20. REVIEW OF DETERMINATION OR ORDER

(1) The Tribunal may uphold, rescind or amend any determination or order made by it, and may rehear any application before making a decision.

(2) Where it is necessary to decide one or more issues in order to dispose finally of an application or complaint the Tribunal may, if satisfied that it can do so without prejudice to the rights of any party or intervenor in the proceeding, decide or make an order respecting one or more of those issues, and reserve its jurisdiction to decide the remaining issues.

20. RÉEXAMEN DES DÉCISIONS ET ORDONNANCES

(1) Le Tribunal peut maintenir, annuler ou modifier ses décisions ou ordonnances et réinstruire une affaire avant de la trancher.

(2) Dans les cas où, pour statuer de façon définitive sur une demande ou une plainte, il est nécessaire de trancher auparavant un ou plusieurs points litigieux, le Tribunal peut, s'il est convaincu de pouvoir le faire sans porter atteinte aux droits des parties et des intervenants, rendre une décision ou ordonnance ne réglant que tel de ces points et différer sa décision sur les autres.

CORRESPONDING SECTIONS:

SAA:	*20(1)*	*CLC:*	*18, 18.1*	***PSLRA***:	*43*
	20(2)		*20(1)*		*-*

JURISPRUDENCE:

2000 CAPPRT 031 (PACT/GMG), para. 77

Review is inappropriate mechanism

This dispute is in relation to the scope, quality and fairness of ACTRA's representation. Given the scheme of the *Act*, reviewing the certification order is not the appropriate mechanism to address these concerns. More appropriate avenues would be a 'duty of fair representation' complaint, an application for revocation or partial revocation, or a timely application for certification when ACTRA's certificate comes up for renewal.

1998 CAPPRT 025 (UDA/APASQ), para. 7

Authority to amend decisions

Subsection 20(1) of the *Act* provides as follows: "The Tribunal may uphold, rescind or *amend* any determination or order made by it, and may rehear any application before making a decision" (our italics). It is therefore clear that the Tribunal has the necessary legislative authority to amend one of its decisions.

1998 CAPPRT 027 (UDA), para. 6

Amendment of Decision 024 re: representation vote

At the joint request of the parties pursuant to subsection 20(1) of the *Act*, the Tribunal subsequently amended Decision No. 024 in order to permit all *metteurs en scène* affected by the two applications for certification to participate in the representation vote (see Decision No. 025, March 10, 1998).

Reconsideration exception not rule

1999 CAPPRT 030 (NAC), para. 20

The Tribunal is of the view that reconsideration of its decisions should be the exception rather than the rule. In the case at bar, the 30-day time limit for filing an application for reconsideration elapsed on May 25, 1996. To reconsider a decision after such a lengthy period could cause serious prejudice to the CAEA as well as to other artists' associations with whom it has jurisdictional agreements. However, the Tribunal would consider extending the time limit in appropriate circumstances.

Long delay unjustified

2000 CAPPRT 031 (PACT/GMG), para. 67-68

Normally, the Tribunal requires that a request for reconsideration be filed within 30 calendar days of the date of the order [...]

[...]

In this case, the request to reconsider the certification order comes almost four years after the order was made. This is an extremely long delay. The prejudice to ACTRA is obvious: it has relied on this certification in its negotiations for scale agreements. To reconsider the certification decision would upset the regime which ACTRA and the producers have negotiated. Furthermore, PACT/CMG has not offered any evidence as to why the information which it now asks the Tribunal to consider was not available at the time of the original certification order. From the evidence, it appears that the circumstances which have led to dissatisfaction amongst background performers existed in 1996 and earlier, although they have only come to the fore in the last year or so [...] The fact that the background performers' dissatisfaction has only more recently come to the fore does not alter this fact. Accordingly, the Tribunal has decided that the request for reconsideration should be dismissed as untimely.

