



Canadian Artists and Producers
Professional Relations Tribunal

Tribunal canadien des relations
professionnelles artistes-producteurs

TRIBUNAL PROCEDURES

2004

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FOREWORD

This manual constitutes the fourth edition of the *Tribunal Procedures*. Initially, it was intended to provide guidelines to the operations of the Canadian Artists and Producers Professional Relations Tribunal. Over the years, its contents have been modified to better serve the artists and producers subject to the *Status of the Artist Act*.

On October 20, 2003, the *Canadian Artists and Producers Professional Relations Tribunal Procedural Regulations* (“the *Regulations*”) were enacted giving force of law to certain established practices. Given that it is not possible to include in a regulatory text all aspects relating to the Tribunal’s practices, we have decided to continue the publication of the *Tribunal Procedures* in paper and electronic format. This manual is another tool for users of the Tribunal in addition to the *Status of Artist Act Annotated* and the *Guide for Self-represented Parties*, copies of which are available on the Tribunal’s web site at www.capprt-tcrpap.gc.ca.

The governing principle of the Tribunal’s practices and procedures is found in subsection 19(1) of the *Status of the Artist Act*: “to proceed as informally and expeditiously as the circumstances and considerations of fairness permit.” With this principle in mind, the Tribunal intends to make every effort to conduct its proceedings in a manner that will allow those who appear before it to represent themselves.

We have endeavoured to ensure that the *Tribunal Procedures* are consistent with the *Regulations*. However, should any inconsistency arise between the *Regulations* and this document, the *Regulations* will have precedence.

Anyone wishing to comment on the Tribunal’s written materials is invited to do so by writing to us at the address below:

The Canadian Artists and Producers Professional Relations Tribunal
240 Sparks Street, 1st Floor West
Ottawa, Ontario K1A 1A1
Telephone: (613) 996-4052
1 800 263-2787
Facsimile: (613) 947-4125
E-mail address: info@capprt-tcrpap.gc.ca

A BRIEF HISTORY OF THE TRIBUNAL

In 1992 Parliament passed the *Status of the Artist Act*, and in June 1993 the provisions of the *Act* creating the Canadian Artists and Producers Professional Relations Tribunal were brought into force. The first members of the Tribunal were appointed in March 1995 and the substantive provisions of the *Act* were brought into force on May 9, 1995.

Section 7 of the *Act* states that the purpose of Part II of the *Act* is “to establish a framework to govern professional relations between artists and producers that guarantees their freedom of association, recognizes the importance of their respective contributions to the cultural life of Canada and ensures the protection of their rights.”

The Tribunal’s responsibilities include defining the sectors of cultural activity subject to federal jurisdiction that are suitable for collective bargaining, and certifying artists’ associations to represent these sectors. In addition, the Tribunal hears and decides complaints of unfair practices and other matters filed by artists, artists' associations and producers, and prescribes appropriate remedies for violations of the *Act*.

1 Certification of Artists' Associations

What certification is

In the *Status of the Artist Act* (the “*Act*”), the term “certification” is used to mean the recognition granted to an artists’ association by the Canadian Artists and Producers Professional Relations Tribunal. Obtaining such certification gives an artists’ association the exclusive right to represent self-employed artists in a specific sector with respect to collective bargaining and their relations with producers within federal jurisdiction (broadcasting undertakings and federal government institutions).

Broadly speaking, a “sector” is composed of independent artists that the applicant is seeking to represent in bargaining with the producers in federal jurisdiction who engage their services.

Who can apply for certification?

An artists’ association may apply to the Tribunal for certification to represent a sector in negotiations with producers within federal jurisdiction. An artists’ association is defined as an organization which has among its objectives the management or promotion of the professional and socio-economic interests of artists who are independent contractors.

When to apply for certification

The application must be made within the time periods set out in section 25 of the *Act*:

If no artists’ association has been certified for the sector, and

- (a) if no other application for certification in respect of the sector is pending before the Tribunal, the application can be made at any time;
- (b) if another application for certification has already been made in respect of the sector, applications by other artists’ associations must be made during the period of public notice prescribed by the Tribunal, unless the Tribunal grants consent for the making of the application.

If another artists’ association has already been certified for the sector, and

- (a) if there is at least one scale agreement in force in the sector, an application by another artists’ association to replace the certified artists’ association may only be made in the three months immediately before the existing certification order is due to expire;

- (b) if no scale agreement is in force for the sector, an application to replace an existing artists' association can be made by another artists' association one year after the date on which the existing certification was issued or renewed.

“Scale agreement” is defined in section 5 of the *Act* and refers to a written agreement between a producer and an artists' association which sets out the minimum terms and conditions for the provision of artists' services and other related matters.

How to apply for certification
Regs s. 25 & s. 8

The written application must contain the following information:

1. the artists' association's name, address, telephone number and fax number, if any;
2. the name, address, telephone number and fax number of the applicant's authorized representative, if any;
3. a general description of the sector for which certification is being sought;
4. an estimate of the number of professional freelance artists working in this sector;
5. an estimate of the number of members of the applicant who work in the proposed sector;
6. a current copy of the applicant's membership list certified by the applicant's authorized representative indicating:
 - (a) the members' full names and current addresses, and
 - (b) if the applicant also represents individuals who do not work within the proposed sector, a list of those members who work in the proposed sector;
7. a copy of any scale agreements in force affecting the proposed sector;
8. a copy of the applicant's by-laws certified by its authorized representative; applicants should ensure that their by-laws conform with section 23 of the *Act*, which requires that the by-laws of the association:
 - (a) establish membership requirements for artists;
 - (b) give regular members the right to take part and vote in meetings and participate in ratification votes affecting them;
 - (c) provide members with the right of access to a copy of the applicant's financial statements;
 - (d) not 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.
9. evidence that the membership has authorized the applicant to apply for certification (artists' associations must follow the provisions contained in their own constitution or by-laws to obtain authorization from their membership to make an

- application for certification);
10. the signature of the applicant or the applicant's authorized representative;
 11. the date of the application.

The application must be accompanied by all relevant documents. Applicants may use the Form provided by the Tribunal for the purpose of making an application for certification.

Where to apply

Applications for certification should be sent to:

Canadian Artists and Producers Professional Relations Tribunal
1st Floor West
240 Sparks Street
Ottawa, Ontario K1A 1A1

*What happens after
an application is
received*

Application is acknowledged

Upon receiving the application for certification, the Tribunal will send the applicant an acknowledgement of receipt. An officer of the Tribunal will review the application and will contact the applicant if any of the required information is missing or incomplete.

If the application is untimely, or if it is incomplete and the applicant fails to provide the information requested by the Tribunal within a specified time period, the Tribunal may dismiss the application. Before taking this step, the Tribunal will provide the applicant with an opportunity to make representations on the issue.

Regs s. 26

A public notice of the application is published

Once the application is complete, the Tribunal will publish a public notice in order to provide artists, artists' associations and producers with an opportunity to make their interest in the application known to the Tribunal. The public notice will be published in the *Canada Gazette* Part I and through such other means as the Tribunal considers appropriate.

The notice will set out the name of the applicant association, a description of the proposed sector and will set a time period for the receipt of applications by other artists' associations in respect of the sector. The time period will be at least 30 calendar days from the date the notice is published. During this time period, in addition to artists and producers, any person or organization who has an interest in the application may signify their interest in being heard on the matter by writing to the Tribunal and outlining the nature of their interest.

The Tribunal also maintains a mailing list of individuals and organizations who have indicated a desire to be informed of applications for certification received by the Tribunal.

The Tribunal will consider the merits of the application

When the time period specified in the public notice has expired, the Tribunal will proceed to consider the merits of the application. There are two stages to this process. First, the Tribunal will determine the sector that is suitable for bargaining and second, it will determine the representativeness of the association applying for certification.

The Tribunal may hold oral hearings with respect to either or both of these stages or it may proceed solely on the basis of the written material submitted to it. The applicant and any persons or organizations who have notified the Tribunal of their interest in the application will be notified of the process the Tribunal intends to adopt with respect to a specific application.

Determination of the suitability of a sector for bargaining

Artists, artists' associations, producers and producers' associations affected by an application for certification have the right to make representations to the Tribunal regarding the suitability of a sector for bargaining. Anyone else who wishes to be heard on this issue must first obtain the Tribunal's permission. At the Tribunal's discretion, the representations may be oral or written.

The applicant and any intervenor making representations regarding suitability should include comments on the following matters:

1. whether the independent artists in the proposed sector have common interests;
2. whether there is a history of professional relations among those artists and the producers to whom they provide services;
3. whether any scale agreements regarding terms of engagement already exist;
4. any relevant geographic and linguistic criteria; and
5. any other factors that may be relevant.

Determination of the representativeness of the applicant

Once the Tribunal has determined that a sector is suitable for bargaining, the next step is for the Tribunal to determine which artists' association is most representative of artists in that sector.

The artists' association that is most representative is entitled to be certified to bargain with producers on behalf of artists in the sector. The Tribunal has discretion to determine representativeness as of the date the artists' association filed its application for certification in respect of a sector, or as of any other date that the Tribunal considers appropriate. The Tribunal also has discretion as to how it will assess representativeness. The two most common means used to determine representativeness are membership evidence (for example, membership lists) and representation votes.

Artists and artists' associations affected by an application for certification have the right to provide the Tribunal with their views regarding the representativeness of any artists' association relative to a particular sector. Anyone else who wishes to be heard on this issue must first obtain the Tribunal's permission. At the Tribunal's discretion, the representations may be oral or written.

The certification order

If the Tribunal is satisfied that an applicant artists' association is the most representative of independent artists working in a sector that has been found to be suitable for bargaining, the Tribunal will issue a certification order granting that association the exclusive right to represent all artists working in the sector for a period of three years. Certifications are automatically renewed every three years unless another artists' association makes an application within the prescribed time period, or an artist makes an application to have the certification revoked. (Section 25 of the *Act* sets out the time periods in which another artists' association can make an application to be certified if there is a pre-existing certification. Section 29 of the *Act* sets out the grounds on which an artist may apply to have the incumbent association's certification revoked).

Consequences of certification

Once the artists' association has been certified by the Tribunal, it is entitled to issue a notice requiring federal producers who engage artists in the sector to bargain. A producer is also entitled to send a notice to bargain to the certified artists' association.

The objective of these negotiations is to reach a scale agreement setting out the terms and conditions under which independent artists will work for the producers. Although the scale agreements will set out the minimum terms and conditions that producers must provide to the independent artists who do work for them, individual artists continue to have the right to negotiate personal contracts containing terms and conditions above these minimums.

2 Associations of Producers

What is an association of producers?

The *Status of the Artist Act* defines producers as federal government institutions and broadcasting undertakings. These producers are entitled to form associations for the purpose of bargaining and entering into scale agreements with artists' associations. The formation of an association of producers is entirely voluntary.

How do producers obtain recognition of their association?

In order to obtain the exclusive right to bargain on behalf of its members, an association of producers must file the following information with the Tribunal:

1. a copy of its membership list;
2. the name, address, telephone number and fax number of the authorized representative of the association of producers;
3. the name of every artists' association from whom it has received a notice to bargain or with whom it has entered into a scale agreement.

The membership list filed with the Tribunal must be kept up-to-date by sending to the Tribunal the name of any producer who joins or withdraws from the association of producers, and the date of membership or withdrawal from membership.

