



Changes at the Tribunal

Since the last Tribunal bulletin, there have been a number of changes to the membership of the Tribunal.

New Chairperson and CEO

On June 8, 2007, the Honourable Jean-Pierre Blackburn, Minister of Labour, announced the appointment of Mr. **Peter Annis** as part-time Chairperson and Chief Executive Officer of the Tribunal.

Mr. Annis has worked as a lawyer for more than 30 years and is certified as a specialist in civil litigation. He is currently a sole practitioner focusing on alternative dispute resolution. He has also worked as a part-time lecturer with the University of Ottawa's law faculty and is the author of many articles in law journals. A fuller biographical sketch of Mr. Annis is available on the Tribunal's web site.

Mr. Annis replaced Mr. **John M. Moreau** of Calgary, who served as a Member from March 2001 until March 2007, and as Acting Chairperson and CEO from April 3, 2006, until June, 2007.

New Vice-Chairperson

On May 15, 2007, the Minister of Labour, the Honourable Jean-Pierre Blackburn, appointed Ms. **Elaine Mary Kierans** as part-time Vice-Chairperson of the Tribunal.

Elaine Kierans worked as a lawyer after graduating from McGill University in 1983, and remains an active member of the Law Society of Upper Canada. She also

holds a business degree, specializing in labour relations, from McGill University.

Ms. Kierans has held numerous positions throughout her career, including Vice-Chair of the Alcohol and Gaming Commission of Ontario. She also has sat on a number of boards, including those of Brighter Minds Media Inc. and the Toronto French School.

Tribunal's first General Counsel now Chair of CIRB

On October 15, 2007, the Minister of Labour, the Honourable Jean-Pierre Blackburn, announced the appointment of Elizabeth MacPherson as Chairperson of the Canada Industrial Relations Board. Ms. MacPherson took up her new position in January 2008.

Ms. MacPherson was the Canadian Artists and Producers Professional Relations Tribunal's first General Counsel, from its founding in 1993 until 1999. She also served as Executive Director of CAPPRT from 1995-1999.

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From 1999 until her appointment as Chair of the CIRB, she was the Director General of the Federal Mediation and Conciliation Service, with the Labour Program at the Department of Human Resources and Social Development.

An interview with Ms. MacPherson can be found in the Tribunal's Information Bulletin 33.

Tribunal approves change to the AFM certification order

(Decision 052 in file 1350-07-001)

On December 10, 2007, the Tribunal rendered a decision in an application by the American Federation of Musicians of the United States and Canada (AFM) for review of its original certification order. The following is a brief summary of the case. The full decision is available on our website.

The AFM's request was that the Tribunal review and modify the description of the sectors that it was certified to represent. Those sectors were set out in two Certification Orders made by the Tribunal in 1997, following Decision 019.

In that decision, the AFM was certified to represent a sector composed of all AFM members engaged as independent contractors by any producer subject to the *Status of the Artist Act*, to perform the function of instrumental musician, conductor, vocalist or arranger, with certain exceptions to accommodate other associations' certifications. It was also certified to represent, for pension purposes only, a sector composed of AFM members engaged as independent contractors to perform the function of music composer, again with certain exceptions to reflect other associations' certifications.

The AFM asked the Tribunal to modify its certification to remove the reference to "members" of the AFM from the definition of the sectors, and to add "leader" to the list of functions in the sector definition that included "instrumental musician, conductor, vocalist or arranger."

The Tribunal gave public notice that it had received the application for review of the AFM's certification orders, and invited interested parties to make written representation.

The National Film Board, the Guild of Canadian Film Composers, and the Canadian Broadcasting Corporation made representations, and following discussions of the issues raised by the parties, the AFM revised its proposed sector as one "composed of **all independent contractors who are professional artists under the *Status of the Artist Act*** engaged by any producer subject to the *Status of the Artist Act* to perform the function of instrumental musician, conductor, leader, vocalist or arranger," subject to exceptions to accommodate other certifications.

