

28. CERTIFICATION	28. ACCRÉDITATION
<p>(1) Where the Tribunal is satisfied that an artists' association that has applied for certification in respect of a sector is the most representative of artists in that sector, the Tribunal shall certify the association.</p> <p>(2) Certification is valid for a period of three years after the date that the Tribunal issued the Certificate and, subject to subsection (3), is automatically renewed for additional three year periods.</p> <p>(3) Where, in the three months immediately before the date that the certification or renewed certification of an artists' association is to expire, an application for certification in respect of the same or substantially the same sector, or an application for revocation of certification, is filed, the period of validity of the association's certification is extended until the date that the application is accepted or rejected and, where it is rejected, renewal of the association's certification takes effect from that date.</p> <p>(4) The Tribunal shall keep a register of all certificates that it issues and of their dates of issue.</p> <p>(5) After certification of an artists' association in respect of a sector,</p> <p>(a) the association has exclusive authority to bargain on behalf of artists in the sector;</p> <p>(b) the certification of any association that previously represented artists in the sector is revoked in so far as it relates to them; and</p> <p>(c) the association is substituted as a party to any scale agreement that affects artists in the sector, to the extent that it relates to them, in place of the association named in the scale agreement or its successor.</p>	<p>(1) Le Tribunal délivre l'accréditation s'il est convaincu que l'association est la plus représentative du secteur visé.</p> <p>(2) L'accréditation est valable pour trois ans à compter de sa délivrance et, sous réserve du paragraphe (3), est renouvelable automatiquement, une ou plusieurs fois, pour la même période.</p> <p>(3) Le dépôt, dans les trois mois précédant l'expiration de l'accréditation ou de son renouvellement, d'une demande d'annulation ou d'une autre demande d'accréditation visant le même ou sensiblement le même secteur emporte prorogation de l'accréditation jusqu'à ce que le Tribunal statue sur la demande, le renouvellement ne prenant effet, en cas de rejet de celle-ci, qu'à la date de décision.</p> <p>(4) Le Tribunal tient un registre des accréditations avec mention de leur date de délivrance.</p> <p>(5) L'accréditation d'une association d'artistes emporte :</p> <p>a) le droit exclusif de négocier au nom des artistes du secteur visé;</p> <p>b) révocation, en ce qui les touche, de l'accréditation de toute autre association;</p> <p>c) dans la mesure où ils sont visés, substitution de l'association - en qualité de partie à l'accord-cadre - à l'association nommément désignée dans celui-ci ou à son successeur.</p>

CORRESPONDING SECTIONS:

<b>SAA:</b>	28(1)	<b>CLC:</b>	28	<b>PSLRA:</b>	64(1)(a)
	28(2)		-		-
	28(3)		-		-
	28(4)		-		-
	28(5)		36(1), (a), (b), (c)		67, 68

COMMENTARY:

The certification register referred to in subsection 28(4) is available to the public on the Tribunal’s web site at [www.capprt-tcrpap.gc.ca](http://www.capprt-tcrpap.gc.ca) .

JURISPRUDENCE:

1998 CAPPRT 027 (UDA), para. 10 to 13

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.

*Determination of association’s representativity*

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 *Status of the Artist Act* provisions analogous to sections 28 to 31 of the *Canada Labour Code* (R.S.C. 1985, c. L-2, as am.). It did not.

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.

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.[...]

1996 CAPPRT 005 (UNEQ), para. 35 to 37

*Tribunal will not prescribe matters that are the subject of bargaining*

It is clear that the Canadian Artists and Producers Professional Relations Tribunal does not have the power to confer rights which are within the jurisdiction of the Copyright Board. The right to bargain conferred as a consequence of the Tribunal’s certification of an artists’ association is the only right which is contemplated by the *Status of the Artist Act*.

What is included in this right to bargain? Subsection 31(1) of the *Act* states that the purpose of bargaining is to enter into a scale agreement. A scale agreement is defined as

“an agreement in writing between a producer and an artists’ association respecting minimum terms and conditions for the *provision of artists’ services and other related matters*”. [Our emphasis]

In these early stages of collective bargaining on behalf of artists who are independent contractors, the Tribunal is not inclined to begin defining or limiting the subjects that can be included in the category of “matters related to the provision of artists’ services”. In our view, it would be unacceptable to divide the provision of services from the use of the work. A producer who commissions a work must be able to use or disseminate the work for which he or she has paid.

1996 CAPPRT 005 (UNEQ), para. 40

*Potential conflict between the SAA and the Copyright Act*

The Tribunal is not convinced that it is appropriate, at this time, to define or limit the exclusive authority resulting from the determination of a sector under the *Status of the Artist Act*. As we stated in interim decision #001 dated December 8, 1995, “there is no necessary conflict between the provisions of the *Status of the Artist Act* and those of the *Copyright Act*.” We are certain that if an artists’ association were to try, without the necessary authorization, to appropriate the exclusive rights held by a body mandated by the Copyright Board, that transgression would be brought to the Tribunal’s attention by way of a complaint.

1997 CAPPRT 023 (CMAQ), para. 11

*Certification grants exclusive authority to association*

When the Tribunal grants certification to an artists’ association, this association obtains the exclusive right to bargain on behalf of all artists in the sector with producers under federal jurisdiction. Consequently, there must not be any overlap between bargaining sectors.

1998 CAPPRT 026 (CMAQ), para. 23

*Sector usually includes all artists*

[...] 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, [...]

2000 CAPPRT 031 (GCM/PACT), para. 62

*Sector usually includes all artists*

PACT/CMG says that the background performers covered by ACTRA’s certificate are not the same as the ones covered by its application for certification - it states that background performers covered by ACTRA’s certificate are limited to those background performers who are members of ACTRA. This is not a valid position. The certificate held by ACTRA is not limited to ACTRA members. When the Tribunal certifies an artists’ association, it normally does so for all artists in the sector, not just for members of the association; exceptions rarely occur, [...]

<i>Interests of non-members must be protected</i>	<p>1998 CAPPRT 026 (CMAQ), para. 28</p> <p>The Tribunal nevertheless wishes to point out that certification to represent all the artists in a sector imposes on the certified association the obligation to negotiate scale agreements with producers in the federal jurisdiction that establish minimum terms and conditions for the provision of services. The association is required to protect the interests of non-members as well as members.</p>
<i>The exclusive authority to bargain</i>	<p>2006 CAPPRT 050 (Petch), para. 57</p> <p>The duty of fair representation exists as a counterpart to the artists' association exclusive authority to bargain on behalf of artists in that sector. When the Tribunal certifies an artists' association, the association becomes the exclusive representative of artists in that section with their relations with producers.</p>