The membership list and any updates to it should be sent to:

Canadian Artists and Producers Professional Relations Tribunal
1st Floor West
240 Sparks Street
Ottawa, Ontario K1A 1A1

What is the effect of filing a membership list with the Tribunal?

Once an association of producers has filed its membership list with the Tribunal, that association has the exclusive right to bargain on behalf of its members for the purpose of entering into or amending a scale agreement.

A scale agreement which is entered into by an association of producers binds each producer who was a member of the association at the time the agreement was signed or who subsequently joins the association, even if the association is later dissolved or the producer withdraws from membership in the association. In the event that a producer withdraws from an association of producers, any scale agreement that was negotiated while that producer was a member will continue to apply to the producer until the date it expires.

3 Applications for Revocation of Certification

What is revocation of certification?

Revocation of certification is a formal procedure to take away an artists' association's exclusive right to represent the artists working in a particular sector.

Basis for a revocation application

An application for revocation of a certification may be made based on the grounds that:

1. the association's by-laws discriminate unfairly against an artist so as to prevent the artist from becoming or continuing as a member of the association; or
2. the artists' association is no longer the most representative of artists in the sector; or
3. the artists' association has not made reasonable efforts to negotiate a scale agreement for the sector.

Who can apply for revocation of certification?

Any independent professional artist who works in a sector for which an artists' association has been certified may apply to the Tribunal to have that association's certification revoked on the basis of one of the grounds set out above.

When to apply

The application must be made within the time periods set out in section 29 of the *Act*:

1. the application can be made at any time if it is based on the ground that the association's by-laws discriminate unfairly against the artist so as to prevent the artist from becoming or continuing as a member of the association;
2. if there is any scale agreement in force for the sector, an application which claims that the association is no longer the most representative of artists in the sector, or that the association has not made reasonable efforts to negotiate a scale agreement, can only be made in the three months prior to the date that the certification is due to expire;
3. if there is no scale agreement in force for the sector, an application which claims that the association is no longer the most representative, or that the association has not made reasonable efforts to negotiate a scale agreement, can be made any time after one year has elapsed from the date the certification was granted or last renewed.

*How to apply for
revocation of certification
Regs s.32 & s.8*

The application must be made in writing and contain the following information:

1. the applicant's name, address, telephone number and fax number, if any;
2. the name, address, telephone number and fax number of the applicant's authorized representative, if any;
3. a description of the sector within which the applicant works, and for which an artists' association has been certified;
4. the name of the artists' association that holds the certification that the applicant seeks to revoke;
5. the grounds on which the applicant seeks the revocation;
6. a description of the facts that the artist alleges would justify the revocation of the certification;
7. the decision or order sought;
8. the signature of the applicant or the applicant's authorized representative;
9. the date of the application.

The application must be accompanied by all relevant documents. Applicants may use the Form provided by the Tribunal for the purpose of making an application for revocation of certification.

Where to apply

Applications for revocation of certification should be sent to:

Canadian Artists and Producers Professional Relations Tribunal
1st Floor West
240 Sparks Street
Ottawa, Ontario K1A 1A1

*What happens after
an application is
received*

Application is acknowledged

Upon receiving an application for revocation of certification, the Tribunal will send the applicant an acknowledgement of receipt. An officer of the Tribunal will review the application and will contact the applicant if any of the required information is missing or incomplete. If the application is untimely, or if it is incomplete and the applicant fails to provide the information requested by the Tribunal within a specified time period, the Tribunal may dismiss the application without a hearing. Before taking this step, the Tribunal will provide the applicant with an opportunity to make representations on the issue.

Regs s.33 & s.34 Notification is sent to the certified artists' association

If the application is complete, the Tribunal will send a copy of the application to the artists' association affected and request a response from the association. If the grounds for the application are that the association's by-laws are discriminatory, the Tribunal may provide the association with a time period in which to adopt by-laws that meet the requirements of the *Act*, and if the association complies then the application may be stayed.

Regs s.35 & s. 10 Applicant is provided with a copy of the artists' association's response

When the Tribunal receives the response of the artists' association, it will send a copy of that response to the applicant and allow the applicant a period of time in which to reply in writing to the Tribunal on any facts or arguments put forward by the association.

Producers and producers' associations may comment

Depending on the circumstances, the Tribunal may also provide any producer or producers' association affected by an application for revocation with a copy of the application and an opportunity to comment.

Determination of type of Tribunal proceedings

On the basis of the written material received from the applicant and the artists' association, the Tribunal will decide whether an oral hearing is necessary or whether it can make a decision based on the written information which has been provided to it. The applicant and the artists' association will be notified of the process the Tribunal intends to adopt with respect to a specific application.

Consideration of the merits and decision

After considering all of the evidence presented to it, the Tribunal will make its decision and notify the applicant, the artists' association and any producer or producers' association affected.

4 Steps in the Complaint Process

What kinds of complaints can be made to the Tribunal?

The *Status of the Artist Act* contains a number of obligations and prohibitions which apply to artists, artists' associations, producers and producers' associations. Section 32 (duty to bargain and not change the terms and conditions), section 35 (duty of fair representation), section 50 (prohibitions relating to producers), section 51 (prohibitions relating to artists' associations) and section 52 (prohibition of intimidation or coercion) can form the basis of a complaint to the Tribunal.

Obligations and prohibitions applicable to producers and to producers' associations

Examples of the obligations and prohibitions include:

- the duty to bargain in good faith and make every reasonable effort to enter into a scale agreement;
- the requirement not to alter any term or condition of engagement or right or privilege of an artist or an artists' association contained in a scale agreement, without the consent of the artists' association, until at least 30 days following the expiry of the scale agreement;
- the requirement not to participate in, authorize or apply pressure tactics against an artist or artists' association until after the commencement of the legal period for such tactics;
- the requirement not to refuse to engage an artist or honour an artist's contract, or discriminate against, intimidate, threaten or discipline an artist because the artist has exercised any rights to which the artist is entitled under the *Act*.

Obligations and prohibitions applicable to artists' associations

Examples of the obligations and prohibitions include:

- the duty to bargain in good faith and make every reasonable effort to enter into a scale agreement;
- the duty not to act in a manner that is arbitrary, discriminatory or in bad faith with respect to the representation of any artist's rights under a scale agreement applicable in a sector for which the association is certified;
- the requirement not to participate in, authorize or apply pressure tactics against a producer until after the commencement of the legal period for such tactics;
- the requirement not to intimidate, coerce or impose a financial or other penalty on an artist because the artist has exercised any rights to which the artist is entitled under the *Act*.

Obligations and prohibitions applicable to artists

Examples of the obligations and prohibitions include:

- the requirement not to participate in, authorize or apply pressure tactics against a producer until after the commencement of the legal period for such tactics;
- the requirement not to use intimidation or coercion to try to force anyone to become or cease from being a member of an artists' association.

Who can make a complaint?

Any person or organization can make a complaint to the Tribunal.

When can complaints be made?

Complaints must be made within six months of the date that the complainant first knew or ought to have known of the action or circumstance giving rise to the complaint.

How to make a complaint
Regs s. 38 & s. 8

A complaint must be made in writing and contain the following information:

1. the name, address, telephone number and fax number, if any, of the person making the complaint (“the complainant”);
2. the name, address and telephone number and fax number, if any, of the person, producer, producers’ association or artists’ association against whom the complaint is being made (“the respondent”);
3. the name, address, telephone number and fax number, if any, of any person to whom copies of correspondence concerning the complaint should be sent (*e.g.* complainant’s representative);
4. the provision of the *Status of the Artist Act* which the complainant feels has been violated;
5. a full factual description of the events, circumstances and actions taken by the respondent which led to the complaint;
6. the date on which the complainant first knew of the action or circumstances which led to the complaint;
7. the details of any actions already taken by the complainant to try to resolve the complaint;
8. a description of the corrective action (remedy) sought by the complainant;
9. the signature of the complainant or the complainant’s authorized representative;
10. the date of the complaint.

The application must be accompanied by all relevant documents. Complainants may use the Form provided by the Tribunal for the purpose of making a complaint.

Where to send the complaint

Complaints should be sent to:

Canadian Artists and Producers Professional Relations Tribunal
1st Floor West
240 Sparks Street
Ottawa, Ontario K1A 1A1

What happens after a complaint is received

Complaint is acknowledged

Upon receiving the complaint, the Tribunal will send the complainant an acknowledgement of receipt. An officer of the Tribunal will review the complaint and will contact the complainant if any of the required information is missing or incomplete.

Preliminary considerations are examined

The Tribunal may refuse to deal with any complaint if it is of the opinion that the complaint:

- (a) is not within its jurisdiction;
- (b) is untimely;
- (c) is no longer relevant (*i.e.*, is moot);
- (d) is frivolous, vexatious, or in bad faith; or
- (e) should have been referred to arbitration under a scale agreement.

The Tribunal may raise these considerations on its own initiative, or they may be raised by any other party to the complaint. Before making a decision to refuse to hear a complaint, the Tribunal will provide the complainant with an opportunity to make representations on these matters.

Respondent is given an opportunity to respond to the complaint

Regs s. 39, s. 9 & par. 17(1)(a)

The Tribunal will send a copy of the complaint and any documents submitted by the complainant to the respondent and provide the respondent with an opportunity to respond to the complaint.

The Tribunal will specify a time period for receipt of the response, which will ordinarily be 15 calendar days from the date the complaint is sent to the respondent. A respondent may request that this time

Regs subs. 17(2)

period be extended by the Tribunal. If a respondent fails to request and obtain an extension of the time for submitting a response, or fails to provide a response within the time allowed, the Tribunal may proceed to deal with the complaint without further notice to that respondent.

A response to a complaint must be in writing and include the following:

Regs s. 39 & s. 9

1. the respondent's name, address, telephone number and fax number, if any;
2. the name, address, telephone number and fax number of the respondent's authorized representative, if any;
3. the Tribunal file number of the proceeding to which the response relates;
4. a full response to any allegations or issues raised in the proceeding and full particulars of any additional relevant facts on which the respondent intends to rely;
5. the respondent's position with respect to the determination or order sought by the complainant;
6. the signature of the respondent or the respondent's authorized representative; and
7. the date of the response.

The response must be accompanied by all relevant documents.

Complainant is given an opportunity to reply

**Regs s. 40 & par.
17(1)(b)**

Upon receipt of the response from the respondent, the Tribunal will provide a copy of the response to the complainant in order to allow the complainant an opportunity to submit a reply. A reply is the complainant's response to any new issues or facts raised in a respondent's response. The Tribunal will establish a time period within which the reply must be made, which will normally be 10 calendar days from the date a copy of the respondent's response is sent to the complainant. The complainant may request that this time period be extended by the Tribunal.

Regs subs. 17(2)

The complainant is not obliged to make a reply, but should do so if the complainant intends to bring forward facts that were not set out in the original complaint.

Regs s. 40 & s. 10

The reply must be made in writing, within the time period set by the Tribunal, and contain:

1. the Tribunal file number of the proceeding to which the reply relates;
2. a full reply to any allegations or issues raised in the response and full particulars of any additional relevant facts on which the complainant intends to rely;
3. the signature of the complainant, or the complainant's authorized representative; and
4. the date of the reply.

The reply must be accompanied by all relevant documents.

Mediation

The Tribunal may appoint one of its members or an officer from its own staff to meet with the complainant and the respondent in an effort to resolve the complaint. Any discussions which take place during this resolution stage are confidential, and no documents or information relating to this stage can be placed in evidence before the Tribunal in the event that it becomes necessary to proceed to the hearing stage.

