

9. EXCLUSIONS AND PRESUMPTIONS	9. INTERPRÉTATION
<p>(1) An artist is not excluded from the application of this Part simply by contracting through an organization.</p> <p>(2) For the purposes of subsection 4(1) of the <i>Competition Act</i>,</p> <p>(a) artists' associations certified under this Part that were formed for the purpose of providing appropriate protection for the professional interests of the artists they represent are deemed to be combinations of employees, in relation to those activities of the association that are directed to achieving that purpose; and</p> <p>(b) contracts, agreements or arrangements between or among two or more producers, whether made directly between or among them or through a corporation or an association of producers, pertaining to bargaining in respect of remuneration and the terms and conditions of engagement of artists, are deemed to be contracts, agreements or arrangements.</p> <p>(3) This Part does not apply, in respect of work undertaken in the course of employment, to</p> <p>(a) employees, within the meaning of the <i>Public Service Labour Relations Act</i>, including those determined to be employees by the Public Service Labour Relations Board, and members of a bargaining unit that is certified by that Board; or</p> <p>(b) employees, within the meaning of Part I of the <i>Canada Labour Code</i>, including those determined to be employees by the Canada Industrial Relations Board, and members of a bargaining unit that is certified by that Board.</p>	<p>(1) Le fait qu'un artiste s'oblige par l'intermédiaire d'une organisation n'a pas pour effet de le soustraire à l'application de la présente partie.</p> <p>(2) Pour l'application du paragraphe 4(1) de la <i>Loi sur la concurrence</i> :</p> <p>a) les associations d'artistes accréditées en application de la présente partie et formées en vue de donner aux artistes une protection professionnelle convenable sont assimilées, pour les activités qu'elles mènent à cette fin, à des coalitions d'employés;</p> <p>b) Les contrats, accords ou arrangements entre deux producteurs au moins, directement entre eux ou par l'intermédiaire d'une personne morale ou d'une association dont ils font partie, au sujet des négociations portant sur la rémunération et les conditions d'engagement des artistes sont assimilés à des contrats, accords ou arrangements conclus entre deux employeurs.</p> <p>(3) La présente partie ne s'applique pas, pour les activités qui relèvent de leurs fonctions :</p> <p>a) aux fonctionnaires - au sens de la <i>Loi sur les relations de travail dans la fonction publique</i> - notamment déterminés par la Commission des relations de travail dans la fonction publique ou faisant partie d'une unité de négociation accréditée par celle-ci;</p> <p>b) aux employés - au sens de la partie I du <i>Code canadien du travail</i> - notamment déterminés par le <i>Conseil canadien des relations industrielles</i> ou faisant partie d'une unité de négociation accréditée par celui-ci.</p>

CORRESPONDING SECTIONS:

<i>SAA:</i> 9	<i>CLC:</i> -	<i>PSLRA:</i> -
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COMMENTARY:

The section of the SAA sets out certain exclusions and presumptions with respect to Part II of the *Act*.

Subsection 4(1) of the *Competition Act* reads as follows:

4(1) Nothing in this *Act* applies in respect of

- (a) combinations or activities of workmen or employees for their own reasonable protection as such workmen or employees;
- (b) contracts, agreements or arrangements between or among fishermen or associations of fishermen and persons or associations of persons engaged in the buying or processing of fish relating to the prices, remuneration or other like conditions under which fish will be caught and supplied to those persons by fishermen; or
- (c) contracts, agreements or arrangements between or among two or more employees in a trade, industry or profession whether effected directly between the employers or through the instrumentality of a corporation or association of which the employers are members, pertaining to collective bargaining with their employees in respect of salary or wages and terms or conditions of employment.

“Employees” except in Part 2 of the PSLRA, means a person employed in the public service, other than:

- (a) a person appointed by the Governor in Council under an Act of Parliament to a statutory position described in that Act;
- (b) a person locally engaged outside Canada;
- (c) a person not ordinarily required to work more than one third of the normal period for persons doing similar work;
- (d) a person who is a member or special constable of the Royal Canadian Mounted Police or who is employed by that force under terms and conditions substantially the same as those of one of its members;
- (e) a person employed in the Canadian Security Intelligence Service who does not perform duties of a clerical or secretarial nature;
- (f) a person employed on a casual basis;
- (g) a person employed on a term basis, unless the term of employment is for a period of three months or more or the person has been so employed for a period of three months or more;
- (h) a person employed by the Board;
- (i) a person who occupies a managerial or confidential position; or
- (j) a person who is employed under a program designated by the employer as a student employment program.

“Employees” within the meaning of Part I of the CLC are:

any person employed by an employer and includes a dependent contractor and a private constable, but does not include a person who performs management functions or is employed in a confidential capacity in matters relating to industrial relations; (...)

“Dependent contractor” is defined in the CLC as:

- (a) the owner, purchaser or lessee of a vehicle used for hauling, other than on rails or tracks, livestock, liquids, goods, merchandise or other materials, who is a party to a contract, oral or in writing, under the terms of which he is
 - (i) required to provide the vehicle by means of which he performs the contract and to operate the vehicle in accordance with the contract, and
 - (ii) entitled to retain for his own use from time to time any sum of money that remains after the cost of his performance of the contract is deducted from the amount he is paid, in accordance with the contract, for that performance,
- (b) a fisherman who, pursuant to an arrangement to which he is a party, is entitled to a percentage or other part of the proceeds of a joint fishing venture in which he participates with other persons, and
- (c) any other person who, whether or not employed under a contract of employment, performs work or services for another person on such terms and conditions that he is, in relation to that other person, in a position of economic dependence on, and under an obligation to perform duties for, that other person.

JURISPRUDENCE :

<i>Incorporation</i>	<p>2002 CAPPRT 037 (APASQ), par. 163</p> <p>Section 9 of the Act provides that an artist who contracts his or her services through an organization is covered by the Act. Accordingly, set painters who carry out their functions through a corporation may benefit from the labour relations scheme established by the Act.</p>
<i>Employees not included</i>	<p>2002 CAPPRT 037 (APASQ), par. 163</p> <p>When the Tribunal certifies an artists’ association, everyone working in a particular artistic field will not necessarily be covered by the certification. Obviously, artists who are engaged in an employer-employee relationship will be excluded. Moreover, it is important to point out that there is nothing that prevents a person from being an employee and also working in the arts as an independent contractor [...]</p>