



Certification of two associations in the performing arts sector

On January 4, 2002, the Tribunal rendered decision 2001 CAPPRT 037, a final decision regarding the applications for certification filed by the Associated Designers of Canada (ADC) and the Association des professionnels des arts de la scène du Québec (APASQ).

Processing of the ADC's and the APASQ's applications for certification filed respectively in 1995 and 1996 has been delayed for several reasons. These include the fact that the applicants attempted to negotiate an agreement respecting jurisdiction and also because one association requested that consideration of its application be deferred until the enactment of the *Status of the Artist Act Professional Category Regulations*.

The part of the APASQ's application for certification that dealt with stage directors ("metteurs en scène") was dealt with in 1997 and 1998. In *Association des réalisateurs et réalisatrices du Québec et al.* (1997 TCRPAP 024), the Tribunal ordered that a representation vote be conducted to determine which association (Union des artistes [UDA] or APASQ) was most representative of stage directors. The Tribunal granted certification to the UDA to represent the sector (1998 CAPPRT 027). The APASQ subsequently amended its application for certification on February 19, 2001 in order to exclude stage directors, technical directors and production managers from its proposed sector.

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The federal government undertakes the review of the Act

Under the provisions of the *Status of the Artist Act*, a mandatory review of the Act is to take place seven years after it has come into full effect. Although the Act received Royal Assent on June 23, 1992, it came into full effect on May 9, 1995. This review will be undertaken by the Minister of Canadian Heritage, in consultation with the Minister of Labour.

The consulting firm Prairie Research Associates has been chosen to conduct consultations with, among others, a representative sample of artists, artists' associations and producers subject to the Act.

The legislation requires that the Minister of Canadian Heritage submit to Parliament a report including a statement of any changes the Minister would recommend. The report stands permanently referred to the committee of that House that normally considers cultural matters. ♦

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The Tribunal was first going to consider the application submitted by the APASQ, and then consider the ADC's application. Following the hearing held in Montréal on March 20 and 21, 2001, the Tribunal decided that it would be more efficient to hear the applications jointly, since they were competing in part. Accordingly, consideration of these two applications was continued in Montréal on June 27, 28 and 29 and in Toronto on November 1, 2001.

Seven artists' associations, producers or producers' associations intervened: the UDA, the Canadian Actors' Equity Association (CAEA), the Société professionnelle des auteurs et des compositeurs du Québec (SPACQ), the International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States and Canada (IATSE), the Professional Association of Canadian Theatres (PACT), the Théâtres Associés Inc. (TAI) and the National Arts Centre (NAC). Details of their respective interventions are presented in the Reasons for Decision.

The Tribunal certified the APASQ to represent a sector composed of all set, costume, lighting, sound, props and puppet designers, stage managers, set painters, assistant costume and set designers, and assistant stage directors who are independent contractors engaged by a producer subject to the *Act*:

- (a) in any performing arts, dance and variety entertainment production presented within the

province of Quebec;

- (b) in any production of the French theatre department of the National Arts Centre in Ottawa.

With the exception of stage managers and assistant stage directors covered by the certification granted by the Tribunal to the Canadian Actors' Equity Association on April 25, 1996, and subject to the agreement between the Association des professionnels des arts de la scène du Québec (APASQ-CSN) and the Canadian Actors' Equity Association dated June 28, 2001.

The Tribunal certified the ADC to represent a sector composed of all set, costume, lighting and sound designers throughout Canada, who are independent contractors engaged by a producer subject to the *Status of the Artist Act*, within the live performing arts industry, with the exception of:

- (a) set, costume, lighting and sound designers engaged by a producer subject to the *Status of the Artist Act* in a production presented in the province of Quebec;
- (b) set, costume, lighting and sound designers engaged by the French language theatre department of the National Arts Centre.

The complete Reasons for Decision are available on the Tribunal's web site. ♦

Some figures... on the status of negotiations

pursuant to the *Status of the Artist Act*

23 sectors of artistic activity have been defined by the Tribunal



21 artists' associations have been certified by the Tribunal



8 artists' associations certified by the Tribunal had negotiated **41** scale agreements before the Act came into force and most of them have since been renegotiated



12 first agreements have been negotiated since the Act came into force

Example of negotiations between UDA and a federal department

As part of its initiatives to commemorate the 80th anniversary of the end of the World War I, Veterans Affairs Canada launched a pilot project in 1998 to produce a play. The department wanted to raise the awareness of Canadians, and especially young Canadians, about Canada's involvement in various military conflicts.

