



The Tribunal has a new Internet address:

[www.cappprt-tcrpap.gc.ca](http://www.cappprt-tcrpap.gc.ca)

## The Tribunal renders two decisions

On August 15, 2001, the Tribunal rendered decision 2001 CAPPRT 035, an interim decision regarding a preliminary objection raised by a number of producers subject to the *Status of the Artist Act* and the Syndicat général du cinéma et de la télévision (SGCT). This preliminary objection was raised in the context of an application for certification filed by the federation 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 (APVQ-STCVQ).

The producers and the SCGT argued that none of the 123 occupations listed in the sector sought by the federation APVQ-STCVQ are practised by independent contractors as they are carried out exclusively by persons who work in an employer-employee relationship. Accordingly, the Tribunal was asked to determine the nature of the relationship between the individuals working in each profession listed in the sector sought by the federation and each federal producer.

In its decision, the Tribunal dismissed the preliminary objection, concluding that the *Act* does not require the Tribunal to determine, at the application for

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## The *Act* brought changes to the voluntary system of bargaining

The federal *Status of the Artist Act* was adopted after considerable lobbying by the artistic community, thorough study by government, and the adoption of status of the artist legislation by Quebec. Before the adoption of the *Act*, many artists' associations and producers negotiated on a voluntary basis. As described below, the *Act* allows for significant changes with respect to representation, unfair practices, the progress of negotiations, enforcement of the scale agreement, the financial health of artists' associations and other issues. Some of these changes affect both artists and producers while others impact mainly on one party or the other.

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certification stage, the nature of the relationship between each artist and producer.

On September 27, 2001, the Tribunal rendered decision 2001 CAPPRT 036, a final decision in the matter of an application for certification filed by the Editors' Association of Canada (EAC). This decision follows the Tribunal's interim decision in this matter, 2001 CAPPRT 033, rendered on February 28, 2001, wherein the Tribunal defined a sector suitable for bargaining as one composed of professional freelance editors and declared that the EAC was the association most representative of artists in this sector. However, the Tribunal stayed the proceeding in order to give the EAC time to amend its by-laws so as to bring them into compliance with subsection 23(1) of the *Act*.

While awaiting the amendments to the EAC by-laws, the Tribunal received three requests for reconsideration of Decision 033. The first was filed by the Union des écrivaines et écrivains québécois (UNEQ), the second by the Directors' Guild of Canada (DGC), and the third by the Playwrights Union of Canada (PUC).

Upon receipt of the amendments to the EAC by-laws, the Tribunal issued decision 2001 CAPPRT 036, in which it declared that the EAC's by-laws, as amended, now comply with the requirements of the *Act*. Accordingly, the EAC's application for certification no longer needed to be stayed. In this final decision, the Tribunal amended *proprio motu* the EAC's sector definition to one composed of professional freelance editors who are authors within the meaning of the *Copyright Act* and who are engaged by a producer subject to the *Status of the Artist Act* to:

- (a) prepare original literary works in the form of compilations or collective works, or
  - (b) prepare original literary works of joint authorship, where the editor's contribution constitutes the work of a joint author;
- in either French or English, but excluding
- (a) authors covered by the certification granted to the Periodical Writers Association of Canada by the Tribunal on June 4, 1996,

- (b) authors covered by the certification granted to the Writers Guild of Canada by the Tribunal on June 25, 1996,
- (c) authors covered by the certification granted to the Société des auteurs, recherchistes, documentalistes et compositeurs (renamed the Société des auteurs de radio, télévision et cinéma) by the Tribunal on January 30, 1996,
- (d) authors covered by the certification granted to The Writers' Union of Canada by the Tribunal on November 17, 1998,
- (e) authors covered by the certification granted to the Union des écrivaines et écrivains québécois by the Tribunal on February 2, 1996, and
- (f) authors covered by the certification granted to the Playwrights Union of Canada by the Tribunal on December 13, 1996.

Following decision 2001 CAPPRT 036, the UNEQ and the DGC withdrew their applications. However, The Writers' Union of Canada filed its own application for reconsideration with the Tribunal and further filed an application for judicial review of decision 2001 TCRPAP 033 as modified by decision 2001 TCRPAP 036 in the Federal Court of Appeal. ♦

➡ *negotiation... continued from page 1*

### Vulnerability of voluntary agreements

Artists' associations and producers who negotiate scale agreements on a voluntary basis may be found guilty under the *Competition Act* of illegally fixing prices. Under the *Status of the Artist Act*, parties to a scale agreement are exempted from the application of the *Competition Act*.

### Representation

By following specific procedures in the *Status of the Artist Act*, an artists' association may become certified to become the exclusive bargaining agent for freelance artists in a defined sector. When more than one association wishes to represent the same sector, the *Act* provides a mechanism for determining which association will become certified.

