existing situation, to take notice of the significant distinctions that prevail in the theatrical world and the performing arts generally in Quebec. APASQ represents virtually all, if not all, of the designers covered by its application in Quebec, and it is the association that is legally recognized in Quebec to act on behalf of all designers, without distinction based

on language. These factors are part of the history of the association. APASQ is the only association that is concerned with both the professional lives and the socio-economic development of these designers.

[104] APASQ acknowledges that ADC is an association with a national structure, but in Quebec its presence is clearly limited, as a result of APASQ's existence. The Tribunal has to consider these facts in determining not only the common interests of the artists in the sector for which the application has been made, but also the representativity of APASQ for this sector.

[105] APASQ points out that the language criteria set out in section 26 of the *Act* is only one of the criteria that the Tribunal has to examine, contrary to what ADC contends. APASQ is asking the Tribunal to consider the history of professional relations, the existing situation, that is the geographic situation without regard to language differences, and the activities that each of the associations carry out in their respective fields. In support of its argument, APASQ refers to two decisions of the Canada Labour Relations Board involving the Canadian Broadcasting Corporation [(1991) 84 di 1; (1994) 96 di 1] in which the Board took notice of this geographic situation when it certified bargaining units for Quebec and in Moncton, New Brunswick, and certified separate bargaining units for the rest of Canada.

#### *ADC*

[106] ADC submits that the sector proposed is one that is suitable for bargaining. The history of professional relations that ADC has is evidence of the common interests shared by designers. ADC is recognized by PACT as the official negotiating body for designers throughout Canada. For those areas which PACT is not mandated to cover, such as performing arts other than English language theatre, ADC negotiates independent contracts. ADC argues that its evidence demonstrates that it has a large number of set, costume and lighting designers and a constantly growing number of sound designers. Because sound design is a more recent development, ADC continues to work with the artists to ensure that they are afforded the same type of consideration and compensation that is provided to other designers in theatre.

[107] ADC states that while set painters, technical directors, production managers, costume and set designer assistants and production assistants are skilled technicians and very talented craftspeople, APASQ has not proven that they are artists. Firstly, although APASQ historically represents these individuals, they are not usually considered artists in the practice of English language productions, and this is confirmed by witnesses for both TAI and the NAC with respect to French language productions. In ADC's view, set painters realize the artistic vision of another artist and do not interpret artistically or create a product themselves. Even if a set painter may make suggestions, the designer maintains the ability to either approve or reject them.

[108] With respect to accessories or property designers, ADC submits that the documentary evidence presented by APASQ failed to demonstrate a separate community of interest, or even a separation in practice between prop/puppet designers and set and costume designers. ADC argues that the accepted and common practice in productions in both French and English in Canada is to include properties and puppet designers as a sub-

category of set and costume designers. For example, when awards are given out, the only recognized categories are set, costume, lighting and sound.

[109] While agreeing with APASQ with respect to the community of interest present in theatre design, ADC submits that there does not exist a community of interest within the Quebec borders that is different from the one in the rest of Canada. ADC argues that any differences in work methods and circumstances within Quebec are comparable in depth and breadth to other regional differences that are found in Canada. ADC is respectful of these regional differences and has dealt with them successfully in the past. Moreover, if there is any separation to be made in practice, ADC has shown that it is to be made between designers working within the English and French language theatre. ADC further submits that both associations tendered evidence that demonstrates that designers living outside Quebec work for Quebec performing arts companies and that Quebec designers work throughout the rest of Canada. Accordingly, common interests are shared by designers across the country, from coast to coast.

[110] With respect to its representativity for the proposed sector, ADC argues that it has demonstrated its desire to promote the designer's economic and legislative interests across Canada. In light of the precedent set by other sectors, the experience of other organizations and the mobility of artists, including designers, ADC further argues that geographical borders are all but meaningless. ADC firmly believes that communication is at the heart of design, in the same way that it is for actors, and much of the actual creation process in design is spent communicating with others. Accordingly, any separation should be made along language lines, and not geographic lines. ADC further submits that a sector based on geography is not logical and does not follow the practice of theatre in Canada.

[111] ADC contends that APASQ's argument to the contrary is confusing. In support of this argument, ADC notes that APASQ's proposed sector is not strictly limited to Quebec, as they are seeking to represent designers at the NAC, other than the ones working in the English language theatre department.

[112] ADC has worked hard over the years, and continues to work hard, to become a truly national organization. This goal will be undermined if the sectors are split along provincial limits, a division that in ADC's opinion is inconsistent with design practice in theatre.

[113] ADC argues that its designers have a strong history of working in all areas of the performing arts in productions in both languages at the NAC. While ADC does not dispute that APASQ members have worked independently at the NAC, it does not believe that APASQ has demonstrated that they have a history of negotiations with the NAC. ADC adds that APASQ is in no way representative of designers working in French language productions working anywhere at the NAC, including the French language theatre, as this department of the NAC has not actually produced anything in many years.

[114] Finally, ADC notes that APASQ does not have the resources in place to support English language designers or designers working in English language productions. Accordingly, as ADC has the resources, materials, personnel support, desire, mandate, if not the responsibility to represent all designers working throughout Canada, ADC is

prepared to represent all designers working with federal producers, whether in English or in French, in Canada.

*TAI and the NAC*

[115] TAI and the NAC (hereinafter “the intervenors”) reminded the Tribunal that 11 theatres in Quebec as well as the French theatre department at the NAC are members of TAI. The NAC is composed of five departments: French theatre, English theatre, dance, music and community programming. The intervenors do not object to APASQ’s application covering French theatre, but they oppose the part of the application that covers the rest of the activities at the NAC.

[116] The intervenors note that APASQ is provincially certified for the positions of set, costume, sound and lighting designers. There is a history of bargaining between APASQ and the NAC for the French theatre department that takes this provincial certification into account.

[117] Section 18 of the *Act* provides that the Tribunal shall take into account, in deciding any question under that Part, the applicable principles of labour law. The intervenors therefore state that this history of bargaining speaks volumes, because the APASQ-TAI collective agreement specifies that props are the responsibility of set or costume designers.

[118] When Parliament enacted the *Regulations* under subparagraph 6(2)(b)(iii) of the *Act*, it specified several design categories, including lighting and sound design, costume design and set design. The parties agree that these individuals are “artists”. Given that props design is not included in the *Regulations*, the intervenors submit that the record does not contain sufficient or probative evidence which would allow the Tribunal to conclude that these individuals form a separate category of designers.

[119] With respect to puppet designers, the intervenors point out that the witnesses for the NAC and TAI, Messrs. Rousseau, Gazalé and Déry, all testified that puppet design is often done by set designers. In addition, the *Regulations* do not provide a separate category for puppet design. Some witnesses pointed out that puppet-making may involve manipulating the puppets. The agreement between APASQ and UDA in this respect provides that APASQ’s jurisdiction is limited to puppet-making, while the function of puppeteer is covered by UDA’s certification. APASQ and UDA acknowledge that under that agreement, one person could be covered by two scale agreements. This type of situation would present a problem for the producer.