Type of Tribunal proceedings

If the Tribunal does not appoint a person to assist in resolving the complaint, or if resolution efforts are not successful, the Tribunal will proceed to consider the complaint. This consideration may consist of deliberations based entirely on written material submitted by the complainant, the respondent and anyone who has been given permission to intervene in the complaint, or it may involve the hearing of oral testimony and representations from the parties and intervenors.

Upon conclusion of its proceedings, the Tribunal will decide the complaint and will notify the complainant, the respondent and any intervenors of its decision.

5 Applications for Determinations or Declarations

What kinds of determinations or declarations can the Tribunal be asked to make?

The Tribunal may be asked to consider and decide a variety of questions. For example, it may be asked:

- to determine what rights, privileges and duties an artists' association has acquired as a result of a merger, amalgamation or transfer of jurisdiction among associations (s. 30 of the *Act*);
- to determine whether a right or benefit under an individual contract between an artist and a producer is more favourable to that artist than the provisions of the scale agreement which applies to the engagement (subs. 33(5) of the *Act*);
- to answer any question arising during an arbitration proceeding which requires a determination as to whether a scale agreement exists, who the parties to the agreement are, or whether an agreement applies to a particular sector or artist (s. 41 of the *Act*);
- whether pressure tactics are being applied by a producer or an artists' association in contravention of the *Act* (s. 47 and s. 48 of the *Act*).

Who can apply for determinations or declarations?

In the case of a question arising during an arbitration proceeding, only the arbitrator or arbitration board can apply to the Tribunal for a determination of the question. With respect to the other types of determinations or declarations, an artist, an artists' association, a producer or a producers' association which has an interest in the subject matter may make the application.

When can applications be made?

Applications for determinations or declarations can be made at any time.

How to make an application
Regs s. 41 & s. 8

An application to the Tribunal for a determination or declaration must be made in writing and contain the following information:

1. the applicant's name, address, telephone number and fax number, if any;
2. the name, address, telephone number and fax number of the applicant's authorized representative, if any;
3. the name, address and telephone and fax number, if any, of any artist, artists' association, producer or producers' association affected by the application;
4. a reference to the section of the *Act* under which the application is being made;

5. the question which the applicant wishes to have the Tribunal determine or the nature of the declaration which the applicant is seeking;
6. the grounds on which the applicant relies and a full description of the facts giving rise to the application;
7. the signature of the applicant or the applicant's authorized representative;
8. the date of the application.

The application must be accompanied by all relevant documents. Applicants may use the Form provided by the Tribunal for the purpose of making an application for a determination or declaration.

Where to send the application

Applications for determinations or declarations should be sent to:

Canadian Artists and Producers Professional Relations Tribunal
1st Floor West
240 Sparks Street
Ottawa, Ontario K1A 1A1

What happens after an application is received

Application is acknowledged

Upon receiving an application for a determination or a declaration, the Tribunal will send the applicant an acknowledgement of receipt. An officer of the Tribunal will review the application for completeness and will contact the applicant if any of the required information is missing or incomplete.

If the application is incomplete and the applicant fails to provide the information requested by the Tribunal within a specified time period, the Tribunal may dismiss the application without a hearing. Before taking this step, the Tribunal will provide the applicant with an opportunity to make representations on the issue.

Regs s. 42 & s. 9

Other affected parties are given opportunity to make representations

The Tribunal will send a copy of the application to any other organization affected by the application, and provide that organization with a period of time in which to submit any representations it wishes to have the Tribunal consider.

Regs s. 43 & s. 10 Applicant is given opportunity to comment

The Tribunal will provide a copy of any representations it receives to the applicant and will allow the applicant a further period of time in which to comment.

Type of Tribunal proceedings

Once the time period set by the Tribunal for the submission of representations and comments has expired, the Tribunal will review the material before it and determine whether an oral proceeding is required.

If an oral proceeding is not required, the Tribunal will consider the application on the basis of all of the documents in its possession and decide whether or not to make the determination or declaration which was sought.

If the Tribunal is of the opinion that an oral proceeding is required, it will notify the applicant and all of the affected parties of the date set for the hearing. Following the oral proceeding, the Tribunal will decide whether or not to make the determination or declaration which was sought.

6 Interim Decisions and Orders

What kinds of interim decisions and orders can the Tribunal make?

During the course of its proceedings on an application or complaint, the Tribunal may find it necessary to decide various preliminary issues. Subsection 20(2) of the *Act* gives the Tribunal the authority to issue interim decisions and orders regarding such issues, provided that it can do so without prejudice to the rights of any party or intervenor in the proceeding.

For example, before the Tribunal proceeds with an application for certification, it will often have to decide whether or not to grant intervenor status to individuals or organizations that have requested the Tribunal's permission to intervene pursuant to subsection 19(3) of the *Act*. A determination of this kind is considered to be an interim decision. When there are a number of intervenors in a case, the Tribunal may issue a procedural order setting out the rights of each intervenor and establishing time limits for the filing of documents. In the context of a Tribunal proceeding, this is considered an interim order.

The participants in a proceeding will always be notified by the Tribunal of any interim decisions or orders.

7 Referral of a Question by an Arbitrator or Arbitration Board

<i>What kinds of questions can be referred to the Tribunal?</i>	An arbitrator or arbitration board can refer to the Tribunal any question arising during an arbitration proceeding which requires a determination as to whether a scale agreement exists, who the parties to the agreement are, or whether an agreement applies to a particular sector or artist (s. 41 of the <i>Act</i>).
<i>Who can refer a question to the Tribunal?</i>	Only the arbitrator or arbitration board can make a referral to the Tribunal for a determination of a question arising during an arbitration proceeding.
<i>When can a question be referred?</i>	A question which arises during an arbitration proceeding can be referred to the Tribunal at any time in the course of the proceeding.
<i>How should a question be referred to the Tribunal?</i>	A question must be referred to the Tribunal in writing.
<i>Where to send the question</i>	Questions should be sent to: Canadian Artists and Producers Professional Relations Tribunal 1 st Floor West 240 Sparks Street Ottawa, Ontario K1A 1A1
<i>What happens after a question is referred to the Tribunal</i> Regs subs. 41(1)	Parties to the arbitration proceeding given opportunity to make representations The Tribunal will send a copy of the question to each of the parties to the arbitration proceedings and provide them with a period of time in which to submit any representations they wish to make.
Regs subs. 41(2)	Any representations which a party wishes to make must be made in writing and contain the following information: <ol style="list-style-type: none">1. the name, address, telephone and fax number, if any, of the party;2. the name, address, telephone and fax number of the party's authorized representative;3. the grounds on which the party relies;4. a full description of the facts relevant to the question referred to the Tribunal;5. the determination or order sought;

6. the signature of the applicant or the applicant's authorized representative;
7. the date of filing of the representations.

Regs subs. 41(3) Each party's representations must be accompanied by all relevant documents or filed in any other manner authorized by the Tribunal.

Regs subs. 41(4) Each party must serve a copy of the representations and documents on the other party.

Regs subs. 41(5) Parties given opportunity to respond

The Tribunal will allow each party a period of time in which to respond in writing to the representations of the other party within a specified time period.

Type of Tribunal proceedings

Once the time period set by the Tribunal for the submission of representations and comments has expired, the Tribunal will review the material before it and determine whether an oral proceeding is required.

If an oral proceeding is not required, the Tribunal will consider the question on the basis of all of the documents in its possession and decide whether or not to make the determination or declaration which was sought.

If the Tribunal is of the opinion that an oral proceeding is required, it will notify the parties of the date set for the hearing. Following the oral proceeding, the Tribunal will decide whether or not to make the determination or declaration which was sought.

Arbitration proceedings not suspended

The referral of a question by an arbitrator or arbitration board does not suspend the arbitration proceedings, except where the arbitrator decides to suspend the proceedings or the Tribunal orders that they be suspended.

8 Review of Decisions and Orders

Types of review applications
Regs subs. 45(1) & 45(2)

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 determination or order contains an error of law or a serious error of fact; or
- (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 determination 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 determination or order. If this time period is exceeded, the applicant must provide a compelling reason why this time limit should be waived.

It should be noted that the filing of an application for reconsideration of a Tribunal decision or order **does not** extend or affect the time limits imposed by the Federal Court regarding the filing of an application for **judicial review** of a Tribunal determination or order.

Regs subs. 45(3)

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.

Regs subs. 45(4)

3. Updating a certification order

An artists' association which has been certified to represent artists in a specific sector may apply to the Tribunal for an order updating the certification order to reflect routine matters such as a change in the association's name or the terminology used to describe the sector. Ordinarily, the purpose of such applications is merely to request that the Tribunal update its order to reflect the current *status quo*. Such applications can be made at any time.

Who can apply for review of a Tribunal decision or order?

Any artist, artists' association, producer or producers' association affected by a particular Tribunal decision or order may apply to the Tribunal for a review of that decision or order. The Tribunal also has the ability to act on its own initiative to review an earlier decision or order. This type of "internal" review of Tribunal decisions and orders should be distinguished from judicial review, which is explained in Chapter 24.

When can an application be made?

The timeliness of an application for review of a Tribunal determination or order depends upon the type of order or determination and the reason for which the review is being sought. The time limits for each type of review application is explained in 1, 2 and 3 above.

How to apply for review
Regs subs. 45(5) & s. 8

An application for review must be in writing and contain the following information:

1. the name, address and telephone and fax number, if any, of the artist, artists' association, producer or producers' association making the application for review ("the applicant");
2. the name, address, telephone and fax number of the applicant's authorized representative, if any;
3. the name, address, telephone and fax number, if any, of any artists' associations or producers affected by the determination or order;
4. the file number and date of the determination or order which the applicant wishes to have reviewed;
5. the grounds on which the applicant relies and full particulars of the facts which the applicant believes would justify a review of the determination or order;
6. a description of the decision or order which the applicant is seeking;
7. the signature of the applicant or the applicant's authorized representative;
8. the date of the application.

The application must be accompanied by all relevant documents. Applicants may use the Form provided by the Tribunal for the purpose of making an application for review.

Where to apply for review

Applications for review should be sent to:

Canadian Artists and Producers Professional Relations Tribunal
1st Floor West
240 Sparks Street
Ottawa, Ontario K1A 1A1

What happens after an application for review is received

Application is acknowledged

Upon receipt of an application for review of one of its decisions or orders, the Tribunal will send the applicant an acknowledgement of receipt. An officer of the Tribunal will review the application for completeness and will contact the applicant if any of the required information is missing or incomplete.

The Tribunal may be asked to rule on the timeliness of the application as a preliminary matter. If this issue is raised, the applicant will be provided with an opportunity to make representations to the Tribunal.

Regs s. 47 & s. 9

Affected parties given opportunity to make representations

The Tribunal will send a copy of the application to any artists' association, producer and producers' association affected by the review, and will provide them with a time period in which to submit representations to the Tribunal regarding the review. In addition, if the outcome of the review could have the effect of enlarging a sector, the Tribunal may publish a notice of the application in order to provide an opportunity for public comment.

Regs s. 48 & s. 10

Applicant given opportunity to comment

A copy of any representations received will be sent to the applicant, and an opportunity will be provided for the applicant to submit comments.

Investigation

The Tribunal may appoint one of its members or staff to conduct an investigation of the application and to prepare a report to the Tribunal. Any report prepared for the Tribunal will be provided to the applicant and any person or organization that has submitted representations.

