



*Cultivating constructive professional relations
in Canada's cultural sector*

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Canadian Artists and Producers
Professional Relations Tribunal



Tribunal canadien des relations
professionnelles artistes-producteurs

Tenth Anniversary Annual Report 2003.2004

Canada

The arts

and culture sector has seen tremendous changes over the last century. From the first cross-Atlantic radio signals and the introduction of musical recordings, cinematography and television, to today's challenges of global competition and technological convergence, these changes have caused artists and producers to adapt and change as well. Today, the Internet and digital technologies have had a powerful impact on broadcasting, the creation and distrib-

ution of film and fine arts, music recording and distribution and the availability of literature. The media and telecommunications industries have become integrated. Increasingly too, consumers are becoming their own producers of art forms like music and film-video.

During these times of rapid change, Canada made and continues to make a distinctive mark among the world's cultures. Canadian works of art and artistic productions are widely recognized, studied, admired and purchased. A diverse and lively community of exceptionally gifted artists and producers, with the talented technical staff that supports them, are taking the country's cultural scene in exciting new directions.

In this context of change, growth and opportunity, artists and producers need to work together to continue to create and deliver successful, innovative works. Through shared effort, Canadian cultural products will continue to earn national and international acclaim.

Canada's *Status of the Artist Act* (the *Act*) offers federally regulated producers and self-employed artists an organized forum in which to address work-related issues and to build effective relationships. The *Act* is one of several ways in which the federal government supports the arts and culture; it recognizes the contribution artists and producers make to Canada's economic and social life, and establishes a set of rules and an adjudicative process for their professional relationship.

By administering the labour relations portion of the *Act*, the Canadian Artists and Producers Professional Relations Tribunal (CAPPRT) is an important part of this support system.





CULTIVATING CONSTRUCTIVE PROFESSIONAL RELATIONS
IN CANADA'S CULTURAL SECTOR

Because the arts and culture are always all around us, it is easy to underrate their importance and consequently to underfund and undersupport them. Yet artists and producers play a central role in creating and defining the Canadian identity and spirit. Artists make our lives richer and our society vibrant; they represent Canada on the world stage. Producers bring the works of Canadian artists to light—their entrepreneurial spirit helps the arts and culture to thrive. On a practical level, the cultural sector contributes significantly to the Canadian economy, delivering an estimated \$26 billion in business and providing 740,000 jobs in 2001, according to Statistics Canada.

The average income of Canadian artists has improved over the years, but it has remained below the average income of all workers in Canada despite the higher-than-average level of education among artists. A high proportion of artists are self-employed and do not have the advantages enjoyed by other Canadians who are employees; they do not receive employment insurance or training benefits, nor in many cases do they have pension funds.

When artists can earn fair compensation and obtain equitable economic and social status with other Canadian workers, they are more likely to continue their artistic work. This provides producers with a national pool of highly skilled artistic talent. Both groups also need a stable, predictable working environment. This means improved status, wages and working conditions for artists, and an environment in which producers can plan their projects around established terms and conditions for engaging artists.

For nearly a decade, CAPPRT has been dedicated to encouraging constructive labour relations between self-employed artists and producers in Canada's broadcasting and federal public sectors. This work has included defining the cultural sectors that are appropriate for collective bargaining under the *Status of the Artist Act*, certifying artists'

associations to represent these sectors and dealing with complaints and other matters. As new challenges and opportunities arise for Canadian artists and producers, CAPPRT is proud to continue doing its part to help them face these changes together, fairly and equitably.

To celebrate our entry into our tenth year, we are taking this opportunity to look back at our own brief history, and at the history of labour relations in the Canadian arts and culture sector over the last century. We are also providing a detailed overview of how we have met, and will continue to meet, the ongoing challenges of supporting positive relationships among those who comprise this sector. Finally, 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.

I want to thank all the present and former Tribunal members and staff for their dedication and determination, and especially the first Chairperson, Senator Marie-P. Poulin, and her successor, André Fortier. A special thanks is owed to Elizabeth MacPherson, the Tribunal's former Executive Director and General Counsel from 1993 to 1999, who put in place the structures and procedures that opened the way for the artists, artists' associations and producers to use the *Act*, and guided the Tribunal through its early proceedings.

The creation of CAPPRT was Canada's imaginative response to a UNESCO resolution on human rights in the cultural sector. In our first decade we made a worthy start. In the decade ahead, we hope to achieve even more.



A handwritten signature in dark ink, appearing to read 'D. Silcox', written over a horizontal line.

