

Canadian Artists and Producers
Professional Relations Tribunal



CANADA

Tribunal canadien des relations
professionnelles artistes-producteurs

Ottawa, March 4, 2003

File No.: 1310-96-0026A

Decision No. 041

In the matter of the application for certification filed by the Federation consisting of the Association des professionnelles et des professionnels de la vidéo du Québec (APVQ) and the Syndicat des techniciens du cinéma et de la vidéo du Québec (STCVQ)

Decision of the Tribunal:

The application for certification is granted in modified form.

Place of hearing: Montréal, Québec

Dates of hearing: April 2 and August 21, 22 and 23, 2002

Quorum: Robert Bouchard, Presiding Member
David P. Silcox
Moka Case

Appearances: For the Federation consisting of the Association des professionnelles et des professionnels de la vidéo du Québec and the Syndicat des techniciens du cinéma et de la vidéo du Québec:
Daniel Payette, Michel Charles Major.

For the Association des professionnels des arts de la scène du Québec:
Mario Campbell.

For the Québec District Council Directors Guild of Canada, la Société professionnelle des auteurs et des compositeurs du Québec, the Writers Guild of Canada and the Directors Guild of Canada:
Colette Matteau.

For Cogeco Radio-Télévision Inc. (TQS):
Michel Towner and Sylvain Dubreuil.

For the National Film Board of Canada:
Raymond Piché and Nadine Perron, Department of Justice Canada, Guy Gauthier.

For the Canadian Broadcasting Corporation:
Thierry Bériault and Serge Laverdière.

For the Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada:
Sylvain Bisailon.

For the Syndicat général du cinéma et de la télévision:
Louise Murchison

Table of contents

I	Background	paras 1 to 17
II	Preliminary issues	para. 18
	<i>Positions included in the sector proposed in the DGC's application for certification</i>	paras 19 to 26
	<i>Analysis and conclusion concerning the positions included in the DGC's application for certification</i>	paras 27 to 47
	<i>Withdrawal of agreement by the NFB regarding certain professions</i>	paras 48 and 49
	<i>Status of the NFB witness, Guy Gauthier</i>	para. 50
III	Evidence	
	<i>Evidence presented by the parties concerning the suitability of the sector and the representativity of the two associations that constitute the Federation</i>	paras 51 to 68
	<i>Evidence adduced by the Federation and intervenors concerning the professions in the proposed sector</i>	paras 69 to 242
	<i>Evidence of Guy Gauthier</i>	paras 243 to 246
	<i>Evidence of Jacques Godbout</i>	paras 247 to 250
	<i>Evidence of Claude Bonin</i>	paras 251 to 257
IV	Issues	para. 258
V	Status of the Artist Act	para. 259

VI Parties' submissions

Submissions of the Federation on the suitability and representativity of the proposed sector paras 260 to 268

The Federation's submissions concerning the professions in the proposed sector paras 269 to 282

The NFB's submissions paras 283 to 294

VII Analysis and conclusion

Agreements concluded by the parties para. 295

Is the Federation adequately constituted? para. 296

The "cinema or film" approach and the "television" approach paras 297 to 299

Analytical criteria for determining what positions in the proposed sector are covered by the Act paras 300 to 307

Analysis of the evidence concerning the professions in the proposed sector paras 308 to 423

Professions covered by the Act para. 424

Is the proposed sector suitable for bargaining? paras 425 to 432

History of professional relations paras 433 and 434

Relevant linguistic and geographical criteria paras 435 to 439

Conclusion regarding the bargaining sector para. 440

Is the Federation representative of the artists in the sector? paras 441 to 443

Do the by-laws of the two associations constituting the Federation meet the requirements of section 23 of the Act? paras 444 to 447

VIII Decision para. 448

Reasons for decision

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

I

Background

[1] This decision concerns an application for certification filed by the Federation consisting of the Association des professionnelles et des professionnels de la vidéo du Québec and the Syndicat des techniciens du cinéma et de la vidéo du Québec (hereinafter “the Federation” or “the applicant”) under section 25 of the *Status of the Artist Act* (S.C. 1992, c. 33, hereinafter the “*Act*”). The application was heard by the Canadian Artists and Producers Professional Relations Tribunal (the “Tribunal”) in Montréal on April 2 and August 21, 22 and 23, 2002.

[2] On November 7, 1996, the Association des professionnelles et des professionnels de la vidéo du Québec (the “APVQ”) filed an initial application for certification to represent a sector composed of:

[TRANSLATION]

all production directors, assistant production directors, production administrators, production co-ordinators, production secretaries, floor directors, assistant directors and/or script assistants, production assistants, crowd animators, drivers, technical directors, directors of photography, lighting directors, lighting designers, lighting consultants, lighting technicians, lighting managers, lighting console operators, chief electricians, electricians, cameramen, C.O.S.S. (camera operated through specialized system) cameramen, assistant cameramen, sound men, sound mixers, sound technicians, sound assistants, boom men, sound effects technicians, grips, riggers, generator operators, maintenance technicians, installation technicians, assistant technicians, still photographers, image controllers (CCU), video recorders, slow motion operators, cue prompter operators, videographers, switchers, ISO switchers, projectionists, computer graphics special effects technicians, crane operators, post-production directors, off-line editors, in-line editors, sound editors, assistant editors, sound mixers, set co-ordinators, set designers, propsman specialists, propsman crewleaders, propsmen, key grips, grips, painters, scenic painters, carpenters, special effects technicians, make-up designers, supervising make-up artists, make-up artists and special effects make-up artists and make-up assistant, hair stylist designers, chief hairdressers, hairdressers, assistant hairdressers, wig-makers, prosthetic make-up technician, puppet designers, puppet handlers, costume designers, stylists, costumers, assistant costumers and wardrobe mistresses working in the province of Quebec in the following fields: video, television and commercials recorded in any medium other than film.

[3] The APVQ asked the Tribunal to adjourn its examination of the case because the majority of the professions included in the sector belonged to professional categories that had not yet been defined by regulation in accordance with subparagraph 6(2)(b)(iii) of the *Act*. The *Professional Category Regulations*, SOR/99-191 (the “*Regulations*”) were

promulgated on April 22, 1999. In October 1999, the APVQ amended its application to take into account the professional categories now included in the *Regulations*. A notice of the amended application (No. 1999-1) was published in the *Canada Gazette* on December 4, 1999, in *La Presse* and in the *Globe and Mail* on December 8, 1999, in *The Montreal Gazette* on December 11, 1999, in the *Info-fax* of the Canadian Conference of the Arts on December 1, 1999, in *Acadie Nouvelle* and *Eau vive* on December 9, 1999, and in the *Franco Albertain*, *La Liberté* and *L'Express* on December 10, 1999. The notice set January 21, 2000, as the deadline for the filing of declarations of interest by the artists, artists' associations and producers.

[4] The following artists' associations indicated their interest in the application:

- the Writers Guild of Canada ("WGC"),
- the Société professionnelle des auteurs et des compositeurs du Québec ("SPACQ"),
- the Union des artistes ("UDA"),
- the Directors Guild of Canada Québec District Council ("DGCQDC"),

and the following producers indicated their interest:

- the National Film Board of Canada ("NFB"),
- Cogeco Radio-Télévision Inc. ("CRTI").

[5] The Tribunal also received three other applications. Le Syndicat général du cinéma et de la télévision ("SGCT") asked to intervene as an interested party in accordance with subsection 19(3) of the *Act*. The Tribunal granted this application on February 28, 2000, and gave the SGCT limited participation rights. Moreover the Tribunal accepted the Association des professionnels des arts de la scène du Québec's ("APASQ") intervention although its declaration of interest reached the Tribunal a few days after the deadline indicated in the public notice, because there was a potential overlapping in the sectors proposed by the Federation and APSAQ. The Canadian Broadcasting Corporation ("CBC") asked the Tribunal to extend the deadline indicated in the notice so that it could file its intervention. The Federation objected to the application but, after considering the reasons justifying the application, the Tribunal allowed the CBC to file its intervention.

[6] On January 18, 2000, the APVQ again asked the Tribunal to adjourn its consideration of the application so it could undertake discussions with another artists' association that had expressed an interest in joining the APVQ in seeking certification.

[7] On March 26, 2000, the Syndicat des techniciens du cinéma et de la vidéo du Québec ("STCVQ") adopted a resolution at its general meeting to seek a merger with the APVQ and to create a federation for the purposes of a joint application for certification for audiovisual works in all media and joint negotiation of scale agreements with the producers subject to the *Act*. The resolution dated March 26, 2000 was ratified by the executive board of the STCVQ on July 3, 2000.

[8] On July 7, 2000, the Tribunal received a reamended application for certification for the Federation consisting of the APVQ and the STCVQ. The Federation asked to be certified to represent in Québec a sector composed of:

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

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

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

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

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

[9] The Tribunal published a new notice (No. 2000-2) in the *Canada Gazette* on August 19, 2000, in *La Presse*, the *Globe and Mail* and the *Voix Acadienne* on August 23, 2000, in *Acadie Nouvelle* and *Eau vive* on August 24, 2000, in the *Gaboteur*, the *Franco Albertain*, *Le Courrier* and *La Liberté* on August 25, 2000, in *L'Express* on August 22,

2000, as well as in *Express du Pacifique* on August 19, 2000. The notice set September 29, 2000, as the deadline for the filing of declarations of interest by artists, artists' associations and producers. The notice also mentioned that the individuals and organizations that had filed an intervention following notice No. 1999-1 had to also submit to the Tribunal any additional comments concerning the reamended application by the same date.

[10] The Tribunal received additional comments from some of the intervenors but received only one new intervention. The International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States and Canada ("IATSE") applied to intervene as an interested party under subsection 19(3) of the *Act*. The Tribunal granted IATSE's application on November 3, 2000, and granted it a limited right to intervene. The following intervenors were accordingly included in the docket for the reamended application: the WGC, SPACQ, the UDA, APASQ, the DGCQDC, the NFB, the CRTI, the SGCT and IATSE. The American Federation of Musicians of the United States and Canada ("AFM") asked the Tribunal to keep it informed of the progress of the proceedings.

[11] Artists' associations may intervene as of right with respect to any issue relating to the definition of a sector and the representativity of the Federation. In accordance with subsection 26(2) of the *Act*, producers and interested parties may intervene as of right with respect to any issue relating to the definition of the sector but must obtain the permission of the Tribunal to intervene on the issue of representativity. No party requested permission to intervene on this issue.

[12] The Tribunal held a pre-hearing conference on April 2, 2001. A hearing took place on April 2, 2002, and a second pre-hearing conference took place on April 3, 2002. Several hearing dates were decided on in 2001 and 2002 but were postponed at the request of the Federation. At the second pre-hearing conference, the Tribunal set August 21, 22 and 23, 2002, as the mandatory dates for the hearing of the application.

[13] At the second pre-hearing conference, the Federation withdrew the following professions from the sector for which it sought certification: safety co-ordinator, transportation co-ordinator, production co-ordinator, production secretary, production assistant, caterer, driver, airwave transmission operator and assistant co-ordinator. The NFB, the CBC and the CRTI indicated that they would not contest the following professions: make-up designer, hairstylist designer, director of photography, cameraman (including the steady-cam, but not the baby-boom or the camera operated through a specialized system [C.O.S.S.] for the cinema approach only), costume designer, puppet designer, chief set designer, off-line editor (film medium only and not for video or television medium).

[14] During 2000 and 2001, several of the intervenors concluded agreements with the Federation. The agreements are as follows:

1. Agreement concluded between the APVQ and the UDA dated January 18, 2000, wherein the APVQ acknowledges that its application for certification does not include persons in the position of "set director"; this agreement

was ratified by the executive board of the STCVQ. The Federation asked the Tribunal to take official notice of the agreement on April 2, 2002.

2. Agreement concluded between the APVQ, the STCVQ and the WGC dated April 2, 2001, wherein the parties agree that the Federation's application for certification does not intend to cover persons who conceptualize or write or contribute to the conceptualization or to the writing of a screenplay or of a text and specifically does not intend to cover any of the persons already covered by the certification granted to the WGC. The Federation asked the Tribunal to take official notice of the agreement on April 2, 2002.
3. Agreement concluded between the APVQ, the STCVQ and SPACQ dated March 30, 2001, wherein the parties agree that the sector which the Federation is seeking to represent does not include persons who are authors, composers or author-composers of musical works, including any person covered by the certification granted to SPACQ on May 17, 1996. The Federation asked the Tribunal to take official notice of the agreement on April 2, 2002.
4. Agreement concluded between the APVQ, the STCVQ and APASQ dated May 30, 2001, wherein the parties agree that the word "set design" used in the wording of the sector proposed by the Federation must not be interpreted as referring to persons whose creative work is intended for the stage, especially the artists covered in APASQ's application for certification. The Federation asked the Tribunal to take official notice of the agreement on April 2, 2002.
5. Agreement concluded between the APVQ and the DGCQDC dated January 18, 2000, wherein the parties agree that the application for certification does not intend to cover the positions of "art director" or "production designer," and that the APVQ will withdraw that part of its application for certification which concerns the position of "art director." This agreement was ratified by the board of directors of the STCVQ. The DGCQDC asked the Tribunal to take official notice of the agreement in a letter dated October 27, 2000. The Federation asked the Tribunal to take official notice of the fact on April 2, 2002.

[15] On August 15, 2002, the Federation informed the Tribunal that it was withdrawing other positions from the proposed sector and requested that the position title "motorized projector operator" be amended to read "motorized projector programmer/operator". The sector it seeks to represent is now as follows:

[TRANSLATION]

The Federation is seeking certification to represent in Quebec a sector composed of all professional independent contractors engaged by a producer subject to the *Status of the Artist Act* who practise professions that contribute directly to the creative aspects of the production in all languages, in all audiovisual productions,

in all means and in all mediums, including film, television, video, multimedia and the recording of commercials. These functions include:

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

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

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

(4) editing and continuity, in particular the following positions: floor director – excluding dubbing directors–, production assistant, location manager, script-clerk, script assistant, switcher, ISO switcher, image controller (CCU), video credits designer, editor, off-line editor, in-line editor, sound editor, sound mixer, assistant editor, videographer.

[16] On August 21, 2002, the CBC and the CRTI informed the Tribunal that they would no longer play an active role in the proceedings or adduce any evidence, nor did they have any other submissions to make. However, they requested that they be kept informed of the progress of the case and that they be provided with copies of the documents sent to the parties. On the other hand, the NFB informed the Tribunal that it would not contest the positions relating to television and that its evidence would be limited to “film” positions. The DGC filed a preliminary motion and withdrew from the case following the Tribunal’s decision. The Tribunal’s Reasons concerning this motion are set out below.

[17] Consequently, only the Federation and the NFB called witnesses and made submissions at the hearing. IATSE did not make any oral submissions.

II

Preliminary issues

[18] The Tribunal must dispose of three objections made by the Federation. The first concerns certain positions included in the sector proposed by the Directors Guild of Canada (“DGC”) in its application for certification. The Tribunal had previously informed the parties that it would deal with this issue at the beginning of the hearing and that written reasons would follow. The second objection concerns the NFB’s request to withdraw its undertaking not to contest two positions and the third concerns the issue as to whether the witness Guy Gauthier will be considered an expert witness by the Tribunal and what his area of expertise will be.

Positions included in the sector proposed in the DGC’s application for certification

[19] On June 21, 2002, the DGC filed an application for certification covering a sector that includes all the professional independent contractors hired in all the productions by a producer subject to the *Status of the Artist Act* as directors, first assistant directors, second assistant directors and third assistant directors with the exception of the artists covered by the certification issued by the Tribunal to the Association des réalisateurs et réalisatrices du Québec on December 30, 1997.

[20] The Tribunal informed the DGC that its application for certification competed in part, albeit only in Québec, with that of the Federation with respect to the positions of first assistant director, second assistant director and third assistant director. The “competing application” was filed after the September 29, 2000 deadline prescribed in Public Notice No. 2000-2. The Federation objected to the DGC being permitted to proceed by including in its proposed sector positions for which it was seeking certification.

[21] The Tribunal heard the parties at the beginning of the hearing. Essentially, the DGC submits that subsection 25(4) of the *Act* gives the Tribunal discretion to permit the filing of a competing application when another application is pending. In the alternative, the DGC maintains that the Federation does not exist because there has not yet been a merger between the two associations and that there exists no genuine memorandum of agreement between them. Consequently, the Tribunal is not “seized” with an application for certification and the DGC can accordingly file its application at any time under subsection 25(1) of the *Act*.

[22] The DGC also submits that after two years the merger of the two associations has not yet taken place and, even though a Federation might be created in 2003, this matter is not yet settled because the members of both associations must accept the “Federation’s” constitution and regulations. In support of its argument, the DGC referred to the decision in *The Writers’ Union of Canada and the League of Canadian Poets* (hereinafter *TWUC*), 1998 CAPPRT 028, where the Tribunal refused to certify a federation of two associations because they had not made their relationship official.

[23] The DGC introduced three sworn statements with attachments made by Fortner Anderson, talent agent; Robert Ditchburn, a director and assistant director; and Leah Bazian, the DGC's Associate National Executive Director.

[24] The Federation argues that the competing application is inadmissible because it was made after the deadline and that the DGC has already benefited from an extension of the deadline to October 16, 2000, to submit its comments or a competing application. According to the Federation, the deadline set in the public notice is designed to avoid any delay in the processing of applications for certification caused by the filing of competing applications that seek to gain time for raiding operations. The Federation also submits that subsection 25(4) of the *Act* must be given a strict interpretation because of the intent of Parliament and in light of subsection 19(1) of the *Act*, which encourages the Tribunal to act expeditiously. Furthermore, in the Federation's view, the DGC has not offered any valid reason to explain its delay in acting.

[25] The Federation rejects the DGC's argument that the Federation does not exist and notes that a memorandum of agreement between the two associations has been filed as part of the record. Furthermore, the Federation submits that the DGC's application is inadmissible because of the agreement concluded between the DGC and the APVQ on January 18, 2000, and ratified by the STCVQ on March 18, 2002, wherein the DGC agrees not to contest the representativity of the Federation, and where the Federation agrees not to apply for certification for the position of art director.

[26] In its reply, the DGC requested that the Tribunal exercise the discretionary power conferred upon it by subsection 25(4) of the *Act* in order to permit it to file its competing application outside the time prescribed in the notice announcing the application for certification.

Analysis and conclusion concerning the positions included in the DGC's application for certification

[27] The Tribunal is flexible with respect to its rules of procedure and at its hearings since such an approach is clearly mandated by subsection 19(1) of the *Act* which states as follows:

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

However, the Tribunal is of the view that it must not exercise its discretionary power lightly. In this case, the deadlines prescribed in the public notices are designed to provide certainty to applicants for certification concerning the intervenors they will have to face so that certain issues can be resolved well before the hearing. This is also true of competing applications. In the past, the Tribunal has extended the deadline indicated in a public notice in order to permit an individual or organization to file its intervention. In these cases, the

period of time that had elapsed was not long and there were serious reasons for the delay. The late filing caused little or no harm to the applicant seeking certification. In this case, the deadline expired on September 29, 2000, and the Tribunal has already extended the deadline for the DGC once, until October 16, 2000. Approximately 19 months elapsed before the DGC filed its application for certification.

[28] There is nothing in the evidence adduced by the DGC to convince the Tribunal that there were serious or exceptional reasons that justify extending the deadline to enable it to proceed with that part of its application that competes with the Federation's application. In fact, the statements of Mr. Fortner and Mr. Ditchburn refer to the desire of certain assistant directors to explore what the DGC can offer them on the professional level. Ms. Bazian, for her part, notes that lengthy discussions were required before the DGC was in a position to file its application for certification. Counsel for the DGC also explained to the Tribunal that the DGC required several months to determine who would make the application, the national council or one of the provincial councils. The Tribunal understands that these problems delayed the filing of the application and it also understands that some assistant directors might have preferred to be represented by the DGC but finds that these grounds do not justify extending the deadline. Consequently, the Tribunal will not exercise the discretionary power conferred upon it by subsection 25(4) of the *Act* to permit the DGC to proceed with its competing application. The first ground relied upon by the DGC is therefore rejected. If the Federation is certified and some artists in the sector subsequently wish to contest its representativity, the *Act* provides them with the means to do so.

[29] In the alternative, the DGC submits that the Federation does not exist because the merger between the two associations has not yet taken place and there is no real memorandum of agreement between them. As a result, it may file its application for certification at any time in accordance with subsection 25(1) of the *Act*. Before embarking on our analysis, it is useful to set out section 25:

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.

(2) An application for certification must include the membership list of the artists' association, a certified copy of its by-laws, and any other information required by the Tribunal.

(3) The Tribunal shall give public notice of any application for certification in respect of any sector without delay, indicating any period in which another application may

be made by any other artists' association, notwithstanding subsection (1), for certification in respect of that sector or any part of it.

(4) No application for certification in respect of a sector may be made, except with the consent of the Tribunal after expiration of the period indicated by the Tribunal in any public notice given pursuant to subsection (3).

