

26. DETERMINATION OF SECTOR	26. DÉFINITION DU SECTEUR
<p>(1) After the application period referred to in subsection 25(3) has expired, the Tribunal shall determine the sector or sectors that are suitable for bargaining, taking into account</p> <p>(a) the common interests of the artists in respect of whom the application was made;</p> <p>(b) the history of professional relations among those artists, their associations and producers concerning bargaining, scale agreements and any other agreements respecting the terms of engagement of artists; and</p> <p>(c) any geographic and linguistic criteria that the Tribunal considers relevant.</p> <p>(2) Notwithstanding subsection 19(3), only the artists in respect of whom the application was made, artists' associations and producers may intervene as of right on the issue of determining the sector that is suitable for bargaining.</p> <p>(3) The Tribunal shall give the artists' association concerned and any intervenors notice of its determination under subsection (1) without delay, and that determination is deemed to be interlocutory, notwithstanding section 21.</p>	<p>(1) Une fois expiré le délai mentionné au paragraphe 25(3), le Tribunal définit le ou les secteurs de négociation visés et tient compte notamment de la communauté d'intérêts des artistes en cause et de l'historique des relations professionnelles entre les artistes, leurs associations et les producteurs concernés en matière de négociations, d'accords-cadres et de toutes autres ententes portant sur des conditions d'engagement d'artistes, ainsi que des critères linguistiques et géographiques qu'il estime pertinents.</p> <p>(2) Les artistes visés par une demande, les associations d'artistes et les producteurs peuvent intervenir devant le Tribunal, sans l'autorisation visée au paragraphe 19(3), sur toute question liée à la définition du secteur de négociation.</p> <p>(3) Le Tribunal communique sans délai sa décision à l'association intéressée et aux intervenants; cette décision est réputée, par dérogation à l'article 21, interlocutoire.</p>

CORRESPONDING SECTIONS:

<p>SAA: 26(1) 26(2) 26(3)</p>	<p>CLC: 27 - -</p>	<p>PSLRA: 57 - -</p>
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JURISPRUDENCE :

<i>Questions to be determined</i>	<p>1995 CAPPRT 001 (UNEQ), para. 8; 1995 CAPPRT 002 (SARDeC), para. 8; 1996 CAPPRT 007 (SPACQ), para. 7</p> <p>There are only two issues to be determined by the Tribunal in an application for certification: (1) whether the proposed sector is suitable for bargaining; and (2) whether the applicant is the most representative of artists working in the sector. Accordingly, the Tribunal treats its proceeding as an inquiry or investigation process, leading to the required determinations.</p>
<i>Language as part of artistic expression</i>	<p>1997 CAPPRT 020 (GMQ), para. 34</p> <p>Generally speaking, the Tribunal believes that national sectors are more suitable for bargaining with producers who are under federal jurisdiction when language is not a part of the artistic expression, as is the case with music, dance and the visual arts. This holds true especially when there is a national artists' association with the infrastructure necessary to serve its membership in both official languages. The Tribunal believes that is preferable to limit the number of sectors to avoid overlap and conflict.</p>
<i>Preference given to sectors that include all artists</i>	<p>1997 CAPPRT 020 (GMQ), para. 36</p> <p>Although the Tribunal is not fully convinced by the applicant's arguments, it recognizes that there is a jurisdictional agreement between the AFM and the Guilde that reflects a factual situation in the operations of these two organizations. Moreover, the Tribunal recognizes that the Guilde's application covers all musicians in Quebec, whereas the AFM's application covers only its members. In order to allow as many artists as possible to enjoy the benefits of the <i>Status of the Artist Act</i>, the Tribunal prefers sector definitions that include all artists in a given discipline, as opposed to definitions that include only the members of an association. The Tribunal therefore concludes, having regard to the facts of the instant case, that a separate sector covering all musicians in Quebec is acceptable.</p>
<i>Job title not always determinative of sector to which artist belongs</i>	<p>1997 CAPPRT 024 (ARRQ/UDA/APASQ), para. 40</p> <p>The Tribunal finds that the duties of a réalisateur described in paragraph [23], including staging, clearly and exhaustively define the work of such directors. The Tribunal wishes to point out that a person's job title does not necessarily determine the sector to which that person belongs; one must examine the duties that the person actually performs. As the Tribunal explained earlier, a person with the title "metteur en scène" must be considered a réalisateur/co-réalisateur included in any sector granted to ARRQ because this person exercises full authority equivalent to that of the réalisateur, whereas someone else with the title "metteur en scène" would not be included in the sector proposed by ARRQ because they work under the supervision of a réalisateur or because his or her participation is limited to a single aspect of the production. For these reasons, the Tribunal believes that the definition of the proposed sector should make reference to the "duties of a director" and not merely to the title "director" (réalisateur).</p>

