

17. POWERS OF THE TRIBUNAL	17. POUVOIRS DU TRIBUNAL
<p>The Tribunal may, in relation to any proceeding before it,</p> <p>(a) on application or of its own motion, summon and enforce the attendance of any person whose testimony is necessary, in the opinion of the Tribunal, and compel the person to give oral or written evidence on oath and to produce any documents or things that the Tribunal considers necessary for the full investigation and consideration of any matter within its jurisdiction;</p> <p>(b) administer oaths and solemn affirmations;</p> <p>(c) accept any evidence and information that it sees fit, on oath, by affidavit or otherwise, whether or not the evidence is admissible on a court of law;</p> <p>(d) examine any evidence that is submitted to the Tribunal respecting the membership of any artist in an artists' association that is seeking certification;</p> <p>(e) examine documents pertaining to the constitution, articles of association or by-laws of an artists' association;</p> <p>(f) make any examination of records and any inquiries that it considers necessary;</p> <p>(g) require a producer or an artists' association to post in appropriate places and keep posted a notice concerning any matter relating to the proceedings that the Tribunal considers necessary to bring to the attention of artists;</p> <p>(h) order, at any time before the conclusion of the proceedings, that</p> <p>(i) a representation vote or an additional representation vote be taken among artists affected by the proceeding,</p>	<p>Le Tribunal peut, dans le cadre de toute affaire dont il est saisi :</p> <p>a) convoquer, d'office ou sur demande, toute personne dont il estime le témoignage nécessaire et la contraindre à comparaître et à déposer sous serment, oralement ou par écrit, ainsi qu'à produire les documents et pièces qu'il estime nécessaire pour mener à bien ses enquêtes et examens sur les questions de sa compétence;</p> <p>b) faire prêter serment et recevoir des affirmations solennelles;</p> <p>c) accepter sous serment, par voie d'affidavit ou sous autre forme, tous témoignages et renseignements qu'il juge indiqués, qu'ils soient admissibles ou non en justice;</p> <p>d) examiner les éléments de preuve qui lui sont présentés sur l'adhésion des artistes à l'association sollicitant l'accréditation;</p> <p>e) examiner les documents constitutifs ou les statuts et règlements de l'association d'artistes, ainsi que tout document connexe émanant d'elle;</p> <p>f) procéder, s'il le juge nécessaire, à l'examen de dossier ou registres et à la tenue d'enquêtes;</p> <p>g) obliger un producteur ou une association d'artistes à afficher, en permanence et aux endroits appropriés, les avis qu'il estime nécessaire de porter à l'attention des artistes sur toute question dont il est saisi;</p> <p>h) ordonner à tout moment, avant d'y apporter une conclusion définitive :</p> <p>(i) que soit tenu un scrutin de représentation, ou un scrutin de représentation supplémentaire, chez les</p>

whether or not a representation vote is provided for elsewhere in this Part, in any case where the Tribunal considers that the vote would assist it to decide any question that has arisen or is likely to arise in the proceeding, and

- (ii) the ballots cast in that representation vote be sealed in ballot boxes and counted only as directed by the Tribunal;
- (i) authorize any person to do anything that the Tribunal may do under paragraphs (a) to (h), and to report to the Tribunal thereon;
- (j) adjourn or postpone the proceeding;
- (k) abridge or extend the time for instituting the proceeding or for doing any act, filing any document or presenting any evidence;
- (l) amend or permit the amendment of any document filed;
- (m) add any person to the proceeding at any stage thereof;
- (n) set requirements for public notice in respect of any application made under this Part;
- (o) award costs; and
- (p) decide any question that arises in the proceeding, including whether
 - (i) a person is a producer or an artist,
 - (ii) an artist is a member of, or is represented by, an artists' association,
 - (iii) an organization constitutes an association of producers, an artists' association, or a federation of artists' association,

artistes en cause s'il estime qu'une telle mesure l'aiderait à trancher un point soulevé, ou susceptible de l'être, qu'un tel scrutin de représentation soit ou non prévu pour le cas dans la présente partie,

- (ii) que les bulletins de vote déposés au cours d'un scrutin de représentation soient conservés dans des urnes scellées et ne soient pas dépouillés sans son autorisation;
- i) déléguer les pouvoirs que lui confèrent les alinéas a) à h) en exigeant, éventuellement, un rapport de la part du délégataire;
- j) en suspendre ou remettre l'audition;
- k) abrégé ou proroger les délais applicables à l'introduction de l'instance, à l'accomplissement d'un acte de procédure, au dépôt d'un document ou à la présentation d'éléments de preuve;
- l) modifier tout document produit ou en permettre la modification;
- m) mettre toute personne en cause à toute étape;
- n) arrêter les mesures de publicité à donner aux demandes présentées au titre de la présente partie;
- o) accorder des dépens;
- p) trancher toute question qui peut survenir, et notamment déterminer :
 - (i) si une personne est un producteur ou un artiste,
 - (ii) si un artiste adhère à une association d'artistes ou est représenté par celle-ci,
 - (iii) si une organisation est une association de producteurs, d'associations d'artistes ou d'artistes,