[120] The intervenors submit that set painters are undeniably talented individuals, but they are not artists because they merely reproduce the artistic vision, thus carrying out support work. These individuals are therefore clearly covered by paragraph 2(2)(a) of the *Regulations*, which provides that persons who carry out support work are not artists within the meaning of the *Act*. In light of this reasoning, the intervenors submit that the positions of costume and set assistants are also excluded from the application of the *Act*, since the individuals who carry out these functions are clearly performing support functions. The intervenors further submit that the experience of Mr. Fortin, who was the costume assistant to François Barbeau, is not representative of the work of costume assistants. In addition, the fact that Mr. Fortin became a costume designer in order to



obtain recognition in the theatrical community implies that he did not see himself as an artist when he was an assistant.

[121] Moreover, the intervenors argue that including assistants in the same sector as set or costume designers would be contrary to the principle of labour law that holds that supervisors should not be included in the same bargaining unit as those whom they supervise. That principle was recognized by the Tribunal when it created a separate sector for stage directors for French-language productions, because they supervised the work of the performers [see *Union des artistes*, 1997 CAPPRT 024]. In addition, granting "artist" status to set and costume assistants presents a significant practical problem for the producer, in terms of the recognition of residual rights.

[122] A number of witnesses, including Mr. Gazalé and Ms. Needles, explained to the Tribunal that there are significant cultural operational distinctions in respect of stage managers and assistant stage directors in the English and French theatre industries. The intervenors therefore submit that the Tribunal may not rely on the findings it made in the decision concerning the CAEA [1996 CAPPRT 010] to determine whether stage managers and assistant stage directors are "artists" in the present case. In addition, the intervenors note that APASQ did not introduce any evidence of bargaining with producers for the positions of stage manager and assistant stage director.

[123] In terms of representativity, the evidence demonstrated that APASQ has had a presence in the French theatre department of the NAC since 1993. The APASQ-TAI agreement applies solely to the theatre department. Consequently, the intervenors are asking that the Tribunal limit APASQ's certification to this department.

[124] The intervenors contend that when language is not part of the artistic expression, the Tribunal has concluded in the past that a national sector is more suitable. Moreover, if language is an integral part of the artistic expression, the language criterion assumes greater importance and the Tribunal will take it into account in defining the sector [see 1997 CAPPRT 024 and 1996 CAPPRT 020]. The intervenors submit that language is an important factor for designers, not simply in terms of communication but also in terms of culture.

#### *IATSE*

[125] IATSE pointed out that it has been present in the theatrical community in Canada since 1896 and at the NAC since 1969. IATSE is composed of employees who, while they are talented individuals, do not claim to be artists. In the submission of IATSE, the final product, the show, is the result various levels of collaboration, which call for different echelons of responsibility. Designers design, they create an idea, and IATSE therefore submits that they are true artists. To carry out their ideas, designers call on the services of skilled and experienced technicians, such as set painters. This is the manner in which IATSE members contribute to the preparation of a theatrical production. IATSE notes that its members are not recognized as artists, and are not seeking such recognition from the artistic community. If the Tribunal certifies APASQ to represent this function, it would infringe on the work reserved for IATSE members.

#### *APASQ's reply*

[126] APASQ points out that props designers were included under the heading of set or costume designers solely because of the certification at the provincial level. With respect to the question of dual jurisdiction raised by the intervenors in respect of puppet designers, APASQ submits that this problem arises in all areas of labour law, not only under the *Act*.

*ADC's reply*

[127] Firstly, ADC points out that contrary to APASQ's argument, the situation involving assistants and set painters is different than the one of an actor following the directions of the stage director in that the latter group add their own artistic creation to the production. Secondly, ADC reiterates its disagreement with respect to the importance of language in design. Contrary to APASQ's assertion that language is of no importance in areas such as dance, opera, and variety entertainment, ADC submits that language is extremely important and integral to the design process as well as the artistic expression that comes from the design.

## *Analysis and Conclusions*

*Agreements reached by the parties*

[128] SPACQ intervened as a result of the potential overlap between the position of sound designer, which is included in APASQ's application, and the position of composer of a musical work, which is covered by its certification. SPACQ submits that a sound designer is a person who creates the sound environment of an artistic production using electronic or acoustic tools, without creating a musical composition, melody or harmony or combination of any of these elements. A sound designer within the meaning of APASQ's certification is not a composer of a musical work.

[129] The parties did not submit a written agreement to the Tribunal, but following discussions between counsel, SPACQ and APASQ asked the Tribunal to note in its Reasons for decision that the sector requested by APASQ does not encroach on the certification granted to SPACQ [see 1996 CAPPRT 007]. The Tribunal grants SPACQ and APASQ's request and recognizes that there is no overlap between the sectors, the function of sound designer being distinct from the function of composer of a musical work.

[130] APASQ entered into three agreements, copies of which were filed so that the Tribunal could take official notice of them. The first was reached between UDA and APASQ. APASQ's initial application covered "... puppet designers, stage directors ...". In 1996, UDA was certified to represent puppeters as performers [see 1996 CAPPRT 017] and in 1998 it was certified to represent a sector composed of stage directors [see 1997 CAPPRT 024 and 1998 CAPPRT 027].

[131] Pursuant to this agreement, APASQ amended its application to exclude stage directors and recognizes that the position of puppet designer in the sector it is seeking is limited to designing and making puppets, and does not extend to puppeters, with or

without dialogue. APASQ recognizes that the position of puppeteer is covered by UDA's certification.

[132] The second agreement, with the NAC and PACT, recognizes that all productions, coproductions and/or presentations at the NAC's English theatre department are not covered by the sector proposed in APASQ's application. The sole purpose of the agreement is to clarify the intended scope of the application for certification.

[133] The Tribunal takes official notice of the two agreements referred to above, copies of which are attached to these Reasons.

[134] The final agreement, which was reached with CAEA, covers the positions of stage manager and assistant stage director. CAEA is certified to represent, *inter alia*, stage managers and assistant stage directors "in a live performance in theatre, opera, ballet, dance, industrial show, cabaret show or concert performance whether or not such performance or entertainment is presented in a theatre or elsewhere". CAEA argued that an overlap exists between the sector for which it is certified and the sector for which APASQ has applied.

[135] This is a question of clarifying the scope of the CAEA bargaining sector. The CAEA's certificate does not specify whether its jurisdiction in respect of the positions of stage manager and assistant stage director is limited by the language of production. The agreement between CAEA and APASQ provides that APASQ will represent general stage managers, stage managers, assistant stage managers, apprentice stage managers, assistant stage directors and assistant choreographers in productions exclusively in French where the productions are performed in Quebec or in the French theatre department of the NAC. In addition, the agreement provides that if APASQ is certified by the Tribunal, CAEA will apply to the Tribunal in order to amend the sector for which it is certified, and APASQ's sector will be subject to CAEA's certification.

[136] It should be noted that only the positions of stage manager and assistant stage director in APASQ's application for certification are included in CAEA's sector. Because the Tribunal is not in a position to expand the bargaining sector applied for by APASQ, it takes official notice of this agreement in respect of the definition of the sector only as it relates to these two positions. As requested by both parties, any bargaining sector for which APASQ is certified will be subject to CAEA's certification. A copy of this agreement is attached to these Reasons.

[137] However, the Tribunal recognizes that the parties are free to negotiate any agreement that they consider appropriate. Accordingly, the findings of the Tribunal regarding this agreement do not invalidate the parties' mutual obligations.

*Are the functions of set, costume, lighting and sound designer covered by the Act?*

[138] The Tribunal heard general testimony concerning the creative contribution and the role played by various individuals who carry out the functions of set, costume, lighting and sound designer in a production. The parties and the intervenors submitted that these four professions meet the criteria to be considered artists within the meaning of the *Act*, pursuant to the *Regulations*, under subparagraph 6(2)(b)(iii) of the *Act*.