<i>Preferable to limit number of sectors</i>	<p>1997 CAPPRT 024 (ARRO/UDA/APASQ), para. 48</p> <p>In its decision concerning La Guilde des musiciens du Québec (decision No. 020), the Tribunal set out its position regarding the application of linguistic and geographic criteria in defining a sector. In summary, the Tribunal believes that it is preferable to limit the number of sectors to avoid potential overlap or conflicts. Where language is not part of artistic expression, as is the case with music, dance and the visual arts, the Tribunal believes that national sectors are more suitable for bargaining with producers in the federal jurisdiction, provided there is a national artists' association with the infrastructure necessary to serve its membership in both official languages. However, when language is part of the artistic expression as in the case of authors, linguistic criteria assume greater importance and the Tribunal takes them into account when defining the sector.</p>
<i>Tribunal must consider all criteria</i>	<p>1997 CAPPRT 024 (ARRO/UDA/APASQ), para. 53</p> <p>The Tribunal is of the view that in the case of audio-visual productions, language is an essential element of artistic expression and that it would have been preferable for the proposed sector to include all directors of French-language audio-visual productions in Canada. However, in addition to linguistic and geographic criteria, the Tribunal is required to take into account other criteria, including the history of professional relations between directors and producers.</p>
<i>Sector too small</i>	<p>1997 CAPPRT 024 (ARRO/UDA/APASQ), para. 142</p> <p>The Tribunal is of the opinion that notwithstanding the important role a fight director plays in ensuring the safety of performers in scenes involving the illusion of physical conflict, an artists' association representing such a small sector would not have sufficient bargaining power to ensure that the interests of fight directors are protected adequately. The Tribunal therefore is not persuaded that the interests of fight directors would be served by creating a separate sector for this occupation.</p>
<i>Sectors should not overlap</i>	<p>1998 CAPPRT 026 (CMAQ), para. 29</p> <p>The Tribunal has an obligation to prevent overlap between certified sectors by excluding from the definition of new sectors those it has already defined. Consequently, relying on CMAQ's statement that it is the artist himself/herself who decides, for a given work, whether he/she belongs to the arts and crafts sector or the visual arts sector, the Tribunal will add to the definition of the sector for arts and crafts a provision excluding artists who identify themselves as belonging to the visual arts sector.</p>
<i>Fragmentation of sector</i>	<p>2000 CAPPRT 031 (GCM/PACT), para. 76 and 77</p> <p>If the Tribunal were to establish a separate bargaining unit for background performers, this would lead to a multiplicity of certifications in the same area and would ultimately dilute bargaining power for artists' associations while forcing producers to undertake collective bargaining with two or more associations instead of just one. These are just some of the undesirable effects of fragmentation. Furthermore, when it certified ACTRA, the Tribunal did so on the basis of a community of interest which it found between background performers and other performers referred to in ACTRA's certificate. This community of interest remains a live consideration in this case. Although some</p>

performers work exclusively in background, the evidence showed that others work in both background and other disciplines mentioned in the ACTRA certificate. In those circumstances, the Tribunal will not fragment the sector unless there are compelling circumstances.

Compelling circumstances are absent in this case.