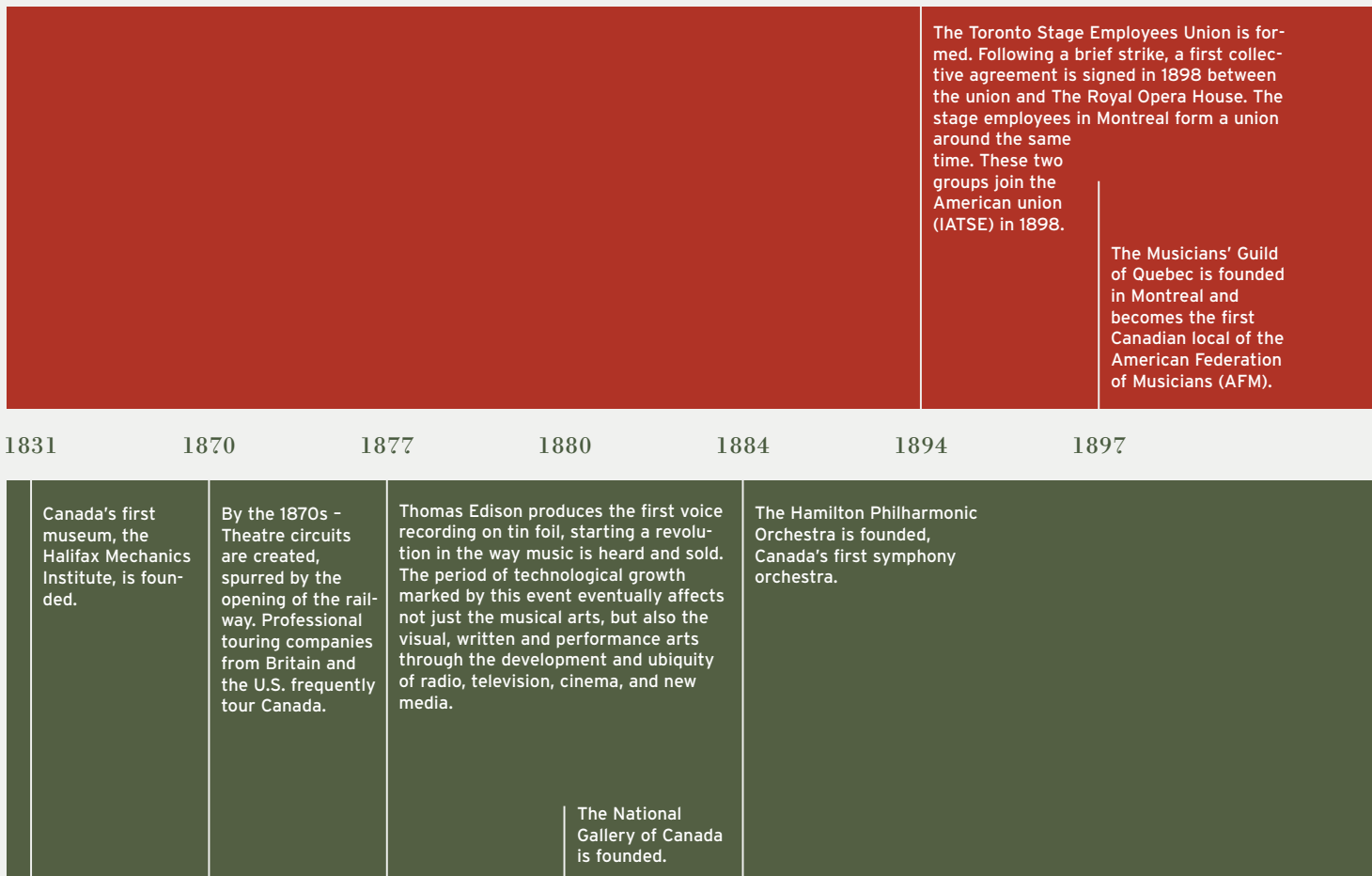
DAVID P. SILCOX
Chairperson

The Arts and Culture Sector: A Historical Perspective

The history of labour relations between artists and producers is intertwined with the history of the struggle of artists, producers and other dedicated Canadians to gain recognition and support for Canadian performing arts, film, literature and the visual arts.

This section looks at some of the pivotal moments in the history of the Canadian arts and culture sector, and the movement of federal and international policy toward legislation that supports positive labour relations among artists and producers.

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The Early Years: Building the Road to Better Working Conditions

The histories of the earliest associations, like the American Federation of Musicians of the United States and Canada (AFM) and the International Alliance of Theatrical Stage Employees (IATSE), reveal the working conditions that drove performers and artists to risk their careers and livelihoods to secure fair working conditions.

Theatre stagehands, the first in the arts and culture sector to organize, often faced hardship and poverty. Wages were poor, and working hours were long and strenuous. Most workers had to hold down second jobs to survive. Theatre work itself came with numerous hazards. Volatile chemicals like ammonia and sulphuric acid, used to create theatrical lighting effects, often caused fatal fires in the poorly ventilated, wood-framed theatres, which were built with little provision for fireproofing or fire escapes.¹

Musicians, who were often on the road, were paid little and often had difficulty collecting their hard-earned wages. And the advent of new technologies, like the movie soundtracks that emerged in the 1920s, resulted in the loss of thousands of jobs. By the 1930s and 40s, as radio began

<p>The AFM changes its name to the American Federation of Musicians of the United States and Canada as interest grows in organizing professional musicians throughout the U.S. and Canada.</p>	<p>The Group of Seven is formed to promote a distinctly Canadian style of painting.</p>						
1900	1901	1906	1913	1918	1920	1922	1924
<p>The first transatlantic wireless signal is sent from England to Newfoundland.</p>	<p>Canadian-born physician Reginald Aubrey Fessenden transmits the first vocal and musical sounds via radio signals.</p>	<p>The first recognized Canadian feature film, <i>Evangeline</i>, is produced by the Canadian Bioscope Company in Halifax.</p>	<p>XWA in Montreal, owned by Marconi Wireless Telegraph Company, becomes the first radio broadcasting station in Canada. Eventually becomes CFCF.</p>	<p>CKAC in Montreal becomes the first French-language radio station.</p>	<p>The Copyright Act comes into force.</p>	<p>The <i>Radio Telegraph Act</i> (passed in 1905) asserts federal government's licensing authority over radio communications.</p>	

¹ IATSE Local 58 Website.

to take hold in Canada, musicians, actors and writers were dealing with a significant rise in opportunity, but little rise in pay. In *The ACTRA Story*, ACTRA tells how most actors saw little more than \$6.50 “for two-and-a-half days’ work on a series of ads that often ran for as long as four years.” There was no compensation to artists when these ads and programs were reused.

Clearly, an examination of the rights of artists as workers was needed. As radio, film, sound recordings, and publishing took off in Canada, artists began forming associations to demand fair compensation and working hours, to carve out a place for Canadian artists in their own country. But it would be decades before the right of self-employed artists to form professional associations and to bargain collectively would be formally turned into law.

