

Canadian Artists and Producers  
Professional Relations Tribunal



CANADA

Tribunal canadien des relations  
professionnelles artistes-producteurs

Ottawa, September 8, 2003

Files: 1350-03-010  
1350-03-011

Decision No. 045

**In the matter of an application for reconsideration of Decisions No. 042  
(*Société professionnelle des auteurs et des compositeurs du Québec*) and  
No. 043 (*Guild of Canadian Film Composers*)**

*Decision of the Tribunal:*

The application for reconsideration of Decisions No. 042 and No. 043 is granted.

*Date of hearing:* August 25, 2003

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

## *Reasons for decision*

1350-03-010 and 1350-03-011: In the matter of an application for reconsideration of Decisions No. 042 (*Société professionnelle des auteurs et des compositeurs du Québec*) and No. 043 (*Guild of Canadian Film Composers*)

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### *Background*

[1] This decision concerns an application for review filed on June 16, 2003, under section 20 of the *Status of the Artist Act* (S.C. 1992, c. 33, hereinafter the “*Act*”) by the Canadian Broadcasting Corporation (“CBC”). The CBC is asking the Canadian Artists and Producers Professional Relations Tribunal (the “Tribunal”) to review Decisions Nos. 042 and 043, rendered on May 20 and 23, 2003, respectively.

[2] Decision No. 042 amends the Société professionnelle des auteurs et des compositeurs du Québec’s (“SPACQ”) sector determination granted by the Tribunal in Decision No. 013 on May 17, 1996. The sector now reads 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.

[3] Originally, SPACQ’s sector determination read as follows:

... 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 Québec;

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

[4] Decision No. 043 grants to the Guild of Canadian Film Composers (“GCFC”) a sector for the purposes of collective bargaining which reads as follows:

... 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 author, composer or author-composer, including all the associated work required by these functions, in order to deliver to the producer music, lyrics, and music with lyrics where the said music or lyrics are intended for film, videotape, digital media or any other audiovisual 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 amended by the Tribunal on May 20, 2003.

And 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.

[5] The CBC did not intervene in the original hearing into these two matters. Its application for review, filed on June 16, 2003, reads as follows:

[Translation]

Dear Madam:

The Canadian Broadcasting Corporation hereby requests the review of Decisions Nos. 42 and 43 rendered on May 20 and 23, 2003, respectively.

We will send you shortly a summary of the reasons invoked by the Canadian Broadcasting Corporation in support of its application for reconsideration.

...

[6] The Tribunal conducted a review of these cases based on the parties' written submissions.

### *Parties' Submissions*

#### *Application for review*

[7] In a letter dated July 4, 2003, and another dated July 7, 2003, the CBC set out the reasons in support of its request. The CBC stated that it is structured into several networks (radio, television, specialty channels) according to the language used for broadcasting. French-language networks are administered from Montréal, whereas English-language networks are administered from Toronto. From these two centres, the CBC ensures the administrative management of the networks, budget management, establishment of the main orientation of productions, organization of productions and management of labour relations with artists and artists' associations.

[8] The CBC submitted that the certification granted to SPACQ in 1996 reflected this reality, namely that French-language songs commissioned for a production broadcast on the French network but produced outside Québec were subject to SPACQ's jurisdiction. In addition, in the case of music without words, a certification limited to Québec and the absence of a certification in the rest of Canada gave the CBC the ability to choose the legal framework to apply when dealing with productions outside Québec in this area.

[9] The absence of another certification in this area also made it possible to give a broad and liberal interpretation to SPACQ's certification. In the CBC's view, Decisions Nos. 042 and 043 have changed this and might create some ambiguity when determining whether an artist is "engaged in a production in Québec" because it administers Francophone productions from Montréal although filming or taping may take place outside Québec.

[10] The CBC is asking that the wording of SPACQ's sector be amended again so as to add the following sentence:

[Translation]

In the case of the Canadian Broadcasting Corporation, a "production in Québec" shall mean a production initiated by one of its establishments located in Québec.

[11] The CBC is also asking that the GCFC's sector determination be amended so as to reflect the amendment made to SPACQ's sector.

[12] SPACQ and the GCFC both informed the Tribunal, by letter dated July 11 and 22, respectively, that they consented to the amendment requested by the CBC.

*Motions filed by SPACQ and the GCFC*

[13] In a letter dated June 26, 2003, SPACQ asked the Tribunal to officially take notice that the CBC had not filed its application for review within the 30-day period prescribed by the *Tribunal Procedures*. For the application to be complete, it must, according to SPACQ, include the reasons justifying the request, which had not been done in this case.

[14] In a letter dated June 27, 2003, the GCFC asked the Tribunal to dismiss the application for review on the same grounds.

