

Canadian Artists and Producers  
Professional Relations Tribunal



CANADA

Tribunal canadien des relations  
professionnelles artistes-producteurs

Ottawa, February 23, 2005

File No.: 1340-04-001

Decision No. 049

**In the matter of an application under section 30 of the *Status of the Artist Act*  
involving the Alliance québécoise des techniciens de l'image et du son**

*Decision of the Tribunal :*

The application is granted. The Alliance québécoise des techniciens de l'image et du son succeeds 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 with respect to the rights, privileges and duties under Part II of the *Status of the Artist Act*.

*Date of hearing:* January 19, 2005

*Quorum :* Marie Sénécal-Tremblay, Presiding Member  
John M. Moreau, Member  
Lyse Lemieux, Member

## *Reasons for decision*

1340-04-001: In the matter of an application under section 30 of the *Status of the Artist Act* involving the Alliance québécoise des techniciens de l'image et du son

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### *Introduction*

[1] This decision concerns an application for declaration under section 30 of the *Status of the Artist Act* (the “*Act*”) filed November 12, 2004 by the Alliance québécoise des techniciens de l'image et du son (“AQTIS”). The question to be determined by the Tribunal is whether the Association québécoise des techniciens de l'image et du son succeeds 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 with respect to the rights, privileges and duties under Part II of the *Status of the Artist Act*. A panel of the Tribunal convened on January 19, 2005 to examine this question based on AQTIS' written representations.

### *Background*

[2] AQTIS maintains it is the result of a merger between 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»). It asks the Tribunal to recognize that it is the successor of the APVQ and the STCVQ with respect to the rights, privileges and duties under Part II of the *Act*, including the rights and obligations stemming from the certification granted by the Tribunal (2003 CAPPRT 041) to the federation consisting of the APVQ and the STCVQ (the “federation”) and the scale agreements the federation negotiated under the *Act*.

[3] In support of its application, AQTIS filed a copy of its statutes and by-laws as well as a copy of letters patent of merger issued by the Enterprise Registrar (Quebec). AQTIS also submitted to the Tribunal an updated sector wording reflecting the merger without changing the scope of the certification.

[4] AQTIS maintains that the merger of two entities incorporated under Part III of the *Companies Act* (R.S.Q., chapter C-38) (the “*Companies Act*”) into a single corporation, results in that corporation succeeding the merged corporations as to their rights and obligations.

[5] Section 30 of the *Act* reads as follows :

**30.** (1) An artists' association that succeeds a certified artists' association as a result of a merger, amalgamation or transfer of jurisdiction among associations acquires the rights, privileges and duties of that certified association under this Part, whether under a scale agreement or otherwise.

(2) On application by an artists' association affected by a merger, amalgamation or transfer of jurisdiction, the Tribunal shall determine the rights, privileges and duties that the association has acquired under this Part or under a scale agreement as a result of the transaction.

We draw two general principles from the wording of this section, principles we will apply in our analysis of the facts of this case. The first is that an association succeeding another must also be an association pursuant to the *Act*. The second is that the role of the Tribunal is limited to recognizing that a merger has taken place and determining its consequences.

### *Analysis*

#### The nature of the succeeding entity:

[6] Section 30 refers to an “artists' association that succeeds a certified artists' association” (our emphasis). It follows that the association alleging that it is the successor of another must first demonstrate that it is also an artists' association or a federation of artists' associations as defined under section 5 of the *Act*.

[7] A necessary consequence of the aforementioned requirement is, in our opinion, that the statutes and by-laws of the succeeding association must first conform to the criteria for certification set out at section 23 of the *Act*.

[8] Although this is not an application for certification, it would seem illogical to allow an association to gain certification indirectly while its statutes and by-laws would have precluded it from doing so in the case of an application for certification.

[9] The relevant provisions of the *Act* read as follows:

**5.** In this Part,

[...]

"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;

[...]