[139] Paragraphs (a) to (e) of section 2 of the *Regulations* provide for certain professional categories comprising professions in which the practitioner contributes directly to the creative aspects of the production by carrying out one or more of the activities set out in that section. *Inter alia*, paragraph 2(1)(a) of the *Regulations* refers to sound and lighting design; paragraph 2(1)(b) refers to costume design; and paragraph 2(1)(c) refers to set design (“*scénographie*”). The parties do not dispute that *scénographie* includes set design (“*conception de décors*”).

[140] The Tribunal finds that set, costume, lighting and sound designers contribute directly to the creative aspects of the production, and consequently persons who are engaged in those professions are artists under subparagraph 6(2)(b)(iii) of the *Act*.

*Is the function of props designer covered by the Act?*

[141] Essentially, the parties’ positions may be summarized as follows. APASQ wants to include this position in its sector, and submits that this is an entirely separate function, equivalent to any other design function. ADC argues that the position of props designer does not exist as it is included in the general tasks of the set designer. Moreover, the intervenors, TAI and the NAC, dispute the inclusion of this profession in the sector. They are of the view that the work of a “propsman” is similar to the work of a stockroom clerk, with no creative contribution to the production. They further point out that the position is not expressly mentioned in the *Regulations*.

[142] APASQ’s witness, Patricia Ruel, has worked in the theatre since 1998, but has already been involved in some thirty productions. She works as a props designer, and as a set designer, in productions of various sizes. Ms. Ruel’s testimony was clear and unequivocal. The person who designs props contributes to the creative aspects of a production. He or she reports to the stage director, just like the other designers, and not to the set designer. Where the same person combines the positions of props design and set design in a particular production, the remuneration and the contract reflect this fact. Incidentally, a number of witnesses stated that one person may combine more than one position for artistic or budgetary reasons.

[143] Based on the evidence presented by the intervenors, TAI and the NAC, the Tribunal understands that there is a profession called “propsman” or, as Ms. Ruel put it, “set propsman”, and that these people are often employees and therefore not covered by the *Act*. The Tribunal also understands that in some productions, the set designer may be responsible for props design, and delegate to someone else the job of assembling or selecting props. It is clear that, in that case, the contribution of the propsman does not “contribute directly to the creative aspects of the production”, since the artistic choices will have been made by the set designer. The Tribunal notes that the intervenors’ witnesses are highly qualified and credible people, with relevant experience. However,

the evidence disclosed that for the past few years they have each worked primarily at the administration level of one particular institution.

[144] ADC put forward a number of arguments to support its assertion that the position of “props designer” does not exist. If it does, ADC argues that it is not covered by the *Act*. ADC put into evidence that a separate award for this position is not handed out at theatre awards ceremonies. Dennis Horn also testified that props design is an activity that is always carried out by the set designer.

[145] In the Tribunal’s view, the fact that no awards are presented is not conclusive evidence that the position does not exist. ADC itself explained that the position of sound designer has only recently been recognized, illustrating that functions evolve. The fact that one person may agree to carry out both positions does not mean that in another situation these functions might not be assigned to two people. The Tribunal is of the opinion that there is in fact a separate activity that may be called props design. However, it must be understood that the person who performs this function must report to the stage director, just like other designers in a production, and his or her work must include the creation or transformation of objects as well as research in order to develop a whole concept that expresses the vision of the stage director. We must now examine the *Regulations* to determine whether this function is included in one of the enumerated categories.

[146] The activities in paragraphs (a) to (e) of the *Regulations* describe artistic fields, and are not defined in relation to specific professions. For example, paragraph 2(1)(b) refers to “costumes, coiffure and make-up design”, and not to “costume ... designer”, which indicates that Parliament did not intend to restrict the application of these categories to specific positions. The Tribunal finds that props design is an activity that is akin to set design. Therefore, this position is covered by paragraph 2(1)(c) of the *Regulations* and the props designer is an artist under subparagraph 6(2)(b)(iii) of the *Act*.

*Is the function of puppet designer covered by the Act?*

[147] The position of “puppet designer” is also challenged by ADC and the intervenors TAI and the NAC. Their main argument is that puppet design is a function that falls within the duties of the set or costume designer. The intervenors further submit that the position is excluded from the *Act* because Parliament does not mention it specifically in the *Regulations*.

[148] Richard Lacroix’s testimony establishes that a puppet designer is hired on contract, and that his or her job is usually dual in nature, in that he or she designs the puppet-theatre, that is, the puppet’s environment, as well as the puppet itself. In some cases, the designer bases the design on existing texts, and in other cases it is an entirely new creation. A specialized workshop carries out the construction of the puppet and the puppet-theatre, but it is done under the supervision of the designer. As well, the evidence demonstrates that the puppet designer is involved in the creative process at every stage.

[149] The Tribunal is of the opinion that there is sufficient evidence to conclude that the position of puppet designer exists, and that this is not a subfunction of the set or costume designer. Nothing prevents a puppet designer from also working as a set or costume designer as well. We must now examine the *Regulations* to see whether the position is included in one of the listed categories.

[150] First, designing the puppet-theatre is similar to theatrical set design. On the other hand, as Mr. Lacroix testified, when the designer draws the puppet, creates the puppet's image and conceptualizes its clothing, the work resembles that of a costume designer. Whereas these two functions are clearly covered by the *Regulations*, in paragraphs 2(1)(b): costumes, coiffure and make-up design, and 2(1)(c): set design, the Tribunal concludes that puppet design is a function covered by the *Regulations* and the puppet designer is an artist under subparagraph 6(2)(b)(iii) of the *Act*.

*Are the functions of assistant set and costume designers covered by the Act?*

[151] In its submissions, APASQ stated that it is seeking to represent individuals who perform the functions of assistant set and costume designer as they are professional artists within the meaning of the *Act*. These individuals carry out the artistic vision of the stage director and the designer. They can identify their creative contribution in the production as a whole, and therefore contribute to the creative process. The producer engages their services as independent contractors, just like other members of the production team.

[152] ADC objects to the inclusion of these individuals in the sector APASQ is seeking to represent on the ground that they do not perform an artistic function. The intervenors, TAI and the NAC, submit that set and costume assistants only perform support work for the designers. Therefore they are not "artists" within the meaning of the *Act*.

[153] The experience of APASQ's witness, Daniel Fortin, demonstrates that considerable opportunities exist for assistants to contribute creatively. In his career, Mr. Fortin worked primarily as an assistant for François Barbeau who, according to the evidence, ranks exceptionally highly in the design field. Although Mr. Fortin is a credible witness, the Tribunal is of the opinion that his experience is not representative of the work performed by the majority of assistant costume designers.

[154] The testimony of Mr. Horn, for ADC, illustrates the opposite experience of an assistant's work, that is, of someone who almost exclusively performs administrative tasks. However, it must be noted that Mr. Horn's entire assistant experience is limited to one season at the Stratford Festival, which, as he himself stated, must be calculated in terms of hours rather than weeks. In light of this limited experience, the Tribunal believes that it is likewise not representative of assistants' work.

