

23. PREREQUISITES FOR CERTIFICATION	23. CONDITIONS PRÉALABLES A L'ACCREDITATION : REGLEMENTS
<p>(1) No artists' association may be certified unless it adopts by-laws that</p> <ul style="list-style-type: none"> (a) establish membership requirements for artists; (b) give its regular members the right to take part and vote in the meetings of the association and to participate in a ratification vote on any scale agreement that affects them; and (c) provide its members with the right of access to a copy of a financial statement of the affairs of the association to the end of the previous fiscal year, certified to be a true copy by the authorized officer of the association. <p>(2) No by-laws of the association may 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.</p>	<p>(1) L'accréditation d'une association d'artistes est subordonnée à la prise de règlements qui :</p> <ul style="list-style-type: none"> a) établissent des conditions d'adhésion; b) habilent ses membres actifs à participer à ses assemblées, à y voter et à se prononcer par scrutin sur la ratification de tout accord-cadre les visant; c) garantissent aux membres le droit d'obtenir une copie des états financiers du dernier exercice certifiée conforme par le dirigeant de l'association autorisé à le faire. <p>(2) Les règlements d'une association d'artistes ne peuvent contenir aucune disposition ayant pour effet d'empêcher injustement un artiste d'adhérer ou de maintenir son adhésion à celle-ci ou de se qualifier comme membre.</p>

CORRESPONDING SECTIONS:

<i>SAA:</i> 23	<i>CLC:</i> 25(2)	<i>PSLRA:</i> 66(2)
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COMMENTARY:

Prior to granting certification, the Tribunal assures itself that the requirements of subsection 23(1) have been met.

In cases where the by-laws of an association could have been discriminatory, the Tribunal limited the scope of the sector (1996 CAPPRT 018 (PUC)) or asked that the applicant amend its by-laws (1997 CAPPRT 023 (CMAQ); 1998 CAPPRT 026 (CMAQ)).

JURISPRUDENCE :

<i>Right to vote</i>	<p>2000 CAPPRT 031 (GCM/PACT), para. 72</p> <p>[...] PACT/CMG's argument that ACTRA's by-laws violate the <i>Act</i> by not giving background performers the right to vote is not supported by the language of section 23. Paragraph 23(1)(b) provides that by-laws must give "regular members" the right to take part and vote in meetings and ratification of scale agreements. As shown by the evidence, background performers can become members of ACTRA, in the Apprentice category. They can also become regular members of ACTRA by fulfilling the requirements established by ACTRA. Accordingly, the Tribunal is not persuaded by this argument.</p>
<i>Non-citizens and landed immigrants excluded</i>	<p>1996 CAPPRT 018 (PUC), para. 17</p> <p>The applicant has limited itself to requesting the right to represent only playwrights who are Canadian citizens or landed immigrants. The proposed sector mirrors PUC's Constitution, which contains a similar limitation on membership in the organization. This means that playwrights who are not citizens or landed immigrants, who write in languages other than French, would not be included in the sector and would be free to form their own association and apply for certification on their own behalf. Until such time, the Tribunal hopes that PUC will continue its practice of assisting these individuals on an ad hoc basis.</p>
<i>Non-citizens and landed immigrants excluded</i>	<p>1997 CAPPRT 023 (CMAQ), para. 35</p> <p>There are two aspects of CMAQ's application that are of concern to the Tribunal. First, although the applicant indicated that it wished to represent "all artists and artisans. . .", it also advised the Tribunal that at the annual general meeting scheduled for June 14, 1997, an amendment to the association's general by-laws will be proposed that would have the effect of restricting membership to artists and artisans who are Canadian citizens or landed immigrants living in Quebec. The Tribunal's first concern stems from the fact that, once certified, the applicant would obtain the exclusive right to bargain on behalf of artists and artisans who would not be entitled to join the association, to vote on decisions affecting them or to participate in the activities of the association.</p>
<i>Amendment of by-laws</i>	<p>1998 CAPPRT 026 (CMAQ), para. 23 to 25</p> <p>The Tribunal believes that the framework governing professional relations between producers under federal jurisdiction and artists cannot be effective if there is a multiplicity of certified artists' associations in the same area. For this reason, the Tribunal endeavours to certify the artists' association that it considers the most representative of each artistic sector, granting to this association the exclusive authority to bargain on behalf of all the artists in the sector, whether or not they are members of the association. Apart from CMAQ's case, the Tribunal has made only one exception to this practice, involving the certification granted to the American Federation of Musicians of the United States and Canada (the "AFM"). In that case, it was the AFM that had limited its application for certification solely to its members.</p>

In CMAQ's case, the Tribunal made an exception to its practice by limiting the certification to CMAQ's members, and gave two reasons for its decision. CMAQ filed a request to review this decision. Subsection 20(1) of the *Status of the Artist Act* allows the Tribunal to uphold, rescind or amend any of its determinations or orders.

The Tribunal is of the opinion that the amendment to CMAQ's by-laws that eliminates the restrictions on the membership of artisans from Quebec in the association adequately addresses the first concern expressed by the Tribunal.

*Tribunal's role
is not to
interfere in
internal affairs
of association*

2000 CAPPRT 031 (GCM/PACT), para. 70

Section 23 does not proscribe all restrictions or limitations on membership but only those which "discriminate unfairly": subsection 23(2). Where an artists' association establishes membership criteria which are *prima facie* related to an individual's artistic or professional qualifications, the party launching the challenge must offer convincing reasons for the Tribunal to interfere. It must be remembered that the Tribunal's role is to assist the parties in establishing a framework for effective negotiations. Its role is not to interfere in the internal affairs of an artists' association.

*Successor rights
and obligations*

2005 CAPPRT 049 (AQTIS), para. 6 to 8

[...] the association alleging that it is the successor of another must first demonstrate that it is also an artists' association or a federation of artists' associations as defined under section 5 of the *Act*.

A necessary consequence of the aforementioned requirement is, in our opinion, that the statutes and by-laws of the succeeding association must first conform to the criteria for certification set out at section 23 of the *Act*.

Although this is not an application for certification, it would seem illogical to allow an association to gain certification indirectly while its statutes and by-laws would have precluded it from doing so in the case of an application for certification.