2003 CAPPRT 041 (APVQ-STCVQ), para. 436

*Granting a
"geographical"
sector
appropriate*

The Federation emphasizes the historical and economic factors that have influenced film and television production in Québec, in order to justify granting a sector on a geographical basis. The Federation also notes the particular working methods that exist in Québec, even though these methods have changed since the increase in the number of American productions filmed in Québec. The Tribunal agrees that these factors argue in favour of granting a "geographical" sector in the present case.

2002 CAPPRT 037 (APASQ), para. 195

*Limiting sector
appropriate in
circumstances*

The Tribunal agrees that language is an important element of the artistic expression in design, and it would have been preferable for the proposed sector to cover all designers working on a French-language production throughout Canada. Even if, in the Tribunal's view, a sector that includes all designers who work on French-language productions in Canada seems more "functional", the sector proposed by APASQ is not as vast, and APASQ is not prepared to make such a proposal viable.

1997 CAPPRT 024 (ARRQ/UDA/APASQ), para. 105

*Necessity of
having separate
sector for
"metteur en
scène"*

In light of the evidence it has heard, the Tribunal is unable to conclude that metteurs en scène have more interests in common with performers than they do with designers. In fact, the probability that the interests of metteurs en scène differ from those of each of these two groups leads the Tribunal to conclude that it would be more appropriate to create a separate sector for metteurs en scène. The Tribunal recognizes that this conclusion differs from the one it reached in the case of the Canadian Actors' Equity Association (see Decision No. 010, rendered on April 25, 1996), where it determined that stage directors should be included in the same sector as performers. However, the Tribunal notes that, in that case, the applicant established that it had historically represented stage directors and that its scale agreements covered both performers and directors.

1999 CAPPRT 030 (CAEA), para. 28 and 29

*Sector includes
singers in
symphonic
performances of
opera in concert*

If the Tribunal were to accept that the sector definition excluded symphonic performances of an opera as requested by the NAC, it would be accepting that some singers could not be covered by a scale agreement. It has been the constant intention of the Tribunal in defining various sectors to be as inclusive as possible, in the interest of the well-being of all artists.

[...]

[...] the sector definition was meant to include all artists who take part in an operatic work as singers, in whatever form. Singers performing an opera on stage, off stage, or in a pit are within the sector. The lack of theatrical elements including staging, direction, costumes, lighting, sets, props or costumes is irrelevant. The wording of the sector definition is sufficiently broad to encompass singers engaged in symphonic performances of opera in concert.

1995 CAPPRT 001 (UNEQ), para. 9 and 10

Categories of intervenors

Although subsection 26(2) of the *Act* states that “only the artists in respect of whom the application was made, artists’ associations and producers may intervene as of right on the issue of determining the sector that is suitable for bargaining”, it does so “notwithstanding subsection 19(3)”. Similarly, subsection 27(2) which grants only artists in respect of whom the application was made and artists’ associations the right to intervene on the issue of determining the representativity of an artists’ association is also “notwithstanding subsection 19(3)”.

It is the Tribunal’s view that the interaction of 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.

1996 CAPPRT 016 (WGC), para. 5; 1996 CAPPRT 017 (UDA), para. 4; 1997 CAPPRT 021 (RAAV), para. 4

Intervenor as of right

Subsections 26(2) and 27(2) of the *Act* provide that artists’ associations may intervene as of right on the issue of determining the sector that is suitable for bargaining and the representativity of the applicant.

Producers intervenors as of right with respect to sector only

1996 CAPPRT 016 (WGC), para. 6; 1997 CAPPRT 021 (RAAV), para. 5

Subsection 26(2) of the *Act* provides that producers may intervene as of right on the issue of determining the sector that is suitable for bargaining. Producers may not intervene as of right on the issue of the representativity of an artists’ association.

