

Canadian Artists and Producers  
Professional Relations Tribunal



Tribunal canadien des relations  
professionnelles artistes-producteurs

# Annual Report

**11<sup>th</sup> report**

2004 - 2005



Canadian Artists and Producers  
Professional Relations Tribunal

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Minister of Public Works and Government Services  
Canada 2005  
Cat. No. L-95-2005  
ISBN 0-662-68963-1

Photo on front cover by Andrew Bordwin



June 17, 2005

The Honourable Joseph Frank Fontana  
Minister of Labour and Housing  
Ottawa, Ontario  
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Dear Minister Fontana:

In accordance with section 61 of the *Status of the Artist Act*, I am pleased to submit the annual report of the Canadian Artists and Producers Professional Relations Tribunal for the period April 1, 2004 to March 31, 2005, for tabling in Parliament.

Yours respectfully,

A handwritten signature in black ink, appearing to read 'D. Silcox', with a horizontal line underneath.

David P. Silcox  
Chairperson and Chief Executive Officer



## T A B L E O F C O N T E N T S

1. Members and staff of the Tribunal	1
2. Mandate	2
3. Activities	3
4. Case statistics	6
5. Spending	6
Appendix 1 — Negotiation activity under the Act	7
Appendix 2 — Members' biographies	8
Appendix 3 — Statutory responsibilities	10



# 1. Members and staff of the Tribunal

**David P. Silcox**  
Chairperson and Chief Executive Officer

**Marie Senécal-Tremblay**  
Vice-chairperson

**Lyse Lemieux**  
Member

**John M. Moreau QC**  
Member

**John Van Burek**  
Member

**Josée Dubois**  
Executive Director and General Counsel

**Diane Chartrand**  
Senior Legal Counsel

**François Auger**  
Registrar and Legal Counsel

**Ginette Demeule**  
Scheduling and Hearing Officer

**Lorraine Farkas**  
Director, Planning, Research and  
Communications

**Manon Allaire**  
Administration and Communications Officer

**Gilles Gareau**  
Chief, Administrative Services

**Nancy Lévesque**  
Administrative and Financial Officer

**Michael Fleming**  
Financial Officer

## 2. Mandate

Since 1995, the Canadian Artists and Producers Professional Relations Tribunal (CAPPRT) has administered Part II of the *Status of the Artist Act*, which governs professional relations (labour relations) between self-employed artists and federally regulated producers. The Tribunal is a quasi-judicial, independent federal agency, whose ultimate aim is to encourage constructive professional relations between these parties.

The Tribunal is one of three agencies that regulate labour relations in the federal jurisdiction. The other two are the Canada Industrial Relations Board, which deals with labour relations mainly between private sector employers in the federal jurisdiction and their employees, and the Public Service Labour Relations Board, which deals with labour relations between most federal government institutions and their employees. Under the Canadian Constitution, provincial legislatures are responsible for regulating labour relations between the vast majority of workers and employers. The federal government has the authority to regulate labour relations in a small number of industry sectors which include: broadcasting, telecommunications, banking, interprovincial transportation and federal government institutions.

The Tribunal's jurisdiction covers broadcasting undertakings regulated by the Canadian Radio-television and Telecommunications Commission, federal government departments, and the majority of federal agencies and Crown corporations (such as the National Film Board and national museums).

The self-employed artists within the Tribunal's jurisdiction include artists covered by the *Copyright Act* (such as writers, photographers and music composers), performers (such as actors, musicians and singers), directors, and other professionals who contribute to the creation of

a production, such as those doing camera work, lighting and costume design.

The Tribunal has the following main statutory responsibilities:

- To define the sectors of cultural activity suitable for collective bargaining between artists' associations and producers within CAPPRT's jurisdiction, and to certify artists' associations to represent self-employed artists working in these sectors; and
- To deal with complaints of unfair labour practices and other matters brought forward by artists, artists' associations or producers, and to prescribe appropriate remedies for contraventions of Part II of the *Act*.

By following the procedures specified in the *Act*, certified associations have the exclusive right to negotiate scale agreements with producers. A scale agreement specifies the minimum terms and conditions under which producers engage the services of, or commission a work from, a self-employed artist in a specified sector.



## 3. Activities

This section provides detailed information on case activity during the fiscal year. It also provides summary information on our communications and other kinds of activity. More detailed information on these types of activities and on the challenges the Tribunal faces is available in the Tribunal's *Departmental Performance Report*, issued in the fall.

