

Canadian Artists and Producers
Professional Relations Tribunal



Tribunal canadien des relations
professionnelles artistes-producteurs

CANADA

Ottawa, May 20, 2003

File No.: 1350-02-008

Decision No. 042

**In the matter of a request for review of Decision No. 013 (Société
professionnelle des auteurs et des compositeurs du Québec)**

Decision of the Tribunal:

The request for review is granted.

Place of hearing: Montréal, Québec

Date: March 12, 2003

Quorum: John M. Moreau, Presiding Member
Moka Case, Member
Lyse Lemieux, Member

Appearances: Colette Matteau and Francine Bertrand-Venne for
the Société professionnelle des auteurs et des
compositeurs du Québec

Guy Gauthier for the National Film Board of
Canada

Reasons for Decision

1350-02-008: In the matter of a request for review of Decision No. 013 (Société professionnelle des auteurs et des compositeurs du Québec)

Background

[1] This decision concerns a request for review filed on May 15, 2002, under section 20 of the *Status of the Artist Act* (S.C. 1992, c. 33, hereinafter the “*Act*”) by the Société professionnelle des auteurs et des compositeurs du Québec (“SPACQ”). SPACQ is asking the Canadian Artists and Producers Professional Relations Tribunal (the “Tribunal”) to review Decision No. 013 rendered on May 17, 1996, certifying SPACQ to represent the following sector:

... a sector that includes lyricists, composers and lyricist-composers:

(a) of songs in the French language commissioned by a producer to whom the *Status of the Artist Act* applies;

(b) of music without words commissioned by a French language broadcast undertaking, when the composer is a resident of Quebec;

©) of music without words commissioned by any producer in Quebec to whom the *Status of the Artist Act* applies, when the composer is a resident of Quebec.

[2] A notice of the application was published in the *Canada Gazette* on September 7, 2002, and in *l'Express*, *The Globe and Mail*, *Le Franco*, *La Voix Acadienne*, *La Presse*, *l'Eau Vive*, *le Courrier de la Nouvelle-Écosse*, *L'Aquilon*, *L'Acadie Nouvelle*, *L'Express du Pacifique*, *Playback* and *La Liberté*, between November 9 and 16, 2002. SPACQ is asking the Tribunal to amend the definition of its sector to read as follows:

Independent contractors engaged in a production in Quebec, by a producer subject to the *Status of the Artist Act*, with the exception of a national private English-language broadcaster, to perform the function of lyricist, composer, lyricist-composer, or music or song editor.

[3] The National Film Board of Canada (“NFB”), a producer subject to the *Act*, filed the only intervention in this matter. In it, the NFB expressed its concern regarding the use of a geographic criterion in the definition of a sector, and submitted that this could create ambiguity when the time came to determine the competent association, particularly for a producer like the NFB which carries on business across Canada. The NFB also objected to including editors in the proposed sector.

[4] At the hearing, SPACQ again amended the definition of the sector sought. The final version reads as follows:

[TRANSLATION] Independent contractors engaged in a production in Québec, by a producer subject to the *Status of the Artist Act*, with the exception of a national private English-language broadcaster, to perform the function of lyricist, composer and lyricist-composer, including the work required for those

positions for delivering the music and/or songs commissioned by the producer. In the case of the National Film Board of Canada (“NFB”), a “production in Québec” shall mean a production initiated by an NFB production centre located in Québec.

[5] The request for review was filed with the application for certification by the Guild of Canadian Film Composers (“GCFC”) to enable the GCFC to include in the sector that it wishes to represent a portion of the sector now represented by SPACQ. The GCFC is seeking to represent the following sector:

... a sector composed of all professional independent contractors engaged by a producer subject to the *Status of the Artist Act* who create, write, compose, orchestrate, arrange or edit music, lyrics (in a language other than French) or music and lyrics where the said music and/or lyrics are intended for film, videotape, digital media or any other audio-visual media or analogous process, or any other process now known or to be invented which modifies or replaces the aforementioned technology and processes, with the exception of:

The artists covered by the certification granted to the Société professionnelle des auteurs et des compositeurs du Québec (SPACQ) by the Canadian Artists and Producers Professional Relations Tribunal on May 17, 1996, as may be amended by the Tribunal in the future.

And is subject to:

- (a) The agreement concluded between the Guild of Canadian Film Composers and the Society of Composers, Authors and Music Publishers of Canada (SOCAN) on May 6, 2002; and
- (b) The agreement concluded between the Guild of Canadian Film Composers and the Société du droit de reproduction des auteurs, compositeurs et éditeurs au Canada (SODRAC) inc. on May 13, 2002.

[6] SPACQ introduced letters of support and the agreements it has concluded with associations of artists and copyright societies into evidence. The following is a list of those exhibits:

- Agreement with the Writers Guild of Canada (“WGC”): the parties agree that the WGC will have jurisdiction in respect of lyricists for a radio, television, film, video, multimedia or other analogous audiovisual production, where the lyricist is also the dramatic or literary author for the same production.
- Agreement with the Société des auteurs de radio, télévision et cinéma (“SARTEC”): the parties agree that SARTEC will have jurisdiction over lyricists and composers working in the French language, where they are also authors of the dramatic or literary work commissioned by the producer.
- Agreement with the American Federation of Musicians of the United States and Canada (“AFM”) and the Guilde des musiciens du Québec (“GMQ”): the parties agree that the AFM will retain complete jurisdiction over the sector that the Tribunal granted to it on January 16, 1997, with the exception of cases in which orchestration, arrangement or copying is an electronic function which does not

require any additional effort or provision of services by the composer or which is done by the composer.