[155] It appears to the Tribunal that the work of assistant set and costume designers, as a whole, likely fall somewhere within these two extremes. The evidence presented by David Gaucher on this topic confirms this conclusion. Mr. Gaucher has extensive experience in the performing arts in Quebec. In addition, he worked as an assistant for three years early in his career. He has also worked with assistants since that time. He testified that being an assistant set or costume designer requires artistic skill, because they must materialize, "breathe life into", the designer's general idea, just as the designer carries out the artistic vision of the stage director. Pierre Rousseau reinforced this

conclusion when he testified that the selection of assistant set and costume designers contributes to the artistic quality of the designers' work. However, the evidence revealed that these positions necessarily involve an administrative component, the amount of time devoted by assistants to these administrative duties varying in accordance with the designer's working methods and the size of the production.

[156] In light of these facts, the Tribunal must determine whether assistant set and costume designers are "artists" within the meaning of the *Act*. Subparagraph 6(2)(b)(iii) of the *Act* designates independent contractors who contribute to the creation of a work in, *inter alia*, the performing arts, music, dance and variety entertainment as artists within the meaning of the *Act*. The *Regulations* specify the scope of this provision. For instance, subsection 2(1) of the *Regulations* provides that a professional who is involved in the creation of a production by contributing *directly* to its creative aspects will be covered by the *Act*. The *Regulations* also provide that the professional's contribution must fall within one or more of the categories listed in paragraphs 2(1)(a) to (e).

[157] The intervenors TAI and NAC argue that assistants are covered by subsection 2(2) of the *Regulations*, in that they perform "support work". Subsection 2(2) excludes people who carry out non-creative functions, specifically accounting, auditing, legal, representation, publicity or management work or clerical, administrative or other support work.

[158] The Tribunal could dispose of the intervenors' argument immediately, as, in its opinion, the assistants' work involves a creative contribution. Nonetheless, the Tribunal notes that in the immediate context of the provision, where the words "accounting, auditing, legal, representation, publicity or management work or clerical, administrative or other support work" are connected grammatically and logically, the intervenors' interpretation cannot stand. The meaning to be given to one item in a group of words that are grammatically and logically connected should be determined by examining the common characteristics of all of the elements of the group (Sullivan, *Driedger on the Construction of Statutes*, 3rd ed., Toronto, Butterworths, 1994, at p. 200). With respect to the words "accounting, auditing, legal, representation, publicity or management work or clerical, administrative or other support work", they all refer to a form of "office work or administrative work". The "support work" does not refer to the work performed by assistants, notwithstanding that some of their duties may be administrative.

[159] The list of activities in the professional categories in paragraphs 2(1)(a) to (e) is explicitly connected to the requirement that there be a contribution to the creative aspects of a production. As noted earlier, these categories are described in terms of artistic fields, and not in relation to specific professions.

[160] The evidence demonstrates that the individuals who work as assistant set and costume designers are usually independent contractors. These professionals meet the criterion of contributing to the creative aspects of a production as set out in subparagraph 6(2)(b)(iii), since the proposed sector relates to the performing arts, dance and variety entertainment. The artistic skills described by Mr. Gaucher illustrate the direct contribution made by these assistants to the creative aspects of a production. The Tribunal finds, based on that evidence, that this creative contribution is sufficient for these functions to be covered by paragraphs 2(1)(b) and 2(1)(c) of the *Regulations* and

that set and costume design assistants are artists under subparagraph 6(2)(b)(iii) of the *Act*.

*Is the function of set painter covered by the Act?*

[161] APASQ is claiming representation of this function on the ground that it is performed by individuals who have unique artistic qualities, their creative contribution to the production being made within the parameters established by the set designer and stage director. ADC believes that these individuals are very talented technicians, but not “artists”, because they merely carry out someone else’s vision. In the submission of the intervenors TAI and the NAC, these individuals perform support work and are therefore excluded from the *Act* pursuant to paragraph 2(2)(a) of the *Regulations*.

[162] David Gaucher’s evidence, for APASQ, demonstrates that set painters work on a production as a result of their artistic skill. Many set painters work as employees in workshops. Set designers may also work as set painters. Pierre Rousseau, who testified for the intervenor TAI, confirmed that generally specialized workshops are retained to carry out set painting. However, these workshops must obtain the theatre’s approval regarding the painter who will perform the work. At the hearing, APASQ had no members listed in the category of “set painter”, but Monique Corbeil, who testified for APASQ, advised the Tribunal that a member may be involved in three, sometimes four, professions at the same time, generally identifying themselves in the category in which they are best known.

[163] Section 9 of the *Act* provides that an artist who contracts his or her services through an organization is covered by the *Act*. Accordingly, set painters who carry out their functions through a corporation may benefit from the labour relations scheme established by the *Act*. Moreover, at the certification stage, the Tribunal does not normally assess the usual relationship between producers and each member of an artists’ association, when the member is engaged in his or her occupation: *APVQ-STCVQ*, 2001 CAPPRT 035, at para. 18. When the Tribunal certifies an artists’ association, everyone working in a particular artistic field will not necessarily be covered by the certification. Obviously, artists who are engaged in an employer-employee relationship will be excluded. Moreover, it is important to point out that there is nothing that prevents a person from being an employee and also working in the arts as an independent contractor: *Union des Artistes*, 1996 CAPPRT 017, at para. 24.

[164] In light of these conclusions, the Tribunal is of the view that a set painter may perform his or her functions in the performing arts, dance or variety entertainment as an independent professional contractor. It remains to be determined whether those professionals are covered by the *Regulations*. The Tribunal accepts APASQ’s evidence that while set painters follow the artistic instructions given by the designers, their work involves a significant element of artistic adeptness. Based on this creative contribution, the Tribunal concludes that set painters contribute directly to the creative aspects of a production, and thus meet the criteria set out in subsection 2(1) of the *Regulations*. The Tribunal rejects the argument made by the intervenors TAI and the NAC, that set painters merely perform “support” duties, having regard to the detailed analysis done by the Tribunal in respect of the positions of assistant set and costume designer [see paragraph 158]. As the set painter’s work complements that of the set designer’s, the Tribunal



concludes that it is covered by paragraph 2(1)(c) of the *Regulations* and the set painter is an artist under subparagraph 6(2)(b)(iii) of the *Act*.

*Are the functions of stage manager and assistant stage director covered by the Act?*

[165] Because the Tribunal has previously determined that stage managers and assistant stage directors are “artists” [CAEA 1996 CAPPRT 010], APASQ contends that the Tribunal need not address this question again. The intervenors TAI and the NAC submit that the cultural differences existing between the way the English and French theatres operate, as identified by their witness and ADC’s witnesses, warrant a fresh analysis by the Tribunal of the status of these positions.

[166] The Tribunal acknowledges that there are certain operational differences that exist between English and French-language theatres, and that these differences may have an impact on the scope of the duties performed by stage managers and assistant stage directors. However, they do not negate the artistic contribution these individuals make to a French theatre production. The two studies completed by the CQRHC regarding these professions clearly demonstrate the creative contribution of these two positions to the overall stage performance.

[167] The study done of the profession of stage manager indicates that a stage manager [TRANSLATION] “manages the performance, by ensuring that the show’s team performs on cue with precision”. The study of the profession of assistant stage director demonstrates that the assistant stage director helps develop and finalize the staging of a production, under the supervision of the stage director. Based on the reasoning followed in the CAEA decision, the Tribunal concludes that the functions of stage managers and assistant stage directors include “directing ... in any manner” a work. Accordingly, they are “artists” pursuant to subparagraph 6(2)(b)(ii) of the *Act*, even if this direction is carried out under the supervision of the stage director [see 1996 CAPPRT 010, at paragraphs 31, 32 and 39].