### 3.1 INTRODUCTION

During the 2004-2005 fiscal year, the Tribunal received five applications, mostly applications for determinations. There were five cases pending from the previous fiscal year. The Tribunal rendered interim decisions in three cases, and final decisions in four cases.

As mentioned in previous reports, certification cases are a decreasing part of the Tribunal's business. It dismissed one application for certification during the fiscal year and currently there are no such cases pending.

Six certifications issued by the Tribunal came up for renewal. Pursuant to subsection 28(2) of the *Act*, a certification is valid for three years. It is automatically renewed for an additional three-year period unless a competing application for certification in respect of the sector, or an application for revocation of certification, is filed within the three months before the expiry of the certification. All six certifications were renewed.

The Tribunal released two publications this year to assist those who are presenting cases to the Tribunal. We released a new version of the *Status of the Artist Act Annotated*. It is accessible only via the Internet, is free of charge and will be updated on an ongoing basis. A new *Guide for Self-represented Parties* is also available only on the Internet.

In May 2004, the Tribunal began celebrating its tenth year. To mark this occasion, we issued a special annual report in which we chart some of the important events in our brief history as well as in the history of labour relations in the arts and culture sector over the last century. We include an overview of how we have been meeting the ongoing challenges of supporting positive relationships among producers and artists in our jurisdiction. Also, we describe how we operate as a model small agency, contributing to the federal government's central goals of effective management, transparency and efficient operations.

Our *Information Bulletins* featured interviews with the Tribunal's three past and current chairpersons on the challenges they faced. We held meetings with certified artists' associations in Montréal and Toronto. We began the planning of similar meetings to be held with government producers and broadcasters in the new fiscal year. The objective is to assist the parties in carrying out successful negotiations.

Tribunal members and staff also made presentations at or simply attended conferences and other meetings. Of note, Tribunal member John Van Burek and executive director Josée Dubois presented an educational skit on the federal *Status of the Artist Act* at the Canadian Conference of the Arts' national policy conference held in Regina on the subject of the status of the artist.

### 3.2 CASE DEVELOPMENTS

The following section presents a summary of the developments during the fiscal year respecting all cases opened during the fiscal year and all cases pending at the end of the previous fiscal year. The Tribunal's *Information Bulletins* provide more detailed information on activity with respect to some cases. All written Reasons for Decisions are available on the Tribunal's Website.

**Union des artistes vs. TVA  
(File No. 1330-02-005)**

In 2002, the Union des artistes filed a complaint pursuant to paragraph 32(a) of the *Status of the Artist Act* alleging that TVA was not bargaining in good faith. In April 2003, the Tribunal granted a request from the parties to suspend a scheduled hearing as they wanted to attempt to reach a settlement. The matter was still pending at the end of the fiscal year.

**London Musicians' Association (American Federation of Musicians of the United States and Canada, Local 279) vs. Rogers Television London Cable 13  
(File No. 1330-03-007)**

In August 2003, the London Musicians' Association (LMA) filed a complaint of failure to bargain in good faith against Rogers Television London, pursuant to paragraph 32(a) of the *Act*. Before a hearing took place on the matter, the Tribunal granted a request from the parties to adjourn the proceeding until further notice, as they wanted to conduct negotiations. Subsequently, the parties reached a settlement and signed a first scale agreement, and the LMA withdrew its complaint in September 2004.

**Stephen H. Petch vs. the Writers Guild of Canada (WGC)  
(File Nos. 1330-04-001 and 1340-04-002)**

A complaint was filed by Mr. Stephen H. Petch, a writer, against the WGC alleging that the WGC breached section 35 of the *Status of the Artist Act* respecting an artists' association's duty of fair representation. Mr. Petch also filed an application pursuant to subsection 33(5) of the *Act* seeking a declaration that the terms of certain of his contracts with the Canadian Broadcasting Corporation (CBC) are more favourable than those provided under the agreement between the WGC and the CBC.

The WGC brought a motion to dismiss the complaint alleging that a *prima facie* case of the breach has not been made and that the com-

plaint was not made in a timely fashion. The case was pending at the end of the fiscal year.

**Independent Media Arts Alliance  
(IMAA)  
(File No. 1310-02-004)**

The IMAA filed an application for certification with the Tribunal to represent "a sector composed of independent artists in the media arts, an independent media art work being a film, video, new media or audio art creation, on any format and/or device of presentation envisioned, over which the creator maintains complete editorial and artistic control up to the final version." The IMAA is composed of 81 organizations, representing more than 10,000 media artists across Canada, working in film, video, new media, audio art and web art.