History of professional relations

1996 CAPPRT 010 (CAEA), para. 20

The Tribunal is of the opinion that there is indeed a community of interest between dancers and other professionals who engage in live theatrical performances. The *Status of the Artist Act* also directs the Tribunal to take into account the history of professional relations among the artists, their associations and producers when determining the suitability of a sector for bargaining. However, the Tribunal is also mindful that if progress is to be made in achieving the objectives of this new *Act*, and particularly in improving the compensation paid to artists for their work, it may sometimes be necessary to go beyond the limits of historical professional relations. The applicant has demonstrated that it has experience in representing dancers, although in a somewhat more limited sphere than they are seeking in this application. The Tribunal therefore finds it is appropriate to include dancers engaged by producers subject to the *Status of the Artist Act* within the scope of the sector.

<i>Entire history of professional relations relevant</i>	<p>2002 CAPPRT 037 (APASQ), para. 182</p> <p>In applying this criterion, the Tribunal looks at the whole of the association's activities in order to determine its entire history of professional relations. It does not rely solely on the existence of scale agreements. In addition, the history of professional relations is based not only in terms of the relationship between artists' associations and producers, but also as between artists and the associations, and as among the artists themselves.</p> <p>The evidence demonstrates that the artistic skills required in order to be a designer or other off-stage participant are the same, and that these artists work in theatre, opera, dance and variety entertainment.</p>
<i>History of professional relations</i>	<p>2002 CAPPRT 037 (APASQ), para. 205</p> <p>When reviewing an association's history of professional relations, the Tribunal must not only look to the existence of scale agreements, but all types of agreements that the association has negotiated on behalf of the artists it seeks to represent.</p>
<i>History of professional relations</i>	<p>2003 CAPPRT 043 (CGFC), para. 48</p> <p>The evidence clearly indicates that there is a long history of professional relations between the GCFC, its members, producers and other organizations. Although no scale agreements were filed with the Tribunal, the GCFC has developed a "contract recipe" available to members on its website. Artists and producers can amend the terms of the "contract recipe" to meet their needs. The GCFC filed agreements that indicate that it maintains professional relations with other organizations such as the Songwriters Association of Canada, the AFM, SOCAN, and SODRAC.</p>
<i>History of professional relations</i>	<p>2003 CAPPRT 044 (DGC), para. 51</p> <p>Detailed evidence was presented at the hearing regarding the DGC's history and in particular its record in representing the interests of directors and assistant directors. The DGC's representation dates back to the early 1960s and touches on an extensive array of interests from labour relations proper, to training, copyright issues and government policy in the arts. Several scale agreements have been negotiated with Canadian and even foreign producers. Consequently, the Tribunal finds there is a long and important history of professional relations in the proposed sector.</p>
<i>Community of interest</i>	<p>1997 CAPPRT 019 (AFM), para. 20</p> <p>Vocalists, for the purposes of this application, are those musicians who both play an instrument and sing. The AFM informed the Tribunal that it is seeking to represent only those singers who accompany themselves on a musical instrument. It has entered into agreements with the Canadian Actors' Equity Association, ACTRA Performers Guild and Union des Artistes that describe the respective jurisdictions of these organizations in this</p>

regard. The Tribunal is of the view that musicians who may sing while playing a musical instrument have a community of interest with other instrumental musicians, and therefore, to the extent that these professionals are not already represented by an artists' association certified by the Tribunal, they should be included in the same sector as other musicians.

1997 CAPPRT 024 (ARRQ/UDA/APASQ), para. 128

Community of interest of choreographers

With respect to those independent choreographers who may be engaged by producers subject to the *Status of the Artist Act*, the Tribunal is of the view that the administrative and supervisory responsibilities they undertake, while important, are of secondary importance to their artistic responsibilities. In these instances, it is the producer, or the director, who has the ultimate responsibility for the engagement, discipline and dismissal of the performers. Accordingly, the Tribunal finds that the level of supervisory responsibility exercised by an independent choreographer in these circumstances is not sufficient to warrant excluding them from a sector that includes dancers and other performers. Moreover, because choreographers have a demonstrable community of interest with dancers and other performers, the Tribunal concludes that it is appropriate to include them in the same sector as performing artists.