*Is the sector proposed by APASQ suitable for bargaining?*

[168] Subsection 26(1) of the *Act* provides that when the Tribunal considers an application for certification, it shall take into account, *inter alia*, the common interests of the artists in respect of whom the application was made, the history of professional relations among those artists, their associations and producers concerning bargaining, scale agreements and any other agreements respecting the terms of engagement of artists, and any geographic and linguistic criteria that the Tribunal considers relevant.

[169] The evidence establishes that there may be operational differences between the English and French-language theatres, and that the size of the production may affect the manner in which duties are allocated, and even whether some positions will be filled. In addition, a majority of the evidence presented by the various parties reflects the practice in productions that are within provincial jurisdiction. The sector of production that seemingly falls within the purview of a federal producer is very narrow. It is therefore in this context that the Tribunal must determine the sector appropriate for collective bargaining.

*Community of interest*

[170] APASQ's application for certification states that all persons who perform the functions listed in the proposed sector are "artists" within the meaning of the *Act* because they are [TRANSLATION] "regarded as authors or creators of the stage performance or a part of the stage performance and accordingly are all entitled, in varying degrees, to residual rights for their works, not to neighbouring rights like performers". In addition, APASQ submits that all of the artists in question are persons who contribute to the creative aspects of a work, separate from performers. These individuals have a community of interest by virtue of the geographic location of the artists in question.

[171] Set, costume, lighting, sound, props and puppet designers as well as set painters are the backbone of the off-stage creative team; they contribute to the existence, preparation and presentation of the stage performance. It is certainly appropriate for them to be included in a single bargaining sector.

[172] Assistant set and costume designers are also part of this group of off-stage professionals. However, the intervenors, TAI and the NAC, expressed concerns about including them in the same bargaining unit as their supervisors, that is the set and costume designers. In support of this argument, the intervenors referred to the Tribunal's decision respecting stage directors [see *Union des Artistes*, 1998 CAPPRT 024]. In response to this argument, APASQ submits that set and costume assistants are generally under the supervision of the stage director, just like all the other participants involved in the production.

[173] Paragraph 18(a) of the *Act* provides that the Tribunal shall take into account the applicable principles of labour law. As the intervenors indicated, one of these principles states that individuals who occupy management positions and the individuals they supervise not be included the same bargaining unit. In *Union des Artistes*, *supra*, the Tribunal had to determine whether stage directors shared a community of interest with performers or designers. In that case, the Tribunal concluded that stage directors did not have managerial responsibilities *per se*, as this notion is commonly understood in labour relations. Nonetheless, the Tribunal found that the stage directors have considerable power over the work of performers and designers, and likely have different interests from each of these two groups. Accordingly, a separate sector was created for them.

[174] The Tribunal dealt with a similar issue when it considered the application for certification by the *Guilde des musiciens* [1997 CAPPRT 020]. In that case, the Tribunal had to determine whether conductors could be included in the same bargaining sector as performing musicians. It was clear from the evidence that a conductor is more akin to a leader and has few, if any, administrative duties. The Tribunal therefore concluded that it was appropriate to include them in the same bargaining sector as musicians.

[175] In this case, the relationship between set and costume designers and their respective assistants bears more resemblance to the relationship between a conductor and his or her musicians than to the relationship between a stage director and the performers or designers. The stage director is the "*maître d'oeuvre*" of the production, while the designer is not. The administrative duties are primarily the producer's responsibility, not the designer's. Set and costume designers and their assistants contribute in a collaborative manner to the creative aspects of a production, and in most cases they

report to the same person. The Tribunal therefore concludes that they share a community of interest and that it is appropriate to include them in the same bargaining sector.

[176] APASQ submits that the positions of stage manager and assistant stage director are also part of this off-stage team, which contributes to the creative process of the stage performance. Moreover, APASQ is the only association that has applied to represent these two positions in Quebec.

[177] The evidence shows that a stage manager must be familiar with the work carried out by each member of the production team, allowing him or her to be the liaison between the stage director and this team. The assistant director assists the stage director from the start of the project to opening night, and contributes to the development and finalizing of the staging. In practice, the assistant stage director often becomes the stage manager of the production.

[178] The Tribunal is satisfied that the individuals who occupy the positions of stage manager and assistant stage director share a sufficient community of interest with designers to include them in a single bargaining sector.

#### *History of professional relations*

[179] APASQ was founded to represent and defend the rights of artists who were not, and could not be, members of UDA. In 1993, APASQ was certified provincially for a sector composed of set, costume, lighting and sound designers. Thus, in terms of professional relations, APASQ is relatively new on the scene. Four collective agreements for the theatre were entered in evidence. Notices to bargain were served on independent producers in both English and French theatre in early 2001. APASQ acknowledges that, due to a lack of resources, bargaining has not been initiated with independent producers in the fields of dance, musical theatre or variety entertainment. The Tribunal notes that the French theatre department of the NAC is a member of TAI, an association of producers, and complies with the provisions of the APASQ and TAI agreement.

[180] The evidence established that APASQ is concerned with its members' professional lives and socio-economic development. For example, it was the driving force behind the studies done by the CQRHC concerning the professions of assistant stage director and stage manager. The Tribunal understands that the purpose of these studies was to identify the duties carried out by these professionals, in order ascertain and improve their working conditions. In addition, APASQ is involved in numerous cultural and artistic activities designed to promote and publicize its members' artistic works. The members have access to a number of services offered by the association, including a "toolkit", consultation services, advice in negotiating contracts and a performing arts social security plan.

[181] The intervenors, TAI and the NAC, argue that the Tribunal should only take into account the history of professional relations as it relates to APASQ's provincial certification. The Tribunal cannot accept this argument. In the past, the Tribunal has certified associations notwithstanding there were no scale agreements in place at the time of the application for certification [see *Association québécoise des auteurs dramatiques*, 1996 CAPPRT 011; *Société professionnelle des auteurs et des compositeurs du Québec*, 1996 CAPPRT 013].

[182] In applying this criterion, the Tribunal looks at the whole of the association's activities in order to determine its entire history of professional relations. It does not rely solely on the existence of scale agreements. In addition, the history of professional relations is based not only in terms of the relationship between artists' associations and producers, but also as between artists and the associations, and as among the artists themselves. The evidence demonstrates that the artistic skills required in order to be a designer or other off-stage participant are the same, and that these artists work in theatre, opera, dance and variety entertainment.

[183] The Tribunal is of the opinion that there is a history of professional relations between APASQ, its members and producers in the theatre in Quebec. Because the French theatre department of the NAC is a member of TAI, the Tribunal concludes that a history of professional relations also exists with that department, and includes it in the bargaining sector.

[184] With respect to the other fields of production enumerated in APASQ's application, the Tribunal notes, and the parties acknowledge, that few productions in these fields fall within federal jurisdiction in Quebec. Consequently, even though APASQ has yet to negotiate a scale agreement in dance and variety entertainment, the Tribunal concludes that it is appropriate to include these fields in the bargaining sector.