The *Status of the Artist Act*: Enhancing Canada's Cultural Sector

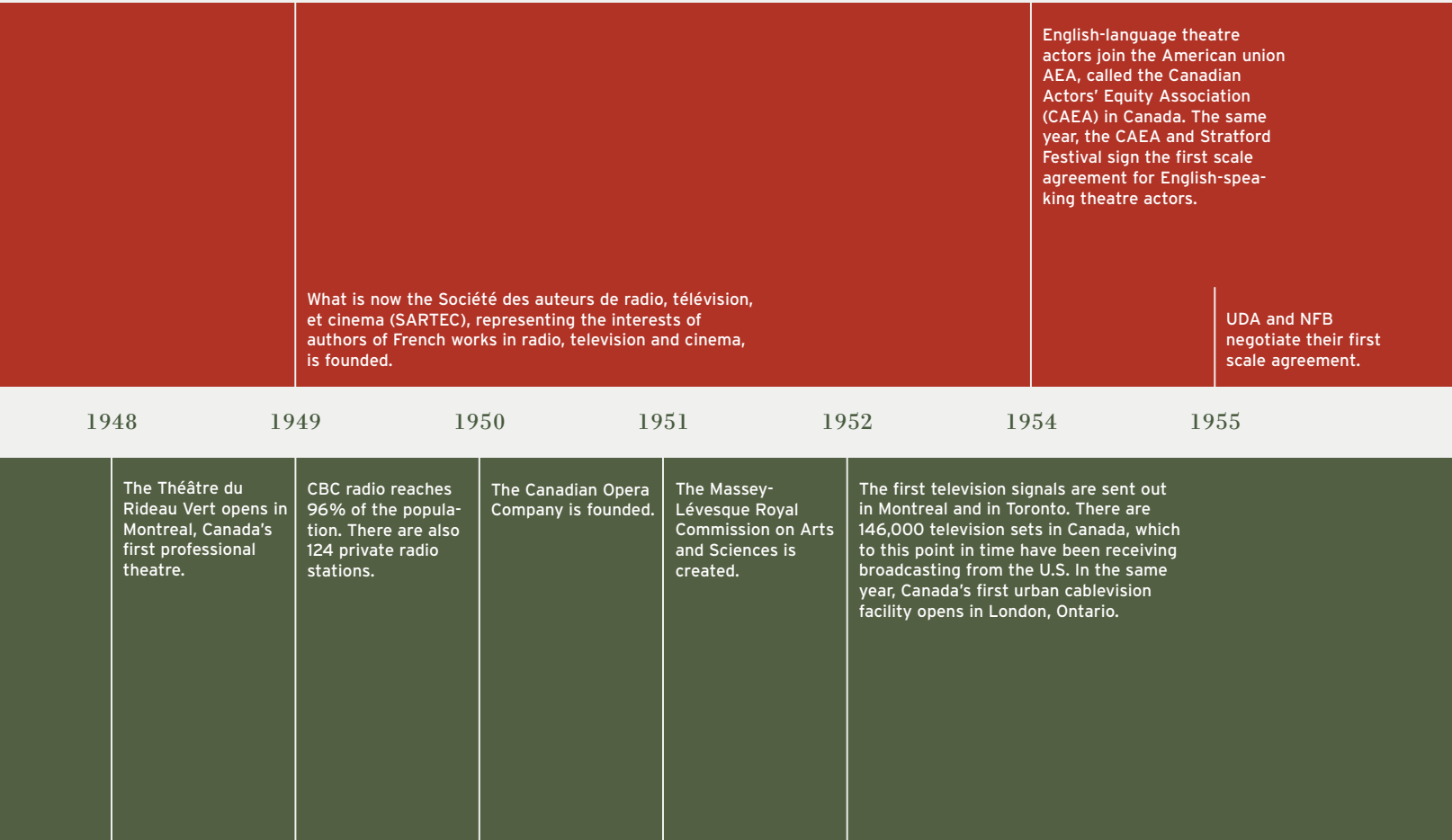
In 1949, Prime Minister Louis Saint-Laurent submitted a report to the Privy Council asserting that Canadians should know as much as possible about their country, its history and traditions, and Canadian achievements. Thus began Canada’s long exploration of the role and rights of those in

	<p>English-speaking radio artists form the Radio Artists of Toronto Society (RATS) and the Radio Artists of Montreal Society (RAMS) with the aim of getting better fees and improved working conditions.</p> <p>L'Union des artistes (UDA), formed in Quebec, includes singers, actors, sound effects specialists and others engaged in radio.</p>	<p>The first national meeting of artists from across the country is held, leading to the creation of the Federation of Canadian Artists. It lobbies the federal government to set up an arts council and a war art program. Along with other major organizations, it eventually becomes the Canadian Conference of the Arts.</p> <p>RAMS and RATS join together with similar collectives in Winnipeg and Vancouver to form the Canadian Radio Artists Association, now ACTRA.</p> <p>UDA and CBC sign their first collective agreement.</p>				
1927	1929	1932	1937	1939	1941	1943
<p>CN Radio holds the first national radio broadcast on July 1, for the Diamond Jubilee of Confederation.</p>	<p>The first Canadian television experiments are conducted.</p> <p>The first broadcasting commission, the Aird Commission, recommends establishing a state monopoly in broadcasting to ensure adequate Canadian content and equitable service across the country.</p>	<p>The <i>Canadian Radio Broadcasting Act</i> is passed and creates the Canadian Radio Broadcasting Commission to provide a national broadcasting system and control all broadcasting. In 1936, it becomes a crown corporation, the Canadian Broadcasting Corporation (CBC).</p> <p>The Judicial Committee of the Imperial Privy Council decides the federal government has exclusive jurisdiction in radio communications.</p>	<p>New transmitters in Toronto and Montreal increase national radio coverage from 49% of the population to 76%.</p>	<p>The first professional ballet company in Canada is formed, now the Royal Winnipeg Ballet.</p> <p>The National Film Board (NFB) is created.</p>		

the arts and culture sector. This journey, which eventually led to the passing of the *Status of the Artist Act* in 1992, among other measures, has been a fascinating one, marked at each stage by the passion and conviction of Canadian artists, producers and legislators.