- Letters of support from SOCAN and SODRAC: each society supports SPACQ's request for review, provided that SPACQ does not infringe their jurisdiction in respect of collective copyright management.

Evidence

SPACQ

[7] Francine Bertrand-Venne, Director General of SPACQ for nearly ten years, testified for SPACQ and described the negotiations that had been initiated, and scale agreements signed with various producers since SPACQ was certified by the Tribunal in 1996. SPACQ has signed two agreements with Radio-Canada, two agreements with TVA and one agreement with Télé-Québec. SPACQ is also in negotiations with the NFB. In addition, she noted that SPACQ's membership has grown from about 60 people when it was certified to 160.

[8] As to the relations between SPACQ and the GCFC, Ms. Bertrand-Venne described a long relationship of cooperation with the aim of providing the members of both associations with representation across the country.

[9] She stated that by relinquishing representation of lyricists, composers and lyricists-composers outside Québec to the GCFC, SPACQ will be able to provide more effective administration and make it easier for producers to understand the jurisdiction of each association. She noted that since 1997 there has been no work commissioned outside Québec by a producer who is a party to a scale agreement with SPACQ.

[10] When Ms. Bertrand-Venne was questioned by the Tribunal, she said that the reference to a "production in Québec" may include a production produced in whole or in part outside Québec but administered from a production centre located in Québec. In that case, SPACQ would have jurisdiction over the artists involved in the production in question.

[11] She also said that adding a reference to "work required for those positions" will allow for the definition of the professional positions in question to evolve with the increasingly rapid technological changes in the industry.

Issues

[12] This matter raises two issues:

- (a) Should the Tribunal amend the scope of the sector granted to SPACQ?
- (b) If so, is the proposed wording appropriate?

Submissions of the Parties

The NFB

[13] Apart from the written submissions filed with its notice of intervention, the NFB made no further submissions at the hearing.

SPACQ

[14] SPACQ submitted that the redefinition of its sector on a geographic basis may be explained by the fact that it is easier to share representation of the artists with the GCFC in this way than on a linguistic basis, particularly because a majority of the commissions in the field are for music without lyrics. It added that SPACQ has completely fulfilled its mandate of representing the sector since it was granted certification in 1996, citing several scale agreements that have been signed as examples of this.

[15] SPACQ supports the application for certification by the GCFC, pointing to the long history of collaboration between the two associations, which will enable them to provide complete representation across Canada.

Analysis and Conclusion

Should the Tribunal amend the scope of the sector granted to SPACQ?

[16] Subsection 20(1) of the *Act* provides that “[t]he Tribunal may uphold, rescind or amend any determination or order made by it, and may rehear any application before making a decision.” The Tribunal has interpreted that provision as giving it the authority needed to amend its own decisions (see, for example: *UDA/APASQ*, 1998 CAPPRT 025; *Conseil des métiers d’arts du Québec*, 1998 CAPPRT 026 and *Writers’ Union of Canada*, 2002 CAPPRT 039).

[17] The Tribunal has reviewed the proposed definition of the sector, having regard to the argument made by SPACQ. The Tribunal also notes the submissions made by the NFB and the agreements and letters of support introduced into evidence.

[18] The evidence shows that the change proposed by SPACQ affects the scope of the existing sector as follows:

- The geographic scope of the production in question is amended to limit the scope of the sector to the province of Québec, whereas the existing sector applies to lyricists, composers and lyricist-composers of songs in the French language regardless of the place where the production is produced and to music without words commissioned by a French-language broadcaster anywhere in Canada.
- The definition of the geographic scope of the sector is amended. In the existing sector, the scope is defined in relation to the artist's and producer's domicile, whereas the new sector refers instead to the place where the production is managed.

- The portion of the sector that applies in Québec is amended to provide for private English-language broadcasters to be excluded from SPACQ's sector.

[19] Having regard to the evidence submitted by SPACQ, and having regard to SPACQ's commitment to assisting the GCFC in representing the GCFC's French-speaking members, the requested amendments are reasonable in the instant case. In addition, the changes proposed by SPACQ do not jeopardize the basis of its certification itself, that is, the appropriateness of the sector for bargaining and the representativity of SPACQ for the sector in question. Accordingly, the Tribunal is of the opinion that SPACQ's request should be granted.

Is the proposed wording appropriate?

[20] The new wording of the sector, which was filed at the hearing, takes into account the concerns expressed by the NFB. Accordingly, the Tribunal concludes that it should not be changed. The sector represented by SPACQ will henceforth be as follows:

... a sector composed of all independent contractors engaged in a production in Québec, by a producer subject to the *Status of the Artist Act*, with the exception of a national private English-language broadcaster, to perform the function of lyricist, composer and lyricist-composer, including the work required for those positions for delivering the music and/or songs commissioned by the producer. In the case of the National Film Board of Canada (“NFB”), a “production in Québec” shall mean a production initiated by an NFB production centre located in Québec.

A new certification order will be issued to confirm the amendment to SPACQ's sector definition.

Ottawa, May 20, 2003

“John M. Moreau”
Presiding Member

“Moka Case”
Member

“Lyse Lemieux”
Member