#### *Geographic and linguistic considerations*

[185] The Tribunal heard a considerable amount of evidence and submissions respecting, on the one hand, the differences between Quebec and the rest of Canada, according to APASQ, and on the other hand, the operational differences between the French and English-language theatre, without any geographical distinction, as submitted by ADC and the intervenors. APASQ is asking the Tribunal to "recognize an existing situation" by taking notice of the differences that exist between theatre in Quebec and theatre in Canada. In support of this argument, APASQ points out that it represents nearly all designers in Quebec and that it is the only association legally recognized in Quebec to bargain on behalf of designers, without linguistic distinction.

[186] ADC and the intervenors argued to the contrary. In their submission, the distinctions that exist lie not in geography, but in the working language of the production. ADC argued that communication is what is central to design and therefore geographic divisions are of virtually no consequence. Any division should therefore be based on linguistic criteria.

[187] The intervenors cited two of the Tribunal's decisions to illustrate the approach it has adopted when looking at the linguistic and geographic criteria, specifically the decisions concerning the applications for certification of the Association des réalisateurs et réalisatrices du Québec et al. and the Guilde des Musiciens du Québec [1997 CAPPRT 024 and 1996 CAPPRT 020, respectively].

[188] In view of the arguments presented by the parties and intervenors, a review of the Tribunal's position regarding linguistic and geographic criteria might prove useful. In *Association des réalisateurs et réalisatrices du Québec et al.*, *supra*, the Tribunal wrote:

[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.

[189] However, in the same decision, at paragraph 53, the Tribunal tempered its conclusions by stating that linguistic and geographic criteria are not the only criteria to be considered when examining an application for certification. Professional relations must also be considered. In the present case, the Tribunal recognizes that it is faced with a unique situation.

[190] It must also be noted that under paragraph 18(a) of the *Act*, the applicable principles of labour law are also relevant. APASQ drew the Tribunal's attention to two decisions of the Canada Labour Relations Board (the "Board") pertaining to the certification of bargaining units at the Canadian Broadcasting Corporation (the "CBC"). APASQ argues that these decisions acknowledge a geographic rather than linguistic situation, in recognizing the existence of two separate networks in Canada: a French network in Quebec and Moncton, New Brunswick, and an English network for the rest of Canada [*Canadian Broadcasting Corporation*, [1991] 84 di 1 and [1994] 96 di 1].

[191] It appears from these decisions that the jurisdictional division between the CBC's French and English networks, as it stands today, was established on the basis of the Board's conclusions in its Letter Decision 849, dated June 7, 1990. Respecting this issue, the Board stated:

[The Board] notes that some obvious anomalies exist in the present bargaining structure at CBC, with respect to territorial scope. It appears in fact that production centres are generally included for collective bargaining purposes in one or the other so-called networks. In certain bargaining units, in Moncton or Montréal, persons working together in one production centre are sometimes represented for collective bargaining purposes by bargaining agents from different networks. This situation seems abnormal given the prevailing conditions in the various production centres.

The Board considers that, unless compelling labour relations reasons are given, all persons working in one production centre will be members of bargaining units associated with one network. Specifically, the Board expects that all bargaining agents be linked to one or the other network and that, unless warranted for labour relations purposes, the divisions remain the same for all.

[192] As the intervenors pointed out, these passages indicate, first, that the initial distinction made by the Board in respect of the bargaining units at the CBC was based on linguistic criteria: the French network for Quebec and Moncton, and the English network for the rest of Canada. However, in its Letter Decision, the Board stated that the situation

that had prevailed before June 7, 1990, created “some obvious anomalies ... in the present bargaining structure ... with respect to territorial scope”, and therefore grouped productions of a single centre together, regardless of the language in which they were broadcast. The example given by the Board in its decision regarding the CBC’s English network (*supra*, [1991] 84 di 1) is explained at p. 9:

For instance, Toronto is administratively speaking an English network centre. Thus, a show produced in Toronto in French is identified to its originating network not by the language in which it is aired, but by the primary language of production in use in that particular region, i.e. English in the present case. In Montréal, English productions are identified to, or generated by, the French network.

In the Tribunal’s opinion, a second division was therefore made, this time establishing groups on the basis of geographic criteria, in order to facilitate the negotiation of professional relations at the CBC’s production centres.

[193] Based on the evidence, the Tribunal doubts that a producer would choose a designer based on the association with which he or she identifies. The parties acknowledge that an artist’s services are engaged on the basis of his or her artistic skill. The issue before the Tribunal is therefore which association will be able to negotiate on behalf of these artists.

[194] According to ADC’s argument, noted above, the Tribunal should define the bargaining sectors based on linguistic rather than geographic criteria. In support of its argument, ADC noted the practice that is in place between CAEA and UDA concerning performing arts across Canada, which is essentially based on the language of production. In the present case, the Tribunal cannot accept ADC’s position. First, this practice is the result of an agreement between CAEA and UDA. Second, APASQ’s application only covers Quebec and the NAC, and not Canada as a whole. And third, a division of that nature, in this instance, would be difficult to apply if the production is bilingual or in the case of an opera, given that no jurisdictional agreement between the two associations is in place.

[195] The Tribunal agrees that language is an important element of the artistic expression in design, and it would have been preferable for the proposed sector to cover all designers working on a French-language production throughout Canada. Even if, in the Tribunal’s view, a sector that includes all designers who work on French-language productions in Canada seems more “functional”, the sector proposed by APASQ is not as vast, and APASQ is not prepared to make such a proposal viable.

[196] The Tribunal understands that ADC is present in the English theatre in Quebec. However, APASQ represents approximately 110 designers and other artists in Quebec, out of a total of approximately 200 in the whole sector. The evidence shows that only five ADC contracts were signed in 2000 with English theatre companies in that province. Of the 50 some English theatre companies in Quebec, six are members of PACT, with which ADC has a considerable history of professional relations. ADC has 12 members in Quebec, three of whom are also members of APASQ. While ADC is seeking to represent designers at the federal level across Canada, the Tribunal cannot deny APASQ’s presence in Quebec.

[197] Accordingly, the Tribunal concludes that a sector established on a geographic basis, in respect of collective bargaining with producers who are subject to the *Act* for performing arts, dance and variety entertainment productions, is appropriate. However, in light of the history of professional relations established between APASQ and TAI, the Tribunal considers it equally appropriate to include the French theatre department of the NAC in this sector, notwithstanding that this institution is located outside Quebec.

*Conclusion regarding the sector for APASQ*

[198] After having considered all of the written and oral submissions presented by APASQ and the intervenors, the Tribunal has determined that the sector suitable for bargaining is a sector composed of all set, costume, lighting, sound, props and puppet designers, stage managers, set painters, assistant costume and set designers, and assistant stage directors who are independent contractors engaged by a producer subject to the *Status of the Artist Act*:

- (a) in any performing arts, dance and variety entertainment production presented within the province of Quebec;
- (a) in any production of the French theatre department of the National Arts Centre in Ottawa.

With the exception of stage managers and assistant stage directors covered by the certification granted by the Tribunal to the Canadian Actors' Equity Association on April 25, 1996, and subject to the agreement between the Association des professionnels des arts de la scène du Québec (APASQ-CSN) and the Canadian Actors' Equity Association dated June 28, 2001.

*Is APASQ representative of artists in the sector?*

[199] When two associations compete for all or part of an artistic sector, the Tribunal must pay special attention to the factors that it will take into account in determining which association is "most representative" of the artists in the sector defined.