<p>(iv) a group or artists constitutes a sector suitable for bargaining,</p> <p>(v) a scale agreement has been entered into or is in force, and the dates that it comes into force and expires, and</p> <p>(vi) any person or organization is a party to or is bound by a scale agreement.</p>	<p>(iv) si un groupe d'artistes constitue un secteur pouvant faire l'objet de négociations,</p> <p>(v) si un accord-cadre a été conclu, est en vigueur et quelles sont se dates de prise d'effet et d'expiration,</p> <p>(vi) si une personne ou une association est partie à un accord-cadre ou liée par celui-ci.</p>
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CORRESPONDING SECTIONS:

<p>SAA: 17(a) (b) (c) (d) (e) (f) (g) (h) (i) (j) (k) (l) (m) (n) (o) (p)</p>	<p>CLC: 16(a), (f. 1) (b) (c) (d) (e) (f) (g) (i) (k) (l) (m), (m. 1) (n) (o) - - (p)</p>	<p>PSLRA: 40(1)(a), 40(1)(h) 40(1)(d) 40(1)(e) 40(1)(f) 40(1)(g) - 40(1)(i) 65(1) 40(l) - - - - -</p>
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JURISPRUDENCE :

*Representation
vote*

1997 CAPPRT 024 (ARRQ/UDA/APASQ), para. 111

Each association submitted its membership list in support of its position that it is most representative of the metteurs en scène in the sector proposed in its application. However, the sector that the Tribunal has found to be suitable for bargaining in the instant case, described above, differs from the sectors proposed by the two applicants. Under the circumstances, the Tribunal concludes that it cannot rely solely on the membership lists to determine representativeness and that there should be a representation vote so that the artists themselves can decide which association should represent them.

*Conduct of
representation
vote*

1998 CAPPRT 027 (UDA/APASQ), para. 7 and 8

The following procedure was used for the conduct of the vote:

- a) each applicant for certification provided the Tribunal Secretariat with a list of the names and addresses of those of its members who consider themselves to be *metteurs en scène*;
- b) from these lists, the Tribunal Secretariat prepared a preliminary list of potential voters;
- c) the list of potential voters was published in 6 French and 4 English newspapers and bilingually in the Canadian Conference of the Arts' INFO-FAX bulletin, together with a notice inviting *metteurs en scène* whose names were not on the list but who met the eligibility criteria to register with the Tribunal no later than May 15, 1998. A copy of the notice is attached as Annex I to these Reasons for Decision;
- d) the applicants for certification provided the Tribunal Secretariat with the campaign materials that they wished to have sent to the voters;
- e) the Tribunal Secretariat sent each person whose name appeared on the final voters list a voters kit consisting of the following materials:
 - i) voting instructions;
 - ii) a declaration of eligibility;
 - iii) an official ballot with the Tribunal's seal;
 - iv) an envelope marked "scrutin secret";
 - v) a stamped return envelope, addressed to the Tribunal;
 - vi) the UDA and APASQ campaign material;
 - vii) a brochure describing the *Status of the Artist Act* and the Tribunal.
- f) voters were requested to return their ballots postmarked no later than June 19, 1998.

The ballots were counted in the Tribunal's offices in Ottawa on Monday, June 29, 1998 in the presence of representatives of the UDA and APASQ. The certificate of results signed by the Registrar of the Tribunal and the representatives of the parties is attached to these Reasons for Decision as Annex II.

*Extension of time
limit*

2003 CAPPRT 040 (GMQ v. CKRL-MF), para. 56

[...] in order to determine whether it will exercise the power conferred on it by paragraph 17(k), the Tribunal may examine one or more of the following factors:

- The length of time that has elapsed and the circumstances surrounding the delay;
- The existence of prima facie evidence indicating that the application of the complaint has merit;

- The existence of serious reasons for extending the time limit;
- The interests of the parties and the purpose of the *Act*.

Time period, prima facie evidence

2003 CAPPRT 040 (GMQ v. CKRL-MF), para. 59

The concept of *prima facie* evidence is important since it is unlikely that a tribunal can find that a case has merit if evidence that could support the allegations is missing. In this case, we understand *prima facie* evidence to mean evidence that, if it were not contradicted, would lead the Tribunal to conclude that the respondent breached his or her duty to bargain in good faith with the complainant.

Awarding of costs

2001 CAPPRT 035 (APVQ-STCVQ), para. 25

Accordingly, the Tribunal prefers to adopt the labour relations' practice to the effect that costs will only be awarded in exceptional circumstances. Circumstances warranting such a measure could include, for example, when one or more provisions of the *Act* are violated, when irreparable harm is caused to one of the parties, or when the conduct of one or more parties at a hearing is unreasonable, frivolous or vexatious in light of all the circumstances.