Saint-Laurent’s report led the Privy Council to establish the Royal Commission on National Development in the Arts, Letters and Sciences in 1950. Also known as the Massey-Lévesque Commission, it worked under the philosophy that a measure of “the degree of civilization attained by a nation,” could be, “the extent to which the nation’s creative artists are supported, encouraged and esteemed by a nation as a whole.” The Commission’s report documented the crucial importance of broadcasting, visual arts, literature and other artistic and cultural disciplines to the very existence of Canada. It ultimately led to strengthened support for Canada’s existing national cultural institutions, and the creation of new ones, like the Canada Council.

An international event initiated a concentrated focus on artists themselves: in 1977, the UN’s International Labour Organization (ILO) and UNESCO held a joint meeting of experts to create a policy on the status of the artist. Chaired by Canadian Paul Siren, this group prepared a draft recommendation. And in 1980, in a historically significant moment for artists around the world, the



UNESCO General Conference adopted the *UNESCO Recommendation Concerning the Status of the Artist*.

Canada was among the countries that signed this Recommendation, which outlined key principles for the status of the artist, including the assertions that:

- ★ It is necessary and appropriate for governments to help create and sustain not only a climate encouraging freedom of artistic expression but also the material conditions facilitating the release of this creative talent.
- ★ Member states should ensure that artists have the freedom and the right to establish trade unions and professional organizations of their choosing and to become members of such organizations.

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In 1980, Canada established the Federal Cultural Policy Review Committee. Its report stated that, "It is clear to us that the largest subsidy to the cultural life of Canada comes not from governments, corporations or the patrons, but from the artists themselves through their unpaid and underpaid labour."

Then, in 1986, the Siren-Gélinas task force was established by the federal government in response to growing pressure from artists. It proposed a number of key changes to existing legislation in support of artists' needs:

		Directors of English works in film and television form the Directors Guild of Canada (DGC) in response to the Directors Guild of America's plans to expand its activities into Canada.	The Associated Designers of Canada (ADC) is formed to represent the interests of light, set and costume designers in television and theatre.		The League of Canadian Poets is founded.	The Canadian Artists' Representation/ Le Front des artistes canadiens (CARFAC) is founded, with the objective of promoting visual arts and the status of visual artists in Canada.
1957	1958	1960	1965	1966	1967	1968
The Canada Council is created, now the Canada Council for the Arts.	The Board of Broadcast Governors is created to replace the CBC as the regulator of Canadian broadcasting. They are empowered to establish regulations promoting use of Canadian talent by broadcasters.	The first privately owned English television station opens in Canada, CFTO (now part of the CTV network) in Agincourt, Ontario. The first private French television station in Canada, CFTM (now part of the TVA network), opens in Montreal.		Colour television broadcasts begin in Canada.	The Canadian Film Development Corporation is created, now Telefilm Canada. The celebration of Canada's centennial brings forth a burst of cultural activity and marks a significant development in the Canadian arts and culture.	The <i>Broadcasting Act</i> is adopted, requiring the predominant use of Canadian creators and talent, and creating the forerunner of the Canadian Radio-television and Telecommunications Commission (CRTC).

- ★ Recognize organizations representing self-employed professional artists as collective bargaining agents.
- ★ Amend income tax legislation to offer more financial security to artists (including tax exemptions and income averaging).
- ★ Change copyright rules to better compensate artists for their work.

“A SOCIETY WITHOUT ARTISTS
HAS NO IDENTITY.”

*Marcel Masse,
Minister of Communications, 1989,
to the Standing Committee
on Communications and Culture*

Acting on the task force's first recommendation, Canada's Department of Communications created the Canadian Advisory Committee on the Status of the Artist, which drafted the *Canadian Artists' Code* in 1988. The *Code*, a proposed *Act on the Professional Status of the Artist*, included changes to the *Income Tax Act* for artists and a collective bargaining regime for artists and producers within the jurisdiction of the federal government.

Production directors, designers, technicians and various other workers engaged in film production in Quebec found the Syndicat des techniciens du cinéma et de la vidéo du Québec (STCVQ).	The Playwrights Co-op is established to publish and distribute scripts in order to encourage more productions of Canadian plays, now called the Playwrights Guild of Canada (PGC).	What is now the Association des réalisateurs et réalisatrices du Québec (ARRQ), representing directors in cinema, television, and multimedia in Quebec is founded.	The Writers' Union of Canada (TWUC) is founded by some of Canada's well-known authors to protect and promote writers' rights and interests with publishers, universities and other groups.	The CAEA separates completely from its American associate and becomes an autonomous Canadian organization, operating under its own constitution and by-laws.	The Union des écrivaines et des écrivains québécois (UNEQ) is formed to gain fair compensation for Quebec writers, along with increased circulation of their literature in educational curricula and libraries, and improved exposure in the media.	
1969	1972	1973	1974	1976	1977	1980
The National Arts Centre opens as Canada's national centre for the performing arts.			The first federal tax measures are established to assist the Canadian film-making industry: capital cost allowance and tax deferral. The CAVCO point system is established to determine the Canadian content of film and television productions for purposes of approving them for tax incentives and CRTC approval.		The Federal Cultural Policy Review Committee, headed by Louis Applebaum and Jacques Hébert, is established.	

In 1987 and 1988, the Province of Quebec became the first in Canada to grant collective bargaining rights to associations of independent professional artists, through Bills 78 and 90.

In 1989, Canada's three main political parties endorsed a standing committee report recommending a legal framework for collective bargaining between artists and federal producers to be administered by an independent administrative tribunal. A new act was drafted and introduced.