Type of Tribunal proceedings

On the basis of the documentary information provided to it, the Tribunal will either make a decision on the review application or will decide to hold an oral proceeding. If the Tribunal is of the view that an oral proceeding is required, it will set a date for the hearing and will notify the applicant and any person or organization which has submitted representations.

Upon conclusion of its proceedings, the Tribunal will make a decision on the review application and will send a copy of this decision to the applicant and those who submitted representations.

9 Interventions in Tribunal Proceedings

What is an intervention?

An intervention is the submission of representations concerning a matter that is before the Tribunal by a person or group who is not a party in the case.

Anyone who is not an applicant, a complainant or a respondent, but who wishes to make representations to the Tribunal regarding a matter which is before it, is called an **intervenor**. There are two types of intervenors: those who have a statutory right to appear and be heard by the Tribunal (“as of right intervenors”) and those who have been given permission by the Tribunal to appear and be heard (“intervenor by permission”).

Who are “as of right intervenors” and who needs the Tribunal’s permission to intervene?

1. Artists

Any artist affected by an application for certification is entitled to be an intervenor as of right with respect to the application. That artist is entitled to make representations as to the suitability of the sector for bargaining and as to the representativeness of the applicant.

Unless the artist is the applicant, complainant or respondent, he or she would need the Tribunal’s permission to intervene in any other type of case before the Tribunal (*e.g.* complaints, applications for declarations, etc.).

2. Artists’ associations

Any artists’ association affected by another association’s application for certification is entitled to be an intervenor as of right with respect to the application. That artists’ association is entitled to make representations as to the suitability of the sector for bargaining and as to the representativeness of the applicant.

Unless the artists’ association is the applicant, complainant or respondent, it would need the Tribunal’s permission to intervene in any other type of case before the Tribunal (*e.g.* complaints, applications for declarations, etc.).

3. Producers

A producer who is affected by an application for certification is entitled to be an intervenor as of right with respect to the issue of the suitability of the sector that the applicant is seeking to represent in collective bargaining.

Unless the producer is the applicant, complainant or respondent, they would need the Tribunal's permission to intervene in any other type of case before the Tribunal (*e.g.* complaints, applications for declarations, etc.).

4. Producers' Associations

Any producers' association affected by an application for certification is entitled to be an intervenor as of right with respect to the issue of the suitability of the sector that the applicant is seeking to represent in collective bargaining.

Unless the producers' association is the applicant, complainant or respondent, it would need the Tribunal's permission to intervene in any other type of case before the Tribunal (*e.g.* complaints, applications for declarations, etc.).

5. Members of the public

A member of the public who is interested in a matter before the Tribunal always requires the Tribunal's permission to intervene.

How do "as of right intervenors" exercise their rights?
Regs subs. 27(1)

To take advantage of their right to be heard, an artist, artists' association, producer or producers' association affected by an application for certification must contact the Tribunal in writing at the address below within the time period set out in the Public Notice. The notice of intervention must contain the following information:

Regs subs. 27(2)

1. the intervenor's name, address and telephone number and fax number, if any;
2. the name, address and telephone number and fax number of the intervenor's authorized representative, if any;
3. the Tribunal's file number indicated in the Public Notice;
4. the signature of the intervenor or their authorized representative;
5. the date of the filing of the notice of intervention.

Regs subs. 27(3)

The Tribunal may request that an intervenor file the grounds for their intervention and their interest in the matter.

Intervenors as of right may use the Form provided by the Tribunal for the purpose of notifying the Tribunal of their intention to participate.

*How do others
obtain the Tribunal's
permission to
intervene?
Regs s. 11
par. 17(1)(a)*

Any individual or organization that is not entitled to intervene as of right, may apply to the Tribunal in writing at the address below during the time period set out in the Public Notice, if applicable, providing the following information:

1. the name, address and telephone number and fax number, if any, of the applicant for leave to intervene;
2. the name, address, telephone and fax number of the authorized representative, if any, of the applicant for leave to intervene;
3. the Tribunal file number of the case that is the subject of the application for leave to intervene;
4. the grounds for the intervention and the nature of the interest of the applicant for leave to intervene in the matter;
5. the contribution that the applicant for leave to intervene expects to make to the proceeding if granted permission to intervene.
6. the signature of the applicant for leave to intervene or of their authorized representative;
7. the date of the application for leave to intervene.

The application must be accompanied by all relevant documents. Applicants may use the Form provided by the Tribunal for the purpose of making an application for intervenor status.

It should be noted that the Tribunal has discretion as to whether or not intervenor status will be granted and the extent of the rights of participation which will be permitted.

*Criteria used by the
Tribunal to
determine intervenor
status*

In deciding whether or not to grant permission to intervene, the Tribunal will consider the following factors:

- (a) whether the individual or organization seeking to intervene is directly affected by the outcome of the proceeding;
- (b) whether the individual or organization's position is already represented by another participant in the proceeding;
- (c) whether the public interest and/or the interests of justice would be served by permitting the individual or organization to intervene;
- (d) whether the Tribunal could hear and decide the matter without the input of the individual or organization.

*Where to send the
application*

Notices and applications should be sent to:

Canadian Artists and Producers Professional Relations Tribunal
1st Floor West
240 Sparks Street
Ottawa, Ontario K1A 1A1

10 Exchange of Documents and Information

Regs s. 19 & s. 20

Every participant in a proceeding is entitled to know the case to which that participant will be required to respond, and not to be taken by surprise during a proceeding. The Tribunal expects participants to act reasonably and cooperatively to achieve this objective.

Prior to the hearing of an application or complaint, any participant in the proceeding may request disclosure from the other participants of any documents or information relevant to the proceeding. If disclosure is not forthcoming within 10 days of the request, the participant seeking disclosure may apply to the Tribunal for an order requiring the other participant to produce all of the documents which the Tribunal considers necessary for the full investigation and consideration of the application or complaint. A participant who has arbitrarily or without good reason failed to disclose relevant documents prior to the hearing may be required to pay the costs of any adjournment of the proceedings that results from this failure.

Documents filed with the Tribunal by a participant in a proceeding will be placed on the Tribunal's case record, which is open to the public. A participant who wishes to prevent public disclosure of a specific document should make application to the Tribunal for protection of confidentiality. See chapter 23 entitled "Tribunal Records and Confidentiality" for details.

11 Evidence Gathering and Mediation

Evidence gathering

The Chairperson of the Tribunal has the authority to direct a member of the Tribunal to receive evidence relating to any matter which is before the Tribunal, and to make a report to the Tribunal on the evidence so received. A copy of any such report and an opportunity to make representations on the report will be provided to all participants in the proceeding before the Tribunal considers the report.

Mediation

When the Tribunal receives an application or a complaint, it may appoint one of its members or staff to assist the parties in resolving the issues. All of the discussions which take place during mediation will be held in confidence and there will be no report of the mediation process prepared by the Tribunal representative.

If the mediation effort is successful, the parties will be asked to sign a memorandum of settlement which will be placed on the Tribunal's case file.

If the mediation effort is unsuccessful, the Tribunal will be advised only that there has been no resolution and that a written or oral proceeding must be held.

12 Withdrawal or Discontinuance

- Withdrawal* Applicants and complainants may decide not to pursue their application or complaint. In such cases, they should notify the Tribunal in writing of their desire to withdraw the application or complaint. The Tribunal has the discretion to refuse to allow a withdrawal.
- Discontinuance* If an application or complaint has been dormant for more than one year and has not been withdrawn, the Tribunal will contact the applicant or complainant and request an explanation for the delay. If the applicant or complainant does not respond within 30 calendar days, or if the Tribunal is not satisfied with the reasons for the delay, the Tribunal may declare the application or complaint to be discontinued.

13 Preparatory Meetings

Purpose of preparatory meetings

The purpose of a preparatory meeting is to identify and narrow the issues that must be resolved by the Tribunal. The Tribunal may decide on its own initiative to hold a preparatory meeting, or it may do so at the request of one or more of the participants in a proceeding.

Conduct of a preparatory meeting

When the Tribunal is of the opinion that a preparatory meeting could be of value in a specific proceeding, it will notify the participants of the time and place of the meeting. Preparatory meetings may require personal attendance, or may be conducted by means of technology such as teleconferencing. The preparatory meeting may be chaired by a member of the Tribunal or by one of its staff, as directed by the Chairperson.

Matters to be discussed at a preparatory meeting

The following are examples of the matters which may be discussed at a preparatory meeting:

1. whether there is any disagreement about the Tribunal's jurisdiction to hear a particular matter;
2. whether the parties are able to agree on some or all of the facts which are to be presented to the Tribunal, in order to avoid the necessity of calling witnesses to prove each fact;
3. any procedural questions, such as the way in which the Tribunal will deal with any motions that a party intends to make and who has the burden of proving various facts;
4. the selection of dates for any oral proceedings which are to be held and the length of time which each party believes it will require to present its case;
5. the order in which the parties will be called on to make their representations to the Tribunal during an oral proceeding;
6. whether there is any requirement for expert witnesses and the time frame for providing an advance summary of any evidence that an expert will be giving;
7. the exchange of any documents or exhibits which will be used in the proceedings;
8. any other matters that would assist in expediting the proceedings.

Settlements reached during preparatory meetings

Should the participants agree on specific matters during the course of the preparatory meeting (*e.g.* admission of specific facts or evidence, withdrawal of certain objections or issues), they may wish to document their agreement in writing and sign it. Written, signed agreements will be placed on the Tribunal case file and will be binding on the participants.

If a settlement of all of the issues which led to the application or complaint is reached during a preparatory meeting, the terms of settlement should be documented and signed by the participants and the Tribunal representative presiding at the conference. At the request of any one of the participants, the Tribunal will issue an order confirming the terms of settlement.

14 Tribunal Proceedings

*What form do
Tribunal proceedings
take?*

The Tribunal may decide matters coming before it on the basis of written submissions, oral representations or both. Oral proceedings will ordinarily be held where the issues involve questions of credibility or when the Tribunal wishes to hear the testimony of witnesses; written proceedings will be the norm for uncontested matters.

Uncontested applications or questions may be decided by a one-member panel of the Tribunal. All other proceedings will involve a panel of at least three Tribunal members.

Oral proceedings will be public, unless the Tribunal determines that the interest of a participant in the proceeding in the non-disclosure of certain sensitive information outweighs the principle of public access.

*Where can
proceedings be
held?*

The *Status of the Artist Act* permits the Tribunal to hold proceedings at such times and locations in Canada as it considers desirable [subs. 13(2)]. When it determines that an oral proceeding is necessary, the Tribunal will endeavour to select a location that is convenient for the parties to the proceeding. With the consent of the parties, the Tribunal may also make use of technology such as telephone conference calls in order to reduce the costs of travel for participants.

*How are Tribunal
proceedings
conducted?*

Written proceedings

The Tribunal staff will assemble the case file, consisting of all relevant documents submitted by the participants, any reports prepared for the Tribunal, and comments on such reports submitted by the participants.

The case file will be submitted to a panel of Tribunal members selected by the Chairperson to hear and decide the case. The panel will consider the material in the file and will either reach a determination or will indicate to the staff the areas in which they wish to receive further evidence or representations from the participants. The panel may decide that an oral proceeding is necessary for a determination of the case. If further written material or an oral proceeding is found to be necessary, Tribunal staff will contact the participants to make appropriate arrangements.