2002 CAPPRT 037 (APASQ), para. 173 and 175

Set and costume designers share community of interest with their respective assistants

Paragraph 18(a) of the *Act* provides that the Tribunal shall take into account the applicable principles of labour law. As the intervenors indicated, one of these principles states that individuals who occupy management positions and the individuals they supervise not be included the same bargaining unit.

[...]

In this case, the relationship between set and costume designers and their respective assistants bears more resemblance to the relationship between a conductor and his or her musicians than to the relationship between a stage director and the performers or designers. The stage director is the "maître d'oeuvre" of the production, while the designer is not. The administrative duties are primarily the producer's responsibility, not the designer's. Set and costume designers and their assistants contribute in a collaborative manner to the creative aspects of a production, and in most cases they report to the same person. The Tribunal therefore concludes that they share a community of interest and that it is appropriate to include them in the same bargaining sector.

2002 CAPPRT 037 (APASQ), para. 177 and 178

Stage managers and assistant stage directors share community of interest

The evidence shows that a stage manager must be familiar with the work carried out by each member of the production team, allowing him or her to be the liaison between the stage director and this team. The assistant director assists the stage director from the start of the project to opening night, and contributes to the development and finalizing of the staging. In practice, the assistant stage director often becomes the stage manager of the production.

The Tribunal is satisfied that the individuals who occupy the positions of stage manager

and assistant stage director share a sufficient community of interest with designers to include them in a single bargaining sector.

2003 CAPPRT 041 (APVQ-STCVQ), para. 432

Community of interest

In the present case, the evidence shows that individuals working on a film set must form close-knit teams to carry out the project successfully, and that each of these teams is essential to the production. Furthermore, the evidence indicates that management responsibilities primarily lie with the producer and/or director. Consequently, we find that it is appropriate to include designers and creators in the same bargaining sector as the other artists covered by the *Regulations*, since all these individuals really do have common interests.

2003 CAPPRT 043 (CGFC), para. 47

Authors, composers and author-composers share community of interest

There are common interests between authors, composers and author-composers, as they are recognized, throughout the world in copyright legislation, as being primary artistic creators. Like authors, composers and author-composers tell stories with music. This group of artists, compared to other artists, share the same distinctive characteristics in their work which requires a similar degree of creativity. They also share similar working conditions. Accordingly, it is our view that there exists a strong community of interests among the artists in the proposed sector.

2003 CAPPRT 044 (DGC), para. 50

Directors and assistant directors share community of interest

Directors and assistant directors work in a constant collaborative effort, one acting as the "right hand" of the other in the implementation of an artistic vision. The work of the assistant director also serves in many cases as a stepping stone to becoming a director, namely through the direction of background performers and of a second unit in a production. These elements establish a strong community of interest between assistant directors and directors.

2004 CAPPRT 048 (CAEA & NCC), para. 35

Community of interest between actors et al. and master of ceremonies

The NCC submitted that masters of ceremonies do not share a community of interest with the artists in Equity's sector. We would agree that someone engaged to act as master of ceremonies or toastmaster at a conference or a private social event may not share a community of interest with the artists in Equity's sector. Furthermore, as discussed in paragraph 19 above, we have indicated that the *Act* applies only to those artists deemed to be "professionals" as defined in paragraph 18(b) of the *Act* and we have found that Mr. Girard clearly falls within that category. Consequently, we find that masters of ceremonies and the other artists included in Equity's sector share a community of interest.

2007 CAPPRT 052 (AFM), para. 30

Sector normally

The AFM is correct in saying that no other association has been certified to represent only

*includes all
artists*

its own members. The Tribunal has stated in the past that:

In order to allow as many artists as possible to enjoy the benefits of the Status of the Artist Act, the Tribunal prefers sector definitions that include all artists in a given discipline, as opposed to definitions that include only the members of an association. (1997 CAPPRT 020 (GMO), para. 36)