[30] Under paragraph 25(1)(a), it is clear that if no other artists' association is certified for the sector and the Tribunal does not receive an application for certification, any association may then file an application to the extent that it is duly authorized to do so by its members. The Tribunal is effectively seized of the Federation's application, but it would be appropriate to consider whether the Federation is properly constituted.

[31] Section 5 of the *Act* provides that an artists' association also includes federations of associations but the *Act* is silent as to what a "federation" is. The Tribunal briefly considered this question in *TWUC, supra*, where the facts were not in dispute. It would accordingly be appropriate to revisit this question. To this end, the Tribunal will look at the applicable principles of labour law, as directed in paragraph 18(a) of the *Act*.

[32] The provisions of the *Canada Labour Code* [S.C. 1985, c. L-2] (the "*Code*") could be useful. We note that the *Code* does not include the concept of a federation of unions. However, section 32 provides as follows:

32. (1) Where two or more trade unions have formed a council of trade unions, the council so formed may apply to the Board for certification as the bargaining agent for a unit in the same manner as a trade union.

(2) The Board may certify a council of trade unions as the bargaining agent for a bargaining unit where the Board is satisfied that the requirements for certification prescribed by or pursuant to this Part have been met.

(3) Membership in any trade union that forms part of a council of trade unions is deemed to be membership in the council of trade unions.

(4) Where a council of trade unions is certified by the Board as the bargaining agent for a bargaining unit,

(a) the council of trade unions and each trade union forming the council of trade unions is bound by any collective agreement entered into by the council of trade unions and the employer concerned; and

(b) this Part applies, except as otherwise provided, as if the council of trade unions were a trade union.

[33] The decisions of the Canada Labour Relations Board [now the Canada Industrial Relations Board] (the "Board") may also serve as a guide. Thus, the following extract from the decision in *Canadian Pacific Express and Transport*, [1988] CLRB (Quicklaw) No. 682, is interesting in the instant case:

For the purposes of this application, where the status of the Council is not in dispute, we are prepared to accept that a council of trade unions must at least meet the same minimum requirements that a trade union has to meet, i.e. file documents showing that it has been formalized to the extent that it is regulated by some form of constitution. The very wording of section 130(1) [now 32(1)] requires that a council of trade unions be made up of two or more trade unions. The Board must surely then satisfy itself that all of the trade unions that are part of a council of trade unions which is making application under section 130(1) [now 32(1)] are, in their own right, trade unions within the meaning of the Code.

It makes sense that organizations which could not obtain trade union status on their own should not be permitted to obtain bargaining rights indirectly by becoming part of a council of trade unions. The Board must also satisfy itself that each and every trade union that is a member of a council of trade unions has authorized the council to *Act* on its behalf as a bargaining agent under Part V [now Part I] of the Code.

[34] Among the tests adopted in that decision, we note that each union belonging to the federation must be a union within the meaning of the *Code*. The federation must be governed by by-laws. Each union must establish that it has authorized the federation to act on its behalf as a bargaining agent.

[35] The Québec *Labour Code*, R.S.Q., c. C-27, does not contain an express provision that would make it possible for a federation of unions to be certified. A number of decisions of the Labour Tribunal have ruled that the definition of union in the Québec *Labour Code* could not include a federation (see, for example: *Québec v. Charbonneau*, D.T.E. 85T-952 (Sup. Ct.) and *Québec v. Munn*, (1984) D.T.E. 84T-328).

[36] The *Act respecting the professional status and conditions of engagement of performing, recording and film artists*, R.S.Q., c. S-32.1, does not contain any express provision that would make it possible to certify a federation of artists' associations. However, the *Act respecting the professional status of artists in the visual arts, arts and crafts and literature and their contracts with promoters*, R.S.Q., c. S-32.01, provides for the certification of groupings of associations and sets out the following requirements in section 13:

13. No group shall be recognized unless it meets the following requirements:

- 1° it was established to achieve, within a particular field, the objectives set out in section 25;
- 2° it has adopted a by-law determining, for the purposes of this *Act*, which functions shall be assumed by its own governing bodies and which shall be assumed by the governing bodies of the associations forming part of the group;
- 3° only professional members of the associations forming part of the group have the status of professional members of the group;
- 4° the by-laws of the group or the by-laws of the associations forming part of the group, depending on the determination made pursuant to paragraph 2, meet the requirements set out in section 12.

The Commission de reconnaissance des associations d'artistes et des associations de producteurs ("CRAAAP") has yet to render a decision on an application for certification made by a federation of artists' associations.

[37] The *Labour Relations Act, 1995*, S.O. 1995, c. 1, Schedule A, includes in the definition of union the concept of a certified council of unions. This is defined as follows in section 1:

"certified council of trade unions" means a council of trade unions that is certified under this *Act* as the bargaining agent for a bargaining unit of employees of an employer; ("conseil de syndicats accrédité")

...

"council of trade unions" includes an allied council, a trades council, a joint board and any other association of trade unions; ("conseil de syndicats")

[38] The Ontario Act also contains the following specific provisions in section 12:

12. (1) Sections 7 to 15, 126 and 128 apply with necessary modifications to an application for certification by a council of trade unions, but, before the Board certifies such a council as bargaining agent for the employees of an employer in a bargaining unit, the Board shall satisfy itself that each of the trade unions that is a constituent union of the council has vested appropriate authority in the council to enable it to discharge the responsibilities of a bargaining agent.

(2) Where the Board is of opinion that appropriate authority has not been vested in the applicant, the Board may postpone disposition of the application to enable the constituent unions to vest such additional or other authority as the Board considers necessary.

(3) For the purposes of sections 7 and 8, a person who is a member of any constituent trade union of a council shall be deemed by the Board to be a member of the council.

[39] In those cases where the Ontario Labour Relations Board has had to adjudicate applications for certification made by federations of unions, it has required the applicants to establish, primarily by means of documents, that they meet the requirements in section 12, namely, that the members of the federation are unions within the meaning of the *Act* and that they have authorized the federation to act as their bargaining agent (see, for example: *Ascot Millwrighting Ltd.*, [1980] OLRB Rep. Apr. 399, and *Courtland Electric Ltd.*, [1978] OLRB Rep. Nov. 979).

[40] As indicated above, the Tribunal expressed an opinion on the issue in *TWUC, supra*, where the evidence established that the associations did not have any official document showing the relationship between them:

[10] No further details of the relationship between the two organizations were provided until the hearing of the application on September 10, 1998 and until that date the Tribunal treated the application as being made on behalf of the two organizations. However, for the purposes of certification, it is necessary for the

Tribunal to satisfy itself that the applicant is either "an artists' association" or a "federation of artists' associations".

...

[12] The Tribunal is satisfied that, independently, the by-laws of TWUC and LCP each comply with these prerequisites. The Tribunal was informed, however, that there is no formal documentation that sets out the relationship between the two organizations. It is thus not clear how membership decisions concerning the conduct of collective bargaining would be taken, and in particular, how ratification votes would be conducted.

...

[15] From the testimony given, it is clear that the relationship between TWUC and LCP is not at this time sufficiently formal to constitute a "Federation of artists' associations" within the meaning of the *Status of the Artist Act*. The Tribunal is of the view that to constitute a federation, the applicants would have to formalize their relationship clearly and develop a constitution that would regulate their activities as a federation.

[41] In this sense, the requirements adopted by the Tribunal are similar to those adopted in the jurisdictions to which reference has been made above. There appears to be consensus concerning three requirements: the members of a federation must be associations/unions within the meaning of the *Act*, they must have duly authorized the federation to represent them as their bargaining agent and they must have agreed on a framework for the management of their relationship within the federation.

[42] It is not necessary for two associations to be merged into a single legal entity in order to make an application for certification. A federation may consist of two separate associations. There is nothing to prevent these associations from merging at a later date. If they do, they would have to apply to the Tribunal to vary their certification order accordingly.

[43] Although the documents filed with the amended application seem to indicate that the two associations hope to merge, both reports filed in support of the creation of the Federation are clear. If the merger does not occur, the parties agree to maintain the Federation on an ongoing basis for the purpose of negotiating scale agreements with federal producers as follows:

- The parties will negotiate together any scale agreement in their bargaining sector.
- The bargaining committee of the Federation will at all times consist of an equal number of members from each of the two associations in the Federation.
- Any scale agreement negotiated will be submitted for approval to the members of each of the two associations.

Moreover, the APVQ and the STCVQ introduced in evidence a copy of a special joint press release dated August 9, 2002 that sets out the agreement on the unification process that has been signed by both associations.

[44] It must be determined whether the documents attesting to the existence and operation of the Federation are sufficient to make it “a federation” within the meaning of the *Act*. To this end, the Tribunal finds that it must consider the following questions:

- are the members of the Federation artists’ associations within the meaning of the *Act*?
- is the Federation properly authorized to represent the two associations as a bargaining agent?
- have the associations agreed on a framework for the management of their relationship within the Federation?

[45] Section 5 of the *Act* defines an artists’ association as being “any organization, or a branch or local thereof, that has among its objectives the management or promotion of the professional and socio-economic interests of artists who are members of the organization.” The APVQ’s by-laws set out the following objectives:

[TRANSLATION]

the purpose of the association is promote the social, professional, economic and political interests of its members through collective action, which includes representing the interests of its members before the various decision-making bodies of the industry, negotiating and concluding a collective agreement, and it abides by the statements of principle of the CNTU. The Association acts without making any distinction with respect to race, sex, language, political or religious opinion or sexual orientation. The Association also aims to develop links of solidarity with other associations or unions;

while those of the STCVQ set out the following:

[TRANSLATION]

the STCVQ is an association of freelance technicians, salaried, self-employed or who provide their services through a commercial corporation, the purpose of which is to study, defend and develop the professional, economic, social and ethical interests of the freelance technicians involved in producing audiovisual documents or works by way of film, video, photographic or other processes. The STCVQ consists of two sections: the film section and the video section.

Each of the associations is an artists’ association within the meaning of the *Act*. The first question is answered in the affirmative.

[46] Each of the associations provided the Tribunal with extracts from their minutes that refer to the way in which the scale agreement must be negotiated and ratified. To the extent that the organization is a Federation, those are the main issues that are of interest to the Tribunal. In *TWUC, supra*, the two associations had not created any document that gave their relationship an official status or any memorandum setting out the negotiation process. The Tribunal finds that the Federation is able to negotiate on behalf of the two associations

with producers subject to federal jurisdiction if it is certified. The Tribunal also answers questions 2 and 3 in the affirmative.

[47] For these reasons, the second ground relied upon by the DGC in support of its motion is dismissed. The DGC may proceed with its application for certification, except for the part of the proposed sector that includes assistant directors in Québec.

Withdrawal of agreement by the NFB regarding certain professions

[48] The second objection relates to the request by the NFB to withdraw its undertaking not to contest the positions of set designer and assistant set designer. At the second pre-hearing conference, some producers, including the NFB, agreed not to contest some of the positions included in the sector proposed by the Federation. This agreement was not expressed in writing. The NFB asked the Federation to release it from this undertaking. The Federation strongly opposes this request.

[49] If the NFB expected to withdraw its consent, it should have done so prior to the hearing in order to give the Federation an opportunity to prepare adequately. The Tribunal notes that four months have passed since the second pre-hearing conference where this agreement was concluded. Such a last minute request is unacceptable.

Status of the NFB witness, Guy Gauthier

[50] The NFB had announced that Guy Gauthier would testify as an expert witness at the beginning of the hearing. When Mr. Gauthier testified, it was not indicated whether he should be considered an expert and in what field. Following his testimony, the Federation objected to his being declared an expert. Counsel for the NFB asserted that Mr. Gauthier had testified as an expert before the CRAAAP on several occasions on issues similar to those which we were considering. Given his experience in labour relations and in the field of human resources, the Tribunal accepts Mr. Gauthier's testimony as that of an expert in the field of labour relations and human resources only.

III

Evidence

Evidence presented by the parties concerning the suitability of the sector and the representativity of the two associations that constitute the Federation

[51] The Federation applied to be certified to represent in Québec a sector composed of all independent professional contractors engaged by a producer subject to the *Status of the Artist Act*, who practise professions that contribute directly to the creative aspects of the production in all languages, in all audiovisual productions, in all means and in all mediums, including film, television, video, multimedia and the recording of commercials. These functions include:

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

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

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

(4) editing and continuity, in particular the following positions: floor director – excluding dubbing directors–, production assistant, location manager, script-clerk, script assistant, switcher, ISO switcher, image controller (CCU), video credits designer, editor, off-line editor, in-line editor, sound editor, sound mixer, assistant editor, videographer.

[52] The Federation's first witness was Michel-Charles Major, President of the APVQ since its foundation in 1991. Before holding this position, Mr. Major had a career at Radio-Québec (now Télé-Québec) as a production administrator and production director as well as in private industry as an assistant director, production director and assistant producer. He explained that the recession of the late 1980s and declining fees led technicians to want to join forces, which is the reason why more than 150 technicians were present at the association's founding assembly.

[53] According to the figures provided by Mr. Major, the APVQ has 1,026 members grouped under 140 positions, some of which are covered by this application for certification. Most of the members work in Montréal although the association has approximately 40 members in the Québec City region and a few members in Matane and in the Outaouais. The APVQ's by-laws set out the criteria for admission. Applicants must be Canadian citizens or landed immigrants, reside in Québec, not be members of a union that has been declared to be a competitor by the general assembly of the association or have status as a permanent employee in one of the positions governed by the APVQ. Mr. Major testified that there was not and had never been a competing union. In order to be accepted as a member, it is also necessary to have accumulated 90 permits (120 for those claiming senior positions) on sets under APVQ jurisdiction in recognized positions in at least two productions.

[54] The association's by-laws provide for two classes of membership: members in good standing and permit members. Only members in good standing are entitled to vote. A permit member is defined as an individual or corporation to whom the association issues a work permit. Normally, a permit member enjoys the benefits of the provisions of the collective agreement and has the right to speak at meetings but may not vote.

[55] A member is recognized in his or her main position but may be recognized in another position if he or she accumulates the credits. A credit is defined as professional experience proven by an APVQ contract by a member wishing to be recognized in one or more positions with the jurisdiction of the APVQ. Ninety credits (120 for senior positions) are necessary for a person to be registered in the inventory. Mr. Major also explained that the APVQ recognizes STCVQ members as having accumulated the equivalent of 70 credits. However, a person must accumulate 20 in the video medium (videography).

[56] Mr. Major discussed the services that the 13 full and part-time employees of the association provide for members. These services include the negotiation and management of agreements, management of grievances and arbitrations, a Web site where users can determine whether members are available, the publication *Télésouffleur* and a list of members, which is published annually and distributed to producers, production companies and government of Québec representative offices abroad. Furthermore, the association has negotiated a collective insurance plan and a group retirement savings plan for its members. It also provides professional training programs and makes representations to government and other agencies whenever appropriate.

[57] The area of activity in which the APVQ is involved consists primarily of television series on videotape, television magazines, dramas (soap operas), sitcoms, variety shows and sports programs in which the language of production may be English or French. The APVQ has negotiated several collective agreements, including one in 1996 with the Association des producteurs de film et de télévision du Québec ("APFTQ"), which has since been renewed on October 15, 2001, for three years. Several agreements are also signed with producers on an *ad hoc* basis for specific broadcasts or series with subsidiaries of broadcasters such as JPL Productions for TVA and Point final for TQS. On cross-examination, Mr. Major confirmed that the APVQ does not currently negotiate with a producer subject to federal jurisdiction although the association has attempted, unsuccessfully, to negotiate with Marc Production (Radio-Nord).

[58] Mr. Major explained that the Québec market is unique in the world. It includes a pool of Francophone television watchers where the viewing rate is very high for the programs that are produced there, a phenomenon that does not exist in the English-language market, where the viewing rates for local productions are lower because of big-budget American productions.

[59] According to Mr. Major, the technicians in the APVQ form a homogenous group because they work on the same sets, with the same producers and in the same programs, under the same working conditions. According to him, this homogenous group forms a family and, if this were not the case, the final product would suffer.

[60] The APVQ and the STCVQ joined together primarily because of the new technologies that now make it possible to record for high definition television on digital media. There is a trend in the market to move toward video. A technician who had mostly worked in film now falls under the aegis of the APVQ, that is to say another union with new working conditions and a different insurance. The APVQ and the STCVQ accordingly decided to begin discussions with a view to merging. Mr. Major noted that even if the merger does not take place, the Federation will continue. Mr. Major informed the Tribunal that the APVQ was preparing to amend its by-laws. In fact, new by-laws, which do not require that the members be Canadian citizens or landed immigrants, were submitted at the last general assembly but have not yet been approved.

[61] The APVQ introduced in evidence a copy of the CRAAAP's decision dated July 12, 1993 which grants it recognition under the *Act respecting the professional status and conditions of engagement of performing, recording and film artists*, for the following sector:

[TRANSLATION]

People involved in the production of audiovisual documents or works using video recording processes in the following positions: director of photography, cameraman, baby-boom or steady cam cameraman, off-line editor, set designer, assistant set designer, costume designer, supervising make-up artist, make-up artist, make-up assistant, hair stylist designer, hairdresser, special effects make-up artist, sound editor, still photographer, computer graphics special effects technician, scenic painter and puppet designer; when such people are engaged in an artistic production within the scope of which they carry out their functions for which they are otherwise employees subject to certification granted under the *Labour Code*, R.S.Q., c. C-27, or by a collective agreement with the producer, they are excluded from the negotiating sector in respect of all the work performed.

[62] The Federation's second witness was Brian Baker, the STCVQ's Director General since April 2002. Mr. Baker is a chief lighting technician. He has held various positions within the STCVQ over the last ten years. He explained that the STCVQ has undergone various changes since the foundation of one of its predecessors, the Syndicat national du cinéma, in 1969.

[63] Mr. Baker testified that in the past there was only one kind of cinema in Québec, that produced by the NFB. When independent production began in the 1960s, artists and technicians felt the need to organize in associations to protect their rights. After a number of name changes, the STCVQ was established under the *Trade Unions Act*, R.S.Q., c. S-40 in 1987, but the constitution has recently been amended to bring it into line with that of the APVQ. In order to facilitate the merger, the STCVQ is now established under the *Companies Act*, Part III, R.S.Q., c. C-38. The new Letters Patent were introduced in evidence.

[64] Mr. Baker asserted that the STCVQ has 2,400 members but pointed out that the number changes from day to day. The association is growing. It has 600 active permit members. The criteria for membership in the STCVQ are similar to those for the APVQ. They are based on experience and established by each department. In order to become a member, it is necessary to have 90 days of experience on two different kinds of projects (*e.g.* feature-length film or a television series); in some departments 150 days of experience are

required. The experience acquired with the APVQ is counted but 20 days of experience on an STCVQ project are required. The association requires that each person wishing to work on a set take a three-day general course. For certain positions where safety issues are important, the association requires that a person take a basic course in electricity.

[65] The STCVQ is present in all kinds of film: feature-length, television series made on film, advertising and documentaries. The members work in both languages but increasingly in English because American producers are coming to Montréal to make films. Most of the members are located in Montréal although a few are in Québec City. The association represents members in 90 positions divided into 14 departments; the departments are undergoing substantial change because of the technological changes and changes in work methods caused by the influence of American films. Mr. Baker noted that in Québec the organization of labour is different than it is in the rest of Canada and in the United States. The differences lie in the control room and support on the set. The STCVQ has been recognized by the CRAAAP in the field of cinema (film medium) for 16 positions.

[66] Mr. Baker confirmed Mr. Major's testimony concerning the merger. He noted that the associations were attempting to integrate their professional development and their group insurance programs.

[67] The STCVQ negotiated a first collective agreement with the APFTQ in 1974, which has always been renewed, and the parties are currently negotiating a renewal of the last agreement, which was signed in 1996. Mr. Baker pointed out that in the 1970s, the association had unsuccessfully attempted to negotiate with the NFB. The NFB sometimes engages the services of directors of photography and film editors.

[68] The STCVQ has 16 employees. The organization is a member of, among others, the Institut national de l'image et du son, the Conseil québécois des ressources humaines en culture, and the Comité aviseur sur film en format géant. Besides the group retirement savings plan and the group insurance, services to members include a members' directory and a Web site that shows members' availability. The association promotes its members in North America. Mr. Baker stated that a million dollars has been invested in their professional development program over the last four years. Producers have also invested money in the professional development program. This year the STCVQ will be offering over 50 courses. The members of the APVQ are included in their program this year.

Evidence adduced by the Federation and intervenors concerning the professions in the proposed sector

[69] Most of the evidence adduced by the Federation was documentary evidence including very detailed work descriptions for the film trades prepared by the consulting firm of Éduconseil at the request of the STCVQ; an expert opinion describing the positions in the field of television prepared by Lucien Létourneau at the request of the APVQ; and 57 affidavits made by persons holding various positions in the proposed sector. Three people testified on behalf of the Federation concerning certain positions included in the proposed sector: Benoît Mélançon, Lucien Létourneau and Stéphane Bourdeau. The NFB also called three witnesses: Guy Gauthier, Jacques Godbout and Claude Bonin. Furthermore, the NFB

filed in evidence an expert opinion prepared by Claude Bonin, in which he comments on the work descriptions prepared by Éduconseil and expresses his opinion as to whether the positions contribute directly to the creative aspects of a production. The Tribunal has carefully reviewed all the documentary evidence and has summarized the essential aspects for each of the professions in the proposed sector.