In 1991, the Honourable Bernard Valcourt, acting for the Minister of Communications, moved that Bill C-7, the *Status of the Artist Act*, be read the second time, stating that, "By legally acknowledging the specific working conditions of artists and recognizing their right to form associations and negotiate minimum conditions of work, this Bill will finally establish a place for artists in our labour relations legislation."

In 1992, an *Act respecting the status of the artist and professional relations between artists and producers in Canada*, known as the *Status of the Artist Act*, was passed. Canada was the first and still is the only country to provide collective bargaining rights for its self-employed artists, an important element of the *UNESCO Recommendation*. In the *Act*, the government of Canada recognizes the importance of the contributions of artists and producers to the cultural life of Canada,

<p>The Freelance Editors' Association of Canada is founded, later to become the Editors' Association of Canada (EAC).</p>	<p>The Guild of Canadian Film Composers (GCFC) is established to represent professional music composers for film, television, and new media outside of Quebec.</p> <p>The Société professionnelle des auteurs et des compositeurs du Québec (SPACQ) is formed by some of Quebec's well-known songwriters to protect the rights and interests of songwriters and composers.</p>	<p>The Regroupement des artistes en arts visuels du Québec (RAAV) is formed to represent professional visual artists in Quebec and improve the conditions in which artists live, work and create.</p>			
1979	1981	1983	1984	1987	1988
	<p>The Siren-Gélinas Task Force proposes measures to enhance the status of the artist.</p>	<p>The CRTC approves the first specialty TV services, MuchMusic and TSN.</p>	<p>The Quebec government passes status of the artist bills 78 and 90.</p> <p>The <i>Free Trade Agreement</i> is enacted, with a cultural exemption sought by arts groups.</p> <p>The <i>Public Lending Right</i>, giving compensation to writers for use of their works in libraries, is implemented.</p> <p>The Canadian Department of Communications creates the Canadian Advisory Committee on the Status of the Artist, leading to the <i>Canadian Artists' Code</i> (1988).</p>	<p>Copyright law is revised and includes an exhibition right providing compensation to visual artists for the public exhibition of their works.</p>	

“... NO ONE SHOULD VIEW THIS BILL AS THE SUM TOTAL OF WHAT WE NEED TO DO FOR CANADIAN ARTISTS. RATHER THIS BILL IS A FOUNDATION UPON WHICH WE CAN BUILD. IT IS A STEPPING STONE TO EXAMINE A WHOLE RANGE OF ISSUES WHICH AFFECT ARTISTS.”

*Bernard Valcourt,
on the Status
of the Artist Act*

and ensures the protection of their rights. The *Act* establishes a framework for artists and producers to conduct effective professional relations within the federal jurisdiction. It guarantees the right of artists to join associations that can represent their professional interests and the right to bargain collectively with producers in order to agree on the minimum terms and conditions under which artists will provide services to those producers.

The *Act* established CAPPRT to administer the collective bargaining regime. Thus, the government created a new labour relations board that specifically recognized the special situation of artists as self-employed workers and the unique relationship between artists and producers.

The Association québécoise des auteurs dramatiques (AQAD) is established to protect the interests of dramatic authors, translators and adaptors of French works across Canada.	Production directors, designers, technicians and various other workers in Quebec in the video production industry form the Association des professionnelles et des professionnels de la vidéo du Québec (APVQ).	The Writers Guild leaves the ACTRA alliance to become the Writers Guild of Canada (WGC).			
1990	1991	1992	1995	1999	2000
1990s - Internet use becomes widespread in Canada.	The federal <i>Status of the Artist Act</i> is passed by the House of Commons.	The CRTC grants the first licences for direct-to-home satellite service to Bell ExpressVu and Power DirecTV.	The CRTC determines that some transmissions over the Internet constitute broadcasting and therefore fall within their purview. The CRTC decides not to require licenses for such broadcasting for the time being.	2000s - Widespread downloading of music and feature films from the Internet, and the use of online radio and television present a new realm of challenges and opportunities for Canadian artists and producers.	



*CAPPRT:
A Proud History of Supporting
the Status of the Artist Act*



CAPPRT was created in 1993, and came into full operation in May 1995. Since then, we have been fully committed to fulfilling our objective: to contribute to Canada’s cultural community by encouraging constructive professional relations between artists and producers in the federal jurisdiction. In addition to meeting the challenges associated with this objective, we have been a model small agency and a key contributor to the administrative tribunal and small agency communities. This section details our achievements and milestones in the fulfillment of our function and in our contribution to efficient and effective government.

MEETING THE CHALLENGES OF APPLYING A NEW ACT

After its inception, CAPPRT received numerous applications for certification. In fact, by the end of 1995—after we had been in full operation for only eight months—CAPPRT had received applications from 18 artists’ associations.

Defining Sectors for Collective Bargaining

The first challenge CAPPRT faced in those earliest days was to define the sector or jurisdiction for collective bargaining for each application for certification. The task was not straightforward; sectors are delineated not only by artistic disciplines, but also by linguistic and geographical parameters. The Tribunal’s decision on how to draw the line or define the sector is guided by the Act; that is, by the history of professional relations in the sector under consideration, the common interests of the artists in the various professions in the application and any relevant geographic and linguistic criteria.

In many of the cases where more than one association already represented the same professionals, the associations had existing agreements on the division of jurisdiction among them at the time of CAPPRT’s founding. CAPPRT attempted to respect these pre-existing agreements when certifying the associations, while aiming to define the sectors as broadly as possible.

For associations that did not have existing jurisdictional agreements, CAPPRT applied the approach that it still adheres to today: to encourage the associations to work together to establish jurisdictional lines themselves. In this way, the parties have a better chance of reaching a mutually satisfactory arrangement and also strengthening their long-term relationship.

The table below illustrates some examples of bargaining sectors defined by the Tribunal and the artists’ associations certified by the Tribunal to represent those sectors.

