

19. PROCEEDINGS	19. PROCÉDURE
<p>(1) In any proceeding before it, the Tribunal</p> <p>(a) shall proceed as informally and expeditiously as the circumstances and considerations of fairness permit;</p> <p>(b) is not bound by legal or technical rules of evidence; and</p> <p>(c) may receive and decide on any evidence adduced that the Tribunal believes to be credible.</p> <p>(2) In order to ensure that the purpose of this Part is achieved, the members of the Tribunal may consult with other members and the staff of the Tribunal in respect of any matter before it.</p> <p>(3) Any interested party may intervene in a proceeding before the Tribunal with its permission, and anyone appearing before the Tribunal may be represented by counsel or an agent.</p> <p>(4) The Tribunal may take notice of facts that may be judicially noticed and, subject to subsection (5), of any other generally recognized facts and any information that is within its specialized knowledge.</p> <p>(5) The Tribunal shall notify the parties and any intervenor in the proceeding before it of its intention to take notice of any facts or information, other than facts that may be judicially noticed, and afford them an opportunity to make representations with respect thereto.</p> <p>(6) The Chairperson may direct any member to receive evidence relating to a matter before the Tribunal, to make a report thereon to the Tribunal, and to provide a copy of the report to all parties and any intervenor in the proceeding.</p> <p>(7) After granting all parties and intervenors an opportunity to make representations on</p>	<p>(1) Dans la mesure où les circonstances et l'équité le permettent, le Tribunal fonctionne sans formalisme et avec célérité. Il n'est pas lié par les règles légales ou techniques de présentation de la preuve et peut recevoir les éléments qu'il juge dignes de foi en l'espèce et fonder sur eux sa décision.</p> <p>(2) Afin d'assurer la réalisation de l'objet de la présente partie, les membres peuvent, dans le cadre des affaires dont le Tribunal est saisi, en consulter d'autres membres, de même que son personnel.</p> <p>(3) Tous les intéressés peuvent, sur autorisation du Tribunal, intervenir dans les affaires dont il est saisi; quiconque comparait devant lui peut le faire en personne ou en étant représenté par un avocat ou un mandataire.</p> <p>(4) Le Tribunal peut admettre d'office les faits ainsi admissibles en justice de même que les faits généralement reconnus et les renseignements qui ressortissent à sa spécialisation.</p> <p>(5) Sauf pour les faits admissibles d'office, le Tribunal informe les parties et les intervenants de son intention d'admettre des faits ou renseignements et leur donne la possibilité de présenter leurs observations à cet égard.</p> <p>(6) Le président peut charger un membre de recueillir des éléments de preuve et de préparer à son intention un rapport qui est ensuite transmis aux parties et aux intervenants.</p> <p>(7) Le cas échéant, le Tribunal peut, après avoir donné aux parties et aux intervenants</p>

any report made pursuant to subsection (6), the Tribunal may make a determination on the basis of the report or hold any further hearings that it considers necessary in the circumstances.	la possibilité de présenter leurs observations, se fonder sur le rapport pour rendre sa décision ou procéder à toute audition qu'il estime indiquée en l'espèce.
---	--

CORRESPONDING SECTIONS:

SAA: 19	CLC: 16.1	PSLRA: 41, 227
---------	-----------	----------------

JURISPRUDENCE:

<i>New issue raised in reply</i>	<p>2000 CAPPRT 031 (GCM/PACT), para. 61</p> <p>The CBC objects to the Tribunal considering these issues, on the grounds that they were raised for the first time in a reply and should have been raised by way of an application. The Tribunal agrees that, normally, a reply should address the issues raised in a respondent's pleading and should not be used to bring forward an entirely new application. However, the Tribunal is not a court and need not adopt strict rules of pleading, particularly in light of subsection 19(1) of the <i>Act</i>. The Tribunal may, in its discretion, allow a pleading of this nature provided that "considerations of fairness permit".</p>
<i>"Interested persons" may intervene</i>	<p>1995 CAPPRT 001 (UNEQ), para. 10; 1995 CAPPRT 002 (SARDeC), para. 10; 1995 CAPPRT 003 (WGC), para. 12</p> <p>It is the Tribunal's view that the interaction of subsections 19(3), 26(2) and 27(2) establishes two categories of intervenors: those who are intervenors as of right and those who are intervenors by permission of the Tribunal. Since an application for certification is a "proceeding before the Tribunal", the Tribunal finds that it does have authority to grant intervenor status to individuals and organizations who are not an artist affected by the application, an artists' association or a producer, so long as the applicant for intervenor status qualifies as an "interested person".</p>
<i>Tribunal may limit intervention</i>	<p>1995 CAPPRT 001 (UNEQ), para. 11; 1995 CAPPRT 002 (SARDeC), para. 11; 1995 CAPPRT 003 (WGC), para. 13</p> <p>The Tribunal is also of the opinion that it has the power to limit the extent of the rights of participation which an intervenor will have. In order to ensure that the informality and expeditiousness of Tribunal proceedings are not unduly compromised, the Tribunal may decide that it is necessary to restrict an intervenor's ability to cross-examine witnesses called by the parties to a proceeding and to place time limits on the presentation of oral argument to the Tribunal.</p>