Assistant director, first assistant director, second assistant director and third assistant director

[70] An assistant director or first assistant director is responsible for planning and co-ordinating all the activities related to the preparation and the filming, not only in organizational and technical terms but also in artistic terms. He or she works closely with the director and discusses the production's artistic approach with the director as well as with the heads of the other departments. In co-operation with the third assistant director, the individual ensures that the background performers rehearse. If necessary, this person may adjust the positioning of these same performers.

[71] Mr. Bourdeau, a witness for the Federation, has been a member of the APVQ and the STCVQ for 12 years and usually provides his services as a first and second assistant director. According to Mr. Bourdeau, beyond the logistical task of preparing schedules, the first assistant director must go through the script and assess the requirements in terms of actors, background performers, make-up and so on. It is somewhat like being the foreman at a construction site. The first assistant director is on the set and ensures that the contributions of all the departments, lighting, make-up, costumes, are ready at the very moment when the director shouts "action". The person must manage the set and ensure the *mise-en-scène* of the background performers and other roles in order to relieve the director of certain tasks so that he or she can devote more time to the main actors.

[72] The expert witness for the NFB, Claude Bonin, does not contest the work description submitted by the Federation. However, in his opinion, the assistant director is not involved on the artistic level and does not contribute directly to the creative aspects of the production; rather he or she collaborates on the production. He testified that assistant directors, especially first assistants, organize the work plan. During filming, the assistant director also ensures that the work plan becomes a reality within the prescribed deadlines.

[73] In his testimony, Mr. Major notes that the position of first assistant director does not exist in television.

[74] The second assistant director assists the first assistant in performing the tasks related to the planning and co-ordination of filming. When a production is being filmed, this person is responsible for meeting with and preparing the actors with respect to their costumes, hairstyles and make-up. He or she has discussions with the first assistant director or with the director concerning the characteristics required by the individuals acting as background performers. According to Mr. Bourdeau, while the first assistant director is like a foreman on the set, the second assistant director works more behind the scenes. He or she prepares all the people before bringing them to the first assistant so that filming can begin.

[75] The third assistant director helps the first and second assistants to perform their duties. He or she is responsible for meeting with and preparing (costumes, hairstyles and make-up) the background performers for the shoot. Mr. Bourdeau's testimony confirms that the duties of the third assistant are somewhat the same as those of the second assistant in terms of logistics in that he or she works behind the scenes dealing with matters related to the background performers.

[76] Mr. Bonin does not dispute the work descriptions filed by the Federation for the second or third assistant but is of the opinion that these persons do not contribute directly to the creative aspects of the production.

Director of photography

[77] The director of photography is responsible for the pictures in a film production. He or she discusses the director's artistic and stylistic vision of the film with the director and participates in the development of the artistic and stylistic concept of the film. He or she works with the director, the art director, the visual designer, the first assistant director and others. He or she must accordingly display talent and sensitivity in order to express the director's creativity through the way the film is photographed as well as his or her own artistic vision. The inclusion of this position is not contested by the producers involved in this matter.

Camera operator

[78] The camera operator works closely with the director and the director of photography and contributes to converting the director's artistic vision into pictures. He or she discusses the project with the director of photography. He or she also discusses camera tests with the director of photography and the director. These duties are reiterated in Maurice Roy's affidavit. Mr. Roy has participated in a number of television and film productions throughout his 36-year career.

[79] According to Mr. Bonin, a camera operator does not work "closely" with the director and the director of photography and does not "contribute" to converting the director's artistic vision into pictures. Rather, he or she films in accordance with the style determined by the director of photography and the director. The person places or moves the camera in response to the needs of the director of photography and not those of the director. He or she may suggest things but will suggest them to the director of photography and later to the director. The camera operator does not contribute directly to the creative aspects of the production.

Cameraman (including steady-cam, baby-boom and camera operated through a specialized system [C.O.S.S.])

[80] Lucien Létourneau, expert witness for the Federation in the field of television, indicates that a cameraman is a specialized professional who handles, moves, focuses and frames the camera. The steady-cam cameraman is a professional who performs the same basic functions as a cameraman but specializes in the operation of a spring-hinged camera with a gyroscopic pivot. The C.O.S.S. cameraman is a professional who performs the same

basic functions as a cameraman but specializes in the lightweight video camera used in news reporting.

[81] According to the documentary evidence, a steady-cam operator frames the scenes where the camera must be moved without rails (shoulder camera) in a film production. He or she works closely with the director of photography, the cameraman, the first assistant cameraman and the key grip. The steady-cam operator is also required to work with the director, and discuss what shots are required with the director or the director of photography. He or she is not involved in the filming as a whole but merely in the filming of specific scenes.

[82] Richard Desmarais, who has been a cameraman for 16 years, states that based on the director's explanations a cameraman contributes to the composition of a scene by suggesting frames (images) and optimizing their contents in co-operation with the other departments involved. In his view, as a result of this involvement, the person actively participates in the creation of the visual aspects of a scene.

[83] Benoit Aumais, a cameraman with 17 years of experience, states that he gives artistic advice to the actors before shooting a scene and that he sometimes shoots a scene without the director. He may be called upon to locate a site that is artistically interesting. When filming, he must ensure that the connections and the continuity form an artistic whole that can be used in editing.

[84] Jean-François Fortier, a cameraman with 10 years of experience, indicates that a cameraman is responsible, in co-operation with the director, for composing and framing the scene. During certain shoots such as a news report, a cameraman might be required to film without a director and he or she then has to find a site that is artistically interesting. A cameraman must display talent and sensitivity in order to express, by means of a video camera, the director's creativity or his or her own artistic vision. The person takes part in developing the artistic concept of the product and must also develop his or her concept of the image and analyse the technical and artistic quality of the picture. The cameraman may have to guide actors, hosts or journalists on occasion.

[85] According to Claude Bonin, a cameraman does not work closely with the director of photography and does not contribute directly to the creative aspects of the production. The NFB, CBC and the CRTI did not contest the inclusion of the positions of cameraman (including steady-cam, but not baby-boom or camera operated through a specialized system [C.O.S.S.]) with respect to the film medium only.

First assistant cameraman

[86] The first assistant cameraman is responsible for the photographic equipment in a film production. He or she must pay attention to detail and keep the camera in good working order. He or she will also work closely with the director of photography, the cameraman and the second assistant cameraman.

[87] Michel Bernier, a first camera assistant with 22 years of experience, states that his work and accuracy have a direct impact on the quality of the images in a film. In his view,

his work is technical as well as artistic because a good “pointer” must fully understand cinema in all its artistic and technical aspects in order to make his or her involvement with respect to the image consistent with the style of the film, the sequence and the shot to be filmed.

[88] Lucien Létourneau defines the assistant cameraman as the professional who handles the tripods in standardized movements in the studio with the exception of the traditional tripod.

[89] In Claude Bonin’s opinion, an assistant cameraman does not have to work closely with the director of photography and does not make a direct contribution to the creative aspects of the production.

Video assist operator

[90] A video assist operator is responsible for recording scenes on videocassette or on hard disk. He or she works closely with the director and the first assistant director. As well, the person is required to work with the script-clerk and director of photography, and is also required to work closely with the director and others. He or she may suggest effective and expeditious ways of working to the director or to the first assistant director.

[91] According to Claude Bonin, the video assist operator does not have to work closely with the director. He or she will be in contact with the director and may make suggestions to the first assistant director regarding effective and expeditious ways of working but not to the director. He is of the view that this position does not contribute directly to the creative aspects of the production.

Still photographer

[92] According to the documentary evidence and Mr. Létourneau’s evidence, a still photographer produces a set of photographs that will be useful in promoting the film. Alain Tremblay, a still photographer since 1995, indicates that he must take the photographs tastefully. Jackie Fritz, a still photographer with 12 years of experience, states that he must make a choice concerning the “final mood or look” and make all kinds of creative choices.

[93] According to Claude Bonin, this position has a special character because it is not one of the positions whose product is actually part of the production of a film. In his opinion, this position does not contribute directly to the creative aspects of the production.

Lighting director

[94] According to Lucien Létourneau, the lighting director designs the lighting, but then turns things over to a lighting technician, who implements the design. Jean Renaud says that as lighting director, he takes part in preproduction meetings, designs shots and does the installation and handling.

[95] Luc Marineau, who has worked as a chief electrician, lighting technician and lighting director for over ten years, explains that his work as director of photography or lighting

director consists of combining image and light. More specifically, he states that he participates in the design of the visual aspect of what is to be seen with the director, the set designer or the art director.

Chief lighting technician

[96] According to Lucien Létourneau, a chief lighting technician is the person who oversees the work of all the lighting technicians in a broadcast in which there are several production sites and each site requires the presence of a lighting technician. Normand Forget has been a chief electrician / lighting technician for 14 years. He states that his work involves operating the lighting console to paint the picture and controlling each of the light sources to create various kinds of ambiance highlighting the subjects (actors) and their environment. In his view, he creates a style and proposes various lighting intensities in close co-operation with the director of photography.

Chief electrician

[97] A chief electrician is responsible for the lighting on the set. He or she works closely with the director of photography and the director and determines lighting needs, in co-operation with these same people. He or she must ask the director of photography and the director about the ambiance sought in each of the scenes, discuss the feasibility of certain shots in light of technical and artistic criteria with the director and the director of photography.

[98] According to Lucien Létourneau, a chief electrician is responsible for all the connections and the smooth operation of the electrical system for a production. In addition, this person supervises the installation of lighting together with the lighting technician.

[99] Luc Marineau, a chief electrician / lighting technician for 17 years, states that he is responsible for implementing the lighting ideas of the lighting technician or the director of photography. In his opinion, a chief electrician should not be confused with a master electrician who makes the electrical connections. The chief electrician must control the quality of the light – direction and intensity – to meet the needs of the lighting technician. He or she must organize the staff and co-ordinate their work in installing the equipment. A chief electrician also co-ordinates between the lighting technician and the production's management team.

[100] According to Claude Bonin, a chief electrician works under the direction of a director of photography or a cameraman and does not have to work closely with the latter. He or she does not have to determine lighting needs with the director. Nor does he or she have to ask the director about the ambiance sought in each of the scenes or discuss the feasibility of certain shots in light of technical and artistic criteria with the director. Furthermore, Mr. Bonin finds that there is no direct contribution to the creative aspects of the production.

Programmer/motorized projector operator

[101] A programmer/motorized projector operator is a professional specializing in the installation, programming and operation of computer-assisted projectors.

[102] Vincent Colbert has been a motorized projector programmer for 13 years. In this capacity, he is asked to recommend and determine the type of equipment that is required. He draws up the lighting plans used to achieve the desired result. He supervises the installation and where necessary changes the position of the equipment in order to attain the best possible result. He creates the visual images and paints the space by programming projectors of all kinds, harmonizing colours and forms to reflect artistic tastes in order to achieve the best possible visual result.

Sound man

[103] The sound man is responsible for recording the sound and for its quality in a film production. He or she works closely with the producer and the director but is also required to work with the location manager, first assistant director, art director, director of photography, chief electrician and key grip. In the television field, Lucien Létourneau defines the sound man as the professional responsible for sound recording.

[104] Benoît Gauvin, a sound man and sound mixer with 15 years of experience, states that when recording the sound, he must make decisions concerning the “sound colour” and the dressing of the program (special effects, musical balance), and sometimes this may be for a final mix.

[105] Marcel Gouin, a sound man for 15 years, states that the work of a sound person / sound editor / sound mixer involves looking for the best sound possible for the recording. He or she must bring together various audio elements in order to recreate a sound picture that meets the expectations of the production or of the other artists or musicians involved in the project. To this end, he or she uses the microphones, consoles and other equipment like the palette of a painter to obtain different colours in order to create a unique environment that will be his or her signature. Experience and mastery of techniques and creativity make it possible to achieve original results and high quality. According to Mr. Gouin, the technicians working in this field do not all obtain the same results and this is what creates the broad artistic variety of the profession.

[106] According to Robert Hankins, a sound man since 1995, sound recording involves listening to places (reverberation, reflection, absorption), placing voices in their context and placing microphones in the best locations to create the desired effect as faithfully as possible.

[107] Robert Vermette, a sound man and sound mixer since 1995, asserts that a sound man must not only record the sound of dialogue but also create the ambiance and atmosphere that will support the picture. Furthermore, in order to make the picture even more credible, it is necessary when recording the sound to imagine and create a three-dimensional perspective corresponding to the shot that is only two-dimensional when it appears on the screen, in a cinema or on the television.

[108] According to Claude Bonin, a sound man does not work closely with the producer or with the director and this position does not contribute directly to the creative aspects of the production.

Sound effects technician

[109] According to Lucien Létourneau, a sound effects technician is the professional responsible for artificially recreating the sounds that accompany an action such as gunfire, thunder, a car crash, etc.

[110] Harvey Robitaille, who has worked in the sound field for 30 years, states that the sound effects technician establishes and creates the sound climate or atmosphere of the production. By using background sound effects in collaboration with a musical composer, he or she establishes the general ambience of the scenes and must also punctuate the visual effects, and devise and create new sound effects. According to Mr. Robitaille, the work requires research and a constant renewal that requires a great deal of imagination.

Computer graphics designer

[111] Lucien Létourneau defines a computer graphics designer as the person who designs the animated or fixed images in two or three dimensions used for various purposes in a live broadcast. He gave the example of the opening titles, the credits at the end of the broadcast, commercial transitions, etc.

[112] Benoit Melançon explained to the Tribunal that in the field of film and television production, a computer graphics designer alters the image by means of 3D modelling tools. A computer graphics artist will receive the pictures that were filmed in the real world in the form of conventional shots and add either objects or effects to create special effects images. For example, he spoke of a project in which an actor must find herself, as though by magic, changing clothes in order to become a princess. The scene was filmed in accordance with the conventional rules of filming. Subsequently, the computer graphics designer had to add “magic sparks” around her and ensure that the dress changed colour and form in order to become a princess dress.

Computer graphics special effects technician

[113] According to Lucien Létourneau, a computer graphics special effects technician is the person who designs the animated or fixed images in two or three dimensions for various purposes in the editing of a program. For example, he refers to the opening credits, the credits at the end of the program, commercial transitions, etc.

[114] Mr. Mélançon states that a computer graphics special effects technician is usually a person with a knowledge of computer graphics who acts as a bridge between the set as such and the post-production studios, which are loaded with effects and illusions. His or her work involves supervising the filming of conventional shots that are intended to be used for the plate or of initial elements for use in creating effects and illusions. The work is not necessarily limited to managing the filming of the shot. He or she is also involved in all the stages of designing the effect based on a reading of the script.

Make-up designer

[115] According to Mr. Létourneau, a make-up designer must read the script or program summary and make a list of the relevant features of the characters. He or she must also complete the necessary analysis and research to design the make-up and establish the “look” of the characters and test make-up products.

[116] In his testimony, Claude Bonin asserted that a make-up designer is a creator because he or she designs, specifically for the work, make-up that conveys what the director wishes to express.

Supervising make-up artist

[117] The supervising make-up artist is responsible for designing the make-up of all the characters and applying the main actor’s make-up in order to give life to the character’s image. This person is also required to change the design of the make-up, design make-up effects and create different effects. He or she works closely with the hairstylist and the costume designer. He or she is also required to work with the director, the second assistant director, the director of photography and the set designer.

[118] France Signori, a make-up artist and supervising make-up artist with 27 years of experience, states that she has to create make-up styles and design “looks” to reflect the era and character of the persons featured in the broadcast. Occasionally, she must create composition make-up where she has to age the characters or change the morphology of a face to make it look like someone else.

[119] Yves-André Bergeron, a supervising make-up artist, make-up artist and make-up assistant for 13 years, states that a supervising make-up artist must be at the service of the production in which he or she is involved. In his view, the most important aspect of his work consists of bringing to the director a broad range of creative design proposals while following the parameters imposed by the type of work to be produced. He or she must also select a team of professionals who can work in harmony with the actors and the technical team, especially the director of photography and the image controller.

[120] According to Lucien Létourneau, a supervising make-up artist collects the information concerning the program and takes part in preparatory meetings with the production team. He or she will design the make-up and purchase all the make-up products required as well as plan the schedule and the work of the make-up artists and the make-up assistants.

[121] Claude Bonin is of the view that a supervising make-up artist is responsible for making up all the characters and does not have to “design” all the make-up. The supervising make-up artist does not have to work with the director but works under the director’s supervision and meets his or her requirements. He also felt that the documentary evidence adduced by the Federation concerning this position was highly inflated. A supervising make-up artist does not “give life” to the character’s image. It is the director who gives life to the image and the character. A supervising make-up artist applies his or her technique

to meet the demands of the director. According to Mr. Bonin, this position does not contribute directly to the creative aspects of the production.

Make-up artist

[122] The make-up artist must make up the actors who play the secondary roles. The make-up artist works closely with the supervising make-up artist and gives life to the characters played by the actors in the secondary roles. He or she must develop the make-up for the eyes, mouth, cheeks, hands and body.

[123] Yves-André Bergeron, a supervising make-up artist, make-up artist and make-up assistant for 13 years, states that a make-up artist has to be able to provide any style of make-up that is requested. He or she also must have a knowledge of the types of camera and lighting in order to achieve a creative result and requires basic training in special effects for cuts, bruises, burns, scars, etc. This person often has to work alone and, in such cases, acts as a supervising make-up artist.

[124] Lucien Létourneau states that when a television program does not need a team consisting of a designer and a supervising make-up artist, it is the make-up artist who performs these functions.

[125] Claude Bonin is of the opinion that a make-up artist does not need to work closely with the supervising make-up artist and does not “develop” forms of make-up but rather applies make-up. In his view, the work description has been embellished because the person applies make-up in accordance with the instructions received.

Make-up assistant

[126] The make-up assistant is responsible for making up the actors in tertiary, non-speaking and walk-on roles.

[127] Yves-André Bergeron, a supervising make-up artist, make-up artist and make-up assistant with 13 years of experience, states that a make-up assistant must recreate and accurately touch up the make-up of actors that was designed by the supervising make-up artist or by the make-up artist. According to Mr. Bergeron, a make-up assistant is regularly required to create make-up effects after receiving very brief instructions from the make-up artist or, in some cases, the supervising make-up artist.

[128] Lucien Létourneau states that when an actor requires too many make-up changes, the make-up assistant works on this task under the direction of the make-up artist.

[129] According to Claude Bonin, this position does not contribute directly to the creative aspects of the production.

Special effects make-up artist

[130] According to the documentary evidence and the solemn declaration of Olivier Xavier, a special effects make-up artist and prosthetic make-up technician with 16 years of

experience, a special effects make-up artist is responsible for colouring and installing prostheses. He or she must develop the design and apply the make-up in three dimensions. This person works closely with the prosthetic make-up artist and the supervising make-up artist and is also required to work with the director, second assistant director, director of photography and the first assistant director.

[131] Lucien Létourneau states that a special effects make-up artist applies specialized composition make-up to achieve special effects such as injuries to the face, amputation of limbs, burns to the face, etc.

[132] Mr. Bonin is of the opinion that a special effects make-up artist does not work closely with the supervising make-up artist but works instead under his or her supervision. According to Mr Bonin, a special effects make-up artist conducts research and documentary analysis required for three-dimensional make-up and not for its creation. This position does not contribute directly to the creative aspects of the production.

Prosthetic make-up technician / prosthetic make-up artist

[133] The prosthetic make-up technician / prosthetic make-up artist designs and manufactures prostheses for all the characters. He or she works closely with the special effects make-up artist and with the supervising make-up artist and is also required to work with the director, second assistant director, director of photography and the first assistant director. In addition, he or she devises the look of different prostheses and makes sculptures from moulds and photographs.

[134] Lucien Létourneau states that the prosthetic make-up technician manufactures prostheses to combine with the specific composition make-up of a character, for example remodelling a chin, a mouth, a forehead, teeth, etc.

[135] Claude Bonin is of the opinion that a prosthetic make-up technician does not work with the supervising make-up artist and that this profession does not contribute directly to the creative aspects of the production

Prosthetic make-up assistant / assistant prosthetic make-up artist

[136] The prosthetic make-up assistant / assistant prosthetic make-up artist is responsible for supporting the prosthetic make-up artist in making prostheses for all the characters in a film production and making plaster models and prostheses for use by the persons playing the tertiary, non-speaking and walk-on roles. This person must make sculptures from moulds and photographs in order to create, for example, wrinkles or scars.

[137] According to Mr. Bonin, this profession does not contribute directly to the creative aspects of the production.

Hairstylist designer

[138] According to Lucien Létourneau, a hairstylist designer must carefully read the script or program summary, bring together all the elements required for designing the hairstyles and design the hairstyles for the program.