The Tribunal had to determine as a first matter whether the IMAA is either an artists' association or a federation of artists' associations for the purpose of section 5 of the *Act*. Pursuant to subsection 19(6), the Tribunal's Chairperson appointed the Vice-chairperson to study the matter. After meeting with the IMAA, the Vice-chairperson prepared a detailed report of her findings, in which she concluded that based on the information received from the IMAA, the IMAA as currently constituted did not meet the requirements of the *Act* to seek certification as a federation of artists' associations. In August 2004, a Tribunal panel dismissed the IMAA's application for certification.

**Referral for determination by David  
H. Kates, arbitrator  
(File No. 1340-03-002)**

A dispute arose between the Canadian Actors' Equity Association (CAEA) and the National Capital Commission (NCC) about whether Dominic Girard, a person engaged by the NCC as master of ceremonies for the 2003 Winterlude Opening Ceremonies was an artist subject to the scale agreement between the parties. The dispute was referred to arbitration in

accordance with the scale agreement provisions. Because it concerned the applicability of a scale agreement to a particular artist, the arbitrator referred the question to the Tribunal for determination, pursuant to section 41 of the *Act* in September 2003. In April 2004, the Tribunal issued Decision 2004 CAPPRT 048 in which it found that master of ceremonies is a function covered under CAEA's certification order and, consequently, Dominic Girard is a performer covered by the scale agreement.

**Canadian Broadcasting Corporation (CBC) vs. Writers' Guild of Canada (WGC) (File No. 1340-03-001)**

In February 2003, the CBC filed an application for a declaration of illegal pressure tactics carried out by the Writers' Guild of Canada. In May 2003, the Tribunal granted the CBC's request to hold the application in abeyance so that the parties could attempt to settle the issue themselves. In February 2005, the Tribunal granted the CBC's request to withdraw its application.

**Canadian Broadcasting Corporation (CBC) (File No. 1350-05-001)**

The CBC filed an application for review of the Tribunal's decision to allow the withdrawal of its application for declaration of illegal pressure tactics (File No. 1340-03-001). Among other things, the CBC argues that the Tribunal did not have the power to allow the withdrawal of its application in a different manner than that contemplated in its letter to the Tribunal. The CBC had asked that the record indicate the withdrawal as being "without prejudice". The Tribunal allowed the withdrawal but declined to qualify it as being without prejudice. The matter was still pending at the end of the fiscal year.

**Alliance québécoise de l'image et du son (AQTIS) (File No. 1340-04-001)**

AQTIS is the result of a merger between the Syndicat des techniciennes et des techniciens du cinéma et de la vidéo du Québec (STCVQ) and the Association des professionnelles et professionnels de la vidéo du Québec (APVQ). In an application filed in November 2004, AQTIS asked the Tribunal to determine that as a result of the merger, AQTIS is the successor to the federation consisting of the APVQ and the STCVQ pursuant to section 30 of the *Act*, and that as a consequence AQTIS would succeed the Federation as the certified association in the certification granted by the Tribunal in Decision 2003 CAPPRT 041. In February 2005, the Tribunal rendered Decision 2005 CAPPRT 049 granting AQTIS' application.

**Referral for determination by Marc Boisvert, arbitrator (File No. 1340-04-003)**

In November 2004, an arbitrator referred a question to the Tribunal pursuant to section 41 of the *Status of the Artist Act*. The arbitrator asked the Tribunal to determine whether the persons performing the duties of host of the television show *La Vie à Québec* are artists and independent contractors pursuant to the *Act*. The parties to the arbitration — Union des Artistes and TVA — and the Syndicat des employés(es) de CFCM-TV (Canadian Union of Public Employees, local 2252), intervenor, were granted an extension for filing written submissions to the Tribunal until June 30, 2005.