**23.** (1) No artists' association may be certified unless it adopts by-laws that

(a) establish membership requirements for artists;

(b) give its regular members the right to take part and vote in the meetings of the association and to participate in a ratification vote on any scale agreement that affects them; and

(c) provide its members with the right of access to a copy of a financial statement of the affairs of the association to the end of the previous fiscal year, certified to be a true copy by the authorized officer of the association.

(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.

[10] A careful reading of AQTIS' statutes and by-laws shows that they conform to the minimal requirement set out in the *Act*. Section 1.6 of the statutes states that the association's objectives include:

[...] the study, defense, development and promotion of the social, professional, economic, political and moral interests of its members [Our translation] [...]

These objectives conform to those stipulated at section 5 of the *Act*, quoted above.

[11] AQTIS' R-1 by-law sets out the association's membership requirements as required at paragraph 23(1)(a) of the *Act*. Section 3.1.1 of AQTIS' statutes stipulates that "the general assembly shall be composed of all members in good standing of the association"[Our translation]; section 3.1.2.2 stipulates that all members may vote at the association's general assemblies; and section 3.1.2.1d) sets out the members' right to ratify scale agreements that affect them, all this conforming to the requirements of paragraph 23(1)(b) of the *Act*.

[12] Section 2.1.1 of AQTIS' statutes sets out a member's right to access the association's documents, including the associations most recent financial statements as required by the *Act* at paragraph 23(1)(c).

[13] Finally, subsection 23(2) of the *Act* requires that an association's by-laws not contain provisions that have the effect of unfairly discriminating against an artist so as to prevent the

artist from becoming or continuing as a member. There are no such provisions in AQTIS' statutes and by-laws.

[14] In fact, we find that at paragraph a) of by-law R-1.1, AQTIS leaves membership open to all persons authorized to work in Canada according to relevant legislation. AQTIS thereby avoids stipulating more stringent requirements, such as limiting membership to Canadian citizens, which might have raised questions on the part of the Tribunal as to possible discriminatory effects towards landed immigrants or refugees, as was the case in past applications for certification (see: 1996 CAPPRT 018, 1997 CAPPRT 023). We also note that AQTIS' by-law R-1.2 sets out how experience acquired outside Quebec or outside AQTIS' jurisdiction will be recognized.

[15] Finally, we note that under section 1.76 of its statutes and the schedule referred to therein, AQTIS has adopted a comprehensive policy on preventing discrimination, including, among other things, the establishment of a committee mandated to apply said policy.

#### Whether a merger has taken place and its consequences:

[16] The Tribunal's authority, pursuant to section 30, is to determine if a merger has indeed taken place and to define the rights that flow from the merger under Part II of the *Act*.

[17] In the case at hand, the merged entities – APVQ and STCVQ – were corporations created under Part III of the *Companies Act* governing corporations and associations without share capital. The issuance by the Enterprise Registrar of letters patent of merger is in and of itself evidence that a merger has indeed taken place pursuant to the *Companies Act* and that AQTIS is the corporation which has effectively succeeded the APVQ and the STCVQ.

#### *Conclusion*

[18] We conclude from the evidence submitted to the Tribunal that AQTIS is an artists' association pursuant to the *Act* and that it is the result of a merger of the APVQ and the STCVQ made pursuant to the *Companies Act*. The APVQ and the STCVQ being the only members of the federation certified by the Tribunal, we find that, pursuant to section 30 of the *Act*, AQTIS succeeds the federation with respect to its rights under Part II of the *Act*.

[19] A new certification order will be issued by the Tribunal and will read as follows :

The Canadian Artists and Producers Professional Relations Tribunal hereby grants to:

the Alliance québécoise des techniciens de l'image et du son

certification to represent 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.]), still photographer, 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.

Ottawa, February 23, 2005

“Marie Senécal-Tremblay,  
Presiding Member”

“John M. Moreau, Member”

“Lyse Lemieux, Member”