Supervising hairstylist

[139] The supervising hairstylist designs the hairstyles of all the characters and styles the hair of the designated actors according to an agreement with the hairdressers. He or she works closely with the supervising make-up artist and the costume designer and must also work with the director, second assistant director, director of photography and the art director. This person designs the hairstyles of the different characters. He or she determines the look of the main characters, views the camera tests, changes the hairstyle designs, if necessary, and designs simple special effects.

[140] Mario Huot, a wig-maker, supervising hairstylist and hairdresser with 10 years of experience, states that as a supervising hairstylist, he essentially performs the same tasks as the wig-maker except that he works with existing hair. Creating the look of a character or a real person is the most important part of his work.

[141] According to Lucien Létourneau, the supervising hairstylist must design the hairstyles of all the participants in a television program or a series. This person co-ordinates the work of the hairdressers or assistant hairdressers and must be familiar with the content of the program and conduct the research required for the design of the hairstyles.

[142] According to Claude Bonin, a supervising hairstylist is responsible for the hairstyles of all the characters and does not have to design or change them. A supervising hairstylist does not work with the director. Mr. Bonin notes that the supervising hairstylist styles hair and supervises the styling of the characters' hair in order to meet the director's requirements. However, it is the director who decides on the era, the style, the look, etc. The hairstylist applies his or her techniques to achieve the effect desired by the director but the work does not contribute directly to the creative aspects of the production.

Hairdresser

[143] The hairdresser works closely with the supervising hairstylist and is involved in developing the design of the hairstyles. He or she discusses the look of the characters with the supervising hairstylist, helps to give the designated actors the style of the character, designs simple special effects and creates different effects such as dirty hair or even a dishevelled look.

[144] Mario Huot, a wig-maker, supervising hairstylist and hairdresser with 10 years of experience, states that as a hairdresser, he performs the same tasks as the supervising hairstylist, albeit without the administrative tasks such as assigning staff to particular characters because in some instances only one person is hired to do the hairstyling.

[145] According to Lucien Létourneau, a hairdresser must design the hairstyles of all the participants in a television program or a series of programs. This person co-ordinates the work of the assistant hairdressers and must be familiar with the content of the program and conduct the research required to design the hairstyles.

[146] Claude Bonin is of the opinion that a hairstylist is involved in the development of hairstyles but not in their design. This person's role is to style the hair of the characters in accordance with the instructions received. He or she also achieves special effects but does not design them. This profession does not contribute directly to the creative aspects of the production.

Wig-maker

[147] According to Lucien Létourneau, a wig-maker is the hairdresser responsible for the wigs. He or she is responsible for finding all the wigs required for a production and may also be required to make wigs, beards, eyebrows, etc.

[148] Mario Huot, a wig-maker and supervising hairstylist and hairdresser for 10 years, believes that creating the look of a character or a real person is the most important part of his work.

Costume designer

[149] A costume designer designs the costumes of all the characters in a film production and is also required to work with the supervising hairstylist, wardrobe mistress, supervising make-up artist, art director, second assistant director, director of photography and, if necessary, the costume co-ordinator. This person must also devise costumes for various characters and make drawings, mock-ups or sketches of the different costumes.

[150] Lucien Létourneau states that a costume designer designs the costumes of all the characters in a television production and must bring together all the elements required in the preparation of a program or television series. He or she must plan the work of the manufacturing team and ensure that they work within budget. This position is not contested by the producers involved in this matter.

Costumer

[151] The costumer assists the costume designer in designing the costumes. He or she works closely with the costume designer, who supervises the work. He or she may design costumes for the people playing the tertiary, non-speaking and walk-on roles. The costumer must devise the clothing and props of the characters for whom he or she is designing the costumes. This person may also be required to make drawings, mock-ups and sketches of the various costumes to be made.

[152] Suzanne Ferland, a costumer and costume designer with almost 20 years of experience, states that she develops a concept based on the program and designs the costumes that are then made by others. Further, she might lease or transform costumes and is responsible for organizing the costumes department.

[153] According to Lucien Létourneau, a costumer designs and draws the costumes for a program or a television series. This person is required to work closely with the costume designer, who supervises his or her work. In a production that does not require the services of a costume designer, namely, a smaller scale television program or series, a costumer performs all the positions relating to design.

[154] Claude Bonin notes that a costumer assists the costume designer in the design of the costumes and that the work is supervised by the costume designer, who also has to approve any drawings that may be made. He also points out that there is a contradiction in the work descriptions in the documentary evidence because in the definition of costume designer it is stated that this person [TRANSLATION] “was responsible for designing the costumes of all the characters.”

Specialized costume technician

[155] The specialized costume technician may be a propsman crewleader, chief hat-maker, chief patina or a cutter. This person works closely with the costume designer and the costumer. He or she must create or find accessories or hats that fully harmonize with the design of the costumes for tertiary roles, non-speaking roles and walk-on parts. He or she will manufacture prototypes of the accessories or hats or change their design. In addition, the specialized costume technician must coordinate the work of other costume technicians and the set seamstresses.

[156] According to M. Bonin, the costume technician does not work closely with the costume designer and the costumer and merely changes the accessories and hats rather than their design. This profession does not contribute directly to the creative aspects of the production.

Costume technician

[157] The costume technician may be a propsman, hatmaker, patina maker or gofer. The duties of this position include changing the design of the accessories or hats as well as making them.

[158] Mr. Bonin notes that a costume technician works under the supervision of the specialized technician if this position is occupied or that of the costume designer or costumer. Similarly, if a person acts as costume co-ordinator, he or she supervises the work of the gofer. If there is no costume co-ordinator, a gofer works under the supervision of a costume designer or costumer. In Mr. Bonin’s view, a costume technician does not change the design of the accessories or hats. He is also of the opinion that this profession does not contribute directly to the creative aspects of the production.

Wardrobe mistress

[159] The wardrobe mistress is responsible for preparing and supervising the dressing of the actors. He or she is required to work with, among other people, the costume designer, first assistant director, scrip-clerk, supervising hairstylist, supervising make-up artist, director, second assistant director and production assistant.

[160] Mireille Langlois, who has worked as a wardrobe mistress since 1982, states that during the shooting of a film, not only does she control the continuity connections but she also checks the aesthetics of the costume required by the costumer and notes conflicts that may occur in the image and takes corrective action whenever possible.

[161] According to Lucien Létourneau, there is always a wardrobe mistress in a major production. This person covers all the positions associated with wardrobe. An assistant wardrobe mistress and wardrobe assistants work under the direction of a wardrobe mistress. According to Mr. Bonin, this profession does not contribute directly to the creative aspects of the production.

Assistant wardrobe mistress

[162] An assistant wardrobe mistress is responsible for assisting the wardrobe mistress to perform his or her duties, in particular by ensuring that the actors dress in accordance with the concept of the costume designer. He or she supervises the work of the wardrobe assistants.

[163] According to Lucien Létourneau, an assistant wardrobe mistress is the professional responsible for assigning to each artist in a given production the costume or costumes intended for that artist and dressing the person. He or she also ensures that the costumes are maintained. Claude Bonin points out that this profession does not contribute directly to the creative aspects of the production.

Dresser

[164] A dresser is a professional specializing in fashion who suggests an image and establishes the costume characteristics of a character or participant in a television program.

Propsman specialist

[165] According to Lucien Létourneau, a propsman specialist is responsible for finding, co-ordinating or even manufacturing all the accessories relating to the costumes for a production. He or she must also find the necessary accessories for a production that are seen but not handled and place them on the set under the supervision of a set designer or art director.

[166] Lucie Thériault, a propsman specialist, set decorator and propsman since 1979, states that her work involves conducting research into furniture and fabrics for curtains and furniture, selecting and purchasing frames, curios and other properties, designing and making props and dressing up the sets. She must ensure that the whole set decoration is harmonious.

[167] Michel Lemieux, a propsman specialist, set decorator and “set designer propsman” since 1997, states that his work involves selecting furniture, props and window dressings in order to create the desired ambiance.

Puppet designer

[168] Mr. Létourneau states that a puppet designer designs and makes the puppets used in a television program. This profession is not contested.

Transportation co-ordinator

[169] The transportation co-ordinator is responsible for determining the type of vehicle to be used in a film production. The person conducts research to find appropriate vehicles for the concept of the film. He or she works closely with the art director and is also required to work with the special effects co-ordinator, special effects technicians, artistic co-ordinator and wardrobe mistress. The person makes props to ensure that the vehicles are integrated into the concept of the film.

[170] According to Claude Bonin, a transportation co-ordinator does not determine the type of vehicles that will be used. He or she does not work with the art director but rather under his or her supervision. He notes that a substantial part of a transportation co-ordinator's time is spent looking for vehicles and visiting suppliers. In his view, this person does not make a direct contribution to the creative aspects of the production.

Assistant art director

[171] An assistant art director is responsible for giving concrete form, in a film production, to the artistic vision of the art director. He or she works closely with the art director, visual designer and location manager as well as with all the members of the set design department. He or she may also be required to work with other people, including the production director and the director.

[172] This person helps the art director to define his or her project clearly. This person transposes the art director's vision using three-dimensional drawings, plans and sketches, and acts as art director for the creation of certain sets. He or she collects information that may be useful in designing the sets and analyses it in order to draft specification sheets. This person designs the sets for certain scenes, draws them and prepares the plans.

[173] According to Lucien Létourneau, the assistant art director assists the art director and is responsible for finding outside locations for a production and preparing them, including the props, for the purposes of the production.

[174] According to Claude Bonin, an assistant art director does not "work" with the art director and does not give concrete form to his or her artistic vision but rather works under his or her supervision, performing the tasks delegated by the art director. In Mr. Bonin's view, an assistant art director does not contribute directly to the creative aspects of a production.

Set designer

[175] The set designer designs various elements of the set and ensures that all elements are available during filming. He or she helps give concrete form to the concept imagined by the

art director. The set designer also works closely with the art director and the director. He or she collects and analyses the information required for the set design and decoration and prepares specification sheets. He or she devises the furnishings and decorative elements at the locations where various scenes will be shot and produces three-dimensional drawings of various components of the set.

[176] This person also takes photographs of furnishings and decorative articles that may be of interest in the set designs. He or she also selects, from among the photographs taken, those that are of greatest interest in the set designs. This person also illustrates the various sets with the assistance of drawings and photographs of furnishings and decorative articles. Finally, a set designer draws furnishings and decorative articles that need to be reproduced.

[177] According to Lucien Létourneau, a set designer designs the sets for a program, supervises their construction in the workshops and, once in the studio, supervises their assembly.

[178] According to Claude Bonin, the chief set designer does not “work” with the art director but rather under his supervision and in accordance with his directions. A set designer’s activities do not help to give concrete form to the concept in the artistic designer’s mind. The chief set designer does not contribute directly to the creative aspects of the production.

Set decorator or technician

[179] The set decorator or technician must resolve problems of a technical nature and build sets and components of sets to reflect the solution that he or she has devised. This person must also do the painting if no painter or scenic painter is present and the carpentry work if no carpenter is present.

[180] Claude Bonin stresses the fact that a set technician works under the direction of the chief set designer, artistic co-ordinator and art director. In his view, a set technician does not make a direct contribution to the creative aspects of the production.

Props designer

[181] According to Lucien Létourneau, a props designer makes or changes the props that will be handled during a production. According to Jacques Godbout, a props designer may be considered an “artist” in the case of certain films.

Propsman crewleader

[182] Paul Chartrand, a propsman and propsman crewleader since 1983, states that his work requires him to work with the art director and the set designers in order to find, repair, alter and make props used by the actors or placed on the set. He creates a visual ambiance on the set that is reflected on the screen.

[183] Alain Timmons, a propsman, props designer and propsman crewleader since 1993, asserts that, in order to create the style and ambiance of a production, his work requires him

to design and create props that are placed and used directly in the shots, all with an attention to detail and a vision of the production in its entirety.

[184] According to Lucien Létourneau, a propsman crewleader makes and alters props that must be handled during a production under the supervision of the props designer.

Studio propsman

[185] The studio propsman is responsible for placing and ensuring the continuity of the placement of the various props on the set when a film production is being shot. He or she works closely with the art director and the location propsman. The comments of Paul Chartrand reported above concerning the propsman crewleader also apply to the studio propsman.

[186] Jean-Claude Rozec, a propsman specialist, set decorator and propsman since 1970, is of the opinion that a propsman is responsible for changing and harmonizing the styles and colours of the props with the set or the (outdoor) film location and sometimes also with the proposed costume.

[187] According to Lucien Létourneau, a studio propsman is the person who, as the film is being shot, places the props on a set and ensures that they are maintained. Claude Bonin stresses the fact that a propsman does not “work “ with the art director but rather works under the supervision of the set designer or the art director. According to him, this person does not contribute directly to the creative aspects of the production.

Location propsman

[188] The duties of the location propsman consist in selecting the various props to be used during the filming of a production. This person works closely with the art director, visual designer and artistic co-ordinator. He or she is also required to work with the draughtsman and supervising make-up artist. He or she designs or has someone else design the props to be produced after conducting research and documentary analyses for the purpose of selecting the props. He or she ensures that the image produced reflects the concept that was developed.

[189] Anne-Renée Laberge, a location propsman since 1993, notes that the location propsman searches for the components of the set such as furnishings, curtains, frames, etc. and finds and selects those which the actors will handle.

[190] According to Lucien Létourneau, a location propsman is the person who, off the set, searches for and makes the props required for a production in the workshop. He or she ensures that they work properly and sends them to the set.

[191] Claude Bonin notes that a propsman is not responsible for “selecting” but rather for “finding” the various props to be used during the shooting of a film. He also notes that the location propsman does not work with the art director. In his opinion, this person does not contribute directly to the creative aspects of the production.

Head painter

[192] The head painter is responsible for designing and supervising the creation of the necessary visual effects by means of paint on the sets used during filming. The head painter works closely with the visual designer and the artistic designer. He or she develops the design of the visual effects using paint, tests these visual effects and changes the design of the visual effects if necessary. He or she also conducts the necessary research and analysis in order to create the visual effects using paint. He or she creates trompe l'oeil, false finishes and various patinas.

[193] According to Mr. Bonin, a head painter does not design the visual effects but is limited to supervising the achievement of the desired visual effects by means of paint. He stresses the fact that the head painter's role is to ensure that the work done is what was requested by the visual designer and the art director, and that the work done reflects the artistic vision of the visual designer as well as that of the art director. In his view, a head painter does not contribute directly to the creative aspects of the production.

Scenic painter

[194] The scenic painter produces visual effects by means of paint and materials such as plaster or jute in order to create textures in two or three dimensions. He or she works closely with the art director and the assistant art director and prepares samples of visual effects and conducts the necessary tests to find the best way to achieve trompe l'oeil, false finishes and patinas. He or she changes the design of the visual effects if necessary and creates trompe l'oeil, false finishes and patinas.

[195] According to Denise Lafontaine, a scenic painter since 1988, her work consists in creating false finishes, trompe l'oeil, patinas and murals. Mr. Létourneau states that the scenic painter is responsible for creating backdrops and patinas as well as certain television props for the sets.

[196] According to Claude Bonin, a scenic painter produces the visual effects "requested" and stresses the fact that this person works under the supervision of the head painter. The role of the scenic painter is not one of creating but rather of executing. He does not contribute directly to the creative aspects of the production.

Sculptor-molder

[197] The sculptor-molder makes and reproduces the various sculptures used during filming. The sculptor-molder works closely with the art director, set designer and visual designer and designs the objects to be sculpted and molded. He or she makes drawings and sketches, designs the sculptures, changes the design of the sculptures, where necessary, and creates the sculptures and prototypes. This person works the material, creates three-dimensional surfaces and textures and makes the molds using the prototype. He or she conducts the necessary research and documentary analyses in order to design the objects to be sculpted.

[198] According to Claude Bonin, a sculptor-molder does not work with the art director but rather works under his or her supervision. He or she does not directly contribute to the creative aspects of the production.

Draughtsman

[199] The draughtsman creates the drawings used to build the sets as well as to design the set of a film. This person works closely with the art director and the visual designer. Using the information received from the set designer, he or she makes drawings of the various sets and of the film locations, makes construction plans and drawings and assists the members of the set design department to give concrete form to their artistic vision.

[200] A draughtsman creates mock-ups showing the art director the different sets and, where necessary, draws objects and props for the location propsman. He or she draws furnishings and decorative articles for the chief set designer and conducts the necessary research and documentary analyses in order to understand the style of decor of the era in which the production is set.

[201] According to Lucien Létourneau, a draughtsman designs a three-dimensional mock-up under the direction of the art director to enable the production teams to evaluate a set. Claude Bonin is of the opinion that the role of a draughtsman is one of executing rather than one of creating or designing sets. This person acts under the supervision of the art director and does not contribute directly to the creative aspects of the production.

Head carpenter

[202] The head carpenter is responsible for planning the construction of the sets used to shoot a film and for supervising the team of carpenters. He or she works closely with the art director. Through his or her activities, a chief carpenter helps to give form to the concept in the art director's mind and ensures that the plans, sketches and mock-ups reflect as far as possible the desired visual concept. The head carpenter proposes changes to resolve design problems where necessary and creates or has others create the set or components of the set that reflect the proposed solution. He or she creates or has others create trompe l'oeil.

[203] Claude Bonin states that a head carpenter does not work with the art director. Nor does this person help to give concrete form to the concept in the art director's mind but rather works under his or her direction. The head carpenter does not directly contribute to the creative aspects of the production.

Studio special effects technician

[204] The studio special effects technician creates the special effects in a film production. He or she works closely with the special effects co-ordinator and with the other special effects technicians, suggesting possible approaches.

[205] According to Lucien Létourneau, a studio special effects technician is responsible for developing the special effects, whether they be pyrotechnical, mechanical, hydraulic or electrical, during a production. Claude Bonin notes that a special effects technician does

not “work” with the special effects designer but rather works under his or her supervision. This person does not directly contribute to the creative aspects of the production.

Weapons specialist

[206] The weapons specialist is a person who determines, in collaboration with the director, producer, art director, actors and propsmen, which types of firearms will be used in light of the script. He or she designs firearms and makes prototypes, where necessary. The weapons specialist also makes and reproduces firearms when the production requires and conducts the necessary research and documentary analyses in order to select appropriate firearms.

[207] According to Claude Bonin, a weapons specialist does not work with the art director but rather works under the supervision of the art director or the set designer. Nor does he or she work with the director, producer, actors or propsmen. This person does not determine the type of firearms and the work is limited to conducting research and making suggestions to the art director. He or she does not directly contribute to the creative aspects of the production.

Floor director or manager (excluding dubbing directors)

[208] The floor director or manager must collect all the information needed to plan the activities relating to filming and find the best possible solution for organizing these activities for each of the filming locations.

[209] Danielle Giroux has 20 years of experience, first as an assistant director and later as a floor director. According to her, a floor director (manager) acts as an intermediary between the artists, the technical team and the director. He or she directs the actors, animators and singers. In location shooting, he or she is often asked to find locations for filming and to plan shooting with the various creative services. He or she must manage the day’s filming and ensure that various problems, relating to both creative and technical matters, such as positioning and movements within a sequence and giving instructions concerning the actions of the characters, are resolved in collaboration with the director.

[210] According to Michèle Ouellet, a floor director (manager) since 1984, a floor director has the task of conveying the director’s instructions to the entire crew and supervising the application of those instructions. Using the script, the floor director must plan the use of props, changes in the set and the positions and movements of the characters.

[211] According to André Lacoste, a floor director (manager) since 1993, a floor director must be fully familiar with and understand the artistic process required by the director. He or she co-ordinates the rehearsals of the scenes, lighting adjustments, set, make-up and hairstyles. He or she may even make suggestions to the actors about their work, helping them to adjust to the limits of television. The floor director must therefore be fully familiar with the dramatic and psychological language related to each of the characters played by the actors.

[212] According to Lucien Létourneau, a floor director must ensure a link between the set and the production control room. He or she is the communication channel for the director on the set and ensures that the program is working well and running smoothly. Claude Bonin stresses the fact that a floor director works under the direction of the production director. In his opinion, the floor director does not directly contribute to the creative aspects of the production.

Production assistant

[213] The Tribunal understands, from the evidence filed, that the floor director/manager and the production assistant perform similar duties.

Location manager

[214] The location manager works closely with the visual designer, director, art director and floor director. He or she works with the director of photography, production director and first assistant director. The location manager must be fully familiar with the architectural styles of the different historical eras in order to focus his or her research appropriately. This person must be familiar with the techniques of photography, including those of photographing film locations. He or she presents a concept of film locations to the director and the visual designer. This person visits the locations in question, selecting those that offer real interest for the film production.

[215] According to Claude Bonin, a location manager is responsible for finding the film locations based on the information obtained from the art director. He or she does not “work” with the art director but rather works under his or her supervision. This person does not have to be “fully familiar” with the architectural styles of the different historical eras but merely to have a basic knowledge of them. In his opinion, the statement that the location manager must “be familiar” with the techniques of photography is too strong and he stresses the fact that a location manager does not present a “concept” of film locations to the director but is limited solely to presenting a location for filming. He or she does not change the “concept” of the film location but merely changes the location. According to Mr. Bonin, the location manager does not directly contribute to the creative aspects of the production.