Professions	Artists’ Association	Geography of Sector	Language of Works in Sector
SCREENWRITERS	SARTEC	ALL OF CANADA	FRENCH
	WGC	ALL OF CANADA	ENGLISH
FILM AND TELEVISION DIRECTORS	DGC	OUTSIDE QUEBEC	ALL LANGUAGES
		QUEBEC	ENGLISH
	ARRQ	QUEBEC	ALL LANGUAGES EXCEPT ENGLISH
PLAYWRIGHTS	PGC	ALL OF CANADA	ALL LANGUAGES EXCEPT FRENCH
	AQAD	ALL OF CANADA	FRENCH
MUSICIANS	AFM	OUTSIDE QUEBEC	N/A
	GMQ	QUEBEC	N/A

Determining the Representativity of Associations

Another challenge in CAPPRT's early application of the *Status of the Artist Act* was determining the criteria for deciding whether the applicant association should be certified to represent the defined bargaining sector. For this, the *Act* requires that an association must be the most representative of artists in that sector. To make this determination, the Tribunal has most often looked at the proportion of artists in the sector who are members of the applicant association. It has also looked at the association's general ability to represent the artists in the defined sector, including over the entire geographic area of the sector and in all the languages of the sector. The Tribunal has also looked at the breadth of experience the association has had in representing artists in various contexts (e.g. before producers, legislative assemblies, governments, regulatory and quasi-judicial bodies) and specifically in the context of professional relations. The Tribunal has taken into consideration whether artists or other artists' associations have contested the applicant's representativity or if indeed there exists another association capable of representing the sector. The Tribunal has also held a vote among artists in a defined sector when it was unclear which of two competing applicants was the most representative of that sector. The vote proved to be much more complicated than the representation votes in traditional labour jurisdictions, where eligible employees in a defined workplace are much easier to identify. CAPPRT had to establish criteria for eligibility to vote, by, for example, setting criteria for how much work in the sector was required for eligibility. The criteria for the voters' list were set in consultation with the artists' associations involved.

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During the processing of applications for certification, some applications were set aside because some of the professions included in the requested certifications were not covered by the *Act*. However, the *Act* allowed for additional artistic professions to be covered through the adoption of regulations. Specifically, artists who contribute to the creation of a production in the performing arts, music, radio and television and other art forms, and who are not already covered by the *Act*, could be granted coverage under regulations.

Extending the Coverage of the Act: Developing Regulations

In 1996, at CAPPRT's request and with the approval of the Minister of Labour, work began on developing a proposal for regulations that would add artistic professions to the *Act*. This undertaking included the preparation and distribution of a major discussion paper, feedback from producers and artists' associations, consultations, research and analysis, draft regulations and further requests for comments.

Finally in 1999, regulations were adopted that added a number of professional categories to be covered by the *Act*. These included design of camera work, lighting, sound, sets, costumes, coiffure and make-up. Artists' associations had requested that many more categories be included in the regulations, such as editors, art conservationists and librarians. In general, producers were reluctant to see more professions become eligible for collective bargaining, maintaining that almost all artists who contributed to the creation of a production were already covered by the *Act*.

CAPPRT then set itself to the task of applying the regulations to the applications that had been set aside. The landmark case was the STCVQ-APVQ case, where a federation of two artists' associations requested that some 123 different professions be included in the bargaining sector. After hearing testimony, in many cases from practitioners themselves, CAPPRT determined that 42 of these professions met the definition of professional categories covered in the new regulations. In its decision, which subsequently became the subject of a judicial review application, CAPPRT explained that it gave a broad interpretation to the regulations in order to respect the *Act's* objectives. CAPPRT developed the following criteria to determine whether a particular profession was covered under the regulations:

- ★ The nature of the tasks
- ★ The fact that one can identify an original finished product derived from some artistic ability
- ★ The fact that the result of the work contributes to giving life to or to realizing the vision of the director, the designer or another creator
- ★ The influence that an individual can exercise within the hierarchical level of the function in the context of a production

Other Types of Cases

Besides certifications, CAPPRT has also dealt with complaints, applications for review, applications for determination or declaration, and applications for consent to prosecute. In dealing with these other kinds of cases, CAPPRT has established some jurisprudence:

Nexus In one complaint, a former member of an association alleged that he had been unfairly expelled from his association. He lodged a complaint against that association and its executive director. In its decision, the Tribunal clarified the scope of its jurisdiction regarding the constitutional principle of division of powers. The Tribunal concluded that the federal power to regulate internal union affairs was dependant on the existence of a link or nexus between the complainant and a federal undertaking. Otherwise, the matter would fall under the provincial jurisdiction over private law (contracts). The complainant was not working for a producer under federal jurisdiction, nor was he subject to a scale agreement between his association and a producer under federal jurisdiction; therefore, the Tribunal concluded that there was not a sufficient nexus to engage its jurisdiction over the matter.

Prima facie In another case, an association filed a complaint against a producer for failing to fulfill its obligation to negotiate in good faith. The producer filed a preliminary objection, arguing that the complaint was untimely. One of the elements of the test crafted by the Tribunal to determine whether it should extend the time limit for filing the complaint was whether the complainant had established a *prima facie* case. In other words, if the evidence provided in support of the complaint were believed, would it be sufficient to lead the Tribunal to decide in the complainant's favour? The Tribunal decided there was an absence of such evidence and found the complaint untimely.

When appropriate, CAPPRT encourages parties to settle differences themselves, in order to avoid costly hearings and to encourage the development of constructive working relationships. CAPPRT also offers mediation services in situations where the parties would benefit from settling the issues themselves. In over half of the complaints submitted, the parties have ended up settling the issues themselves. Sometimes the lodging of a complaint of failure to bargain in good faith has been a sufficient step to get the parties to bargain, without the necessity of a decision by CAPPRT. Several complaints are presently in abeyance at the request of the parties so that they may try to resolve their differences.