Error of law or fact to justify reconsideration

2002 CAPPRT 039 (TWUC), para. 65

The *Canada Labour Code*, R.S.C. 1985, c. L-2, contains an identical provision at section 18. This provision has been interpreted by the Canada Industrial Relations Board and it has clearly articulated that its "... reconsideration power is not intended to be an appeal process, nor is it meant to contest the Board's findings or the decision of the original panel" (Telus Corp. (Re), [2000] CIRB no. 94 (Q.L.) at para. 7). The Tribunal agrees with this interpretation and, accordingly, will not interfere lightly with its findings unless it has committed an error of law or a serious error of fact.

Basis for certification not jeopardized

2003 CAPPRT 042 (SPACQ), para. 19

Having regard to the evidence submitted by SPACQ, and having regard to SPACQ's commitment to assisting the GCFC in representing the GCFC's French-speaking members, the requested amendments are reasonable in the instant case. In addition, the changes proposed by SPACQ do not jeopardize the basis of its certification itself, that is, the appropriateness of the sector for bargaining and the representativity of SPACQ for the sector in question. Accordingly, the Tribunal is of the opinion that SPACQ's request should be granted.

Time lines for certain applications

2003 CAPPRT 045 (CBC/SPACQ and GCFC), para. 17

An application for reconsideration of a Tribunal decision must therefore be made within 30 calendar days of the date of the decision, with the exception of an application for review involving only an amendment of the sector determination, which can be made at any time.

Notice of an application for review

2003 CAPPRT 045 (CBC/SPACQ and GCFC), para. 23

Subsection 25(3) of the *Act* requires the publication of public notices in the case of applications for certification. This practice is also commonly followed by the Tribunal when dealing with requests for review where the scope of a sector could be affected. Public notices appear in the *Canada Gazette*, Part I, as well as in a wide range of publications including widely distributed daily newspapers, specialized journals and daily and weekly newspapers in the minority official language throughout Canada.

The review of decisions is the exception

2006 CAPPRT 051 (Petch), para. 31, 32, 33 and 34

The Tribunal's review power is explained further at section 45 of the *Canadian Artists and Producers Professional Relations Tribunal Procedural Regulations*, SOR/2003-343, (the "*Regulations*"):

> 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
> (...)

The *Canada Labour Code*, R.S.C. 1985, c. L-2, has a provision similar to the review provisions of the *Act* and its *Regulations*. This provision has been interpreted by the Board and it has clearly articulated that its "(...) reconsideration power is not intended to be an appeal process, nor is it meant to contest the Board's findings or the decision of the original panel" (*Telus Corporation*, [2000] CIRB no. 94; and 72 CLRBR (2d) 305).

The Board also had the following to say about the use of the reconsideration power in its decision in *Canadian Broadcasting Corporation* (1991), 86 di 92; and 92 CLLC 16,006 (CLRB no. 897)

> (...) Let us repeat what was said recently in *CanWest Pacific Television Inc.* (CKVU) (1991), 84 di 19 (CLRB no. 847), to the effect that reconsideration of decisions is the exception rather than the rule. The Board's primary concern is the finality of its decisions and the onus is therefore on an applicant to satisfy the Board that there are serious grounds which warrant the setting aside of the original decision. The primary function of a reconsideration panel is to screen

> applications with these policies in mind. Applications will not proceed past this initial screening stage if they do not provide new facts or circumstances which, if they had been known at the time, could have resulted in the Board arriving at a different conclusion. Applications alleging error in law or policy that do not contain something substantial, which throws the interpretation applied by the original panel into serious doubt, will meet the same fate. Mere disagreement with the Board's analysis of the facts or with the interpretation of law or policy applied by the Board are not grounds for a review by the full Board sitting in plenary.

Similarly, the Board wrote in *591992 BC Ltd.*, [2001] CIRB no. 140

> The finality of its decisions is of primary concern to the Board. Thus, the rescinding of an original panel's decision remains the exception rather than the rule. The applicant has the burden of proving that there are serious reasons, or even exceptional circumstances, that would justify the reconsideration of a decision. The grounds raised by the employer in the present matter do not appear to warrant re-opening of the case.

The Tribunal agrees with these interpretations and, accordingly, will not interfere lightly with its findings.