Script-clerk

[216] The script-clerk ensures a logical progression of all the aspects of a film, that is, ensuring continuity in the film. Continuity must be ensured in technical areas such as lighting, special effects and costumes as well as in dramatic terms such as the action, movement of the characters, expression and direction of glances. This person works closely with the director and the first assistant director. He or she also works with the editor to ensure continuity in the editing process.

[217] Claude Bonin stresses the fact that the script-clerk works under the supervision of the director. According to him, this person does not directly contribute to the creative aspects of the production.

Script assistant

[218] There is no evidence concerning this position.

Switcher

[219] According to Jean-Philippe Blondeau, who has been a switcher since 1992, a switcher must make use of the technical capabilities of his or her equipment to meet the artistic needs of the film crew. This person selects the various transitions between images and advises the director concerning this selection. He or she must often interpret the sometimes poorly expressed requests of the director and resolve problems while respecting the spirit of the work.

[220] Jean-Pierre Vachon, who has been a switcher since 1985, notes that a switcher may also have to use a digital special effects device to design video effects for use in transitions. On occasion, he or she may suggest camera angles to the director in dramatic programs.

[221] According to Lucien Létourneau, a switcher works very closely with the director to ensure that images are broadcast and to ensure their final composition.

ISO switcher

[222] According to Daniel Laurin, who is an ISO switcher with over four years of experience, an ISO switcher must select, mount, record and clearly arrange the pictures provided by the cameramen when television programs are recorded. The aim is to select the most beautiful pictures for the director as “security,” and this requires him or her to make artistic choices based on a sound knowledge of the television world.

[223] Lucien Létourneau notes that an ISO switcher performs the same basic duties as a switcher except that the work merely involves operating a switch in order to isolate camera outputs for the purpose of final editing.

Image controller (CCU)

[224] According to Benoit Anctil, who has been an image controller since 1982, an image controller (CCU) seeks and selects, in collaboration with the lighting technician, the picture “texture” that is appropriate for a television production. This person makes suggestions to the lighting technician for improving the ambiance and the visual effects, and this affects the quality of the pictures. He or she also adjusts the brightness, contrast, definition, saturation and the tint of the image.

[225] Mario Lemieux, a technical director and image controller with approximately 11 years of experience, states that the work of an image controller is essential in order to ensure the quality of the picture. He or she adjusts the cameras before shooting begins and works together with the lighting technician to create an image that is “warmer,” “colder,” “more contrasting,” “clearer,” etc.

[226] According to Lucien Létourneau, an image controller is responsible for the basic checking and maintenance of the cameras and ensures that the pictures are technically the same from one camera to another. He or she adds colour to the lighting and the production

by what is done with the cameras on which the transitions occur in order to amplify and add life to what is happening in front of the camera.

Video credits designer

[227] According to Lucien Létourneau, a video credits designer is responsible during a live program for adding the text, paginating the text or superimposing titles to a picture such as the names of the guests or the credits.

Editor

[228] The documentary evidence shows that an editor must, among other things, assemble the original pictures and sounds in a film production to reflect the director's vision while respecting the script. He or she must tell the story through the scenes shot and in accordance with an established script. Among other things, this person is required to work with the director, script-clerk, director of photography and production director. He or she suggests ways to improve the pace of the film and does the first edit, assembles the shots and adds the visual effects (snow, images, etc.).

[229] The editor also makes the final edit of the production. If necessary, he or she reduces the film to the desired length, selects the scenes that may be cut, chooses to cut a whole scene or parts of a scene and uses visual means to cut extracts. He or she judges the quality of the sound and determines whether music or sound effects should be added, designs the sound track and edits the sound.

[230] According to Hélène Girard, an editor with approximately 30 years of experience, an editor must view and assess the rushes, develop the structure of the work and edit the work shot by shot. He or she must conduct a critical viewing of the film and ensure that it is finished.

[231] According to Lucien Létourneau, an editor is the person who does the final edit (video and audio) of a program.

Off-line editor

[232] According to Yves Langlois, who has been an off-line and in-line editor for more than 25 years, an off-line editor decides on the cuts to be made, develops an editing plan, collaborates in the choice of scenes and decides on the shots to be chosen. He or she develops the style and pace of the editing and contributes to the creative process. According to Lucien Létourneau, an off-line editor completes the pre-edit (video-audio) of a program.

In-line editor

[233] The statements of Yves Langlois concerning an off-line editor also apply to an in-line editor. According to Lucien Létourneau, an in-line editor completes the final editing of a program; in other words, once the work of the off-line editor is complete, he or she adds the effects and completes the set up of sound and pictures for the program.

Sound editor

[234] According to Harvey Robitaille, who has approximately 30 years of experience in sound editing, a sound editor completes the qualitative mixing of all the sound elements of a production such as sound effects and music. His or her services have a direct impact on the success of the product and he or she is recognized as a creative artist in the same way as a musician.

[235] According to Lucien Létourneau, a sound editor in a taped production, is responsible for arranging several sound tracks in order to create a finished product reduced to a single track (mono) or two tracks (stereo) ready for broadcast.

Sound mixer

[236] The statements of Harvey Robitaille concerning a sound editor also apply to a sound mixer. According to Robert Vermette, who has been a sound man and sound mixer since 1995, a sound mixer must create a sound track consisting of all the elements that may be used to support the image and generate emotions. By using the musical track, a sound mixer creates all kinds of sound ambiance by adding sound effects created for the occasion.

[237] According to Lucien Létourneau, a sound mixer in a live production is responsible for mixing the various sound tracks that are forwarded to him or her for the sound man to include in the finished product.

Assistant editor

[238] The assistant editor is responsible for preparing the material to make the work of the editor easier. He or she is required to work with the editor, scrip-clerk and projectionist. This person completes the first edit of a sequence, where appropriate, depending on the amount of responsibility given to him or her by the editor.

[239] According to Lucien Létourneau, an assistant editor handles the cassettes and makes all the preparations for editing. His or her work is directly subject to the orders of the off-line editor. Claude Bonin stresses the fact that an assistant editor works under the supervision of and not in collaboration with the editor. In his view, this person does not directly contribute to the creative aspects of the production.

Videographer

[240] Yves Bourbonnais, a videographer since 1997, states that a videographer uses a character generator to create titles, credits, sub-titles and sometimes graphics.

[241] According to Réal Robin, a videographer since 1988, a videographer works in co-operation with the director and suggests the best possibilities for using the equipment creatively. He or she researches the elements required, selects the best ideas and does the work accordingly. The videographer captures images, logos and fonts and changes these elements to harmonize them with the production as a whole.

[242] Mr. Létourneau notes that a videographer adds the writing, pagination and superimposed texts and titles to an image during the editing process.

Evidence of Guy Gauthier

[243] Director of Human Resources since 1989, Mr. Gauthier has worked for the NFB since 1971, first as a human resources adviser and, since 1974, in labour relations. He testified concerning his experience in the hiring of freelancers at the NFB. He explained that the NFB hires freelance technicians occasionally whenever the situation calls for it. He does not remember having discussions with any of the associations forming the Federation for the purpose of commencing negotiations, except for the discussions with the STCVQ in 1976 concerning a film on the Olympic Games.

[244] The technicians hired by the NFB are covered by a union certification and are represented by the SGCT. According to Mr. Gauthier, the conditions of employment for the technicians hired by the NFB differ from those negotiated by private producers and it would be difficult to have technicians doing the same work on the same set under different conditions. Consequently, he stated that 99% of the technicians he employs are hired as employees, even if for only a short period. Mr. Gauthier also explained in detail the hiring policies regarding independent contractors.

[245] According to Mr. Gauthier, all the positions listed in the proposed sector contribute to the “making” of an audiovisual work, but only costume, make-up and hairstyle design and the creation of costumes are professions that contribute to the creation of the work. Mr. Gauthier also explained that the television approach and the film approach differ greatly from each other. In the case of television, programs are filmed in the studio, often before an audience. In the case of film, the scripting, direction and involvement of the team is different. The work is not done in a linear fashion. Many shoots take place outdoors. The media have evolved from film to video to digital but the approach is still different. According to him, photography direction, camera and sound recording are examples of areas where the profession is different, depending on the approach.

[246] On cross-examination, Mr. Gauthier stressed the fact that the technicians are chosen for their skills and not for their artistic talents, which is not true of the director, scriptwriter and director of photography. Mr. Gauthier admitted that the fact that a documentary is designed to be projected on film in a cinema or on video on television does not change the work to be done by a sound-recording technician when the film is shot, although the duties could vary to reflect the nature of the production. He gave multimedia productions as an example of this.

Evidence of Jacques Godbout

[247] Jacques Godbout, a director and author, testified as an expert on behalf of the NFB. During a career that spans 37 years, Mr. Godbout has worked in all types of production for the cinema including films, musical comedies, documentaries and feature-length and short films. He has worked primarily for the NFB as a film-maker (scriptwriter, director and editor). He stated that he had never worked in the field of television.

[248] Mr. Godbout explained his vision of an artist to the Tribunal. In his view, a person must be acknowledged by his or her peers or by the literary or film establishment. A person cannot proclaim him- or herself to be an “artist.” In the field of cinema, there are artists and artisans and, according to Mr. Godbout, technicians are artisans. There is an area of artistic involvement and an area of technical production, material production. Mr. Godbout stated that technicians are interchangeable and were not directly involved in the creative process. On cross-examination, however, he admitted that some technicians are not interchangeable, not because of their artistic talent but rather because of their skills as artisans. “Artists” are not interchangeable because they have a signature. Mr. Godbout testified that the scriptwriter, director of photography, set designer, art director, costume designer, make-up designer, music composer and actors are “artists.”

[249] According to Mr. Godbout, the assistant directors are persons who [TRANSLATION] “do what they are told to do.” They may sometimes suggest changes, but on the basis of goals proposed by the director. They may be responsible for rehearsing the actors but he indicated that an assistant director would not be dismissed for “artistic reasons.”

[250] In a letter that was introduced in evidence during his testimony, Mr. Godbout indicated that the following professions contribute directly to the creative aspects of a work: scriptwriter, director of photography, set designer, art director, costume designer, make-up designer, hairstylist designer, puppet designer, music composer, editor (images) and editor (sound - original tape). He notes that in exceptional cases, a cameraman might be an artist. On cross-examination, he admitted that a computer graphics designer may also be an artist.

Evidence of Claude Bonin

[251] Claude Bonin also testified as an expert witness for the NFB. Mr. Bonin is a film producer and has worked in that field since 1973. During his career, he has been an assistant producer, producer, production director and second assistant director. He summarized the work of a producer by stating that this person identifies the scriptwriter, secures the funding, physically produces the film to the post-production stage and negotiates with the distributor. Mr. Bonin works primarily in the production of feature films. He has not worked in the television field. He mentioned that he had worked with STCVQ agreements but never with APVQ agreements.

[252] At the request of the NFB, Mr. Bonin annotated and commented on the work descriptions prepared by Éduconseil for the Federation. His counter-expertise was introduced in evidence and is discussed in detail in the part of these Reasons where the various professions are analysed. He noted that the descriptions clearly reflect his

understanding of the trades when they are practised in a film setting, regardless of the medium used (film, video or digital).

[253] According to Mr. Bonin, the relationships of authority and responsibility were not clearly established in the descriptions. The work in most of these jobs is done under the supervision or direction of someone and this is not clearly reflected in the descriptions. Similarly, there may occasionally be direct relations with the director such as, for example, in the case of an assistant director; in the case of a propsman, however, this was unusual. Mr. Bonin agreed that there was in fact a great deal of “co-operation” in film, but some of these descriptions placed supervisors, colleagues and casual colleagues on the same footing although the professional relations among these people are different.

[254] Mr. Bonin is of the opinion that when a person is under the supervision of another person, he or she executes the concept that was requested and is therefore an “executant.” A script-clerk ensures that there is continuity between the scenes but does not contribute directly to the creative aspects of the production. A cameraman contributes to the design of the work because he or she translates into a film style with the director the way in which the director wants to create his or her film. A cameraman may make suggestions but essentially his or her job is to execute the director’s wishes. A chief electrician executes what the director of photography requests.

[255] With respect to assistant directors, Mr. Bonin testified that a first assistant organizes the work and draws up the work plan but does not contribute creatively. The second assistant works in the background, reserves the actors, checks that they are available and rehearses them. The third assistant is on the set with the first assistant and acts as the link between the first and second assistants. The third assistant is also responsible for the background performers.

[256] In reply to a question from a member of the panel, Mr. Bonin stated that the assistant director can do what he described as blocking or the “mechanics of the stage” but the director was there for the “real” rehearsals. He admitted that an assistant director can rehearse the actors but that he had not seen it done very often. On re-examination, he said that there is no artistic aspect to the direction carried out by the first assistant. This person’s work is organizational in nature.

[257] Mr. Bonin felt that the main people involved in terms of the creative aspects of the production were the director of photography, set designer, art director, editor and make-up designer. In some cases, the supervising make-up artist and the supervising hairstylist could also be included here. The producer, scriptwriter and director make up the team that drives the project from beginning to end.

IV

Issues

[258] The application for certification of the APVQ-STCVQ Federation raises the following questions:

- (a) Is the Federation adequately constituted?
- (b) If so, is the sector proposed by the Federation suitable for bargaining purposes and, in particular, which of the positions sought are covered by subparagraphs 6(2)(b)(i), (ii) or (iii) of the *Act*?
- (c) Is the Federation representative of the artists in the sector?

V

Status of the Artist Act

[259] The relevant provisions are as follows:

5. In this Part,

"artist" means an independent contractor described in paragraph 6(2)(b);

"artists' association" means any organization, or a branch or local thereof, that has among its objectives the management or promotion of the professional and socio-economic interests of artists who are members of the organization, and includes a federation of artists' associations;

...

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 ...

(2) An application for certification must include the membership list of the artists' association, a certified copy of its by-laws, and any other information required by the Tribunal.

(3) The Tribunal shall give public notice of any application for certification in respect of any sector without delay, indicating any period in which another application may be made by any other artists' association, notwithstanding subsection (1), for certification in respect of that sector or any part of it.

(4) No application for certification in respect of a sector may be made, except with the consent of the Tribunal, after expiration of the period indicated by the Tribunal in any public notice given pursuant to subsection (3).

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.

(3) The Tribunal shall give the artists' association concerned and any intervenors notice of its determination under subsection (1) without delay, and that determination is deemed to be interlocutory, notwithstanding section 21.

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.

VI

Parties' Submissions

Federation's submissions on the suitability and representativity of the proposed sector

[260] The applicant submits that the bargaining sector is a suitable sector because of the community of interests. All the artists in question are involved in the production of a common audiovisual work. They form united work teams on the set. Due to technological change, this community of interest extends beyond the medium of the work. According to the applicant, it matters little whether film, videotape or a computer is involved. The fact remains that the persons work on the production of an audiovisual work, which could be shown in the cinema, on television or on the Internet or for any broadcasting process whatsoever.

[261] The applicant stresses that the two associations have developed similar membership criteria and that the sector for which certification is being sought includes areas of activity related to audiovisual production since it covers film, video and multimedia. With respect

to multimedia, the applicant submits that it can be included, citing the *Writers Guild of Canada* decision, 1996 CAPPRT 016.

[262] As to the history of their professional relations, the applicant maintains that the APVQ and the STCVQ have existed for a number of years, that they both represent their members in all respects and they have a substantial membership which continues to grow.

[263] The applicant notes that both associations have separately negotiated many collective agreements under provincial jurisdiction. The STCVQ engaged in negotiations even before the legislation on the status of the artist was enacted. Both associations have also negotiated agreements with American producers and the APVQ has negotiated agreements with broadcasters' subsidiaries. Both associations accordingly have extensive prior experience in negotiating collective agreements and representing artists. As to producers under federal jurisdiction, the applicant notes that the APVQ attempted to negotiate with Radio Nord and that the STCVQ and the NFB had discussions at one point.

[264] With respect to the by-laws and the requirement that applicants be Canadian citizens in order to become members, the applicant indicated that this provision is being amended by both associations.

[265] The applicant submits that language spoken by the technicians is not a key factor in the creation of the product. The language of work on the set is not necessarily the same as the language of the performers in an audiovisual work. Only the artists who are in direct contact with the performers must know the language used in the production but communications with others can be in English or in French. Thus, language is not essential to the product being created and this justifies certification on a geographic basis. In support of its argument, the applicant cites the tests developed by the Tribunal in the decisions concerning the *Association des réalisateurs et réalisatrices du Québec*, 1997 CAPPRT 024, and the *Guilde des musiciens du Québec*, 1997 CAPPRT 020.

[266] For various historical and economic reasons, film and television production in Québec has developed its own roots and its own distinct organizations. According to the applicant, there is no reason not to recognize or to change this situation; nor is there any desire on the part of the artists in question to see it changed.

[267] On the issue of representativity, the applicant submits that the Federation is clearly representative of the artists who work in audiovisual production in any medium in Québec. The two associations have more than 3,000 members or almost all the artists working in this field.

[268] According to the applicant, the evidence shows that the two associations already offer their members a large number of professional services, including a placement service in the form of a Web site. The site, accessible to producers, gives them access to the availability list and allows them to quickly meet their needs.

The Federation's submissions concerning the professions in the proposed sector

[269] The Federation began by urging the Tribunal to give a large and liberal interpretation to the *Act* in order to meet the objective sought by Parliament, which was to improve the social and economic situation of artists and it cited in support the decision in *The Writers' Union of Canada*, 1998 CAPPRT 028, para. 58. The Federation also claims that when it passed the *Act*, Parliament knew that CRAAAP had given a restrictive interpretation to the concept of artist. According to the Federation, Parliament wished to give a broader definition to the concept of "artist" in at least four ways:

- any author within the meaning of the *Copyright Act* is an artist within the meaning of the *Act*;
- the director of any audiovisual work is an artist within the meaning of the *Act*;
- all professionals who "direct" a literary, musical or dramatic work are artists within the meaning of the *Act*;
- subparagraph 6(2)(b)(iii) of the *Act* applies expressly to categories of artists who may not be actors, performers or persons responsible for the direction of an artistic work but nevertheless contribute through their creative contribution to a joint artistic work.

[270] According to the Federation, Parliament also intended to broaden the concept of artist to include professional categories not referred to in subparagraphs 6(2)(b)(i) and (ii) of the *Act*, as appears in paragraph 2(2)(b) of the *Regulations*, which states that the categories which are included are not those included in subparagraphs 6(2)(b)(i) or (ii) of the *Act*. Therefore, the *Regulations* must also be given a large and liberal interpretation in order to meet the goal sought by Parliament.

[271] Furthermore, the Federation submits that paragraph 2(e) of the *Regulations* (category 5: research for audiovisual productions ...) is an activity the exercise of which contributes directly to the creation of a production and that Parliament did not limit the kind of research tasks involved. Consequently, the mere fact that a propsman researches props for an audiovisual production means that he or she can be included in category 5 rather than category 3 (set design) of the *Regulations*.

[272] The Federation is of the opinion that the Tribunal cannot adopt the restrictive interpretation of the concept of artist put forth by the NFB because the effect of this would be to return to the traditional idea that there are real artists who create original forms of beauty and those who are mere artisans or simple executing technicians. Furthermore, the Federation stresses the fact that the interpretation proposed by the NFB is so restrictive that it does not recognize the creative contribution of workers even though that contribution has been recognized by CRAAAP for the STCVQ and the APVQ for positions such as those of supervising hairstylist, hairdressers, supervising make-up artists and make-up assistants.

[273] The Federation also argues that the restrictive interpretation proposed by the NFB of the expression "*in which the practitioner contributes directly to the creative aspects of the production*" in subsection 2(1) of the *Regulations*, where only a small circle of artists contribute to the creative aspect of an audiovisual work whereas the others participate in the

making of the work, cannot be adopted because neither the everyday meaning of the words nor the *Act* permit this distinction to be made. He noted that in *Le Petit Larousse*, “contribution” is defined as [TRANSLATION] “participation provided by someone to a common activity,” whereas “participation” is [TRANSLATION] “the act of participating,” that is taking part. “To create” means [TRANSLATION] “to give an existence or form to or to produce from existing elements” whereas “to make” means [TRANSLATION] “to transform materials into objects of everyday use.” According to the Federation, “making” and “creating” are virtually synonymous, as are “participation” and “contribution.”

[274] The Federation notes that the *Regulations* merely define the professional categories provided for in subparagraph 6(2)(b)(iii) of the *Act*. It cannot contradict the *Act* itself. The provision applies to professionals who participate in the production, and the English version says “... contribute to the creation...” The English version of the *Regulations* repeats the verb “contribute” (... contributes directly to the creative aspects...) whereas in this case the French equivalent is “...dont l'exercice contribue directement à la conception...”. The terms “participation” and “contribution” are accordingly synonyms and indicate that the artist must not be the only or the main creator of the work, contrary to what the NFB is arguing. It is sufficient for this person to contribute a creative element to the overall work.