Oral proceedings

The Chairperson will assign an appropriate number of members of the Tribunal to act as the panel to hear the case and will designate the presiding member who will chair all the meetings of the panel.

Regs s. 23

The Tribunal staff will determine the availability of the panel members and the participants and will schedule the hearing dates. Except in urgent cases, the Tribunal will endeavour to give participants at least 21 calendar days notice of all hearings. Tribunal staff will also ascertain whether any special arrangements are required (*e.g.* simultaneous translation) and make the appropriate arrangements.

At the opening of the oral proceeding, the presiding member of the Tribunal will call the proceeding to order. The participants and their counsel, if any, will be asked to identify themselves and will be given an opportunity to raise any preliminary issues.

The applicant or complainant will then be asked to present its case. Witnesses, if any, will be affirmed by the Tribunal Registrar. Any participant who has an adverse interest to that of the applicant or complainant will be given an opportunity to question each witness. The applicant or complainant will be given an opportunity to reexamine any of its witnesses who was questioned by another party.

When the applicant or complainant has completed the presentation of its case, the respondent, if any, will be asked to present its case. Each witness will be affirmed and any of the participants who have an interest that is adverse to the respondent's will be given an opportunity to question any of the respondent's witness. The respondent will be given an opportunity to reexamine any of its witnesses who was questioned by another party.

When the respondent has completed the presentation of its case, each intervenor will be given an opportunity to make a statement or present its position on the matters in issue before the Tribunal. The applicant or complainant and the respondent are entitled to question any intervenor or intervenor's witness who makes a statement or presents a position to the Tribunal. Questions put to witnesses and intervenors must be relevant to the matters in issue before the Tribunal.

Once all of the intervenors have been heard, the applicant or complainant and the respondent will each be given a final opportunity to summarize its case and make its argument to the Tribunal.

The presiding member will then close the proceeding. The panel may give its decision immediately, or it may reserve its decision. Whenever possible, the presiding member will try to give the participants an indication as to when they might expect to receive the Tribunal's decision in the case.

15 Bringing a Motion

What is a motion?

A motion is a request that the Tribunal make a decision or issue an order on a matter which is related to the proceedings on an application or complaint, but which does not deal directly or completely with the substance of the application or complaint. For example, a participant may make a motion to amend its application or complaint, or to ask the Tribunal to conduct all or part of the oral proceeding in private in order to preserve the confidentiality of certain information. Another type of motion is one which asks the Tribunal to adjourn a scheduled oral proceeding. The order or decision sought on a motion may be procedural in nature (*e.g.* a request to extend or abridge time limits), or it may be final in nature (*e.g.* a motion to dismiss an application on the grounds of lack of jurisdiction or to dismiss a complaint as being frivolous).

Who can make a motion?

Any participant in a proceeding may make a motion.

When can a motion be made?

A motion can be made at any time before the Tribunal issues its decision on an application or complaint, but the person making the motion should give the Tribunal as much advance notice as possible in order to avoid inconvenience and unnecessary delay.

How to make a motion

A motion which is made before the Tribunal proceeding commences must be in writing, and must set out the nature of the order which is requested (*e.g.* “an order amending the applicant's application to read as follows...”) and the reasons why the motion is being made.

A motion which is made during an oral proceeding may be made orally (*e.g.* to request an adjournment due to unforeseen circumstances). The person making the motion will be required to state the reasons for which the motion is being made.

A motion which is made after the conclusion of an oral proceeding but before the decision is rendered must be made in writing. It should set out the nature of the order requested (*e.g.* “an order to reopen the oral proceeding to enable the Tribunal to hear new evidence which was not available previously...”).

What happens when a motion is made

When it receives a motion, the Tribunal will ordinarily give all of the other participants in the proceeding an opportunity to state their views as to whether or not the motion should be granted, and the reasons for their position. The Tribunal will consider the views presented, decide whether or not to grant the motion, and notify all of the participants accordingly.

16 Adjourments and Postponements

The Tribunal is entitled to adjourn or postpone a proceeding at any time (see par. 17(j) of the *Act*). Due to the difficulties in scheduling hearing dates, the Tribunal will only grant adjourments and postponements when strong justification for doing so exists.

A participant who wishes to obtain a postponement or adjournment of an oral proceeding must specify the reasons for the request. Normally, a request for a postponement or adjournment should be made in writing, in advance of the scheduled date for the commencement of the oral proceeding. If circumstances do not permit the request to be made in advance, it may be presented orally during the course of the hearing.

The Tribunal may canvass the views of the other participants to the proceeding before making a decision as to whether or not it will grant the postponement or adjournment.

If the reason for the adjournment could reasonably have been anticipated by the participant seeking the adjournment, and the adjournment will result in inconvenience or increased expense to any other participant to the proceeding, the Tribunal may order the participant seeking the adjournment to pay the costs of the adjournment.

17 Filing of Documents

Documents filed before an oral proceeding **Regs subs. 15(1)**

Certification proceedings

If a participant wishes to draw the Tribunal's attention to a document, a copy of the document should be provided to the Tribunal and the other participants no less than 14 calendar days prior to the oral proceeding. If the document is pertinent to the issues before the Tribunal, the Registrar will add it to the Tribunal's case file and to the "List of Pertinent Documents" that is provided to all participants prior to the oral proceeding. A participant wishing to obtain copies of any of the documents in the Tribunal's case file should contact the Registrar. Documents may also be reviewed at the Tribunal's offices. Anyone wishing to do so should contact the Registrar.

Other types of proceedings (complaints, applications for declarations etc.)

If a participant wishes to draw the Tribunal's attention to a document, six copies of the document should be provided to the Tribunal no less than 14 calendar days prior to the oral proceeding. Upon receipt of the document, the Tribunal will provide a copy to any other parties to the proceeding.

Documents filed during an oral proceeding **Regs subs. 15(2)**

Anyone wishing to file a document during the course of an oral proceeding should bring six copies for the use of the Tribunal plus a sufficient number of copies for each of the other participants involved in the proceeding, including the interpreter and any witness, if applicable.

Documents in a written proceeding

When the Tribunal decides a matter before it on the basis of written submissions, participants will be advised in advance of the deadline for submitting any document they wish the Tribunal to consider.

18 Witnesses

When are witnesses required?

A participant in a proceeding may wish to call one or more witnesses to give evidence regarding facts which are in dispute. Witnesses can only give evidence as to facts within their personal knowledge and must limit their opinions to matters within their experience or expertise.

How to ensure that a witness attends the proceeding

The Tribunal has the power to summon and enforce the attendance of any person whose testimony the Tribunal believes is necessary to its proceedings, and to compel the person to give oral or written evidence on oath and to produce documents (see par. 17(a) of the *Act*). This power is exercised by means of “summons to witness” issued by the Tribunal, which instructs a specific person or representative of an organization to attend the oral proceeding on a prescribed date and to bring with them the documents specified on the summons.

There are two circumstances in which a witness may be compelled to attend a Tribunal proceeding:

1. because the Tribunal has issued a summons to the witness on its own initiative; or
2. because the Tribunal has issued a summons to the witness at the request of a participant to the proceeding.

A participant who wishes to request that the Tribunal issue a summons to witness must provide the Tribunal with the following information:

Regs subs. 24(1)

1. the Tribunal case file number of the proceeding to which the summons relates;
2. the name and address of the person to be summoned;
3. the date on which the person is required to appear;
4. the reason for the summons
5. the details of any documents or items that the person being summoned must bring with them to the oral proceeding and how the documents or items are relevant to the proceeding.

Participants may use the Form provided by the Tribunal to request that a summons be issued.

Where to send the request

A request that the Tribunal issue a summons should be sent to:

Canadian Artists and Producers Professional Relations Tribunal
1st Floor West
240 Sparks Street
Ottawa, Ontario K1A 1A1

*What happens after
a request has
been made*
Regs subs. 24(3)

Upon receipt of this information, the Tribunal will consider the request and, if appropriate, will prepare a summons to witness and send it to the participant who requested the summons. It is the responsibility of the participant who requested the summons to witness to arrange for personal service of the summons on the person to whom it is directed, at least seven days before the person is required to appear, and to provide proof of service to the Tribunal. "Personal service" is the process of delivering a summons or other document to the person to whom it is addressed. The use of professional process servers for service of a summons to witness is recommended.

*Witness fees and
expenses*
Regs subs. 24(4)

The participant who has requested that a particular witness be summoned to appear before the Tribunal is responsible for paying that person's expenses (*i.e.* transportation and living expenses and a daily attendance fee).

The amount of the witness fee and expenses depends on the province in which the oral proceeding is being held, since it is based on the fees and expenses payable to a witness in a civil proceeding in the superior court of that province. Tribunal staff can assist participants in determining the witness fees and expenses which apply to a specific proceeding.

*What happens if the
oral proceeding is
postponed*
Regs subs. 24(6)

If an oral hearing is adjourned and the subsequent date is not indicated during this time, the person who applied for the summons must notify the person who is under summons of the new date. This must be done either at least five days before the person summoned is to attend, or if the Tribunal has given less than five days notice of the reconvening, within a notice period that is fair and reasonable in the circumstances.

*Affirmation of
witnesses*

The Tribunal may require that a witness make a solemn affirmation prior to giving his or her evidence. The following affirmation will be administered by the Registrar:

"Do you solemnly affirm that the evidence to be given by you to this Tribunal shall be the truth, the whole truth and nothing but the truth?"

*Exclusion of
Witnesses*

At the request of any participant in the proceeding, the Tribunal has the discretion to exclude from the hearing room any witness who has not yet given his or her evidence. The purpose of such exclusion is to prevent a witness from "tailoring" his or her evidence after hearing the evidence of earlier witnesses. Excluded witnesses must not discuss evidence among themselves or with others who have been present in the hearing. A witness who has completed giving his or her evidence

is permitted to remain in the hearing room for the remainder of the proceeding.

19 Affidavits

What is an affidavit?

An affidavit is a written declaration or statement of facts, confirmed by the oath or affirmation of the person who is making the affidavit in the presence of an individual who has the authority to administer oaths and affirmations.

When is an affidavit used?

Although the *Act* gives the Tribunal the power to accept affidavit evidence, it will do so only in exceptional circumstances. Any participant wishing to rely on affidavit evidence should contact the Registrar well in advance to obtain the Tribunal's direction.

Content of an affidavit

An affidavit must be in writing, and must contain the following information:

1. the name of the proceeding to which it relates;
2. the name and address of the person making the affidavit;
3. the title or position of the person making the affidavit;
4. a statement that the person making the affidavit swears or affirms that the contents of the affidavit are true to the best of his or her knowledge;
5. a concise statement of each of the facts relevant to the case (each fact should be set out in a separate paragraph, and should be very explicit).

Persons wishing to file an affidavit may use the Form provided by the Tribunal for this purpose.

The affidavit must be sworn or affirmed and signed in the presence of an individual who has the authority to administer oaths and affirmations (e.g. a lawyer or a person authorized by the Tribunal to administer oaths and affirmations).

Where to send affidavits

Affidavits should be sent to:

Canadian Artists and Producers Professional Relations Tribunal
1st Floor West
240 Sparks Street
Ottawa, Ontario K1A 1A1

20 Evidence

Admissibility

The Tribunal has the discretion to accept any evidence and information that it sees fit, whether or not the evidence is admissible in a court of law (see par. 17(c) of the *Act*). The Tribunal will determine the form in which it will receive evidence or information (for example, through sworn oral testimony or by affidavit).