## 4. Case statistics

All files <sup>1</sup>	1995 1996	1996 1997	1997 1998	1998 1999	1999 2000	2000 2001	2001 2002	2002 2003	2003 2004	2004 2005	Annual average <sup>2</sup>
Brought forward from previous fiscal year	n/a	18	15	14	11	11	8	7	7	5	11
New applications received	22	10	6	1	3	3	7	6	7	5	7
Days of hearings held <sup>3</sup>	8	20	9	6	2	16	12	12	10	6	10
Interim decisions rendered	7	2	2	0	1	8	8	2	5	3	4
Final decisions rendered	3	10	6	4	1	3	5	4	8	4	5
Cases withdrawn	1	3	1	0	2	3	3	2	1	2	2
Renewals	n/a	n/a	n/a	2	11	3	5	11	3	6	6
Pending at fiscal year end	18	15	14	11	11	8	7	7	5	5	10

*1 Includes complaints and applications for certification, for review of decisions or orders, for determinations or declarations and for consent to prosecute*

*2 Average over 10 years except for the years where it is indicated n/a (non-applicable)*

*3 Includes public hearings and paper hearings*

## 5. Spending

	2004-2005	2003-2004
Operating expenditures	\$426,640	\$502,678
Salaries, wages and other personnel costs	\$900,317	\$939,139
Total spending	\$1,326,957	\$1,441,817
Unspent*	\$513,043	\$347,183
Total allocation	\$1,840,000	\$1,789,000

*\*Returned to the Consolidated Revenue Fund of the government*

## Appendix 1 — Negotiation activity under the Act

### Notices to bargain

A list of notices to bargain sent between April 1, 2004 and March 31, 2005, copies of which were provided to the Tribunal, is found below.

<b>Artists' Associations</b>	<b>Producers</b>	<b>First*</b>
ACTRA Performers Guild	Canadian Broadcasting Corporation (Radio)	No
	Canadian Broadcasting Corporation (Television)	No
American Federation of Musicians of the United States and Canada	National Arts Centre (in-house)	No
Association des professionnels des arts de la scène du Québec	Théâtres Associés Inc.	No
Canadian Actors' Equity Association	National Arts Centre (Orchestra)	No
Société des auteurs de radio, télévision et cinéma	Société Radio-Canada	No
	TVOntario	No
Société professionnelle des auteurs et des compositeurs du Québec	Société Radio-Canada	No

*\*Indicates if the notice to bargain is for a first scale agreement*

### Scale agreements concluded

A list of scale agreements concluded between April 1, 2004 and March 31, 2005, copies of which were provided to the Tribunal, is found below.

<b>Artists' Associations</b>	<b>Producers</b>	<b>First*</b>
ACTRA Performers Guild	National Film Board of Canada	No
	Saskatchewan Communications Network	Yes
American Federation of Musicians of the United States and Canada	Rogers TV (London)	Yes
Canadian Actors' Equity Association	National Arts Centre (Orchestra)	No
	National Arts Centre (Special events)	Yes
Société des auteurs de radio, télévision et cinéma	Groupe TVA inc.	No
	TQS inc.	No
Union des artistes	National Film Board of Canada	No
	Télévision Quatre-Saisons - CFAP-TV Québec	No
	Théâtres Associés Inc. (Stage directors)	Yes

*\*Indicates whether it is a first scale agreement between the parties*

## Appendix 2 — Members' biographies



### **David P. Silcox**

Toronto, Ontario

David P. Silcox has been a part-time member of the Tribunal since December 1995 and was appointed chairperson and chief executive officer on March 1, 1998.

Mr. Silcox has an M.A. from the University of Toronto and an honorary Doctorate from the University of Windsor. He is a Senior Fellow of Massey College.

As a writer, Mr. Silcox is the author of *Painting Place*, the biography of David B. Milne, co-author of the Milne catalogue raisonné and co-author of a major book on the painter Tom Thomson. His most recent book is *The Group of Seven and Tom Thomson*. Before being appointed head of Sotheby's Canada in 2001, Mr. Silcox was the Director of the University of Toronto Art Centre.

Mr. Silcox has extensive experience in cultural portfolios at the federal, provincial and municipal levels. He served as Assistant Deputy Minister (Culture), federal Department of Communications, and as Deputy Minister, Culture and Communications, Ontario. He has served as a member of numerous boards and commissions in the cultural sector, including as a board member and chairman of Telefilm Canada, and is still an active member in several cultural organizations.



### **Marie Senécal-Tremblay**

Montreal, Quebec

Marie Senécal-Tremblay has been a part-time member of the Tribunal since March 2001 and vice-chairperson since April 2002. She

holds a Bachelor of Social Sciences Degree in Sociology (1978) and a Bachelor of Laws from the University of Ottawa (1982). She has been a member of the Law Society of Upper Canada since 1984.