Including "leader" in the definition of the sector was essentially a technical amendment, to allow for the distinction between conductors, who lead symphonic or classical musicians, and who were already included in the sector, and leaders, who perform the identical function but with musicians in different musical genres. The AFM had historically represented both leaders and conductors.

The reference to "members" in the AFM's existing certification order reflected the sector definition that it had submitted in its original application for certification. It was the only artists' association whose certification was based on membership.

As the AFM told the Tribunal, defining a sector by reference to membership in an association was a poor fit with the *Status of the Artist Act*. The *Act* requires that the Tribunal, to certify an association to represent a sector, must be satisfied that the association is “the most representative of artists in that sector.”¹ Defining a sector by reference to an association’s members made this requirement, in the words of the AFM, “somewhat perfunctory.”

So the Tribunal had two issues before it: should it add the term “leader” in the description of the sector, and should it remove the reference in the sector definition to membership?

With respect to adding leaders to the sector, the Tribunal accepted the AFM’s submission that this was a technical amendment. It was satisfied that leaders fell within the definition of performers and directors of performers in the *Act*. Since the AFM had historically represented leaders as well as conductors, the Tribunal found it appropriate to include these artists in the proposed sector.

On the question of whether to remove the reference to membership in the definition of the sector, the Tribunal noted that the AFM was correct that no other association had been certified to represent only its own members. The Tribunal had stated in the past that it preferred sector definitions that include all artists in a given discipline, as opposed to definitions that include only the members of an association.²

Given the history of the AFM’s representation of performing musicians and the acknowledgement of its

jurisdiction by producers and other artists’ associations, and in the absence of any challenge to its representativeness, the Tribunal granted the AFM’s request to represent “a sector composed of **all independent contractors who are professional artists under the *Status of the Artist Act*** engaged by any producer subject to the *Status of the Artist Act* to perform the function of instrumental musician, conductor, **leader**, vocalist or arranger,” with the exceptions mentioned above to reflect other associations’ certifications.

A new certification order was issued to reflect this decision.

What’s in a name?

This is a reminder to certified artists’ associations that, when they change their name, it’s a good idea to apply to the Tribunal for an order updating its certification.

When the Tribunal certifies an artists’ association, it issues a legal document called a certification order.

The certification order clearly identifies the artists’ association and gives it exclusive authority to bargain on behalf of artists in its sector.

A certified artists’ association that intends to change or has already changed its name should contact the Tribunal Secretariat and apply for an order updating its certification order to reflect the changes.

An application to review a certification order may be also be made by an artists’ association when there are changes in the terminology used to describe the sector.

An “Application for Review” form is available on the Tribunal web site in the *Forms* section, in both HTML and PDF versions.

¹ 28. (1) “Where the Tribunal is satisfied that an artists’ association that has applied for certification in respect of a sector is the most representative of artists in that sector, the Tribunal shall certify the association.”

² Tribunal Decision No. 020: Final decision in file 95–0017–A, *Guilde des musiciens du Québec (GMQ)*; issued January 16, 1997.

Keeping us up to date

Subsection 31(5) of the *Status of the Artist Act* requires that copies of notices to bargain be sent to the Minister of Labour by the party serving notice. We would like to remind artists' associations and producers' that we recommend copies also be sent to the Tribunal.

Similarly, subsection 33(2) of the *Act* requires that when a scale agreement is concluded, the parties file a copy with the Minister. Again, we recommend that the parties also send copies to us.

Tribunal staff monitor these notices and scale agreements to improve their understanding of conditions in the arts and culture economy in the Tribunal's jurisdiction. The Tribunal is also considering ways of integrating them into a research database that can be made available to its clients, to support their collective bargaining activities. Comments, suggestions and questions related to this project are welcome, and can be sent to the contacts identified at the end of this Bulletin.

Also, we welcome comments on any other matters related to the *Act* or the Tribunal's operations. We are continually looking at ways to improve the services we provide to artists, artists' associations and producers, and direct feedback is helpful to us.

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*Are you currently preparing a course or
organizing a conference on professional
relations in the cultural sector?*

**Tribunal personnel are available to make presentations
regarding the *Status of the Artist Act* and the role,
procedures and activities of the Tribunal.**