Relationship between the *Copyright Act* and the *Status of the Artist Act*

From the hearing of the very first Tribunal panel, different points of view concerning the relationship between the *Status of the Artist Act* and the *Copyright Act* have been put forward, with some parties perceiving an overlap of the two acts. In particular, some producers have expressed concern that CAPPRT, in some of its sector definitions, has opened the door to the bargaining of conditions relating to existing works—a move which opens the way for the parties to bargain matters dealing with copyright.

CAPPRT clarified in Decision 1998 CAPPRT 028 regarding the certification application of The Writers' Union of Canada and the League of Canadian Poets that the *Status of the Artist Act* was intended to complement and supplement the regime provided in the *Copyright Act*. It is intended to do so by providing

artists with an additional mechanism to obtain compensation for their work, thereby enhancing and promoting artists' freedom of choice as to how they will exploit the fruits of their creative talents. CAPPRT also clarified that the *Act* does not limit the right of the parties to bargain about any matters. This approach is consistent with Canadian labour law generally, in which the duty to bargain has been held to encompass any subject matter the parties consent to include in a collective agreement.

The Attorney General of Canada, on behalf of two federal government departments subject to the *Act*, filed an application for judicial review of the above decision. The Attorney General alleged that CAPPRT had acted beyond its jurisdiction by declaring the sector suitable for bargaining in a manner that empowered The Writers' Union of Canada to bargain with respect to pre-existing works. The Federal Court of Appeal dismissed the Attorney General's application, stating that "the Tribunal's mandate was to determine a sector suitable for bargaining and the Tribunal did not have the mandate to determine the subject matter of collective bargaining." The Court ruled that "nothing in the certification order indicates the scope of actual bargaining." In other words, the Tribunal had acted within its jurisdiction.

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OUR VALUES AND ORGANIZATION

The *Status of the Artist Act* was enacted to encourage constructive professional relations between artists and producers, with the ultimate objective of improving artists' status and working conditions and maintaining a stable, predictable labour environment. In general, all labour relations legislation is enacted to ensure a level and orderly playing field between workers and employers. CAPPRT treats artists and producers alike regarding requests for information and processing of cases. Similarly, CAPPRT members ensure impartiality toward all parties in deciding cases.

In accordance with the *Act*, Tribunal proceedings are as expeditious and informal as circumstances permit. Parties may file applications and complaints, without representation by counsel. A handbook has been prepared to guide parties who represent themselves before the Tribunal.

CAPPRT prides itself on providing quick, helpful and impartial service. Because the *Status of the Artist Act* is a labour code for self-employed artists and producers and is therefore unique, it is still not as well known and understood as we would wish. Since CAPPRT's inception, our Secretariat has been committed to informing artists' associations and producers about their rights and obligations under the *Act*. The Tribunal issues regular information bulletins and organizes information sessions, both on its own initiative and in response to requests. We respond to queries from clients and the public within two days.

We also provide detailed information through our Web site. Since we launched our Web site in mid-1996, we have used it to post all public notices, Reasons for Decision and the legislation. We have consistently added relevant and timely information, including the schedule of hearings, information bulletins, performance and other reports and lists of government producers subject to the *Act*, outstanding first notices to bargain and all scale agreements negotiated under the *Act*. We will continue to add new information in the future.

We also issue all Reasons for Decision on a timely basis. In fact, over the past nine years we have issued Reasons on average within 44 days of the closing of a hearing. However, this time span has been longer in recent years, as the decisions have become more complex (due in part to the application of the new *Professional Category Regulations*), and we have experienced some changes in key CAPPRT staff, among other factors. As a result, we have increased our target timeframe for issuing Reasons from 35 days to 60 days. This figure is still well within the target times set by other quasi-judicial tribunals across the country.

ENCOURAGING CONSTRUCTIVE RELATIONS BETWEEN PRODUCERS AND ARTISTS

Over the past decade, the right to bargain collectively, enshrined by the *Status of the Artist Act*, has been beneficial to both artists and producers. Since certifications started under the *Act*:

- * Twenty-one first scale agreements have been concluded in addition to the 42 agreements that already existed before the *Act*
- * Over 120 notices to bargain first scale agreements are outstanding

These first agreements guarantee, for the first time for the artists concerned, minimum levels of remuneration and various working conditions. For producers, this translates to a more predictable and stable environment with pre-established minimum standards. For example:

- * First agreements between SPACQ and various producers guarantee for the first time that music composers retain copyright in their creations
- * The first agreement between Canadian Heritage and UNEQ establishes a protocol for the use of existing works—an issue that had been the subject of disagreement between the two parties in the past

The content of scale agreements is determined by the parties themselves, and covers a full range of issues relating to remuneration and working conditions. This has led to improved conditions for artists. For instance:

- * Agreement renewal between the WGC and the NFB has led to compensation improvements for scriptwriting of approximately 30% in ten years

- * Agreement renewal between the AFM and the CBC has improved artists' remuneration by about 15% in ten years
- * The UDA and TVA have negotiated remunerative improvements of approximately 9% in 9 years for tier-1 artists at the national level

More recently, artists' associations and producers have engaged in timely discussions about new media and remuneration for works distributed on the Internet. As ACTRA has noted in *Celebrating 60 years: the ACTRA story*, "technology has almost always expanded the entertainment industry, creating more work." It is therefore necessary to build practices that reflect this new reality. The forum for negotiation enshrined by the *Act* offers a space for artists and producers to have an effective dialogue as both groups deal with the impact of technological change. For example:

- * The AFM and CBC have come to an agreement on the use of electronic music devices and the reuse on the Internet of programs originally recorded for CBC broadcast for an additional 10% payment
- * SARTEC and TVA, UDA and Musique Plus, and ACTRA and CBC, are examples of parties who have agreed to create joint committees to study the issue of technological change and its impact on compensation and other conditions of work

Knowledgeable and Experienced Members

The *Act* provides that CAPPRT have a Chairperson, Vice-chairperson and two to four members, all appointed by the Governor in Council. Except for the first Chairperson, all members have been appointed on a part-time basis, and are called on as needed. This approach has proven efficient, because caseload has varied and therefore members are only compensated when work is required. CAPPRT currently has six members who reside in various locations across the country. Together, they represent a wealth of experience in labour relations and various areas of the arts, including broadcasting, writing, visual arts and music. In ge-

neral, all members of CAPPRT receive training in conducting hearings, writing decisions and understanding the code of ethics.