[200] In its application for certification, APASQ stated that it represents 120 professionals in the proposed sector and that there might be approximately 200 individuals working in that sector. At the hearing, it advised that it represents 110 active members and four apprentice members, all of whom work on productions in the performing arts, dance and variety entertainment. In addition to its members, APASQ has approximately 100 associate members. APASQ claims that it represents virtually all, if not all, of the artists in the sector in Quebec.

[201] The Tribunal notes that no other association has applied to represent the interests of all the artists included in the sector that the Tribunal has found to be suitable for collective bargaining. Accordingly, the Tribunal accepts APASQ's submission that it is the most representative of the artists in the sector.

*Decision regarding APASQ's application for certification*

[202] For these reasons, and in view of the fact that APASQ's by-laws are in compliance with the requirements of paragraph 23(1) of the *Status of the Artist Act*, the Tribunal

**Declares** that the sector suitable for bargaining is a sector composed of all set, costume, lighting, sound, props and puppet designers, stage managers, set painters, assistant costume and set designers, and assistant stage directors who are independent contractors engaged by a producer subject to the *Status of the Artist Act*:

- (a) in any performing arts, dance and variety entertainment production presented within the province of Quebec;
- (b) in any production of the French theatre department of the National Arts Centre in Ottawa.

With the exception of stage managers and assistant stage directors covered by the certification granted by the Tribunal to the Canadian Actors' Equity Association on April 25, 1996, and subject to the agreement between the Association des professionnels des arts de la scène du Québec (APASQ-CSN) and the Canadian Actors' Equity Association dated June 28, 2001.

**Declares** that the Association des professionnels des arts de la scène du Québec (APASQ-CSN) is the most representative of artists in the sector.

An order will be issued to confirm the certification of the Association des professionnels des arts de la scène du Québec (APASQ-CSN) for the said sector.



*Is the sector proposed by ADC suitable for bargaining?*

[203] The sector proposed by ADC is one composed of set, costume, lighting and sound designers working within the live performing arts industry. Many issues related to ADC's application for certification were decided in previous sections of these Reasons, specifically those pertaining to the definition of the appropriate sector for bargaining in the APASQ application for certification. The Tribunal will therefore not revisit these matters.

*Community of interest and history of professional relations*

[204] ADC was created to represent the rights and interests of theatrical designers in set, costume, lighting, and later, sound design. The Tribunal accepts ADC's evidence that it is the official negotiating organization recognized by the English language theatre association in Canada, PACT, and as such negotiates on behalf of designers across Canada. In addition, ADC negotiates contracts with independent theatres as well as with producers of dance and industrial productions. The Tribunal agrees with ADC's argument that its history of professional relations, specifically in relation to PACT, on behalf of set, costume, lighting and sound designers is evidence of the common interests shared among designers.

[205] When reviewing an association's history of professional relations, the Tribunal must not only look to the existence of scale agreements, but all types of agreements that the association has negotiated on behalf of the artists it seeks to represent. ADC conceded that its agreement with PACT, as well as all other agreements it has in place for designers, are not "true" scale agreements in that they do not contain a minimum fee structure. However, these agreements are unequivocal evidence that ADC is the only association whose mandate it is to represent designers working in Canada.

[206] ADC admitted that it mainly negotiates on behalf of designers carrying out their profession with English language theatre companies. It was explained that fewer opportunities exist for independent contractor designers working in other areas. For example, in the case of live music performances, many of the artists travel with their entire entourage and their sets are usually completed prior to the artist's arrival in a Canadian city. With respect to opera productions, the evidence presented to the Tribunal indicates that many designers are hired as employees of an opera company.

[207] Although ADC's application for certification to represent designers in the 'live performing arts' is stronger with respect to English language theatre than it is for other areas of production, the Tribunal accepts the evidence that was tendered to the effect that the same artistic qualifications are required in all areas of the live performing arts. Accordingly, the Tribunal concludes that it is appropriate to define a sector composed of designers that includes all areas of live performing arts in Canada, with the exception of Quebec, for the reasons aforementioned in the analysis respecting APASQ's application for certification.

[208] This conclusion is also applicable to the remaining departments at the NAC. However, as the Tribunal heard numerous arguments with respect to this particular producer, a further clarification of the Tribunal's conclusions with respect to the NAC is justified.

[209] The English language theatre department of the NAC is a member of PACT and accordingly, ADC clearly has a history of professional relations with this department. ADC submitted evidence indicating that a quarter of its membership has worked at the NAC at least once. Additionally, ADC has counted approximately 100 contracts that its members have signed with the NAC since the early 1990s. ADC's evidence with respect to the other departments of the NAC, namely the dance, music and community departments, is not as ample as the evidence that was provided with respect to the English language theatre department. However, Alexandre Gazalé, witness for the NAC, indicated to the Tribunal that he is aware of ADC members who have worked at the NAC in departments other than English language theatre. The Tribunal accepts this evidence.

[210] Accordingly, the Tribunal finds that ADC has demonstrated a history of professional relations with the NAC such as to include all of its departments, with the exception of the French language theatre department, in any sector ADC will be granted.

*Geographic and linguistic considerations*

[211] ADC seeks to represent a nation-wide sector of designers. ADC's application makes no distinction on the basis of language. However, given APASQ's position, ADC argued at the hearing that language, and not geography, is the more significant criteria. As ADC stated, "communication is at the heart of design". However, in light of the Tribunal's analysis conducted under this heading in the previous sections of these Reasons, the Tribunal considers this question to have been decided. Notwithstanding the Tribunal's preference for nation-wide sectors, the Tribunal considers, in the present situation, that an appropriate sector is one composed of designers working in live performing arts productions, anywhere in Canada, with the exception of designers engaged in productions presented in the Province of Quebec and by the French language theatre department of the National Arts Centre.

*Conclusion regarding ADC's sector*

[212] After having considered all of the written and oral submissions presented by ADC and the intervenors, the Tribunal has determined that the sector suitable for bargaining is a sector composed of all set, costume, lighting and sound designers throughout Canada, who are independent contractors engaged by a producer subject to the *Status of the Artist Act*, within the live performing arts industry, with the exception of:

- (a) set, costume, lighting and sound designers engaged by a producer subject to the *Status of the Artist Act* in a production presented in the province of Quebec;
- (b) set, costume, lighting and sound designers engaged by the French language theatre department of the National Arts Centre.

*Is ADC representative of artists working in the sector?*

[213] ADC advised the Tribunal that it is an artists' association with a national mandate. This objective is clearly stated in the association's by-laws. ADC has recently strengthened its ability to carry out this national mandate, in part, as a result of this proceeding.

[214] In addition to the negotiation of contracts, ADC offers numerous services to its members, including mediation and legal services, RSPs and accident insurance as well as a bond procedure for certain members. It is also very active in the promotion of its members and the promotion of design as an art form, both nationally and internationally. As an example, the Tribunal notes the joint project ADC has undertaken with the Toronto Public Library.

[215] ADC's application for certification indicated that it represents approximately 155 designers of an estimated 200 independent professional contractors in the sector. At the hearing, ADC stated that its membership consists of 155 professional members, 13 apprentice members and 11 honorary members. ADC's members work in all areas of live performing arts, although the majority of them work in theatre. When engaged in a Canadian production, foreign designers will often join ADC.

