

| 25. CERTIFICATION PROCEDURE  | 25. PROCÉDURE D'ACCREDITATION   |
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| <p>(1) An artists' association may, if duly authorized by its members, apply to the Tribunal in writing for certification in respect of one or more sectors</p> <p>(a) at any time, in respect of a sector for which no artists' association is certified and no other application for certification is pending before the Tribunal;</p> <p>(b) in the three months immediately preceding the date that the certification or a renewed certification is to expire, where at least one scale agreement is in force in respect of the sector; or</p> <p>(c) after one year, or such shorter period as the Tribunal may fix on application, after the date of the certification or a renewed certification, where no scale agreement is in force in respect of the sector.</p> <p>(2) An application for certification must include the membership list of the artists' association, a certified copy of its by-laws, and any other information required by the Tribunal.</p> <p>(3) The Tribunal shall give public notice of any application for certification in respect of any sector without delay, indicating any period in which another application may be made by any other artists' association, notwithstanding subsection (1), for certification in respect of that sector or any part of it.</p> <p>(4) No application for certification in respect of a sector may be made, except with the consent of the Tribunal, after expiration of the period indicated by the Tribunal in any public notice given pursuant to subsection (3).</p> | <p>(1) Toute association d'artistes dûment autorisée par ses membres peut demander au Tribunal de l'accréditer pour un ou plusieurs secteurs :</p> <p>a) à tout moment, si la demande vise un ou des secteurs pour lesquels aucune association n'est accréditée et si le Tribunal n'a été saisi d'aucune autre demande;</p> <p>b) dans les trois mois précédant la date d'expiration d'une accréditation ou de son renouvellement, s'il y a au moins un accord-cadre en vigueur pour le secteur visé;</p> <p>c) sinon, un an après la date de l'accréditation ou de son renouvellement, ou dans le délai inférieur fixé, sur demande, par le Tribunal.</p> <p>(2) La demande est accompagnée d'une copie certifiée conforme des règlements de l'association, de la liste de ses membres et de tout autre renseignement requis par le Tribunal.</p> <p>(3) Le Tribunal fait, dès que possible, publier un avis de toute demande d'accréditation pour un secteur donné et y précise le délai dans lequel d'autres associations d'artistes pourront, par dérogation au paragraphe (1), solliciter l'accréditation pour tout ou partie de ce secteur.</p> <p>(4) La demande d'accréditation est toutefois, sauf autorisation du Tribunal, irrecevable une fois expiré le délai mentionné au paragraphe (3).</p> |

CORRESPONDING SECTIONS:

|             |                            |             |  |               |                        |
|-------------|----------------------------|-------------|--|---------------|------------------------|
| <i>SAA:</i> | 25(1)<br>(2)<br>(3)<br>(4) | <i>CLC:</i> | 24(1), 24(2)(a), (b), (c)<br>-<br>-<br>- | <i>PSLRA:</i> | 54, 55<br>-<br>54<br>- |
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COMMENTARY:

Public notices of applications for certification are published in Part I of the *Canada Gazette*, newspapers in both official languages and appropriate trade journals pursuant to subsection 25(3). The Tribunal may also publish a public notice of an application for review of a sector determination.

JURISPRUDENCE:

*Certification regime*

1995 CAPPRT 001 (UNEQ), para. 19; 1995 CAPPRT 002 (SARDeC), para. 19; 1995 CAPPRT 003 (WGC), para. 19

The *Status of the Artist Act* provides a regime for the certification of an artists' association to represent freelance artists working in a particular sector. Certification by the Tribunal gives the artists' association the exclusive authority to bargain on behalf of artists working in that sector. It is not necessary for each individual artist to grant a licence or mandate to the artists' association to bargain on his or her behalf; by virtue of the certification, the statute effectively appoints the certified artists' association as the bargaining agent for all individuals working in the sector designated by the Tribunal.

*Proceeding need not be adversarial*

1995 CAPPRT 001 (UNEQ), para. 8; 1995 CAPPRT 002 (SARDeC), para. 8; 1995 CAPPRT 003 (WGC), para. 10; 1996 CAPPRT 007 (SPACQ), para. 7

The Tribunal does not consider its proceedings in an application for certification to be adversarial, unless a competing application for certification is filed.

*Requirement of legislative scheme*

2001 CAPPRT 035 (APVQ-STCVQ), para. 17 and 18

This legislative scheme does not require that the Tribunal determine, at the application for certification stage, the usual relationship between the producer(s) and the applicant's different members when they exercise their profession.

[...]

In fact, such a requirement appears to go completely against the fundamental principles underlying the *Act*. When the Tribunal certifies an artists' association, this does not mean that all persons working in a given artistic field will be affected by the certification. It stands to reason that artists engaged in an employer-employee relationship are excluded. However, it is important to bear in mind that there is nothing preventing someone from being an employee and working in the artistic world as an independent contractor at the same time [...]