[275] According to the Federation, the interpretation given to the *Regulations* by the NFB is designed to restrict its meaning solely to costume, hairstyle, make-up and set designers whereas it applies to all those who participate by making their own creative contribution to the creative aspects of the work in the broader sense. In support of its argument, the Federation cites the decision in *Association des professionnels des arts de la scène du Québec and Associated Designers of Canada*, 2001 CAPPRT 037 (hereinafter *APASQ*):

[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 ...

[276] According to the NFB, a person does not contribute to the creation of an artistic work once his or her creative work is subject to the instructions of a designer or supervised by another creator. The Federation notes that the Tribunal has also rejected this argument as follows in the *APASQ* decision:

[164]... 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*. ...

[277] The Federation states that certain positions in the proposed sector are covered by subparagraph 6(2)(b)(i) and cites the decision in *Regroupement des artistes en arts visuels du Québec*, 1997 CAPPRT 021:

[22] The Tribunal is of the view that it can include in the sector proposed by the applicant artists whose form of expression is painting, sculpture, engraving, drawing,

illustration, photography and textile art, because all these forms of expression are covered by section 2 of the *Copyright Act* and can be subject to copyright.

[278] According to the Federation, it is not important that these works are later integrated into a work of film. When a sculptor-molder creates a sculpture, he or she creates an artistic work within the meaning of the *Copyright Act*, one that is an independent work and the fact that it is included in another work protected by the *Copyright Act*, a work of film, does not deprive it of this character of artistic work protected by the *Copyright Act*. The same is true of the prosthetic make-up technicians and prosthetic make-up assistants who create sculptures, prop designers, scenic painters, head painters, sculptor-molders, draughtsmen and weapons specialists as well as the people who create programs and software that are literary works within the meaning of the *Copyright Act* or that use these forms of software to create artistic works such as the computer graphics designer and motorized projector programmer.

[279] Finally, the Federation submits that the work of director of an audiovisual work is expressly referred to in subparagraph 6(2)(b)(i) of the *Act* and that the assistant director or first assistant director participates in the creative tasks of the director, even though they do so under his or her supervision and this position is accordingly covered by subparagraph 6(2)(b)(i).

[280] However, other positions are covered by subparagraph 6(2)(b)(ii). In paragraph 167 of the *APASQ* decision, the Tribunal drew an analogy with the work of choreographer in order to determine whether directors and assistant directors in the theatre direct a work and are accordingly artists under subparagraph 6(2)(b)(ii) of the *Act*, even though this work is done under the supervision of the director. The Federation argues that the evidence concerning the assistant director or the first assistant director shows that he or she in some way directs the work of film that is, according to the *Copyright Act*, akin to a dramatic work. According to the Federation, this inclusion under subparagraph 6(2)(b)(ii) of the *Act* must also extend to the second assistant director who is, according to the work description, responsible for directing activities on the periphery of the set, including ensuring the direction of the background performers and the costumes, hairstyling and make-up departments. Moreover, the same is true of the set director or director in a television production because the director is involved in editing in a separate room and it is the floor director or the floor manager who is his or her eyes and ears in the studio and directs shooting.

[281] As to the so-called “television” trades, the Federation stresses that there is an approach that comes from the studios and there is an approach that is more akin to film, that comes from shooting at an outside location in a piecemeal way, but these distinctions are tending, with the new technologies, to become less marked and can vary greatly from one type of production to another. Thus, there is a difference but undue importance should not be placed on this difference. According to the Federation, many of these positions are similar from one production to another, from one production area to another.

[282] Secondly, as to the cinema trades, the Federation notes that the analysis of the professions conducted by Éduconseil was validated by the expert for the NFB, Claude Bonin, who changed only a few lines of authority or supervision. The fact that an artist must perform his or her creative activity in accordance with the directives provided by another

creator and, in the front line the director, who is in charge of the film, does not alter the fact that he or she makes a distinct creative contribution to the overall creative aspects of an audiovisual work.

The NFB's submissions

[283] The NFB is of the opinion that the Tribunal must consider the criteria set out in the *Act* to determine who is an artist. One of these criteria is recognition by third parties. The NFB notes that everyone agrees in saying that an actor is an artist. Producers recognize that directors, scriptwriters and editors are essential to the creation of a film and that these people are also artists. Consequently, the Tribunal must recognize that historically some people have been considered to be artists by their peers or by third parties who have dealings with them.

[284] As to the professions to be included in the proposed sector, the NFB submits that no evidence was adduced before the Tribunal showing that third parties recognize the people practising these professions as being artists and that the Tribunal consequently could not “create a precedent” because a person does not become an artist merely because a tribunal decides that that person is an artist.

[285] The NFB submits that the *Regulations* significantly restrict the people who are referred to therein since it speaks of “professions” and not of fields:

Subject to subsection (2), in relation to the creation of a production, the following professional categories comprising professions ... 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)(iii) of the *Act*.

And, furthermore, these professions must “... contribute directly to the creative aspects of the production”, which is much more restrictive than the wording of the *Act*.

[286] According to the NFB, there are four persons who create a film: the producer, the scriptwriter, the director and the editor. These four creators must retain collaborators in order to make the film. The NFB rejects the Federation’s argument that all those who are involved in the production are artists. Rather, it is necessary to identify the professions that contribute directly to the creative aspects of the production, those that would influence the creators. The NFB is of the opinion that the main collaborators who would influence the approach taken in a film are the director of photography, the art director and a number of people who have creative authority such as the costume designer and set designer. These individuals contribute directly to the creative aspects of the production.

[287] The NFB rejects the Federation’s argument that “creation” is synonymous with “making” and gives the example of an architect who designs a house and hires co-workers to build it. This will not be the work of a carpenter even though he or she may have contributed to making the house. The creation of a film and its execution are two completely different things. According to the NFB, if the *Regulations* are interpreted as meaning to contribute to the making of a work, then we come back to the *Act*, and the *Regulations* would serve no purpose.

[288] The NFB also submits that the Tribunal must fully analyse the meaning of “directly” in the *Regulations*, The dictionary defines this word as meaning [TRANSLATION] “without an intermediary” and it cannot be said that the hundreds of technicians who might work on the making of a film contribute directly to the creation of the film.

[289] The *Act* is designed to permit the certification of artists who produce works. In the case of cinema, the work is the film. The NFB submits that the *Act* does not contemplate certification with respect to parts of works. It is the work itself that identifies the artist and not parts of works.

[290] According to the NFB, there is a distinction between the film approach and the television approach and it urges the Tribunal to draw the necessary distinctions between the various trades. For example, it notes that a director in the theatre and a director in film do not practise the same trade.

[291] As to the Federation’s argument that conducting research as part of a job means that this position is covered by the *Regulations*, the NFB rejects this claim and maintains that the position of a researcher is one that exists in its own right.

[292] The NFB argues that the Federation has not made a distinction between “junior” and “senior” workers who practise each of the trades and that it would accordingly be difficult to negotiate the salaries in a collective agreement. Furthermore, it notes that a sector should not be certified on the basis of evidence that gives added value to certain persons who have extraordinary abilities because the sector includes all those who practise the same trade. The NFB submits that the Tribunal’s task is to certify work descriptions and that the debate should not have been personalized. For example, the NFB notes that where an employer describes the duties of a position, the employer never sets out the qualities of the person who would hold that position.

[293] According to the NFB, the Federation did not adduce any evidence to support its argument that some trades, including those of sculptor-molder, draughtsman, prosthetic make-up technician and scenic painter, are the creators of artistic works referred to in subparagraph 6(2)(b)(i) of the *Act*.

[294] Finally, the NFB asked the Tribunal to define what is meant by “in the province of Québec” in the proposed sector. Does the sector cover productions that were made in their entirety in Québec or partially in Québec by people living in Québec or who come to live in Québec for the duration of the production.

VII

Analysis and conclusion

Agreements concluded by the parties

[295] As requested by the parties, the Tribunal takes official notice of the agreements listed in paragraph 14 of these reasons.

Is the Federation adequately constituted?

[296] Given the analysis conducted in paragraphs 30 to 47 of these Reasons, it is not necessary to reconsider this point; the answer to question 1 is yes.

The “cinema or film” approach and the “television” approach

[297] Some of the professions listed in the sector proposed by the Federation are specific to the field of cinema—which the witnesses referred to as the “film approach”—while others exist only in the field of television. Finally, some positions exist both in film and in television, but the duties performed may be different. The Federation is asking the Tribunal to find that all the proposed professions contribute, in one way or another, to the production of an audiovisual work regardless of the medium or the approach, while the NFB is asking the Tribunal to distinguish them according to the approach.

[298] Movies produced on film are now to be seen on television, while videos are increasingly present in cinema. Some professionals can distinguish between the two modes of production, and say that they see a world of difference between them. However, most people—including those who work in the field—cannot do this. With a few exceptions, the professions required to make films and those required to make videos are comparable. A team of directors, actors, authors, designers and camera operators is necessary, and a number of technicians move easily from one type of production to the other.

[299] Until very recently, the essential difference between film and video was “intent.” Elaborate, complex feature films were usually made for the big screen, while short works or television series, designed for the small screen, were usually recorded on videotape. Since technology has blurred the distinctions between the two modes of recording, cinema screens have shrunk and television screens have expanded, the differences between the two modes have become less and less significant, even though some differences still exist. These differences primarily relate to the fact that television is produced in a studio, with several cameras recording simultaneously, while in features films the shots are planned out. In a few years, the differences between the two modes of production will become even less as the industry increasingly moves to digital technology. This is the spirit in which the Tribunal plans to analyze the proposed professions and possibly certify a sector.

Analytical criteria for determining what positions in the proposed sector are covered by the Act

[300] It is worthwhile recalling the relevant provisions of the *Act* and *Regulations*:

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.

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)(iii) 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; and

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

[...]

[301] The NFB argues that only artists recognized as such by their peers should be recognized as artists within the meaning of the *Act*. Although it is correct to say that, historically, some persons were recognized as artists by their peers or by third parties with whom they established a relationship, the *Act* does not make this distinction. Section 5 of the *Act* defines an “artist” as an independent contractor described in paragraph 6(2)(b). To define the authors to whom the *Act* applies, Parliament incorporated into subparagraph 6(2)(b)(i) the concept of “works” within the meaning of the *Copyright Act*, R.S.C. 1985, c. C-42. Not all “authors” are “artists” as the NFB understands the term, since the only distinctive characteristic of a literary work is not its literary or artistic merit, but simply the fact that it has been written or printed (*Apple Computer Inc. v. Macintosh Computers Ltd.* (1987), [1988] 1 F.C. 673 (C.A.), upheld by [1990] 2 S.C.R. 209). To specify more clearly the persons covered by the *Act*, Parliament provided a mechanism to determine the professional status of an independent contractor’s activity. This provision must guide the

Tribunal when it determines the professional status of an independent contractor within the meaning of the *Act*. This provision does not necessarily determine who is an artist in the eyes of the community. Paragraph 18(b) of the *Act* provides that the Tribunal may examine one or the other of the following criteria:

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.

[302] The NFB's argument that the absence of evidence concerning "junior" and "senior" people will make it difficult to negotiate a collective agreement, is untenable. Every bargaining sector has individuals at different stages in their career. Some have much experience, some little; some are "stars," others not. Scale agreements negotiated under the *Act* stipulate only minimum rates for the provision of a service or the commissioning of a work. Artists remain free to negotiate conditions superior to the minimum provided for in the agreement. Some artists will be able to negotiate a better situation for themselves because of their experience or status, while others will not be able to do this.

[303] The NFB insists on the wording of section 2 of the *Regulations*, which refers to "professions in which the practitioner contributes directly to the creative aspects of the production," and is asking the Tribunal to interpret this provision. The production of an audiovisual work requires the participation of hundreds of people whose contribution varies greatly in importance. The director's role and influence is most important of all, and the screen writer and editor also play primary roles. The NFB is of the view that the director of photography, the art director, the costume designer and the set designer are part of the group of individuals who make a direct contribution to creative aspects of the production, and is asking the Tribunal to restrict the bargaining sector to these professions. According to the NFB, the other individuals involved in the production are artisans or people who just carry out orders; they do not contribute directly to the creative aspects of the production because their work is subordinated to the instructions of a designer, or they do their work under the supervision of another creator. The Tribunal cannot accept such an interpretation, and has indeed already dismissed it (see the decision in *APASQ*, *supra*, para. 146).

[304] Along the same lines, the NFB maintains that the use of the term "directly" restricts the scope of the *Regulations* to those professions that have direct decision-making authority regarding the final state of the production. We cannot subscribe to this point of view. Such a restrictive interpretation would violate the principle of the useful effect of the law. As the Supreme Court of Canada affirmed, in the judgment written by Spence J.: "It is of course trite

law that no legislation whether it be by statute or bylaw should be interpreted to leave parts thereof mere surplusage or meaningless...” [...]” (*Subilomar Properties (Dundas) Ltd. v. Cloverdale Shopping Center Ltd.*, [1973] S.C.R. 596, 603).

[305] It seems clear to us that if Parliament chose to give the Governor in Council the power to define professional categories by regulation under subparagraph 6(2)(b)(iii) and section 56 of the *Act*, it did so in order to bring within the purview of the *Act* professions to which the *Act* did not already apply through pre-existing provisions. However, the interpretation proposed by the NFB would have the effect of restricting the application of the *Regulations* to professions which, for the most part, are or could be included in subparagraphs 6(2)(b)(i) or (ii) of the *Act* as authors within the meaning of the *Copyright Act*, as directors or as persons who are in some way responsible for the direction of a work. The Tribunal is of the opinion that it must give a broader interpretation to the *Regulations* in order to give effect to the objectives of the *Act*. That does not mean that all the individuals who take part in the production of an audiovisual work practice professions that are covered by the *Regulations*. It is necessary to examine each profession and to make a finding based on the evidence and on the arguments that have been presented.

[306] When the Tribunal interpreted the *Regulations* for the first time in *APASQ*, *supra*, it arrived at its decision by first examining the duties performed in a particular position. In some cases, it examined the hierarchical relationship of the position in the context of production (see *APASQ*, para. 142). The Tribunal also considered the question of whether it was possible to identify the creative contribution of the individual’s work to the production as a whole, and whether the nature of the work “breathed life” into the ideas of a designer (see *APASQ*, paras 142, 151 and 155).

[307] These criteria are appropriate, and enable us to determine whether or not practicing a particular profession contributes directly to the creative aspects of the production in the broader sense intended by Parliament. For greater clarity, however, the Tribunal is of the view that it may consider one or more of the criteria stated below in order to determine whether a particular profession is covered under one of the professional categories listed in the *Regulations*:

- The nature of the duties.
- The fact that it is possible to identify an original finished product that is the result of artistic skill.
- The fact that the result of the work helps to breathe life into, or realize, the artistic vision of the director, or of a designer or other creator.
- The influence that the individual can exercise, given the hierarchical relationship of the position in the context of the production.

Analysis of the evidence concerning the professions in the proposed sector

Assistant director and first assistant director

[308] The duties of the assistant director and first assistant director are to plan and coordinate all the activities linked to the filming. The individual must also go through the script to estimate requirements for actors, for background performers and in other departments. His or her duties may include directing background performers or certain secondary roles. The individual works in close collaboration with the director.

[309] On the one hand, section 2 of the *Copyright Act* provides that a work of cinematography is like a dramatic work. The following is the relevant provision:

Dramatic work

includes any piece for recitation, choreographic work or mime, the scenic arrangement or acting form of which is fixed in writing or otherwise, **any cinematographic work**, and any compilations of dramatic works. (Our emphasis)

[310] On the other hand, part of the work of the assistant director or first assistant director is to do directing, in other words, to direct, to some extent, supporting roles or background performers. Subparagraph 6(2)(b)(ii) of the *Act* provides as follows:

6. This Part applies

[...]

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

[...]

(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,

[...] (Our emphasis)

[311] Even if part of the duties of the assistant director or first assistant director is administrative or involves coordinating, the Tribunal finds that it may include this profession under subparagraph 6(2)(b)(ii) of the *Act* because the evidence shows that these individuals are called upon to direct actors, if only in secondary roles or as background performers, and that they may be called upon to direct other aspects of the production.

Second assistant director and third assistant director

[312] Regarding the second and third assistant directors, the Tribunal finds that the evidence produced does not show that the duties inherent in these two positions contribute directly to the creative aspects of the production, since these duties are primarily administrative and do not result from artistic skill. Consequently, these positions are not covered by the *Regulations*. Moreover, the evidence does not show that they direct in any manner, and consequently, these positions are not covered by subparagraph 6(2)(b)(ii) of the *Act*.

Director of photography

[313] The inclusion of this position is not challenged. The evidence shows that the director of photography has a primary role in developing the artistic and stylistic design of the film. Moreover, the director of photography works closely with other creators. These two factors are sufficient to allow the Tribunal to find that this profession contributes directly to the creative aspects of the production and is covered by paragraph 2(1)(a) of the *Regulations* (category 1: camera work, lighting and sound design).

Camera operator

[314] The camera operator sets up shots in accordance with the style established by the director of photography and the director, and works with the director of photography. According to witness Claude Bonin, the camera operator does not contribute to converting the director's artistic vision into pictures, but may make suggestions to the director of photography.

[315] The work of the camera operator unquestionably requires technical skills. However, the camera operator must show artistic ability, because his or her work requires that he or she be in direct contact with the director of photography and, in certain cases, with the director. Even if the camera operator does not convert the director's artistic vision into pictures, he or she must be able to translate the intention of the director of photography, or express it in concrete form. The fact that the camera operator may make suggestions to the director or the director of photography shows that he or she could influence the creative aspects of a production. The Tribunal finds that the camera operator contributes directly to the creative aspects of the production, and that this profession is covered by paragraph 2(1)(a) of the *Regulations* (category 1: camera work, lighting and sound design).

Cameraman (including steady-cam, baby-boom and camera operated through a specialized system [C.O.S.S.]

[316] The cameraman position includes using various cameras in the fields of television, video and film. According to the evidence submitted, there are differences in the duties associated with the use of various cameras and differences relating to the approach (film or television). However, we do not think that it would be useful, in terms of professional relations, to try to separate out all the positions and approaches. Consequently, for the purposes of certification, the Tribunal finds that it is preferable to examine the profession of cameraman in general terms. This does not imply that the positions are necessarily interchangeable.

[317] Generally speaking, the cameraman works closely with the director and other creators. His or her work requires technical ability, but also an artistic sensibility to be able to transpose the instructions of the director or of the director of photography. In addition, because of the cameraman's hierarchical position in a particular production, he or she is in direct contact with the director and could, in certain situations, influence the director. The Tribunal finds that the profession contributes directly to the creative aspects of the production and is covered by paragraph 2(1)(a) of the *Regulations* (category 1: camera work, lighting and sound design).

First camera assistant

[318] The evidence submitted shows that the first camera assistant performs technical and equipment handling duties, and does not have to interpret a creator's vision or express it in concrete form. Consequently, the first camera assistant does not contribute to the creative aspects of the production. The Tribunal finds that this is not a position covered by the *Regulations*.

Video assist operator

[319] Mr. Bonin challenges the work description submitted by the Federation, and primarily the assertion that the video assist operator is called upon to work closely with the director. According to Mr. Bonin, this individual has to be in contact with the director. There is nothing in the documentary evidence to show that the various duties associated with this position are other than technical in nature, and there is nothing to show any contribution to the creative aspects of the production. The Tribunal finds that this is not a position covered by the *Regulations*.

Still photographer

[320] The work of the still photographer requires special analysis. According to the documentary evidence, the still photographer must produce a set of photographs that will be useful in promoting the film.

[321] The Tribunal has, however, already recognized the work of photographers in connection with three applications for certification. In Decision No. 012 concerning the application for certification filed by the Canadian Association of Photographers and Illustrators in Communications, 1996 CAPPRT 012, the Tribunal granted the association a bargaining sector throughout Canada "composed of commercial photographers and commercial illustrators."

[322] In Decision No. 021 concerning the application for certification submitted by the Regroupement des artistes en arts visuels du Québec, 1997 CAPPRT 021, the Tribunal granted this association a bargaining sector composed of:

...all professional independent contractors in the field of visual arts in Quebec who are authors of original artistic works of research or expression, either in single copy or a limited number of copies, that are commissioned or distributed by a producer subject to the *Status of the Artist Act* and expressed in the form of [...] **photography** [...] excluding:

[...]

(b) commercial photographers and commercial illustrators covered by the certification granted by the Canadian Artists and Producers Professional Relations Tribunal to the Canadian Association of Photographers and Illustrators in Communications on April 26, 1996 and in accordance with the terms of the agreement concluded between the Regroupement des artistes en arts visuels du

Québec and the Canadian Association of Photographers and Illustrators in Communications on March 20, 1997;

[...] (Our emphasis)

[323] Finally, in Decision No. 029 concerning the application for certification filed by the Canadian Artists' Representation / Le Front des artistes canadiens, 1998 CAPPRT 029, the Tribunal granted to this organization a bargaining sector composed of:

[...] all independent professional visual and media artists in Canada who are authors of original artistic works of research or expression commissioned by a producer subject to the *Status of the Artist Act* and expressed in the form of [...] **fine art photography** or any other form of expression of the same type, excluding:

[...]