[216] In its final submissions, ADC stated that it has the desire and the mandate to promote designers' economic interests across Canada. No other artists' association has come forward seeking to represent the interests of the designers in the sector that the Tribunal has found to be suitable for collective bargaining. The Tribunal therefore finds that the Associated Designers of Canada is the artists' association most representative of artists working in the sector.

*Decision regarding ADC's application for certification*

[217] For all these reasons, and in view of the fact that ADC's by-laws are in compliance with the requirements of paragraph 23(1) of the *Status of the Artist Act*, the Tribunal

**Declares** that the sector suitable for bargaining is a sector composed of all set, costume, lighting and sound designers throughout Canada, who are independent contractors engaged by a producer subject to the *Status of the Artist Act*, within the live performing arts industry, with the exception of:

- (a) set, costume, lighting and sound designers engaged by a producer subject to the *Status of the Artist Act* in a production presented in the province of Quebec;
- (b) set, costume, lighting and sound designers engaged by the French language theatre department of the National Arts Centre.

**Declares** that the Associated Designers of Canada is the association most representative of artists in the sector.

An order will be issued to confirm the certification of the Associated Designers of Canada to represent the said sector.

Ottawa, January 4, 2002

Robert Bouchard

David P. Silcox

Moka Case

## APPENDIX 1

The following is an unofficial translated version of the Agreement reached between the parties.

### AGREEMENT

BETWEEN **The Union des Artistes**, having its head office at 3433 Stanley Street, Montréal, Quebec, and duly represented in this matter by Pierre Curzi, President,

hereinafter the “**UDA**”

- and -

**L’Association des professionnels des arts de la scène du Québec (CSN)**, having its head office at 4874 de Brébeuf Street, Montréal, Quebec, and duly represented in this matter by David Gaucher, President,

hereinafter “**APASQ (CSN)**”

**WHEREAS APASQ (CSN)** is seeking certification for 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 and set design assistants and production assistants working in the province of Quebec and at the National Arts Centre in the areas of the performing arts, dance and variety entertainment***” in file No. 1310-95-0021-A of the Canadian Artists and Producers Professional Relations Tribunal, hereinafter the “**CAPPRT**”;

**WHEREAS THE UDA** is certified to represent **stage directors** pursuant to CAPPRT’s Decisions No. 024 dated December 30, 1997, and No. 027 dated July 24, 1998;

**WHEREAS THE UDA** is certified to represent puppet players and puppeteers as performers under Decision No. 017 dated August 29, 1996 (see pars. 19, 39 and 42 of the Decision);

**THE PARTIES AGREE TO THE FOLLOWING:**

- (a) The preamble is an integral part of this Agreement;
- (b) **APASQ (CSN)** will amend its application for certification in file No. 1310-95-0021-A of the CAPPRT to exclude stage directors and states that it is no longer seeking certification to represent stage directors in this file in recognition of the UDA's certification in this respect;
- (c) **APASQ (CSN)** recognizes that the duties of puppet designers, for which it is seeking certification in file No. 1310-95-0021-A of the CAPPRT, are limited to designing and making puppets and do not extend to operating the puppets with or without dialogue, which are the duties of puppet players and puppeteers already certified with the **UDA**;
- (d) **APASQ (CSN)** and the **UDA** recognize therefore that the same person may be affected by both the certification held by UDA with respect to puppet players and puppeteers and by the certification sought by **APASQ (CSN)** with respect to puppet designers insofar as the designer operates the puppet with or without dialogue;
- (e) **APASQ (CSN)** and the **UDA** agree to enter this agreement into file No. 1310-95-0021-A of the CAPPRT and to request that the CAPPRT take official notice of this Agreement.

**IN WITNESS THEREOF**, the parties signed at Montréal, on February \_\_\_\_, 2001

UNION DES ARTISTES

ASSOCIATION DES PROFESSIONNELS DES ARTS  
DE LA SCÈNE DU  
QUÉBEC  
(CSN)

“Pierre Curzi”  
Pierre Curzi, President

“David Gaucher”  
David Gaucher, President

## APPENDIX 2

The following is an unofficial translated version of the Agreement reached between the parties.

**DRAFT AGREEMENT  
BETWEEN  
National Arts Centre (NAC)  
and  
Professional Association of Canadian Theatres (PACT)  
and  
Association des professionnel-le-s  
des arts de la scène du Québec (APASQ)**

1. It is agreed that the jurisdiction sought for APASQ, and potentially the jurisdiction granted by the Canadian Artists and Producers Professional Relations Tribunal, does not cover NAC's English-language productions, co-productions and/or theatrical productions;
2. This Agreement applies only to PACT, the NAC and APASQ and for the sole purpose of clarifying the intended scope of the certification sought, and potentially granted by the Tribunal;
3. This Agreement should not be interpreted as a waiver of the professions APASQ is seeking to represent and the sector defined in APASQ's application or any other issue relating to its application for certification.

Signed at Ottawa, on May 22, 2001

Signed at Montréal, on June 15,  
2001

“Sophia Trottier”  
**Representative of the NAC**

“Monique Corbeil”  
**Representative of APASQ**  
Executive Director

Signed at Toronto, on April 27, 2001

“Pat Bradley”  
**Representative of PACT**  
Executive Director

## APPENDIX 3

The following is an unofficial version of the Agreement reached between the parties.

UNDERSTANDING OF JUNE 28, 2001

**BETWEEN:**

**CANADIAN ACTORS' EQUITY ASSOCIATION**  
(“CAEA”)

**and**

**ASSOCIATION DES PROFESSIONNELS DES ARTS  
DE LA SCÈNE DU QUÉBEC**  
(“APASQ-CSN”)

**WHEREAS** the CAEA is permitting APASQ-CSN to assume a certain limited jurisdiction as specified in this Understanding;

The parties agree as follows:

- 1- Schedule “A” and Schedule “B” are agreed to and are incorporated into this Understanding.
- 2- Subject to paragraph 3 below, CAEA will continue to represent all independent contractors covered by its certification order.
- 3- APASQ-CSN will represent production stage managers, stage managers, assistant stage managers, stage management apprentices, assistant stage directors and assistant stage choreographers who are working on exclusively French language productions when performed in the Province of Quebec or for the French Theatre Department at the National Arts Centre.

FOR CAEA:

FOR APASQ-CSN:

“Susan Wallace”

“David Gaucher”



Executive Director

President

### **SCHEDULE “A”**

Tribunal File No. 95-0001-A

Canadian Actors’ Equity Association (CAEA) agrees that if Association des professionnels des arts de la scène du Québec (APASQ-CSN) is certified by the Tribunal in Tribunal File no. 1310-95-0021-A to represent the below mentioned independent contractors who are currently covered by the certification order granted to CAEA that CAEA will add a third exception to its certification order in the above file as follows:

- “(c) production stage managers, stage managers, assistant stage managers, stage management apprentices, assistant stage directors and assistant stage choreographers covered by the June 28, 2001 Understanding between Canadian Actors’ Equity Association and Association des professionnels des arts de la scène du Québec (APASQ-CSN)”

### **SCHEDULE “B”**

Tribunal File No. 1310-95-0021-A

Association des professionnels des arts de la scène du Québec (APASQ-CSN) agrees that if it is certified by the Tribunal in the above file that the sector description in its certification order shall be subject to the certification order granted to the Canadian Actors’ Equity Association (CAEA) by the Tribunal in Decision No. 010 as modified by the Understanding between CAEA and APASQ-CSN dated June 28, 2001.