



Procedural Regulations

The Tribunal is considering developing regulations

In February 1999, the Tribunal published the third edition of the *Tribunal Procedures*, a plain language guide to its procedures. This document describes the steps to be followed in a variety of circumstances, including applications for certification, applications for revocation, applications for determinations or declarations, and complaints to the Tribunal.

Under the *Status of the Artist Act*, the Tribunal has the power to make procedural regulations. The Tribunal is considering developing such regulations in order to give its procedures the force of law. The *Tribunal Procedures*, a copy of which may be obtained on the Tribunal's web site or by contacting the Tribunal, will serve as the basis for any such procedural regulations. Additionally, the regulations could provide for:

- ➔ the conduct of representation votes,
- ➔ a waiting period for submission by an artists' association of a new application for certification, where a previous application for certification was dismissed,
- ➔ a waiting period for submission by an artist of a new application for revocation of the certification of an artists' association, where a previous application for revocation was dismissed, and
- ➔ delegation of power and duties of the Tribunal.

The Tribunal invites artists, artists' associations and producers to provide any comments they may have no later than February 28, 2001. ♦

Tribunal decisions

The Tribunal rendered decisions regarding two applications: the first dealt with an application for review filed by the National Film Board of Canada (NFB) and the second with an application for certification filed by the Canadian Media Guild on behalf of the Professional Association of Canadian Talent (PACT/CMG).

On September 27, 2000, the NFB filed an application for review of the decision rendered July 28, 2000, amending the Société des auteurs de radio, télévision et cinéma's (SARTEC) sector. The Tribunal agreed to reconsider its decision. A notice was published in December 2000 with a closing date of January 31, 2001 for those wishing to file written representations.

On March 31, 2000, PACT/CMG filed an application for certification to represent background performers. The Alliance of Canadian Cinema, Television and Radio Artists filed a preliminary objection to the application on the grounds it held bargaining rights for background performers. After hearing the parties, the Tribunal dismissed PACT/CMG's application. Complete reasons for decision (Decision No. 031) will be available on the Tribunal's web site at <http://homer.ic.gc.ca/capprt> shortly. ♦

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Status of the Artist Act

An overview of the bargaining process

This article provides an overview of the bargaining process under the *Status of the Artist Act*, from the issuing of a notice to bargain to the conclusion of a scale agreement. Information is included on what pressure tactics may be applied if necessary during negotiations and when a complaint for bad faith bargaining may be filed.

Issuing a Notice to Bargain

Under section 31 of the *Act*, a certified artists' association or a producer can issue the Notice to Bargain. It will usually consist of a letter. There are no set requirements in the *Act* as to the contents of a Notice to Bargain. It is suggested that the following information be included:

- ➔ name of the organization issuing the Notice;
- ➔ copy of the Certification Order issued by the Tribunal;
- ➔ provision under which the Notice is being issued (section 31 of the *Status of the Artist Act*, S.C. 1992, c. 33);
- ➔ indication of the steps the Recipient is expected to take (for example, they should phone you, you will phone them or you expect a response by a specified date).

A copy of the Notice to Bargain must be sent to the Minister of Labour. It is suggested that a copy also be sent to the Tribunal Secretariat.

Meeting to bargain

Pursuant to section 32 of the *Act*, the parties must meet within 20 days of the issuance of the Notice to Bargain or at a mutually agreed-upon later date.

If there is no response to the Notice to Bargain, the party who issued the Notice should take additional steps to engage negotiations. Such steps could include follow up phone calls or letters. These efforts are important if a complaint alleging failure to bargain in good faith is filed at a later date. In that case, a party must be able to demonstrate that reasonable efforts were made to enter into negotiations. The determination of what constitutes "reasonable efforts" is made on a case by case basis.

Once the parties have determined how they intend to proceed with bargaining, meetings will be held and negotiations will begin. Parties must negotiate in good faith, that is, they must negotiate with the purpose of entering into a scale agreement.

Entering into an agreement

When the parties reach an agreement, a copy must be filed with the Minister of Labour pursuant to section 33 of the *Act*. It is suggested that a copy also be sent to the Tribunal Secretariat. All disputes arising from the interpretation of the agreement must be referred to arbitration pursuant to section 36 of the *Act*.

What to do when problems arise ?