<p><i>Factors to determine sufficient interest for intervention</i></p>	<p>1995 CAPPRT 001 (UNEO), para. 12; 1995 CAPPRT 002 (SARDeC), para. 12; 1995 CAPPRT 003 (WGC), para. 14; 1996 CAPPRT 008 (AFM), para. 21</p> <p>In determining whether a person has a sufficient interest to warrant granting them intervenor status in a proceeding, the Tribunal will consider the following four factors:</p> <ol style="list-style-type: none"> <li>(1) whether the proposed intervenor is directly affected by the outcome of the proceeding;</li> <li>(2) whether the position of the proposed intervenor is adequately represented by one of the parties to the proceeding;</li> <li>(3) whether the public interest and the interests of justice would be better served by the intervention of the proposed intervenor; and</li> <li>(4) whether the Tribunal could hear and decide the case on its merits without the intervention of the proposed intervenor.</li> </ol>
<p><i>Lack of sufficient interest for intervention</i></p>	<p>2001 CAPPRT 032 (APVQ-STCVQ), para. 15 to 17</p> <p>The Tribunal is of the view that the dispute between the applicants and the APVQ is an internal matter which is not relevant to the issues raised in the context of the application for certification.</p> <p>[...]</p> <p>As a distinct entity, the APVQ can apply for certification or form a federation with another artists' association in order to make an application.</p> <p>[...]</p> <p>Moreover, the applicants assert that if the Tribunal certifies the federation, this could have an impact on their legal proceedings against the APVQ. However, it is important to understand that the <i>Status of the Artist Act</i> establishes a legal framework for collective bargaining with producers specified in paragraph 6(2)(a)</p> <p>[...]</p> <p>The Tribunal is of the view that the applicants have failed to demonstrate that they are directly affected by the application for certification and, consequently, are not "interested persons" within the meaning of the <i>Act</i>. It is not necessary to consider the issue of timeliness.</p>
<p><i>Conflict of interest</i></p>	<p>2001 CAPPRT 034 (APVQ-STCVQ), para. 10</p> <p>The Tribunal is of the view that the finding that it has jurisdiction to make a declaration of disqualification may rest on either subsection 19(3) or its ancillary jurisdiction. Based on <i>Booth v. Huxter</i> and <i>Kirsch v. Royal LePage Real Estate Services Ltd.</i>, the Tribunal concludes that it has jurisdiction to declare a representative to be disqualified by reason of a conflict of interest.</p>

## 2001 CAPPRT 034 (APVQ-STCVQ), para. 14 to 17

The Tribunal's file indicates that two lawyers from the law firm of Sauvé et Roy, Mr. Vallée and Mr. Lavergne, handled the APVQ's application for certification from 1996 to 1999. In light of that, there is an inference that these two lawyers and all the other lawyers at Sauvé et Roy received confidential information that is closely connected to the "matter at hand". This inference includes Ms. Bousquet, since she was a lawyer with Sauvé et Roy during that time period. The fact that she now works for the FNC as a labour relations advisor and not as a lawyer has no effect on this finding. The principle here is that substance prevails over form.

*Representative  
in conflict of  
interest*

The Tribunal is of the view that the fact that the APVQ has formed a federation with the STCVQ does not alter this finding.

[...]

The Tribunal should draw the inference, unless satisfied, on the basis of clear and convincing evidence, that all reasonable measures have been taken to prevent confidential information from being disclosed to the lawyers at Sauvé et Roy or to Ms. Bousquet. Mr. Lévesque did not suggest that any measure of that kind had been taken. Therefore we find that all the lawyers with Sauvé et Roy, as well as Ms. Bousquet, who worked at Sauvé et Roy during the relevant time period, "receive[d] confidential information attributable to a solicitor and client relationship relevant to the matter at hand".

Accordingly, neither the lawyers at Sauvé et Roy nor Francine Bousquet may act against the APVQ.

## 2003 CAPPRT 046 (APVQ-STCVQ), para. 13 and 14

In *Knight v. Indian Head School Division No. 19*, [1990] 1 S.C.R. 653, Justice L'Heureux-Dubé acknowledged at pages 677-678 that there is a right to procedural fairness before administrative tribunals, which includes the right to be heard, but that the legislative framework must be considered in order to determine whether it changes this right. Subsection 19(4) of the *Act* permits the Tribunal to take notice of facts that may be judicially noticed, and under subsection 19(5) it does not have to inform the parties of its intention to do so.

*Tribunal may  
take notice of  
its own  
jurisprudence*

The Tribunal may accordingly take notice of legislation, regulations, its jurisprudence, well-known and indisputable facts and take them into consideration in its decisions and, under subsection 19(5) of the *Act*, it does not have to inform the parties and the intervenors concerning this kind of taking of notice. Consequently, the Tribunal is of the opinion that the Federation was not deprived of its right to be heard and that there was no breach of the rules of natural justice.

## 2006 CAPPRT 051 (Petch), para. 39

*To take notice*

The Tribunal may accordingly take notice of legislation, regulations, jurisprudence, well-known and indisputable facts and take them into consideration in its decisions.