(b) artists covered by the certification granted to the Regroupement des artistes en arts visuels du Québec by the Canadian Artists and Producers Professional Relations Tribunal on April 15, 1997;

(c) artists covered by the certification granted to the Canadian Association of Photographers and Illustrators in Communications by the Canadian Artists and Producers Professional Relations Tribunal on April 26, 1996;

[...] (Our emphasis)

[324] These three decisions, and especially the decision concerning the Canadian Association of Photographers and Illustrators in Communications, create sectors that to a large extent embrace the work of the still photographer. In the absence of any evidence to the effect that the work of the still photographer must be included in a sector separate from those that have already been granted by the Tribunal, we must necessarily find that the work of the still photographer cannot be the subject of the certification sought by the Federation in the present case.

Lighting director

[325] The lighting director is the person who, in the television field, designs the lighting required for the production of a program. He or she works with the director and other creators, such as the set designer, and is involved in a project from the outset. This position helps to express, in concrete form, the director's vision and that of other creators involved in a particular production. Consequently, the Tribunal finds that the profession contributes directly to the creative aspects of the production, and is covered by paragraph 2(1)(a) of the *Regulations* (category 1: camera work, lighting and sound design).

Chief lighting technician

[326] The chief lighting technician provides the lighting on the set. He or she organizes or coordinates the work of the lighting technicians when there are several production sites. The solemn declaration of Normand Forget indicates that the chief lighting technician must

create a style and propose various degrees of illumination in close co-operation with the director of photography.

[327] The evidence shows that the coordination and supervision duties associated with this profession are significant. Moreover, the work on the console is very technical. The Tribunal finds that this profession does not contribute directly to the creative aspects of the production. The profession is not covered by the *Regulations*.

Chief electrician

[328] The work of the chief electrician, like that of the chief lighting technician, consists of providing lighting on the set. The chief electrician coordinates and supervises the work of the lighting technicians. The Tribunal finds that this profession does not contribute directly to the creative aspects of the production. The profession is not covered by the *Regulations*.

Motorized projector programmer / operator

[329] The motorized projector programmer / operator installs, programs and operates motorized projectors in order to achieve certain colour or light effects. He or she is called upon to draw up lighting plans, and must also supervise the assembling of equipment and change the position of equipment if necessary.

[330] Most of the duties in the work description are technical; others involve supervision or coordination. Consequently, the Tribunal finds that this profession does not contribute directly to the creative aspects of the production. The profession is not covered by the *Regulations*.

Sound man

[331] The sound man creates the sound ambiance that supports the picture. He or she must have a mastery of the various techniques relating to sound recording. The solemn declarations led in evidence also indicate that the sound person must exercise artistic discernment to obtain the desired quality and effect. In particular, the sound person must work with the art director and the director of photography.

[332] We find that because the sound person must create the sound environment, and this environment must contribute to realizing the vision of a creator—in this case the art director or the director of photography—this profession contributes directly to the creative aspects of the production. The profession is covered by paragraph 2(1)(a) of the *Regulations* (category 1: camera work, lighting and sound design).

Sound effects technician

[333] The sound effects technician must artificially reproduce the sounds that accompany the action. He or she must display creativity in order to re-create noises and sounds that are realistic. In his solemn declaration, Harvey Robitaille affirms that the sound effects technician establishes the general ambiance of scenes by using background sound effects.

[334] The sound effects technician creates or re-creates the sound atmosphere sought by the director or other designer. In some cases, he or she works with a musical composer to achieve the desired effect. The Tribunal finds that the practice of this profession contributes directly to the creative aspects of the production and that this is a profession covered by paragraph 2(1)(a) of the *Regulations* (category 1: camera work, lighting and sound design).

Computer graphics designer

[335] The computer graphics designer designs animated or fixed images, such as opening titles and credits. In his testimony, Mr. Mélançon also explained that the computer graphics designer alters images by means of 3D modelling tools. The computer graphics designer uses specialized computer programs to create images that will be integrated into the audiovisual production.

[336] By its very nature, the work of the computer graphics designer can be easily identified in the production. The choice of effects is the result of artistic ability, even if this skill is translated by a computer. The effects created must give concrete expression to the vision of the director or other creator. The Tribunal finds that the practice of this profession contributes directly to the creative aspects of the production, and that the profession is covered by paragraph 2(1)(a) of the *Regulations* (category 1: camera work, lighting and sound design).

Computer graphics special effects technician

[337] The work of the computer graphics special effects technician resembles that of the computer graphics designer, but relates more to special effects. In addition, the work of this individual includes a supervision and coordination aspect, in particular with regard to acting as a bridge between the film set and the post-production offices. According to Mr. Mélançon, the computer graphics special effects technician is involved in all phases of the design of a special effect, starting with the reading of the script.

[338] Even though the work of the computer graphics special effects technician has aspects that could be described as administrative, the Tribunal finds that for the reasons stated in respect of the computer graphics designer, the computer graphics special effects technician does contribute directly to the creative aspects of the production. Consequently, this is a profession covered by paragraph 2(1)(a) of the *Regulations* (category 1: camera work, lighting and sound design).

Make-up designer

[339] None of the producers in this matter has challenged the inclusion of this profession in the proposed sector. The make-up designer sees to the creation of the look of the characters, as envisaged by the director. In this capacity, the make-up designer contributes directly to the creative aspects of the production and the profession is therefore covered by paragraph 2(1)(b) of the *Regulations* (category 2: costumes, coiffure and make-up design).

Supervising make-up artist

[340] The supervising make-up artist brings together a team of make-up artists and make-up assistants, as required by the scope of the production, and must manage this team. He or she works with the director of photography and the set designer. In television more particularly, the responsibilities of the supervising make-up artist seem to extend to all aspects of production, from attending production meetings to purchasing make-up products. France Signori states that she has to create make-up styles, and Yves-André Bergeron emphasizes that his work involves bringing the director a broad range of creative design proposals for the particular type of work to be produced.

[341] The evidence shows that some duties of the supervising make-up artist are administrative, and that he or she might have to supervise a team of make-up artists and assistants. In smaller productions, the team may be fairly small. In our view, these duties do not diminish the influence that the incumbent of this position may have. The work of the supervising make-up artist results from artistic ability, since he or she must be able to translate and express, in concrete form, the ideas of the designer or, as the case may be, the director. The work of the supervising make-up artist, like that of the designer, contributes directly to the creative aspects of the production. Consequently, this is a profession covered by paragraph 2(1)(b) of the *Regulations* (category 2: costumes, coiffure and make-up design).

Make-up artist

[342] The make-up artist is primarily responsible for the make-up of actors playing supporting roles. He or she creates make-up styles in accordance with the instructions of the supervising make-up artist or make-up designer. Mr. Létourneau emphasized that in some television programs, there is no make-up designer or supervising make-up artist, only a make-up artist, who must design the make-up styles.

[343] The make-up artist must demonstrate creativity and artistic ability in his or her work, and must have acquired and be the master of many techniques that make it possible to give life to the character. Even if a character is imagined or created by the director or other creator, it is given concrete form by a designer, a supervising make-up artist or, in some cases, the make-up artist. Furthermore, in television and in smaller film productions, it is often the make-up artist who must design and produce the make-up styles. These may involve making an actor look older or younger, changing an actor's physical form, etc. The Tribunal finds that the work of the make-up artist, like that of the designer, contributes directly to the creative aspects of the production. Consequently, this is a profession covered by paragraph 2(1)(b) of the *Regulations* (category 2: costumes, coiffure and make-up design).

Make-up assistant

[344] The duties of the make-up assistant are comparable to those of the make-up artist, except that the assistant will have to handle the make-up for the actors who play the tertiary roles, non-speaking roles and walk-on parts. The Tribunal finds that, for the reasons stated above regarding make-up artists, make-up assistants contribute directly to the creative aspects of the production. Consequently, this is a profession covered by paragraph 2(1)(b) of the *Regulations* (category 2: costumes, coiffure and make-up design).

Special effects make-up artist

[345] On the one hand, the work of the special effects make-up artist is similar to that of the make-up artist, as described above. On the other hand, it is different because the special effects make-up artist works with prostheses, and must use materials other than those normally employed for make-up in order to create special effects and make-up in three dimensions. The Tribunal finds that for the reasons stated above with respect to make-up artists, special effects make-up artists contribute directly to the creative aspects of the production. Consequently, this is a profession covered by paragraph 2(1)(b) of the *Regulations* (category 2: costumes, coiffure and make-up design).

Prosthetic make-up technician

[346] The prosthetic make-up technician designs and makes the prostheses used to alter the actors' appearance. The result of this work is original, and requires artistic talent. The individual is called upon to collaborate, in particular, with the make-up designer, the director and the director of photography in order to give concrete expression to their vision.

[347] The Tribunal finds that the prosthetic make-up technician contributes directly to the creative aspects of the production. Consequently, this is a profession covered by paragraph 2(1)(b) of the *Regulations* (category 2: costumes, coiffure and make-up design).

Prosthetic make-up assistant

[348] The duties of the prosthetic make-up assistant are comparable to those of the prosthetic make-up technician. However, this individual will create prostheses for the actors playing tertiary roles, non-speaking roles and walk-on parts.

[349] The Tribunal finds that for the reasons stated above with respect to the prosthetic make-up technician, the prosthetic make-up assistant contributes directly to the creative aspects of the production. Consequently, this profession is covered by paragraph 2(1)(b) of the *Regulations* (category 2: costumes, coiffure and make-up design).

Hairstylist designer

[350] This position is not being challenged by the producers involved in this matter. The hairstylist designer creates hairstyles to suit the vision of the director and thus contributes directly to the creative aspects of the production. Consequently, this is a profession covered by paragraph 2(1)(b) of the *Regulations* (category 2: costumes, coiffure and make-up design).

Supervising hairstylist

[351] It appears from the evidence that in certain situations, there is no hairstylist designer, but rather a supervising hairstylist. In such cases, the supervising hairstylist must design the hairstyles or develop the look of the characters, and must dress the hair of the actors in the desired style. The supervising hairstylist must also work with the supervising make-up artist and the costume designer so that the character as a whole will correspond to what the director has in mind. The supervising hairstylist is also called upon to direct the work of the other hairdressers. The Tribunal finds that the work of the supervising hairstylist, like that of the designer, contributes directly to the creative aspects of the production. Consequently, this is a profession covered by paragraph 2(1)(b) of the *Regulations* (category 2: costumes, coiffure and make-up design).

Hairdresser

[352] According to the evidence, the duties of the hairdresser are comparable to those of the supervising hairstylist, except that the hairdresser does not have to supervise the work of a team. The hairdresser must exhibit artistic ability to bring the character to life by giving the character the hairstyle designed by the supervising hairstylist. He or she will have to design simple special effects. The Tribunal finds that the hairdresser contributes directly to the creative aspects of the production. Consequently, this is a profession covered by paragraph 2(1)(b) of the *Regulations* (category 2: costumes, coiffure and make-up design).

Wig-maker

[353] The wig-maker is usually a hairdresser who works with hair prostheses and wigs. He or she may be called upon to make wigs, beards, eyebrows, etc. The wig-maker must achieve the visual appearance of the character using wigs or other artificial devices.

[354] The work requires artistic ability in order to translate the vision of the director or other creator. The Tribunal finds that the wig-maker contributes directly to the creative aspects of the production. Consequently, this is a profession covered by paragraph 2(1)(b) of the *Regulations* (category 2: costumes, coiffure and make-up design).

Costume designer

[355] This position is not challenged by the producers who are parties to this matter. The Tribunal has already determined in *APASQ, supra*, that costume designers are covered by the *Regulations*. The duties of the costume designer in relation to an audiovisual production are essentially the same. Consequently, the Tribunal finds that the costume designer contributes directly to the creative aspects of the production, and that this is thus a profession covered by paragraph 2(1)(b) of the *Regulations* (category 2: costumes, coiffure and make-up design).

Costumer

[356] The costumer assists the costume designer in the design of costumes, and is called upon to create or design costumes for characters in tertiary, non-speaking and walk-on roles.

In smaller productions, the costumer will have to assume all the duties relating to costumes, some of which are administrative.

[357] Drawings, mock-ups or sketches prepared by the costumer in order to make a costume are the result of artistic ability. The costumer's creations and the work that he or she does with the costume designer contribute to realizing the vision of the director. The Tribunal therefore concludes that the costumer contributes directly to the creative aspects of the production. Consequently, this is a profession covered by paragraph 2(1)(b) of the *Regulations* (category 2: costumes, coiffure and make-up design).

Specialized costume technician

[358] The specialized costume technician helps the costume designer or costumer to complete the appearance of the character by providing or creating such props as hats, shoes or jewels for characters in tertiary, non-speaking or walk-on roles. According to the evidence, the specialized costume technician is sometimes a propsman specialist, chief hat-maker, set designer or a cutter. He or she is also called upon to coordinate the work of a team of technicians.

[359] The duties of the specialized costume technician require some artistic skill. However, it is likely that most of the time, props are purchased, not created from scratch. The Tribunal finds that the specialized costume technician is not in a position to have a significant influence on the concepts developed by the costume designer. Consequently, this profession does not contribute directly to the creative aspects of the production and is not covered by the *Regulations*.

Costume technician

[360] The costume technician works under the supervision of the specialized costume technician, and must deal primarily with the production or fabrication of props. Part of the work may perhaps require some artistic ability, but this is not the case for most duties of this profession. As in the case of the specialized costume technician, the Tribunal finds that the costume technician is not in a position to have a significant influence on the concepts developed by the costume designer. Consequently, this profession does not contribute directly to the creative aspects of the production and is not covered by the *Regulations*.

Wardrobe mistress and assistant wardrobe mistress

[361] The wardrobe mistress and the assistant wardrobe mistress essentially see to it that the actors are properly clothed. The Tribunal finds that neither of these professions contributes directly to the creative aspects of the production. Consequently, they are not covered by the *Regulations*.

Dresser

[362] The Tribunal finds that the evidence submitted does not enable it to determine whether this position is covered by the *Regulations*.

Propsman specialist

[363] The duties of the propsman specialist are similar to those of the propsman. Essentially, the propsman specialist “dresses” the set by purchasing or creating the props that compete the set.

[364] This profession requires some artistic skill, but the Tribunal finds that it does not contribute directly to the creative aspects of the production, and is not covered by the *Regulations*.

Puppet designer

[365] This position is not challenged by the producers who are parties to this matter. The Tribunal already determined in the *APASQ* decision, *supra*, (at paras 147 to 150), that puppet designers are covered by the *Regulations* in the field of the performing arts. We find that the duties associated with this position in connection with an audiovisual production are essentially the same and do not require an exhaustive analysis.

Transportation co-ordinator

[366] The work of the transportation co-ordinator primarily consists of identifying the vehicles required for a production. The nature of the transportation co-ordinator’s duties is such that this profession does not contribute directly to the creative aspects of the production and is not covered by the *Regulations*.

Assistant art director

[367] The assistant art director works closely with the art director, and with the visual designer and location manager. He or she represents the art director’s vision using three-dimensional drawings, plans and sketches, and may act as art director in creating certain film sets. The assistant art director will be called upon to design the set for certain scenes, to draw the set and to prepare the plans.

[368] Some duties of the assistant art director are administrative, but others require artistic sensibility and skill, in particular with regard to organization of the production location and graphic representation of the art director’s vision. Even though the assistant art director works under the supervision of the art director, the assistant art director is able to exercise a direct influence on the design, since he or she may be called upon to design certain aspects of the production. The Tribunal therefore finds that the profession contributes directly to the creative aspects of the production, and is covered by paragraph 2(1)(c) of the *Regulations* (category 3: set design).

Set designer

[369] The set designer designs various elements of the set design and ensures that they are available when the shooting begins. He or she works closely with the art director and with the director. He or she devises the furnishings and decorative elements at the locations where various scenes will be shot. The set designer produces three-dimensional drawings of various

components of the set, and draws the furnishings and decorative elements that will have to be reproduced. In a television production, the set designer designs the set for a program. In the shop, he or she supervises construction, and then supervises the assembly of the components in the studio.

[370] Most of the work of the set designer consists of breathing life into the vision of the art director, in the selection and even the design of set components. In this capacity, the set designer's work makes an important creative contribution, and clearly results from artistic ability. The Tribunal therefore finds that the profession contributes directly to the creative aspects of the production, and is covered by paragraph 2(1)(c) of the *Regulations* (category 3: set design).

Set decorator or technician

[371] Most of the work of the set decorator or technician consists of transporting, handling and installing sets in preparation for filming and after filming is completed. The set decorator or technician must also occasionally build sets or set components. He or she must also occasionally do painting work if no painter or scenic painter is present, and carpentry work if no carpenter is present.

[372] We find that the work of the set decorator or technician is essentially technical, involving the handling of materials. There cannot be any direct contribution to the creative aspects of the production, and the profession is thus not covered by the *Regulations*.

Props designer

[373] The props designer makes or modifies props that will be handled during a production. According to the witness Jacques Godbout, a props designer may be considered to be an "artist" in the case of certain films.

[374] The work of the props designer requires artistic skill, the aim being to create original elements used in the production that, although they are "props", are clearly identifiable. The Tribunal finds that the profession does contribute directly to the creative aspects of the production, and is covered by paragraph 2(1)(c) of the *Regulations* (category 3: set design).

Propsman crewleader

[375] The propsman crewleader makes and modifies the props that will be used by the actors or placed on the set. He or she works with the art director and the set designers, and creates a visual ambiance on the set that is reflected on the screen. In television, the propsman crewleader makes and modifies the props that must be handled during a production, under the supervision of the props designer.

[376] The work of the propsman crewleader requires artistic ability, since he or she must be able to translate the ideas of the props designer or art director and give them concrete form. In this regard, the work of the propsman crewleader contributes directly to the creative aspects of the production. The Tribunal therefore finds that the profession is covered by category 3 (set design) of the *Regulations*.

Studio propsman

[377] The studio propsman is responsible for placing the various props on the set when a film production is being shot, and for ensuring the continuity of the placing. He or she works closely with the art director and the location propsman. The studio propsman is responsible for harmonizing the styles and colours of the props with the set or the (outdoor) film location, and sometimes also with the proposed costume.

[378] The work of the studio propsman, like that of the propsman crewleader, requires a certain level of artistic sensibility and skill because the studio propsman must see to it that the set elements designed or chosen by others are harmonized among themselves. We conclude, however, that the studio propsman's creative contribution is not great enough nor direct enough to find that this profession contributes directly to the creative aspects of the production. The profession is not covered by the *Regulations*.

Location propsman

[379] The location propsman selects and obtains the various properties that will be used in a film production. He or she makes sure that the required props are on the set, in accordance with the concept developed by the art director. The location propsman also collects the props after the shooting is completed. He or she works closely with the art director, the visual designer and the artistic co-ordinator.

[380] The work of the location propsman, like that of the studio propsman, requires a certain level of artistic sensibility and skill because the location propsman must see to it that the set elements designed or chosen by others are harmonized among themselves. We conclude, however, that the location propsman's creative contribution is not great enough nor direct enough to find that this profession contributes directly to the creative aspects of the production. The profession is not covered by the *Regulations*.

Head painter

[381] The head painter designs and supervises the creation of the visual effects that must be produced on the sets, and works closely with the visual designer and the art director. He or she develops the design of visual effects, and changes them if necessary. The head painter must also do the research and analysis required to design visual effects achieved by paint. He or she creates trompe l'oeil, false finishes and patinas.

[382] The aim of the head painter's work is to give concrete form to the vision of the art director and visual designer. His or her work requires artistic ability, particularly in the design and implementation of visual effects, and the result of his or her work is clearly identifiable. The Tribunal therefore finds that the profession contributes directly to the creative aspects of the production and is covered by paragraph 2(1)(c) of the *Regulations* (category 3: set design).

Scenic painter

[383] The scenic painter produces visual effects in order to create textures in two or three dimensions. He or she works closely with the art director and the assistant art director. The scenic painter must develop methods for producing trompe l'oeil, false finishes and patinas, and may have to produce them.

[384] The work of the scenic painter requires artistic ability, in particular in the design and production of visual effects, the result of which is clearly identifiable. The Tribunal therefore finds that the profession contributes directly to the creative aspects of the production, and is covered by paragraph 2(1)(c) of the *Regulations* (category 3: set design).

Sculptor-molder

[385] The sculptor-molder makes and reproduces various sculptures. He or she works closely with the art director, the set designer and the visual designer. The sculptor-molder produces sketches, devises the concept of the sculptures and prototypes, and creates them. He or she must conduct such research and analysis of documents as is required to design the objects to be sculpted.

[386] It is clear that the duties of the sculptor-molder require artistic skills that result in the creation of original pieces that are clearly identifiable. His or her work helps to give concrete expression to a concept, and to realize the director's vision. The Tribunal therefore finds that the profession contributes directly to the creative aspects of the production, and is covered by paragraph 2(1)(c) of the *Regulations* (category 3: set design).