In the course of negotiations, problems may arise that could lead to a breakdown in bargaining. If this occurs, parties have various options, including the following. One or both parties may:

- ➔ ask the Minister of Labour to appoint a mediator, or
- ➔ file a complaint if it is believed that there is failure to bargain in good faith and/or
- ➔ use pressure tactics.

Requesting assistance from the Minister of Labour

Under section 45 of the *Act*, the Minister of Labour may name a mediator to confer with parties who are unable to reach agreement and assist them to enter into a scale agreement.

Filing a complaint with the Tribunal

When a party believes that the other has breached the duty to bargain in good faith, the party can file a complaint with the Tribunal pursuant to section 53 of the *Act*. The complaint must be filed within six months. The necessary forms for filing a complaint are available on the Tribunal's web site.

The following are examples of situations where there may be a failure to bargain in good faith:

- ➔ refusing to meet to bargain;
- ➔ refusing to bargain unless certain procedural conditions are met;
- ➔ sending representatives to bargain who do not hold the authority to negotiate;
- ➔ providing misleading or incomplete information;
- ➔ not informing the other party of important decisions that may have a major impact on a sector;
- ➔ seeking agreement to an illegal provision;
- ➔ bargaining to impasse regarding the scope of an association's certification.

The Tribunal may appoint a member or staff to assist the parties to settle the complaint. If the matter is not resolved after a reasonable period, the Tribunal will hold a hearing, and either uphold or dismiss the complaint. If it is upheld, the Tribunal will issue a Remedial Order which can be filed, if necessary for enforcement purposes, in the Federal Court pursuant to section 22 of the *Act*.

Applying pressure tactics

Under section 46 of the *Act*, either party may apply pressure tactics beginning 30 days after a scale agreement expires or six months after certification where there is no scale agreement. Pressure tactics include:

- ➔ artists threatening to refuse to work or refusing to work;
- ➔ work slowdown;
- ➔ producers closing place of work;
- ➔ suspension of a production;
- ➔ refusing to continue an artist's engagement.

The duty to bargain in good faith continues even if pressure tactics are applied. At this point again, if one party believes that the other party has breached the duty to bargain in good faith, it can file a complaint

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The Tribunal Secretariat holds information sessions

In an effort to respond to questions raised with respect to the *Status of the Artist Act* and its negotiation process, the Secretariat recently held an information session for artists' associations in Toronto and a session for government producers in Ottawa. In January, another session for artists' associations will be held in Montreal and another presentation to government producers will be made. The Secretariat is also working on organizing meetings with broadcasters, in addition to a meeting held in June 2000.

By raising the understanding by artists' associations and producers regarding their rights and obligations, the Secretariat hopes to foster constructive relations between the parties.

Judicial review of Decision No. 028

Federal Court of Appeal dismisses application

On November 15, 2000, the Federal Court of Appeal dismissed the Attorney General's application for judicial review of the Tribunal's Decision No. 028. The application for judicial review was in respect of the certification granted to The Writers' Union of Canada (TWUC) on November 17, 1998.

In its application for judicial review, filed December 17, 1998, the Attorney General's challenge was based on the allegation that the Tribunal acted beyond its jurisdiction by declaring the sector suitable for bargaining in a manner which empowers the Association to bargain in respect of pre-existing works.

The Court held that "the Tribunal's jurisdiction was limited to determining whether the sector proposed by the Association was suitable for collective bargaining and did not extend to determining the subject matter of collective bargaining". It upheld the Tribunal's decision since "nothing in the certification order indicates the scope of actual bargaining or whether pre-existing works may be included or excluded, although the Tribunal did make reference to pre-existing rights in its reasons". ♦

Changes at the Tribunal

Renée Caron became the Tribunal's Registrar and Senior Legal Counsel on September 5, 2000. Prior to joining the Tribunal, Ms. Caron was Legal Counsel with the Canada Industrial Relations Board. She brings a vast experience in labour relations. ♦

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with the Tribunal pursuant to section 53 of the Act as described above in this article.

Should you need more information regarding the content of this article, please communicate with the Tribunal Secretariat. This information will also be available on our web site.

Tribunal Secretariat

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*Are you currently
preparing a course or
organizing a conference
on professional relations
in the cultural sector?*

Tribunal personnel
are available to make
presentations regarding the
Status of the Artist Act
and the role, procedures
and activities
of the Tribunal.