

27. REPRESENTATIVITY OF AN ASSOCIATION	27. DÉTERMINATION DE LA REPRÉSENTATIVITÉ
<p>(1) After determining the sector pursuant to subsection 26(1), the Tribunal shall determine the representativity of the artists' association, as of the date of filing of the application for certification or as of any other date that the Tribunal considers appropriate.</p> <p>(2) Notwithstanding subsection 19(3), only artists in respect of whom the application was made and artists' associations may intervene as of right on the issue of determining the representativity of an artists' association.</p>	<p>(1) Une fois le secteur défini, le Tribunal détermine, à la date du dépôt de la demande ou à toute autre date qu'il estime indiquée, la représentativité de l'association d'artistes.</p> <p>(2) Les artistes visés par la demande et les associations d'artistes peuvent intervenir devant le Tribunal, sans l'autorisation visée au paragraphe 19(3), sur toute question liée à la détermination de la représentativité.</p>

CORRESPONDING SECTIONS:

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

Issues to be determined

1995 CAPPRT 001 (UNEQ), para. 8; 1995 CAPPRT 002 (SARDeC), para. 8

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 proceedings as an inquiry or investigation process, leading to the required determinations.

Representation vote

1997 CAPPRT 024 (ARRQ/UDA/APASQ), para. 111

Each association submitted its membership list in support of its position that it is most representative of the *metteurs en scène* in the sector proposed in its application. However, the sector that the Tribunal has found to be suitable for bargaining in the instant case, described above, differs from the sectors proposed by the two applicants. Under the circumstances, the Tribunal concludes that it cannot rely solely on the membership lists to determine representativeness and that there should be a representation vote so that the artists themselves can decide which association should represent them.

<i>Determination of association's representativity</i>	<p>1998 CAPPRT 027 (UDA), para. 10 to 13</p> <p>In circumstances such as the present case, where there are two artists' associations that have applied to represent the same artistic sector, the Tribunal must carefully reflect on the factors that it will consider when determining whether it is satisfied that either one of them is the "most representative" of artists in the sector that it has found to be suitable for bargaining.</p> <p>Clearly, the test is not that which is used in traditional labour relations, where an applicant for certification must demonstrate that it represents a majority of the employees in the bargaining unit (for example, 50% + 1). Had Parliament wished to impose this criteria, it would have included in the <i>Status of the Artist Act</i> provisions analogous to sections 28 to 31 of the <i>Canada Labour Code</i> (R.S.C. 1985, c. L-2, as am.). It did not.</p> <p>Nevertheless, the Tribunal must consider a number of the traditional factors used in any democratic system. Among the factors that the Tribunal believes it is appropriate to consider are the overall size of the sector, the total number of votes cast and the number of votes cast for each applicant for certification.</p> <p>The Tribunal is of the view that Parliament left it with significant discretion to determine representativeness in recognition of the fact that, when dealing with independent contractors, it is often difficult if not impossible to determine the exact size of a sector.</p>
<i>Categories of intervenors</i>	<p>1995 CAPPRT 001 (UNEQ), para. 9 et 10</p> <p>Although subsection 26(2) of the <i>Act</i> 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)".</p> <p>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.</p>
<i>Artists' association intervenor as of right</i>	<p>1996 CAPPRT 016 (WGC), para. 5; 1996 CAPPRT 017 (UDA), para. 4; 1997 CAPPRT 021 (RAAV), para. 4</p> <p>Subsections 26(2) and 27(2) of the <i>Act</i> 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.</p>
<i>Representativeness is a matter between artists in sector and artists' association</i>	<p>1996 CAPPRT 008 (AFM), para. 24</p> <p>The <i>Status of the Artist Act</i> does not provide producers with a statutory right to make submissions regarding the representativeness of an applicant for certification (see subsection 27(2)). In the Tribunal's view, representativeness should be a matter between the applicant artists' association and the individual artists in the sector determined by the Tribunal to be suitable for collective bargaining.</p>