Draughtsman

[387] The draughtsman produces the drawings used to build the sets and to decorate a film production. To this end, the draughtsman co-operates closely with the art director and the visual designer. Using information received from the set designer, he or she executes drawings of the various sets. He or she makes drawings of film locations, and prepares plans, construction drawings and mock-ups. The draughtsman draws objects and props for the location propsman, and furnishings and decorative articles for the set designer.

[388] It is obvious that the work of the draughtsman, since it essentially consists of creating material representations of concepts imagined by the art director and the visual designer, helps to give concrete expression to their vision. Moreover, the very nature of these duties requires artistic ability. The Tribunal therefore finds that the profession contributes directly to the creative aspects of the production, and is covered by paragraph 2(1)(c) of the *Regulations* (category 3: set design).

Head carpenter

[389] The head carpenter plans the construction of sets and supervises the team of carpenters. He or she works with the art director, and ensures that the plans, drawings and sketches reflect the desired visual concept as closely as possible.

[390] The head carpenter's contribution and his or her collaboration with the art director are technical rather than artistic in nature. The head carpenter must give concrete form to a concept imagined and planned by others, and it is unlikely that he or she would be able to influence the concept of one of the creators, except in regard to technical issues. The Tribunal thus finds that the profession is not covered by the *Regulations*.

Studio special effects technician

[391] The studio special effects technician produces the special effects. He or she is also responsible for developing special effects, whether they be pyrotechnical, mechanical, hydraulic or electrical. The studio special effects technician works closely with the special effects co-ordinator, suggesting possible approaches.

[392] The essential aim of the work of the special effects technician is to breathe life into and give concrete form to the vision of the special effects designer. The duties of the special effects technician may, at first glance, seem very technical. However, they do require, for their performance, a certain artistic ability, since they involve implementing concepts that are very difficult to plan and describe in advance, but whose outcome is original and easily identifiable within the production. The Tribunal thus finds that the profession does contribute directly to the creative aspects of the production, and is covered by paragraph 2(1)(c) of the *Regulations* (category 3: set design).

Weapons specialist

[393] The work description indicates that the weapons specialist determines the type of firearms to be used according to the script and in collaboration with the director, producer, art director, actors and propsmen. The weapons specialist designs firearms, and may have to make a prototype or even reproduce a weapon. He or she must do the documentary research and analysis required to make a choice of firearms. According to Claude Bonin, the work of the weapons specialist is limited to doing research and making suggestions to the art director.

[394] Essentially, the weapons specialist does the same work as a propsman, but in the highly specialized field of firearms. Given the attention that naturally must be paid to the use of firearms during filming, the weapons specialist may have to work with the director or the actors themselves. However, the weapons specialist does not have to develop a concept, and his or her work is such that he or she cannot exercise any influence on the creators. This is not a profession covered by the *Regulations*.

Floor director or manager (excluding dubbing directors)

[395] The floor director or manager's role is to communicate the director's instructions to the whole set team, and to supervise the carrying out of these instructions. He or she ensures that the broadcast is running smoothly, directs the day's filming and resolves various problems on both the creative and technical levels.

[396] The evidence shows that the work of the floor director or manager is to manage the whole production on the set, according to the instructions obtained from the director. Since

the floor director or manager directs what is essentially a dramatic work, the Tribunal is including this profession under subparagraph 6(2)(b)(ii) of the *Act*.

Production assistant

[397] This position is covered by the *Act*, for the reasons stated above concerning the floor director.

Location manager

[398] The location manager visits the desired locations, chooses the places that are of genuine interest for the production, and submits a selection to the director and to the visual designer so that they can make the final choice.

[399] The work of the location manager consists of giving concrete form to the vision of the director and the visual designer. The duties of the position require artistic ability, in that the location manager must have a detailed understanding of the artistic vision of these creators and a capacity for visualizing it in relation to a location that may eventually be used to film the production. The Tribunal therefore finds that the profession contributes directly to the creative aspects of the production and is covered by paragraph 2(1)(e) of the *Regulations* (category 5: research for audiovisual productions, editing and continuity).

Script-clerk

[400] The script clerk ensures the logical progression of all the dramatic and technical aspects of a film. He or she ensures the continuity of the production.

[401] The work of the script clerk is essential to the expression of the director's vision in concrete terms because the script person ensures that this vision, which is a unity at the outset but is made up of several separate parts, has consistency in its final version. The Tribunal therefore finds that the profession contributes directly to the creative aspects of the production and is covered by paragraph 2(1)(e) of the *Regulations* (category 5: research for audiovisual productions, editing and continuity).

Script assistant

[402] There is no evidence concerning this profession. Consequently, it is impossible to determine whether this is a profession covered by the *Regulations*.

Switcher

[403] The switcher selects the various transitions between images and advises the director concerning this selection. He or she may also have to use a digital special effects device to design video effects that will be used to make these transitions.

[404] The work of the switcher requires some artistic ability, in that he or she has to create effects. However, most of the switcher's duties are technical in nature, and it is unlikely that

he or she will have any influence on the creative aspects of the production. The Tribunal finds that this profession is not covered by the *Regulations*.

ISO switcher

[405] The ISO switcher performs the same basic duties as a switcher, except that his or her work merely involves operating a switch to isolate camera outputs for the purpose of final editing.

[406] The work of the ISO switcher, like that of the switcher, requires some artistic ability to the extent that the ISO switcher must understand the director's vision. However, most of his or her duties are technical, and it is unlikely that the switcher would have any influence on the creative aspects of the production. The Tribunal finds that this profession is not covered by the *Regulations*.

Image controller (CCU)

[407] The image controller (CCU) is responsible for the checking and basic maintenance of the cameras, and ensures that the pictures are technically homogenous from one camera to another. Working with the lighting engineer, he or she seeks and selects the picture "texture" that is appropriate for a television production, and makes suggestions to the lighting engineer for improving the ambiance and the visual effects.

[408] The very nature of the duties of the image controller (CCU) leads the Tribunal to conclude that this profession is not covered by the *Regulations*.

Video credits designer

[409] The video credits designer is the person who, during a live program, is responsible for adding the text, paginating the text or superimposing titles on a picture such as the names of the guests or the credits.

[410] The very nature of the duties of the video credits designer leads the Tribunal to find that this profession is not covered by the *Regulations*.

Editor

[411] The editor must assemble the original pictures and sounds in a film production, to reflect the director's vision and the script. He or she does the final edit of the production.

[412] The editor plays an essential role in giving concrete expression to the director's vision. He or she is the person who, in co-operation with the director, gives the production its final visual appearance, working from the raw footage. The editor's close collaboration with the director necessarily exercises a definite influence on the latter. The Tribunal therefore finds that the profession contributes directly to the creative aspects of the production and is covered by paragraph 2(1)(e) of the *Regulations* (category 5: research for audiovisual productions, editing and continuity).

Off-line editor

[413] The off-line editor is the person who completes the pre-edit (video-audio) of a program. He or she decides on the cuts to be made, develops an editing plan, collaborates on the choice of scenes and decides on the shots to be chosen.

[414] The work of the off-line editor involves making artistic choices to give concrete form to the director's vision by drawing, from the raw footage, scenes that are likely to achieve this goal. In particular, the off-line editor does a pre-edit of these scenes. The Tribunal therefore finds that the profession contributes directly to the creative aspects of the production and is covered by paragraph 2(1)(e) of the *Regulations* (category 5: research for audiovisual productions, editing and continuity).

In-line editor

[415] The in-line editor completes the final editing of a program; in other words, once the work of the off-line editor is complete, he or she adds the effects and completes the dressing, sound and pictures for the program. The in-line editor decides on the cuts to be made, develops an editing plan, collaborates on the choice of scenes and decides on the shots to be chosen.

[416] The work of the in-line editor involves making artistic choices to give concrete form to the director's vision by completing the editing begun by the off-line editor. The Tribunal therefore finds that the profession contributes directly to the creative aspects of the production and is covered by paragraph 2(1)(e) of the *Regulations* (category 5: research for audiovisual productions, editing and continuity).

Sound editor

[417] The sound editor is responsible for arranging a number of sound tracks containing all the sound elements of a production in order to create a finished product to be reduced to a single track (mono) or two tracks (stereo) ready for broadcast.

[418] The work of the sound editor requires artistic talent because it involves determining how the production will ultimately sound. The sound editor thus helps to breathe life into this aspect of the director's vision. The Tribunal therefore finds that this profession contributes directly to the creative aspects of the production and is thus covered by paragraph 2(1)(e) of the *Regulations* (category 5: research for audiovisual productions, editing and continuity).

Sound mixer

[419] The sound mixer must create a sound track consisting of all the elements that may be used to support the image.

[420] The work of the sound mixer involves making a huge number of artistic choices since it consists of creating the sound background for the production. This work thus contributes significantly to breathing life into the director's vision. The Tribunal therefore finds that the

profession contributes directly to the creative aspects of the production and is covered by paragraph 2(1)(e) of the *Regulations* (category 5: research for audiovisual productions, editing and continuity).

Assistant editor

[421] The assistant editor prepares the material to make the editor's work easier, and may be called upon to complete the first edit of a sequence for the editor.

[422] It would seem that the assistant editor carries out, on a more elementary level, a number of the editor's duties. Nonetheless, the Tribunal finds that there is insufficient evidence to determine whether this is a profession covered by the *Regulations*.

Videographer

[423] The videographer uses a character generator to create titles, credits, sub-titles and sometimes graphics, and superimposes them on a picture. The very nature of the videographer's duties leads the Tribunal to the conclusion that this profession is not covered by the *Regulations*.

Professions covered by the Act

[424] Based on our analysis of the evidence, the following professions are included in the *Regulations*:

- *Category 1: camera work, lighting and sound design*
assistant director, first assistant director, director of photography, camera operator, cameraman (including steady-cam, baby-boom and camera operated through a specialized system [C.O.S.S.]), lighting director, sound man, sound effects technician, computer graphics designer, computer graphics special effects technician;
- *Category 2: costumes, coiffure and make-up design*
make-up designer, supervising make-up artist, make-up artist, make-up assistant, special effects make-up artist, prosthetic make-up technician, prosthetic make-up assistant, hairstylist designer, supervising hairstylist, hairdresser, wig-maker, costume designer, costume technician, puppet designer;
- *Category 3: set design*
assistant art director, set designer, props designer, propsman crewleader, head painter, scenic painter, sculptor-molder, draughtsman, studio special effects technician;

Category 5: editing and continuity

- floor director or manager (excluding dubbing directors), production assistant, location manager, script-clerk, editor, off-line editor, in-line editor, sound editor, sound mixer.

Is the proposed sector suitable for bargaining?

[425] Subsection 26(1) of the *Act* provides that when the Tribunal considers an application for certification, it shall take into account, in particular, 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.

[426] The Federation is of the opinion that there are common interests because all the individuals in the proposed sector participate in the production of a common audiovisual work, and form work teams that are united on the set. The Federation further emphasizes that the medium on which the work is preserved is of little importance. The documentary evidence and the testimony heard by the Tribunal confirm these claims for the two associations forming the Federation.

[427] The APVQ and the STCVQ offer many services to their members. Because of a possible merger, they are trying to consolidate a number of these services, including group insurance plans and professional development programs. Membership criteria are comparable, and each of the associations recognizes equivalences when an individual wishes to become a member of the other association.

[428] In its decision in *APASQ, supra*, the Tribunal found that set, costume, lighting, sound, props and puppet designers as well as set painters are the backbone of the off-stage creative team, that they contribute to the existence, preparation and presentation of the stage performance, and that it is appropriate for them to be included in a single bargaining sector (see para. 171). In the present case, the proposed sector includes these same designers, although their titles may be different, and also includes other creators who are essential to the realization of an audiovisual production.

[429] The proposed sector also includes other individuals who, through their creative input or contribution to the creative aspects of the production, are covered by the *Regulations*, and the Federation hopes to include them in the same bargaining sector. Some assist the creators, while others work under their supervision or under the supervision of another person. We must therefore ask ourselves whether it is appropriate to include these individuals in the same sector as the creators and designers. Paragraph 18(a) of the *Act* provides that the Tribunal shall take into account the applicable principles of labour law. One of these principles is that persons who hold management positions shall not be in the same bargaining unit as the persons whom they supervise.

[430] In his counter-expertise, Mr. Bonin noted the subordinate relationship that could exist between individuals working on the same team or in a particular department. He also referred to the relationship that could exist, in particular, with the director or art director.

[431] In *APASQ, supra*, the Tribunal considered the question of whether assistants should be in the same bargaining sector as designers, since designers supervised their work. In that case, the Tribunal found that it was appropriate to include assistants and designers in the same bargaining sector because the relationship between designers and assistants more closely resembles that between an orchestra conductor and his musicians than the relationship between the director and the designers. Here is what the Tribunal said:

[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.

[432] In the present case, the evidence shows that individuals working on a film set must form close-knit teams to carry out the project successfully, and that each of these teams is essential to the production. Furthermore, the evidence indicates that management responsibilities primarily lie with the producer and/or director. Consequently, we find that it is appropriate to include designers and creators in the same bargaining sector as the other artists covered by the *Regulations*, since all these individuals really do have common interests.

History of professional relations

[433] The two associations that compose the Federation have existed for many years, though not as long in the case of the APVQ. They were created to meet a need for representation experienced by technicians working in the video, television and film fields. They are both recognized by CRAAAP, and have concluded a number of collective agreements with producers under provincial jurisdiction. The APVQ tried to negotiate with a producer under federal jurisdiction, but without success.

[434] There is also a history of professional relations between the artists and the two associations, since the evidence shows that the same technicians may work on an APVQ set or on an STCVQ set and this is increasingly likely to be the case in the future. The Tribunal finds that the history of the associations, the many collective agreements that have been negotiated and renegotiated, and the relations among the artists themselves prove that there exists a history of professional relations.

Relevant linguistic and geographical criteria

[435] The Federation represents members who live and work primarily in the Montréal region. The language of production on the sets may be English or French, and the working language on the set is not necessarily the language used by the performers. The Federation claims that the language of the technicians is not a key factor in their creative activity, and that a certification based on a geographical criterion is appropriate. The proposed sector covers audiovisual productions in Québec, without regard to language of production.

[436] The Federation emphasizes the historical and economic factors that have influenced film and television production in Québec, in order to justify granting a sector on a geographical basis. The Federation also notes the particular working methods that exist in Québec, even though these methods have changed since the increase in the number of American productions filmed in Québec. The Tribunal agrees that these factors argue in favour of granting a “geographical” sector in the present case.

[437] The NFB is asking the Tribunal to clarify the meaning of the phrase “in Québec” in the wording of the proposed sector. More specifically, the NFB is asking the Tribunal to specify whether the sector covers productions shot entirely or partially in Québec by people who live in Québec or by people who reside in Québec for the duration of the production. The Federation has not made any representations on this issue.

[438] The proposed sector covers all audiovisual productions produced by a producer subject to the *Act*, regardless of the language of production. The wording of the sector description indicates that the Federation wishes to represent individuals exercising the professions in question “in Québec.” When a similar question was asked in the *ARRQ* case, *supra*, the Tribunal found:

[57] The Tribunal accepts the NFB’s suggestion that paragraph (b) of the description of the proposed sector be limited to audio-visual works that are filmed primarily in Quebec. The Tribunal therefore concludes that the words “*where all or part of the shooting takes place in the province of Quebec*” in paragraph (b) of the proposed sector description must be replaced by the words “*when the shooting takes place primarily in the province of Quebec.*”

[439] In the absence of more complete representations, we find that it is appropriate to limit the sector to productions shot primarily in Québec. As for the second part of the NFB’s request, we note that any sector granted to the Federation includes members and non-members who might, in a particular case, be domiciled elsewhere than in Québec.

Conclusion regarding the bargaining sector

[440] After taking into consideration all the oral and written representations presented by the Federation and by the intervenors, the Tribunal determines that the appropriate sector for the purposes of collective bargaining is a sector composed of all professional independent contractors engaged by a producer subject to the *Status of the Artist Act* to perform the function of assistant director, first assistant director, director of photography, camera operator, cameraman (including steady-cam, baby-boom, and camera operated through a

specialized system [C.O.S.S.]), lighting director, sound man, sound effects technician, computer graphics designer, computer graphics special effects technician, make-up designer, supervising make-up artist, make-up artist, make-up assistant, special effects make-up artist, prosthetic make-up technician, prosthetic make-up assistant, hairstylist designer, supervising hairstylist, hairdresser, wig-maker, costume designer, costumer, puppet designer, assistant art director, set designer, props designer, propsman crewleader, head painter, scenic painter, sculptor-molder, draughtsman, studio special effects technician, floor director or manager (excluding dubbing directors), production assistant, location manager, script-clerk, editor, off-line editor, in-line editor, sound editor, sound mixer, in all audiovisual productions shot primarily in the province of Québec, in any language, in all forms and in all mediums, including film, television, video, multimedia and the recording of commercials.

Is the Federation representative of the artists in the sector?

[441] The evidence indicates that the APVQ has approximately 1,024 members. This number has increased since April 2002, when the APVQ had about 800 members. The STCVQ has about 2,400 members, and approximately 600 licensees. Apparently some 500 to 600 persons are members of both associations. The application for certification filed by the Federation mentions approximately 3,500 individuals working in the sector that is the subject of the application.

[442] No other artists' association has made representations before the Tribunal regarding the representativeness of the two associations. Moreover, no association has applied to be certified for the same sector, since the Tribunal found the DGC's competing application to be inadmissible.

[443] Consequently, the Tribunal accepts the Federation's claim that it is the most representative of artists in the sector.

Do the by-laws of the two associations constituting the Federation meet the requirements of section 23 of the Act?

[444] The Tribunal is satisfied that the by-laws of the two member associations of the Federation meet the requirements set out in subsection 23(1) of the *Act* regarding the establishment of membership requirements, the democratic rights of members and the financial transparency of the associations in relation to their respective members.

[445] The documentary evidence indicates that the constitution and by-laws of the APVQ require, as a condition of membership, that the candidate be a Canadian citizen or landed immigrant. The constitution and by-laws of the STCVQ do not contain any such provision. Subsection 23(2) of the *Act* provides as follows:

(2) No by-laws of the association may have the effect of discriminating unfairly against an artist so as to prevent the artist from becoming or continuing as a member of the association.

[446] In the decision concerning the certification of the Canadian Artists' Representation / Le Front des artistes canadiens, 1998 CAPPRT 029, the Tribunal examined this issue at paragraph 58:

When the Constitution or by-laws of an artists' association contain limitations on membership that are unrelated to the individual's artistic or professional qualifications and could have the effect of discriminating unfairly against the artist, the Tribunal has three choices. **It can require, as a pre-condition to certification, that the discriminatory provision be removed**; it can fashion the sector definition so as to remove artists who are not eligible for membership from the scope of the exclusive right to bargain that the artists' association obtains upon certification; or it can accept evidence that the artists' association has a past practice of not enforcing the discriminatory provision in its Constitution or by-law. (Our emphasis)

[447] At the hearing, counsel for the Federation informed the Tribunal that his client intends to no longer make citizenship or landed immigrant status a prerequisite for membership and to amend its by-laws accordingly. Mr. Major's testimony confirms this fact. The Tribunal notes this undertaking and finds that the requirement of subsection 23(2) of the *Act* is thus met.

VIII

Decision

[448] For all these reasons, and in view of the fact that the by-laws of each of the associations that compose the Federation are in compliance with the requirements of subsection 23(1) of the *Status of the Artist Act*, the Tribunal:

Declares that the sector suitable for bargaining is a sector composed of all professional independent contractors engaged by a producer subject to the *Status of the Artist Act* to perform the function of assistant director, first assistant director, director of photography, camera operator, cameraman (including steady-cam, baby-boom, and camera operated through a specialized system [C.O.S.S.]), lighting director, sound man, sound effects technician, computer graphics designer, computer graphics special effects technician, make-up designer, supervising make-up artist, make-up artist, make-up assistant, special effects make-up artist, prosthetic make-up technician, prosthetic make-up assistant, hairstylist designer, supervising hairstylist, hairdresser, wig-maker, costume designer, costumer, puppet designer, assistant art director, set designer, props designer, propsman crewleader, head painter, scenic painter, sculptor-molder, draughtsman, studio special effects technician, floor director or manager (excluding dubbing directors), production assistant, location manager, script-clerk, editor, off-line editor, in-line editor, sound editor, sound mixer, in all audiovisual productions shot primarily in the province of Québec, in any language, in all forms and in all mediums, including film, television, video, multimedia and the recording of commercials.

Declares that the Federation consisting of the Association des professionnelles et des professionnels de la vidéo du Québec and of the Syndicat des techniciens du cinéma et de la vidéo du Québec is the most representative of the artists working in the sector.

An order will be issued to confirm the certification of the Federation consisting of the Association des professionnelles et des professionnels de la vidéo du Québec and of the Syndicat des techniciens du cinéma et de la vidéo du Québec to represent the said sector.

Ottawa, March 4, 2003

“Robert Bouchard”

“David P. Silcox”

“Moka Case”