From 1991 to 1997, she was senior legal counsel at Canadian Pacific Limited working principally in the area of federal labour and employment law.

Actively interested in the arts and culture, Ms. Senécal-Tremblay has worked with organizations such as Héritage Montréal, the Montréal Museum of Fine Arts and the Montreal Children's Museum project. Since 2000, she has been a board member of the Drummond Foundation.



### **Lyse Lemieux**

Vancouver, British Columbia

Lyse Lemieux was appointed a part-time member of the Tribunal in April 2002. Ms. Lemieux is a visual artist with extensive

experience in the field of arts and culture. In addition to her experience in gallery management, her artistic work has been exhibited in Canada and Europe and is held in corporate and private collections.

Ms. Lemieux also worked for the Canadian Broadcasting Corporation for many years, where she produced numerous radio programs. She was assistant producer for the national French radio program *Le Monde à Lanvers* for which she won the 1999 French radio award *Meilleure création radiophonique*.



**John M. Moreau**  
**QC**

Calgary, Alberta

John M. Moreau has been a part-time member of the Tribunal since March 2001. He holds a B.A. (1973) and a Bachelor of Laws (1974) from the University of Alberta. He has been a member of the Law Society of Alberta since 1975. From 1977 to 1998, he was a partner at the law firm of Moreau, Ogle & Hursh. Mr. Moreau has been a full-time arbitrator and mediator since 1998.

Mr. Moreau has been a member of the National Academy of Arbitrators since 1994 and was appointed Queen's Counsel in 2001. He is the author of many conference and seminar papers. Involved in his community, Mr. Moreau was the president of the Association canadienne-française de l'Alberta from 1995 to 1997. Since 1992, he has been president of the Robert Spence Foundation.



**John Van Burek**  
Toronto, Ontario

John Van Burek has been a part-time member of the Tribunal since May 2002. Mr. Van Burek obtained a B.A. from the Saint Anselm College in Manchester, New Hampshire,

an M.A. from the University of New Brunswick and a Bachelor of Education from the University of Toronto.

Mr. Van Burek has been active in the cultural sector for many years, serving as a theatre director, teacher and translator. He founded the Théâtre français de Toronto where he was artistic director for two decades, and the Pleiades Theatre, which he currently runs as Artistic Producer. He has directed more than 90 productions from a variety of repertoires in Canada, the U.K. and France. Mr. Van Burek has taught at many theatre schools. He has translated numerous plays and is the co-translator of most of Michel Tremblay's plays into English.

## Appendix 3 — Statutory responsibilities

### **The *Status of the Artist Act* requires or permits the Tribunal to undertake the following activities:**

1. pass by-laws governing the conduct of its affairs [subs.11(2)];
2. hold meetings or proceedings of the Tribunal at such times and locations in Canada as it considers desirable [subs.13(2)];
3. make regulations of general application which it considers conducive to the performance of its duties [s.16];
4. make interim orders [subs.20(2)];
5. rescind or amend determinations or orders and rehear applications [subs.20(1)];
6. file a copy of its order or determination in the Federal Court for purposes of enforcement [s.22];
7. review by-laws of artists' associations [s.23];
8. receive copies of membership lists filed by associations of producers [s.24];
9. receive applications for certification from artists' associations pursuant to s.25 and provide public notice of the application;
10. determine the appropriateness of sectors for collective bargaining [s.26];
11. determine whether an artists' association is representative of the sector for which it seeks certification [s.27];
12. certify artists' associations to represent specific sectors [s.28];
13. maintain a register of all certificates issued [subs.28(4)];
14. receive, consider and decide applications for revocation of certification [s.29];
15. determine the rights, duties and privileges acquired by an artists' association following a merger, amalgamation or transfer of jurisdiction [s.30];
16. determine whether contractual conditions are "more favourable" to an artist than those contained in a scale agreement [subs.33(5)];
17. change the termination date of a scale agreement when so requested by the parties [s.34];
18. hear and determine questions referred to it by an arbitrator or arbitration board [s.41];
19. hear and decide on applications for a declaration that the use of pressure tactics is unlawful and prescribe appropriate remedies [ss.47,48,49];
20. hear and decide applications alleging unfair labour practices and prescribe appropriate remedies [ss.53,54];
21. issue consent to prosecute [s.59];
22. establish other offices which it considers necessary [subs.13(1)];
23. prepare and submit an annual report to Parliament through the Minister of Labour regarding activities during the fiscal year [s.61].