Written, produced and performed by department employees, the *Chronicle of an Unknown Soldier* was presented for the first time on November 2, 1998 in Ottawa. The play's success led the department to decide to repeat the experience and to present the play in French at the Ste. Anne de Bellevue Hospital near Montréal. Ms. Joy MacFarlane, who was then Chief, Procurement and Contracting Services, for the department, advised the group in charge of the project to hire professional performers and to comply with the *Status of the Artist Act*.

The Union des artistes (UDA) being the artists' association certified by the Tribunal and authorized under the *Act* to negotiate on behalf of this sector of cultural activity, in August 1999, the department contacted Ms. Nicole Picard, who was, at the time, the UDA's labour relations advisor for the performing arts sector. The project represented a significant challenge for the department because no one had any experience negotiating under the *Act*. The situation was made more complex by the time constraints (the premiere was to be in October) and distance (the department's offices are in Charlottetown and those of the UDA in Montréal).

At the outset, the UDA proposed using the agreement it had signed with the *Théâtres unis enfance jeunesse* and suggested that the department sign this agreement with the UDA. The agreement would have been binding on the department for a set period of time with respect to dramatic productions covered under

the certification order issued by the Tribunal. Preferring not to commit itself beyond the production of *The Chronicle of an Unknown Soldier*, Veterans Affairs Canada signed a memorandum of understanding with the UDA that applied only to that production. The agreement was signed on October 8, 1999.

Both parties agree that the negotiations went well. According to Ms. MacFarlane, the most complicated problems were within the department because its contracting and payment management practices were not necessarily adapted to the specific requirements associated with negotiations under the *Act*. "It was a different way of proceeding", Ms. MacFarlane points out. For example, under the *Act*, it is the Tribunal's certification order that determines the artists' association in the negotiations, not the department; actors had to fill out time sheets; the department had to pay each actor separately and to deduct union dues to be remitted to the UDA; service charges had to be paid to the UDA, etc. In short, there are a whole series of procedures not usually encountered when a department contracts for services. Fortunately, adds Ms. MacFarlane, "The UDA was very cooperative".

For her part, Ms. Picard says that the only real difficulty she remembers was not the negotiations themselves but rather identifying the individuals with signing authority. "I was given the names of six different people before finding the one who could actually sign the agreement", she explains. Apart from that, she says that everything went well. "It was no harder than dealing with any other producer who has no producing experience", Ms. Picard states.

The experience was clearly positive and conclusive since the department decided to repeat it the following year. On January 28, 2000, Veterans Affairs Canada and the UDA signed a basically identical agreement for the English production of the play in Truro, Nova Scotia.

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➔ *negotiation... continued from page 3*

Although the negotiation and production of the play were successful, Mr. Michel Laurence, who is the head of communications for the UDA, nonetheless laments the fact that some federal institutions hire artists as independent workers without having previously negotiated agreements with the artists' associations certified under the *Act*. He believes that when no scale agreement has been signed, federal institutions should inform the association and negotiate an agreement prior to hiring artists. He urges the Federal Government to immediately contact the artists' associations certified under the *Act* and to sign scale agreements with them: "If a scale agreement can be entered into with the Government of Canada that is binding on all departments, it would make things so much simpler for everyone. Not only for the UDA, but also for the people in the departments who are producing audiovisual documents or productions".

Ms. MacFarlane urges Federal Government institutions not to shrink from the difficulties involved in adapting their contracting and payment management practices. She believes the effort is worth it because it enabled the Veterans Affairs Canada to produce a high-quality play that was appreciated by everyone who had the opportunity to see it.

The comments by Ms. Joy MacFarlane of Veterans Affairs Canada and by Ms. Nicole Picard and Mr. Michel Laurence of the Union des artistes were obtained respectively by Lorraine Farkas and Marc Boucher. Artists' associations and Federal Government institutions who are entering into negotiations under the Act can obtain information on the experience of Veterans Affairs Canada and the UDA by contacting Ms. MacFarlane at (902) 566-8628 or Luc Béchard at (514) 288-6682 ext. 280. ♦

Changes at the Tribunal

On February 11, 2002, François Auger, will join the Tribunal's legal services as Legal Counsel and Samantha Maislin Dickson will become acting Registrar and Senior Legal Counsel. Mr. Auger has worked as a Staff Relations Officer at the Canada Customs and Revenue Agency. ♦

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