[15] In letters dated July 4 and 7, 2003, respectively, the CBC submitted that its application involved only an amendment to the sector determination and that according to the *Tribunal Procedures*, such an application could be made at any time.

## *Decision*

### *Motions filed by SPACQ and the GCFC*

[16] The *Tribunal Procedures* state the following at part 7:

#### ***TYPES OF REVIEW APPLICATIONS***

##### **1. Reconsideration of a Tribunal decision**

A party affected by a decision or order of the Tribunal may make a written application to the Tribunal for a review of that decision or order on the grounds that:

(a) the Tribunal's decision contains an error of law or a serious error of fact;

(b) the applicant has new information or evidence that was not available at the time the decision or order was originally made, and which could alter the basis on which the decision or order was made.

An application for reconsideration of a Tribunal decision should be made within 30 calendar days of the date of the original decision or order. If this time period is exceeded, the applicant must provide a compelling reason why this time limit should be waived.

...

##### **2. Review of a sector determination**

The certified artists' association or a producer affected by a Tribunal decision prescribing the sector suitable for bargaining may apply in writing to the Tribunal for a review of the sector determination. The purpose of such applications may be to enlarge, modify or clarify the scope of the sector determination. *Such applications can be made at any time.* [Emphasis added.]

...

[17] An application for reconsideration of a Tribunal decision must therefore be made within 30 calendar days of the date of the decision, with the exception of an application for review involving only an amendment of the sector determination, which can be made at any time.

[18] The decisions under review were rendered on May 20 and 23, 2003. The CBC filed its request for review on June 16, 2003, without setting out the reasons, noting that they would be provided at a later date. In their letters of June 26 and 27, 2003, the two associations essentially submitted that for the application to be complete and valid, it must include the reasons justifying the request, and that the 30-day period prescribed by the

*Tribunal Procedures* had expired. The Tribunal received the CBC's reasons on July 4 and 7, 2003.

[19] A review of the CBC's application confirms that it involves only a request to amend SPACQ and the GCFC's sector determination. Therefore, it is not subject to the 30-day period prescribed by the *Procedures*. Accordingly, the Tribunal finds that the motions must be dismissed.

*Request for review*

[20] In subsection 20(1), the *Act* states that "[t]he Tribunal may uphold, rescind or amend any determination or order made by it, and may re-hear any application before making a decision." In the case at bar, the request for review essentially involves adding the following sentence to SPACQ's sector determination: "In the case of the Canadian Broadcasting Corporation, a 'production in Québec' shall mean a production initiated by one of its establishments located in Québec."

[21] The addition of this sentence modifies the scope of SPACQ's sector only with respect to the CBC's activities and does not in any way modify the scope in connection with the other producers subject to the *Act*. It should also be noted that the National Film Board of Canada asked the Tribunal to include a similar sentence at the time of the initial hearing. SPACQ and the GCFC are not opposed to the addition of the sentence to SPACQ's sector determination.

[22] In order to ensure greater certainty in the interpretation of sectors suitable for bargaining by producers and artists' associations, the Tribunal finds that it is appropriate to grant the CBC's request. However, we would like to point out that it would have been preferable for the CBC to make its submissions at the initial hearings in light of the importance for the Tribunal to have the relevant evidence and information when deciding a case.

[23] Subsection 25(3) of the *Act* requires the publication of public notices in the case of applications for certification. This practice is also commonly followed by the Tribunal when dealing with requests for review where the scope of a sector could be affected. Public notices appear in the *Canada Gazette*, Part I, as well as in a wide range of publications including widely distributed daily newspapers, specialized journals and daily and weekly newspapers in the minority official language throughout Canada.

[24] This case emphasizes the importance for cultural sector organizations to closely follow the activities of administrative and quasi-judicial bodies involved in their area.

### *Conclusion*

[25] 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. In the case of the Canadian Broadcasting Corporation, a “production in Québec” shall mean a production initiated by one of its establishments located in Québec.

A new certification order will be issued to confirm the amendment to SPACQ’s sector determination.

[26] As for the determination of the sector granted to the GCFC, it will be modified as follows:

. . . 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 author, composer or author-composer, including all the associated work required by these functions, in order to deliver to the producer music, lyrics, and music with lyrics where the said music or lyrics are intended for film, videotape, digital media or any other audiovisual 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 amended by the Tribunal on May 20, 2003, and September 8, 2003.

And 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.

A new certification order will be issued to confirm the amendment to the GCFC's sector determination.

Ottawa, September 8, 2003

"John M. Moreau"  
Presiding Member

"Moka Case"  
Member

"Lyse Lemieux"  
Member