The primary concern of the Tribunal with respect to the admissibility of any particular piece of evidence is whether it is relevant to the proceeding.

Once it decides to admit a particular piece of evidence, the Tribunal will decide what weight it will give to that evidence in reaching its eventual decision.

Circumstances when evidence is not required

Judicial notice (subs. 19(4) of the *Act*)

Judicial notice is a process by which the Tribunal recognizes the existence and truth of certain facts which relate to a matter before it, without the necessity of having those facts proved by means of evidence or testimony. Facts which may be judicially noticed include matters which are common knowledge (*e.g.* orchestras are composed of musicians; the National Arts Centre is located in Ottawa), matters which are documented in dictionaries, almanacs, reference works, case reports, federal and provincial statutes and regulations, and certificates signed by the Minister of Labour or officials of the Federal Mediation and Conciliation Service.

Specialized Knowledge (subs. 19(5) of the *Act*)

When the Tribunal intends to take notice of any facts or information that are within its specialized knowledge, it will notify the participants in the proceedings of this intention. The participants will be provided with an opportunity to make representations to the Tribunal with respect to this type of facts or information.

21 Enforcement of Tribunal Decisions

Filing a Tribunal order in the Federal Court

If it appears that an artist, artists' association or producer has failed or is unlikely to comply with an order issued by the Tribunal, the Tribunal has the power to file that order with the Federal Court of Canada. Once the Tribunal has filed the order, it is registered by the Court and is treated as if it is a judgment of the Court. As a consequence, failure to comply with the order then becomes a contempt of Court and an individual or organization which fails to comply with the order could be prosecuted for contempt of court.

Procedure for filing a Tribunal order in the Federal Court Regs subs. 49(1) & s.8

The Tribunal has the authority to file its orders in the Federal Court (see s. 22 of the *Act*). When one of the parties named in a Tribunal order is of the view that there is reason to believe that the Court's enforcement mechanisms will be required to ensure compliance by another party, it should apply in writing to the Tribunal asking that the order be filed in the Federal Court. The application should contain the following information:

1. the name, address, telephone number and fax number, if any, of the applicant;
2. the name, address telephone and fax number of the applicant's authorized representative, if any;
3. the Tribunal file number in respect of which the determination or order was issued;
4. a copy of the order which the applicant wishes the Tribunal to file in Federal Court;
5. the reasons why the applicant believes that the order should be filed in the Federal Court including:
 - (a) whether there is a failure or likelihood of failure by the person named in the order to comply with it, and
 - (b) filing the order would serve a useful purpose;
6. the signature of the applicant or the applicant's authorized representative;
7. the date of the application.

Regs subs. 49(2)

If the application states that a person named in the determination or order has failed or likely to fail to comply with it, the applicant must serve a copy of the application on the person.

The application must be accompanied by all relevant documents. Applicants may use the Form provided by the Tribunal for the purpose of applying to have a Tribunal order filed in the Federal Court.

Where to send the application

An application for the filing of a Tribunal decision in the Federal Court should be sent to:

Canadian Artists and Producers Professional Relations Tribunal
1st Floor West
240 Sparks Street
Ottawa, Ontario K1A 1A1

What happens after an application is received

Regs s. 50, s. 22 & s. 9

Upon receipt of an application to file one of its orders in Federal Court, the Tribunal will notify the other parties to the order and provide them with an opportunity to make representations on the issue.

The applicant may also reply to the other party's response and provide them a copy of the reply (*i.e.* in person, registered mail, electronic means with a proof of receipt, or any other manner approved by the Tribunal). The reply must include the following:

Regs s. 51, s. 10 & s. 14

1. the Tribunal file number of the application;
2. a full reply to any allegations or issues raised in response and full particulars of any additional relevant facts on which the applicant intends to reply;
3. the signature of the applicant or the applicant's authorized representative; and
4. the date of filing of the reply.

All documents relevant to a reply must be attached to the reply or filed in a manner authorized by the Tribunal.

The Tribunal may appoint one of its members or staff to meet with the parties in an effort to resolve the difficulties which led to the filing of the application.

The Tribunal will decide whether there is an indication that the order will not be complied with or whether any useful purpose would be served by filing the order with the Court and if satisfied that either of these conditions are met, will take the steps necessary to file the order in the Federal Court Trial Division Registry. Once an order is filed, it becomes the responsibility of the court to enforce compliance with its terms.

22 Enforcement of the Act (Consent to Prosecute)

The violation of, or failure to comply with, either orders of the Tribunal or certain provisions of the *Status of the Artist Act* (for example, giving evidence [par. 17(a)], deduction or remittance of association dues [s. 44]) constitutes an offence for which the individual committing the offence may be prosecuted by the Crown or by a private person. However, before any prosecution can be instituted in respect of such offences, the written consent of the Tribunal must be obtained.

*How to apply for
consent to prosecute
Regs subs. 51(1) &
s. 8*

An application for consent to prosecute must be made in writing and contain the following information:

1. the name, address and telephone and fax number, if any, of the applicant;
2. the name, address telephone and fax number of the applicant's authorized representative, if any;
3. the name, address and telephone and fax number of the individual, producer, producers' association, artist or artists' association against whom the prosecution is to be brought ("the respondent");
4. a reference to the sections of the *Act* which the respondent is alleged to have contravened, or to the Tribunal order with which the respondent is alleged to have failed to comply;
5. a full description of the events, circumstances and actions taken by the respondent which are alleged to contravene or fail to comply with the *Act* or the Tribunal order;
6. the date on which the applicant first knew of the action or circumstances which lead to the application for consent to prosecute;
7. the signature of the applicant or the applicant's authorized representative;
8. the date of the application.

*Regs subs. 51(2) &
s. 14*

The applicant must serve a copy of the application for consent to prosecute on the person in respect of whom consent to prosecute is sought.

The application must accompanied by all relevant documents. Applicants may use the Form provided by the Tribunal for the purpose of making an application for consent to prosecute.

Where to apply

Applications for consent to prosecute should be sent to:

Canadian Artists and Producers Professional Relations Tribunal
1st Floor West
240 Sparks Street
Ottawa, Ontario K1A 1A1

*What happens after
an application is
received*

Acknowledgement of receipt

Upon receiving an application for consent to prosecute, the Tribunal will send the applicant an acknowledgement of receipt. An officer of the Tribunal will review the application for completeness and will contact the applicant if any of the required information is missing or incomplete.

Consideration of the application

***Regs s. 53, s. 9 &
s. 14***

Once the application is complete, the Tribunal will send a copy of the application to the respondent together with a request for a response within a specified period of time.

***Regs s. 54, s. 10 &
s. 14***

The applicant will be provided with an opportunity to comment on any response provided by a respondent.

The guiding principle to be applied by the Tribunal in determining applications for consent to prosecute will be the best interests of professional relations.

23 Tribunal Records and Confidentiality

Case records

The official case record of the Tribunal consists of:

1. the original application, complaint, reference or other document which commenced the proceeding;
2. a copy of any notice of oral proceeding published or sent to the parties;
3. copies of any answers, replies or interventions filed in the proceeding;
4. a copy of any interim orders made by the Tribunal related to the proceeding;
5. all of the documentary material filed with the Tribunal;
6. a copy of any report prepared for the Tribunal with respect to the subject matter of the proceeding;
7. a copy of any audiotape or transcript of evidence given at the oral proceeding;
8. the decision or order of the Tribunal and, if reasons for the decision have been given, an original, signed copy of the reasons for decision, including any dissent.

Access to case records **Regs subs. 20(1)**

The participants in a proceeding and the public have the right to view the Tribunal's official case records, with the exception of any documents which have been determined by the Tribunal to be confidential. Persons wishing to consult or obtain copies the Tribunal's official records should contact the Registrar at (613) 996-4052.

Confidentiality **Regs subs. 20(2)**

While the Tribunal's policy is to encourage openness and accessibility to documents relating to its proceedings, the Tribunal recognizes that there are times when a document in its possession should not be subject to public disclosure. For example, membership lists filed by artists' associations in the course of seeking certification will be treated as confidential by the Tribunal.

Any participant to a proceeding who wishes to have the Tribunal treat a particular document in confidence should identify that document and give reasons why confidentiality is required. The Tribunal will generally recognize the following reasons for confidentiality:

1. the information consists of financial, commercial, scientific or technical material that is consistently treated in a confidential manner by the participant supplying it to the Tribunal;

2. the disclosure of the information could reasonably be expected to result in a significant financial loss or gain to, or prejudice the competitive position of, the participant supplying it to the Tribunal.

24 Judicial Review

Privative clause The operations of the Canadian Artists and Producers Professional Relations Tribunal are protected by a privative clause which limits judicial review of the Tribunal's decisions and orders to certain types of error (see s. 21 of the *Act*).

Jurisdiction to hear and determine applications for judicial review made in respect of the Tribunal rests with the Federal Court of Appeal [*Federal Court Act* (R.S.C. 1985, c. F-7), par. 28(1)(o)].

Grounds for review Applications to the Court for judicial review of Tribunal decisions and orders may be made on the grounds that the Tribunal:

1. acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction;
2. failed to observe a principle of natural justice, procedural fairness or other procedure that it was required by law to observe; or
3. acted, or failed to act, by reason of fraud or perjured evidence.

Applications for judicial review Applications for judicial review of a Tribunal decision or order must be made in accordance with the *Federal Court Act* and the Federal Court Rules.

25 General Matters

Hours of operation The Tribunal's hours of operation are Monday to Friday from 8:00 a.m. to 5:00 p.m., Eastern Time.

Official languages The Tribunal provides service in both English and French. Decisions and orders of the Tribunal are available in both official languages.

In order to minimize operational and oral proceeding costs, correspondence between the Tribunal and individual parties will not ordinarily be translated. Simultaneous translation at oral proceedings will only be provided when the participants indicate that such service is necessary. When scheduling oral proceedings, the Registrar will contact the participants to determine whether simultaneous translation is required for the oral proceeding.

Receipt of documents The Tribunal will accept documents delivered to its offices by personal delivery, registered or ordinary mail or courier. It is the responsibility of the sender to ensure that the document is received by the Tribunal within any time period specified by the Tribunal or in the *Act*. Documents may be faxed to the Tribunal, provided that an original copy is also immediately sent to the Tribunal by mail.

The address of the Tribunal is:

Canadian Artists and Producers Professional Relations Tribunal
1st Floor West
240 Sparks Street
Ottawa, Ontario K1A 1A1
Telephone: (613) 996-4052
1-800-263-ARTS (2787)
Facsimile: (613) 947-4125
E-mail address: info@capprt-tcrpap.gc.ca

Communications with the parties and intervenors The Tribunal will communicate directly with the participants on matters related to the proceeding in which they are involved, unless it receives a written direction from a participant instructing the Tribunal to communicate only with its counsel or agent.

Information available on the Internet The full text of the *Status of the Artist Act*, the Tribunal's decisions, current public notices, notices of hearings as well as the names of contacts may be found on the Tribunal's Home Page on the Internet at <http://www.capprt-tcrpap.gc.ca>.