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compels its automatic acceptance by producers and opens the way for bargaining to take place. In addition, artists may apply to change the association certified to represent them under the *Act* or may apply for revocation of an association's certification. The *Act* sets aside certain time periods for allowing such applications, thus promoting less disruption in relations between artists' associations and producers in comparison to the voluntary system.

### Negotiations for a scale agreement

There are several provisions in the *Act* which facilitate the initiation and continuation of negotiations and promote a smoother process compared to the one that takes place under the voluntary bargaining system. First of all, once a notice to bargain is issued, the parties must meet within 20 days or at a date mutually agreed upon. They must bargain in good faith, that is, make every reasonable effort to enter into a scale agreement. If the parties are having difficulties in bargaining, they may request that the Minister of Labour appoint a mediator to help them reach an agreement. There is no charge to parties for this service. The *Act* also sets down certain time periods during which parties may engage in pressure tactics, such as strikes and lock-outs, thus allowing for ultimate bargaining power to be exercised but in an orderly, predictable and enforceable manner. It is also noteworthy that the *Act* obliges producers to respect the terms and conditions of engagement and rights under the *Act* until the pre-conditions for a strike or lockout are in place.

If a party feels that the other is not fulfilling their obligations under the *Act* as described above, they may file a complaint with the Canadian Artists and Producers Professional Relations Tribunal. If appropriate, the Tribunal will first provide mediation to assist the parties to resolve the matter. If the Tribunal ultimately renders a decision and an order in the matter, this order may be filed in the Federal Court, thus making it a judgement of that Court.

These provisions aim to help the parties to avoid or resolve situations where they are bogged down in negotiations. They may also have the effect of negotiations taking less time, thus leading to savings in

resources.

### Administration and enforcement of the scale agreement

One of the major changes brought by the *Act* is the fact that a scale agreement, once signed, is enforceable. Every scale agreement must contain a provision for final settlement of all differences concerning its interpretation without pressure tactics, by arbitration or other means. If there is no such provision in a particular agreement, the parties must submit such differences to an arbitrator whom they select or to the one appointed by the Minister of Labour. All such arbitration decisions may be filed in Federal Court; they then become essentially a judgement of that Court. A comparable enforcement mechanism does not exist in the voluntary system.

### Unfair practices and duty of fair representation

Provisions in the *Act* prohibit producers and artists' associations from engaging in unfair labour practices; for example, producers intimidating, threatening or disciplining artists who exercise their rights under the *Act*, and artists' associations taking disciplinary action against an artist in a discriminatory manner. These prohibitions are bolstered by a complaint mechanism and by specific remedial powers of the Tribunal, such as requiring compensation or the re-engagement of an artist, as well as the general power to order anything that is equitable in a specific situation.

Furthermore, the duty of artists' associations to provide fair representation to artists in the sector with respect to their rights under a specific scale agreement is included in the *Act* and enforceable by the complaint mechanism.

### Dues check-off

At the request of an artists' association, a scale agreement will include a provision for check-off of dues for all artists engaged in the sector, which includes both member and non-member artists. This secure source of revenue for artists' associations may assist them in strengthening their financial situation. ♦

# Federal government institutions subject to the *Act*

Whom should you contact?

In order to facilitate information exchanges and negotiation between parties subject to the *Status of the Artist Act*, the Tribunal Secretariat added a new section to its Web site in which federal government institutions subject to the *Act* are listed. This page can be found under the section "On collective bargaining".

The Secretariat also makes available to its clientele a list of federal government institutions' contact persons with whom you can communicate for any information regarding negotiations. Addresses and phone numbers of these contact persons can be obtained at the Tribunal Secretariat. We also invite federal institutions subject to the *Act* to inform us of any changes in staff responsibility in this regard. ♦

## Information sessions for broadcasters

In September, the Tribunal Secretariat held information sessions on the *Status of the Artist Act* for broadcasters. The Canadian Association of Broadcasters assisted the Tribunal in organizing these meetings which were held in Montreal and Toronto. The representatives from major as well as smaller broadcasters who attended expressed appreciation for the information provided. These events complete the series of information meetings organized by the Tribunal Secretariat with all its client groups in the past year. It is expected that the enhanced understanding of their rights and obligations and the processes under the *Act* will assist the parties in moving negotiations forward. ♦

## Changes at the Tribunal

On January 1, 2002, Lorraine Farkas, Director, Planning, Research and Mediation will begin a sabbatical year that she intends to spend in Chile. She will be replaced by Linda L'Heureux who brings a vast experience in labour relations. At present, Ms. L'Heureux is Senior Industry Research Officer at the department of Human Resources Development Canada. ♦

## Tribunal Secretariat

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The Annual Report and the Performance Report for the year ending March 31, 2001 have been tabled in the House of Commons. You may view these reports on our web site or obtain copies by calling the Tribunal Secretariat.