*Undermining  
purpose of the  
Act*

2001 CAPPRT 035 (APVQ-STCVQ), para. 20

[...] by proceeding in the manner requested by the federal producers, the Tribunal may well undermine the purposes of the *Act* since their objection concerns only members of the federation. However, the federation has not only asked for certification of the artists included in the proposed sector who are its members; it is requesting certification for all the artists working in the sector sought, whether they are members or not. In accordance with its policy, the Tribunal continues "to certify the artists' association that it considers the most representative of each artistic sector, by 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" [...]

*Artists' wish to  
be represented  
confidential*

2001 CAPPRT 035 (APVQ-STCVQ), para. 21

In dealing with an objection limited to the members of the federation and assuming that it would determine that certain members are "artists" within the meaning of the *Act*, the Tribunal would allow the producers to know the artists' wish to be represented by an artists' association. This would go against the fundamental principle applicable in labour law that it is paramount to keep the wish of employees (or artists) to be or not to be represented by a union (or artists' association) confidential. In the case at bar, the producers have the right to intervene on the issue of determining the sector, but they cannot intervene on the issue of determining representativity, without the Tribunal's permission. The Tribunal is of the opinion that it should not allow the producers to do indirectly what they cannot do directly.

*Tribunal not  
involved in  
internal  
disputes of  
associations*

2001 CAPPRT 032 (APVQ-STCVQ), para. 15

Although the Tribunal must examine an association's constitution and by-laws in order to assure itself that the association is an "artists' association" within the meaning of the *Act*, this does not mean that the Tribunal will become involved in the internal disputes of associations. In the present case, there is nothing in the applicants' submissions which suggested that the APVQ or the federation lacked the necessary status to apply for certification. Indeed, the CSN's constitution states [translation]: "Each affiliated organisation forms a distinct entity. [...]". As a distinct entity, the APVQ can apply for certification or form a federation with another artists' association in order to make an application. It should be noted that the APVQ and CSN constitutions require that affiliates must respect the CSN constitution. However, that is an internal matter which is none of the Tribunal's concern and, furthermore, which is outside the scope of the present certification proceedings.

*Contents of  
Public Notice*

1995 CAPPRT 001 (UNEQ), para. 7; 1995 CAPPRT 002 (SARDeC), para. 7; 1995 CAPPRT 003 (WGC), para. 9; 1996 CAPPRT 007 (SPACQ), para. 6

With respect to applications for certification, the procedure adopted by the Tribunal provides that when the public notice contemplated by subsection 25(3) of the *Act* is given, it not only indicates the period in which competing applications may be made by other artists' associations, but also sets a time period in which artists, artists' associations and producers who have an interest in the application must notify the Tribunal of their interest.

*Time Limit in Public Notice*

1995 CAPPRT 001 (UNEQ), para. 7; 1995 CAPPRT 002 (SARDeC), para. 7; 1995 CAPPRT 003 (WGC), para. 9; 1996 CAPPRT 007 (SPACQ), para. 6

By setting a time limit, the Tribunal essentially requires artists, artists' associations and producers to notify the Tribunal of their intent to claim the right of intervention granted to them by subsections 26(2) and 27(2) of the *Act*. This procedure enables the Tribunal to notify the applicant artists' association on a timely basis of the interventions that have been filed with respect to its application. This notification enables the applicant to modify its application or to prepare to meet the concerns raised by the intervenors.

*Standing to intervene artists' association*

1996 CAPPRT 008 (AFM), para. 13

There are two means by which an artists' association can obtain standing to intervene in an application for certification filed by another artists' association. One is by filing its own application for certification for the same sector or any part of it during the time period prescribed by the Tribunal in the public notice (see subsection 25(3) of the *Act*); the second is by claiming the statutory right to intervenor status provided for in subsections 26(2) and 27(2) of the *Act*.

*Public Notice required when sector to be expanded*

1998 CAPPRT 026 (CMAQ), para. 4

Because the effect of CMAQ's request was to expand the sector it had been certified to represent, the Tribunal decided that it was important to seek the views of artists and producers who might be affected by the request. Public notice was therefore given in *La Presse*, *Le Soleil* and *The Globe and Mail* on December 3, 1997. This notice also appeared in *Le Devoir* on December 13, 1997 and in the December 1997 issue of the INFO-FAX bulletin of the Canadian Conference of the Arts.

*Sector that appears in Public Notice may not be definitive*

1999 CAPPRT 030 (CAEA), para. 22

When the Tribunal publishes a public notice, the sector definition which appears is in fact only a proposed sector, not necessarily the sector which will be granted to the particular artists' association. At that stage of the process, the Tribunal has not made a determination as to what the appropriate sector for bargaining should be. The Tribunal has frequently refined or amended proposed sector definitions in light of the evidence it heard from applicants and intervenors. In cases where the Tribunal has done so, it has satisfied itself that the new sector definition did not enlarge the sector that was initially proposed.