Canadian Artists and Producers Professional Relations Tribunal Procedural Regulations

PART 1 INTERPRETATION

1. The following definitions apply in these Regulations.

“Act” means the *Status of the Artist Act*. (*Loi*)

“applicant” means an artist, an artists’ association or a producer who has filed an application. (*requérant*)

“participant” means a party or an intervenor in a proceeding. (*participant*)

“Returning Officer” means an individual appointed by the Tribunal under section 31 to conduct a representation vote. (*directeur du scrutin*)

PART 2 GENERAL PROVISIONS

Application

2. (1) Subject to subsection (2), these Regulations apply in respect of all proceedings before the Tribunal that are pending on the day on which these Regulations come into force.

(2) Any proceeding commenced or document filed with the Tribunal before the coming into force of these Regulations is not invalid merely because the commencement or filing does not conform to the requirements of these Regulations.

Calculation of Time

3. Unless otherwise stated by the Tribunal, time limits and deadlines must be calculated using calendar days.

Holidays

4. Whenever a time limit or deadline calculated under these Regulations falls on a Saturday, Sunday or statutory holiday, the time limit or deadline is extended to the next working day.

Orders

5. (1) Any member of the Tribunal may sign an order of the Tribunal.
- (2) Unless otherwise stated in the order, an order takes effect on the day on which it is issued.

Matters Not Provided For

6. If a procedural matter that is not provided for by these Regulations arises, the Tribunal may take any action that is consistent with these Regulations and the Act and that it considers necessary to resolve the matter.

Dispensing with Compliance

7. The Tribunal may, of its own motion or on application, excuse a participant from complying with any provision of these Regulations in order to ensure that a proceeding is dealt with informally and expeditiously.

Requirements for Applications, Complaints and Questions

8. (1) Subject to section 24, an application, complaint or question must be in writing, be filed with the Tribunal and include the following information:
 - (a) the applicant's or complainant's name, address, telephone number and fax number, if any;
 - (b) the name, address, telephone number and fax number of the applicant's or complainant's authorized representative, if any;
 - (c) the grounds on which the applicant or complainant relies and full particulars of the facts relevant to the application, the complaint or, if applicable, the question;
 - (d) the determination or order sought;
 - (e) the signature of the applicant or complainant, or of their authorized representative; and
 - (f) the date of the application, complaint or question.
- (2) All documents relevant to an application, complaint or question must be attached to the originating document or filed in any other manner authorized by the Tribunal.

Requirements for Responses

9. (1) A response to an application, complaint or question must be in writing, be filed within the period referred to in paragraph 17(1)(a) and include the following information:
 - (a) the participant's name, address, telephone number and fax number, if any;
 - (b) the name, address, telephone number and fax number of the participant's authorized representative, if any;
 - (c) the Tribunal file number of the proceeding to which the response relates;
 - (d) a full response to any allegations or issues raised in the proceeding and full particulars of any additional relevant facts on which the participant intends to rely;

- (e) the participant's position with respect to the determination or order sought by the applicant or complainant;
- (f) the signature of the participant or the participant's authorized representative; and
- (g) the date of the response.

(2) All documents relevant to a response must be attached to the response or filed in any other manner authorized by the Tribunal.

Requirements for Replies

10. (1) A reply to a response must be in writing, be filed within the period referred to in paragraph 17(1)(b) and include the following information:

- (a) the Tribunal file number of the proceeding to which the reply relates;
- (b) a full reply to any allegations or issues raised in the response and full particulars of any additional relevant facts on which the applicant intends to rely;
- (c) the signature of the applicant or complainant, or of their authorized representative; and
- (d) the date of the reply.

(2) All documents relevant to a reply must be attached to the reply or filed in any other manner authorized by the Tribunal.

Requirements for Applications for Leave to Intervene

11. (1) An application for leave to intervene under subsection 19(3) of the Act must be in writing, be filed within the period referred to in paragraph 17(1)(a) and include the following information:

- (a) the name, address, telephone number and fax number, if any, of the applicant for leave to intervene;
- (b) the name, address, telephone number and fax number of the authorized representative, if any, of the applicant for leave to intervene;
- (c) the Tribunal file number of the application, complaint or question that is the subject of the application for leave to intervene;
- (d) the grounds for intervention and the interest of the applicant for leave to intervene in the matter;
- (e) the contribution that the applicant for leave to intervene expects to make to the application, complaint or question if granted leave;
- (f) the signature of the applicant for leave to intervene or of their authorized representative; and
- (g) the date of the application for leave to intervene.

(2) All documents relevant to an application for leave to intervene must be attached to the application or filed in any other manner authorized by the Tribunal.

(3) At the request of the Tribunal, the applicant or complainant in respect of the original proceeding must file a response to the application for leave to intervene, in accordance with section 9.

(4) At the request of the Tribunal, the applicant for leave to intervene must file a reply to the response, in accordance with section 10.

(5) If, in the opinion of the Tribunal, the intervention would further the objectives of the Act, the Tribunal may grant leave to intervene, subject to any conditions that it considers appropriate.

(6) If the leave to intervene includes the right to respond to the application, complaint or question, the response must be prepared in accordance with section 9.

Electronic Documents and Signatures

- 12.** For the purposes of these Regulations, when authorized in writing by the Tribunal,
- (a) a document that is in electronic format is considered to be in writing; and
 - (b) signatures may be electronic.

Notice of Constitutional Question

13. (1) If a participant intends to raise a question about the constitutional validity, applicability or operability of a statute or regulation, the participant must, as soon as the circumstances giving rise to the question become known and, in any event, at least 10 days before the question is to be argued,

- (a) serve a notice of a constitutional question on the other participants, the Attorney General of Canada and the attorney general of each province; and
- (b) file a copy of the notice with the Tribunal.

(2) The notice must be in the form required by the *Federal Court Rules, 1998*.

Filing and Service of Documents

14. (1) An application or other document that is required by these Regulations to be filed with the Tribunal or served on any person must be filed or served

- (a) by handing it to the recipient in person;
- (b) by mailing it by registered mail to the address for service, as described in subsection (2);
- (c) by transmitting it through electronic means, including a fax, that provides a proof of receipt of the document; or
- (d) by doing so in any other manner that the Tribunal authorizes.

(2) In paragraph (1)(b), “address for service” means

- (a) in the case of the Tribunal, the address of its offices; and
- (b) in the case of any other person, the address of the person that appears in any notice issued by the Tribunal in the proceeding in respect of which service is being made or, if no address appears in the notice, the latest known address of the person.

(3) A document that is transmitted by electronic means in accordance with paragraph (1)(c) must include the following information:

- (a) the name, address, telephone number, fax number and, if applicable, the electronic mail address of the person transmitting the document;
- (b) the name, address, telephone number, fax number and, if applicable, the electronic mail address of the person to whom the document is being transmitted;
- (c) the date and time of transmission;
- (d) the total number of pages being transmitted; and
- (e) the name and telephone number of a person to contact in the event of problems in its transmission.

Filing of Documents for an Oral Hearing

15. (1) If, before an oral hearing, a participant intends to draw the Tribunal's attention to a document, the participant must file the document with the Tribunal and serve a copy on all other participants, not less than 14 days before the hearing.

(2) If a participant files a document in the course of an oral hearing, the participant must file the document and six copies with the Tribunal and must provide a copy to each of the other participants, if any, and to any witness or interpreter.

Date of Filing

16. The date of filing of an application or other document with the Tribunal is

- (a) in the case of a document sent by registered mail, the day on which it is mailed; and
- (b) in any other case, the day on which the document is received by the Tribunal.

Time for Responding, Intervening or Replying

17. (1) Unless the Tribunal directs otherwise,

- (a) a response or an application for leave to intervene in a proceeding other than an application for certification must be filed within 15 days after notice, sent by the Tribunal, is received in respect of an application, complaint or question; and
- (b) a reply must be filed within 10 days after notice, sent by the Tribunal, is received in respect of the response.

(2) An application for an extension of the period within which to respond, apply for leave to intervene or reply must be in writing and set out the grounds on which it is based.

Incomplete Applications or Documents

18. If an application or other document is incomplete, the Tribunal must notify the participant who filed the application or other document of its deficiencies. The application or other document will not be considered or acted on unless it is completed within the period specified by the Tribunal.

Production of Documents

19. (1) Subject to section 20, a participant may, at any time before a hearing, request that another participant produce for inspection any document relevant to the proceeding.

(2) If a participant fails to produce the requested document within 10 days after receiving the request, the requesting participant may apply to the Tribunal for an order requiring its production.

(3) If a participant fails to comply with a request made under subsection (1) or an order issued under subsection (2), the Tribunal may order the participant to pay the costs of any adjournment of the proceedings that results from the failure.

Confidentiality of Documents

20. (1) Subject to subsections (2) to (4), documents filed in a proceeding must be placed on the Tribunal's case record and be available to the public.

(2) Of its own initiative or on motion, the Tribunal may declare that a document that has been filed be treated as confidential and may limit access to the document to those persons whom the Tribunal designates, subject to any conditions that it considers appropriate.

(3) For the purposes of subsection (2), a "document" includes

(a) financial, commercial, scientific or technical material that is consistently treated as confidential by the participant filing it with the Tribunal; and

(b) information whose disclosure could reasonably be expected to result in a significant financial loss or gain to, or prejudice to the competitive position of, the participant filing it with the Tribunal.

(4) Despite any other provision of these Regulations, the Tribunal must not disclose evidence that could, in the Tribunal's opinion, reveal membership in an artists' association, opposition to the certification of an artists' association or the wish of any artist to be represented, or not to be represented, by an artists' association, unless the Tribunal considers that the disclosure would further the objectives of the Act.

Evidence of Artists' Wishes

21. The Tribunal may receive evidence, in order to establish whether any artists wish to be represented by a particular artists' association, in any circumstances in which the Tribunal considers that to receive it would further the objectives of the Act.

Consolidation and Severance

22. (1) The Tribunal may direct that any proceedings before it be consolidated or severed.

(2) If the Tribunal directs that proceedings be consolidated, the Tribunal must issue directions on whether the proceedings will be combined or heard together, and may issue any further directions that it considers appropriate in respect of the conduct of the consolidated proceeding.

(3) If two or more proceedings have been consolidated and the Tribunal considers that their continued consolidation would not be conducive to furthering the objectives of the Act, the Tribunal may, after giving the participants the opportunity to be heard, order that the proceedings be severed.

Notice of Oral Hearing

23. (1) Unless the Tribunal directs otherwise, the Registrar of the Tribunal must give to the participants at least 21 days notice of an oral hearing.

(2) If a participant is notified of a hearing and fails to appear, the Tribunal may proceed and dispose of the matter in the participant's absence.

Summonses

24. (1) In the case of an oral hearing, a participant may apply in writing to the Tribunal, before the start of the hearing or at the hearing, but in any case as soon as the circumstances giving rise to the application become known to the participant, for the Tribunal to issue a summons.

(2) The application for summons must set out

- (a) the Tribunal file number of the proceeding to which the summons relates;
- (b) the name and address of the person to be summoned;
- (c) the day on which the person is required to appear;
- (d) the reasons for the summons; and
- (e) the details of any documents or items that the person being summoned must bring with them to the oral hearing, and how the documents or items are relevant to the proceeding.

(3) The participant who applies for a summons must serve the summons directly on the person to be summoned at least seven days before the person is required to appear, unless the Tribunal directs otherwise.

(4) The participant who applies for a summons is responsible for paying the witness's expenses and fees, in accordance with section 64 of the Act.

(5) A person who is summoned to an oral hearing must attend at the time and day specified as well as each day of the hearing, unless the Tribunal directs otherwise.

(6) If an oral hearing is adjourned and the date of its reconvening is not indicated at the time of the adjournment, the person who applied for the summons must notify the person who is under summons of the date of the reconvening

- (a) at least five days before the person summoned is to attend; or

(b) if the Tribunal has given less than five days notice of the reconvening, within a notice period that is fair and reasonable in the circumstances.

PART 3 CERTIFICATION PROCEEDINGS

Application for Certification

25. An application for certification must be made in accordance with section 8 and must, in addition to the requirements of that section, include the following information:

- (a) a general description of the sector for which certification is sought;
- (b) an estimate of the number of professional freelance artists working in the proposed sector;
- (c) an estimate of the number of members of the applicant who work in the proposed sector;
- (d) a current copy of the applicant's membership list certified by the applicant's authorized representative indicating
 - (i) the members' full names and current addresses, and
 - (ii) if the applicant also represents individuals who do not work within the proposed sector, a list of those members who work within the proposed sector;
- (e) a copy of any scale agreement in force affecting the proposed sector;
- (f) a copy of the applicant's constitution and by-laws certified by its authorized representative; and (g) evidence that the membership authorizes the applicant to apply for certification.

Public Notice

26. (1) The Tribunal must publish a notice of the application for certification in the *Canada Gazette*, Part I, or through any other means that the Tribunal considers appropriate.

(2) The notice must indicate the name of the applicant, a description of the proposed sector, and the period for filing competing applications and expressions of interest from artists, artists' associations, producers and other interested persons in respect of the proposed sector.

(3) The period referred to in subsection (2) is at least 30 days from the date of publication of the notice.

Notice of Intervention as of Right

27. (1) An artist, artists' association or producer that intervenes under subsection 26(2) or 27(2) of the Act must file a notice of intervention with the Tribunal.

(2) A notice of intervention must be filed within the period specified in the notice published under subsection 26(1), be in writing and include

- (a) the name, address, telephone number and fax number, if any, of the intervenor;

- (b) the name, address, telephone number and fax number of the intervenor's authorized representative, if any;
- (c) the Tribunal's file number indicated in the notice referred to in subsection 26(1);
- (d) the signature of the intervenor or their authorized representative; and
- (e) the date of filing of the notice of intervention.

(3) At the request of the Tribunal, the intervenor must file the grounds for the intervention and their interest in the matter.

Applicant's Response

28. At the request of the Tribunal, the applicant for certification must, in accordance with section 9, file a response to the grounds for intervention filed by the intervenor.

Reply of Intervenor

29. At the request of the Tribunal, the intervenor must, in accordance with section 10, file a reply to the applicant's response.

Subsequent Application for Certification

30. (1) If the Tribunal rejects an application to certify an artists' association, the same artists' association may not submit a new application for certification in respect of the same sector, or what the Tribunal considers to be substantially the same sector, until six months after the day on which the previous application was rejected.

(2) Despite subsection (1), the Tribunal may, of its own motion or on application of the artists' association, abridge the period referred to in that subsection.

PART 4 REPRESENTATION VOTES

31. (1) If the Tribunal orders that a representation vote be taken, the Tribunal must appoint a Returning Officer.

(2) The Returning Officer may give directions to ensure the proper conduct of the vote and must report the results point one or more employees of the Tribunal, as required, to assist in the conduct of the vote.

PART 5
REVOCATION OF CERTIFICATION

Application for Revocation of Certification

32. An application for the revocation of an artists' association's certification must be made in accordance with section 8 and must, in addition to the requirements of that section, include the following information:

- (a) the name of the artists' association that holds the certification that the applicant seeks to revoke; and
- (b) a description of the sector within which the applicant works and for which the artists' association has been certified.

Notice of Application for Revocation of Certification

33. (1) The Tribunal must provide the affected artists' association with a copy of the application for revocation of certification.

(2) If the application for revocation of certification is based on subsection 23(2) of the Act, the Tribunal may request that the artists' association adopt by-laws that do not contravene that subsection.

(3) If an application for revocation of certification is not made within the period referred to in paragraph 29(1)(b) of the Act, the Tribunal may dismiss the application.

Response to an Application for Revocation of Certification

34. The affected artists' association may file a response to an application for revocation of its certification in accordance with section 9.

Applicant's Reply

35. The applicant may file a reply to a response referred to in section 34 in accordance with section 10.

Subsequent Application for Revocation of Certification

36. (1) If the Tribunal rejects an application for the revocation of an artists' association's certification, a new application for revocation in respect of the same sector may not be submitted until six months after the day on which the previous application was rejected.

(2) Despite subsection (1), the Tribunal may, of its own motion or on application of an artist or artists' association, abridge the period referred to in that subsection.

PART 6
JOINT APPLICATION TO CHANGE TERMINATION DATE
OF SCALE AGREEMENT

37. A joint application to change the termination date of a scale agreement must be made in accordance with section 8 and must, in addition to the requirements of that section, include a copy of all scale agreements between the parties, whether in force or expired, and any other document that the Tribunal may require.

PART 7
COMPLAINTS

Filing a Complaint

38. A complaint made under section 53 of the Act must be made in accordance with section 8 and must, in addition to the requirements of that section, include the following information:

- (a) the name, address, telephone number and fax number, if any, of the person or organization that is the object of the complaint;
- (b) the provision of the Act on which the complaint is based;
- (c) the day on which the complainant first knew of the actions or circumstances giving rise to the complaint;
- (d) full particulars of any measures taken by the complainant to resolve the situation that gave rise to the complaint; and
- (e) a description of the remedy sought by the complainant.

Response to a Complaint

39. A person or organization that is the object of a complaint made under section 38 may file a response to the complaint in accordance with section 9.

Complainant's Reply

40. A complainant may file a reply to a response referred to in section 39 in accordance with section 10.

PART 8
DECLARATIONS

Application for Declaration

41. An application for a declaration under section 47 or 48 of the Act must be made in accordance with section 8 and must, in addition to the requirements of that section, include the following information:

- (a) the name, address, telephone number and fax number, if any, of any artist, artists' association or producer who, in the opinion of the applicant, could have an interest in the application;
- (b) a reference to the provision of the Act under which the application is being made; and
- (c) the question that the applicant wishes to have the Tribunal determine or the nature of the declaration that the applicant is seeking.

Response to an Application for Declaration

42. An artist, artists' association or producer who has an interest in an application for a declaration may file a response in accordance with section 9.

Applicant's Reply

43. An applicant may file a reply to a response referred to in section 42 in accordance with section 10.

PART 9
REFERRAL OF QUESTION BY ARBITRATOR OR ARBITRATION BOARD

44. (1) If an arbitrator or arbitration board refers a question to the Tribunal, the Tribunal must give notice to the parties to the arbitration.

(2) The parties to the arbitration must file written representations within any period specified by the Tribunal and must include the following information:

- (a) the party's name, address, telephone number and fax number, if any;
- (b) the name, address, telephone number and fax number of the party's authorized representative, if any;
- (c) the grounds on which the party relies and full particulars of the facts relevant to the question;
- (d) the determination or order sought;
- (e) the signature of the party or the party's authorized representative; and
- (f) the date of filing of the representations.

(3) All documents relevant to a party's representations must be attached to the representations or filed in any other manner authorized by the Tribunal.

(4) Each party must serve a copy of its representations and documents on the other party.

(5) Each of the parties must be given the opportunity to respond to the opposing party's representations within the period specified by the Tribunal.

PART 10
APPLICATIONS FOR REVIEW

Review of a Tribunal Determination or Order

45. (1) Subject to subsection (3), any person affected by a determination or order of the Tribunal may, within 30 days after the date of the determination or order, make an application for a review of the determination or order.

(2) The application must be based on the grounds that

- (a) the Tribunal's determination or order contains an error of law or a serious error of fact; or
- (b) the applicant has new information or evidence that was not available at the time the determination or order was originally made that could alter the basis on which the determination or order was made.

(3) A certified artists' association or a producer affected by a determination or order of the Tribunal that establishes a sector may apply for a review of the determination or order at any time for the purposes of enlarging, modifying or clarifying the scope of the sector determined.

(4) An application to review a certification order may be made by a certified artists' association at any time in order to update the artists' association's certification order for purposes including changes in

- (a) the name of the certified artists' association; and
- (b) the terminology used to describe the sector.

(5) An application for a review of a determination or an order made by the Tribunal must be made in accordance with section 8 and must, in addition to the requirements of that section, include the following information:

- (a) the name, address, telephone number and fax number of any artists' association or producer affected by the determination or order; and
- (b) the file number and date of the determination or order that the applicant wishes to have reviewed.

Notice of Application for Review

46. (1) The Tribunal must publish a notice of an application for review in the *Canada Gazette*, Part I, or through any other means that the Tribunal considers appropriate if the review might result in an enlargement of the sector.

(2) If an application for review of a determination or an order is not made within the period referred to in subsection 45(1), the Tribunal may dismiss the application.

Response to an Application for Review

47. An artist, artists' association or producer who has an interest in the application may file a response in accordance with section 9.

Applicant's Reply

48. An applicant may file a reply to a response referred to in section 47 in accordance with section 10.

PART 11
FILING DETERMINATIONS OR ORDERS IN FEDERAL COURT

Application to File in the Federal Court

49. (1) An application made under section 22 of the Act must be made in accordance with section 8 and must, in addition to the requirements of that section, include the following information:

- (a) the Tribunal file number in respect of which the determination or order was issued;
- (b) a copy of the determination or order that the applicant wishes to have filed in the Federal Court; and
- (c) the reasons that the applicant believes the determination or order should be filed in the Federal Court, including why the applicant believes that
 - (i) there is a failure or likelihood of failure by any other person named in the determination or order to comply with it, and
 - (ii) filing the determination or order would serve a useful purpose.

(2) If an application states that a person named in the determination or order has failed or is likely to fail to comply with it, the applicant must serve a copy of the application on the person.

Response to Application to File in the Federal Court

50. A person named in the determination or order may file a response to an application filed under section 22 of the Act in accordance with section 9, and must serve a copy on the applicant.

Applicant's Reply

51. An applicant may file a reply to a response referred to in section 50 in accordance with section 10, and must serve a copy on the person named in the determination or order.

PART 12
CONSENT TO PROSECUTE

Application for Consent to Prosecute

52. (1) An application for consent to prosecute under section 59 of the Act must be made in accordance with section 8 and must, in addition to the requirements of that section, include the following information:

(a) the name, address, telephone number and fax number, if any, of the person in respect of whom the applicant seeks consent to prosecute;

(b) a reference to the provision of the Act or to the determination or order of the Tribunal on which the application is based;

(c) a full description of the events and circumstances leading to the application for leave to prosecute and the actions taken by the person in respect of whom the applicant seeks consent to prosecute; and

(d) the day on which the applicant first knew of the events, circumstances or actions that led to the application for consent to prosecute.

(2) The applicant must serve a copy of the application for consent to prosecute on the person in respect of whom consent to prosecute is sought.

Response to Application for Consent to Prosecute

53. A person in respect of whom an applicant seeks consent to prosecute may, in accordance with section 9, file a response to an application filed under section 52, and must serve a copy on the applicant.

Applicant's Reply

54. An applicant may, in accordance with section 10, file a reply to a response referred to in section 53, and must serve a copy on the person in respect of whom consent to prosecute is sought.

PART 13
COMING INTO FORCE

55. These Regulations come into force on the day on which they are registered.