Official Languages

CAPPRT has largely met the requirements for bilingualism for administrative tribunals. When bilingual hearings are required, bilingual members have been responsible for the case, in accordance with the *Official Languages Act*. That act does not permit tribunal members to hear cases using translation equipment. The fact that all CAPPRT members are currently bilingual facilitates the scheduling of cases. CAPPRT issues all Reasons for Decision in both official languages as required, although under unusual circumstances, it has issued Reasons for Decision in one language before the translated version is available in order to provide the decision to the applicant on a timely basis.

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A Model Small Agency

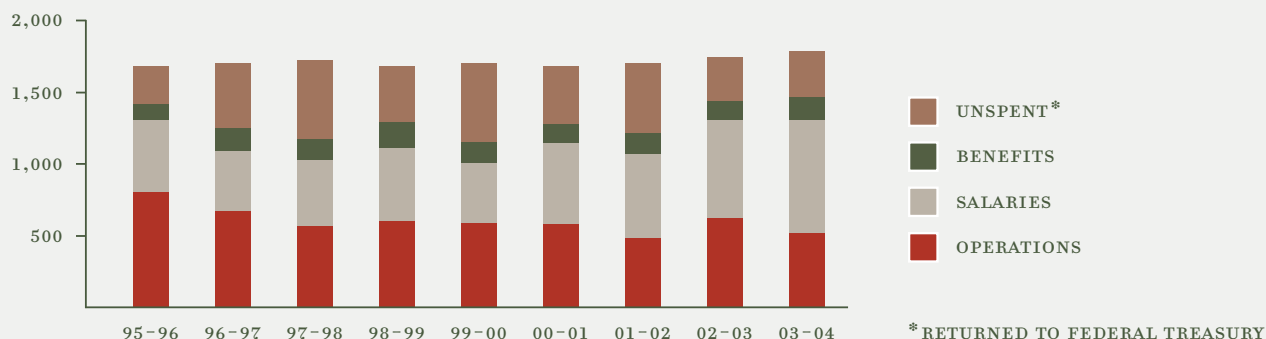
When CAPPRT was created in 1993, the Canadian government was shifting its focus to service and results for the public, responsible spending, adherence to high professional and ethical values and transparent reporting practices. In this spirit, CAPPRT adopted business practices that would make us a very efficient, flexible agency, capable of adapting to an unpredictable and changing workload.

From CAPPRT's earliest days, we have served the public with a clear statement of our objectives, high standards for service delivery and transparent reporting. We quickly developed and implemented our performance measurement framework, which identifies our strategic goal and related performance measures. Although the framework is always evolving, CAPPRT's management team has embraced it since its inception, and is continually guided by it.

Since our creation, our efficiency has been evident in the practice of contracting to government departments and the private sector for many of the services we do not require on a full-time basis. For example, we have contracted with Industry Canada for informatics, security and mail services, and with Canadian Heritage for human resources services. We are currently carrying out a joint staffing action with another small agency to hire a financial analyst who will work for both agencies. We use the hearing rooms and library services of other labour boards. We select staff who have multiple skills, are flexible, and who are interested in doing a variety of tasks and in taking initiative. The fact that all Tribunal members are part-time appointees adds to our economic efficiency on the whole, although this makes scheduling more difficult because members have other commitments. CAPPRT also provides accommodation to the small office of Environmental Protection Review Canada, which leads to greater efficiency for the government.

As seen in the chart below, over the nine years, total spending has varied somewhat with a maximum of \$1.455 million. The budget allocation to CAPPRT has increased slightly from \$1.692 million to \$1.789 to allow for negotiated increases in salaries and benefits. Consequently CAPPRT has returned unspent funds to the government treasury each year. One marked trend in spending is the relatively large increases in salaries over the last two fiscal years, mainly reflecting the change made by the Privy Council Office in the status of Tribunal members from being contractors paid out of operating funds to being employees paid out of the salary budget.

ACTUAL USE OF BUDGET ALLOCATION
(in thousands of dollars)



As the government has introduced new initiatives in its pursuit of greater accountability to the Canadian public, CAPPRT has implemented these initiatives. For example, CAPPRT has been implementing Modern Comptrollership—an exercise to adopt modern management methods government-wide—in a timely and efficient manner. For this exercise, we formed a partnership with three other tribunals of similar size to engage contractors to carry out assessments of our capacities and develop tailored action plans for implementation. For example, the contractors carried out a risk assessment of CAPPRT, which identified all potential risks in our operations and measured the level of consequence and probability of each risk. We are developing a plan to minimize the risks identified in their assessment.

CONTRIBUTING TO EFFICIENT, EFFECTIVE GOVERNMENT

Despite CAPPRT’s small size, we have contributed to the effectiveness of the administrative tribunal community. CAPPRT members and staff were instrumental in the establishment by the government in 1996 of the training program available to members of all administrative tribunals across the country. The program includes an intensive five-day training session on hearing room skills, delivered usually twice yearly in each official language, and an annual forum that addresses issues of common concern. This has been an important initiative because there was previously no comprehensive training program available at a reasonable cost for members of small tribunals in the federal or most provincial jurisdictions. Tribunal members and staff have continued to play key roles in the ongoing delivery of the program, and work with the Professional Development Centre for Members of Canadian Administrative Tribunals which is now responsible for the program.

CAPPRT has also played a key role in ensuring that central agencies, like Treasury Board Secretariat, have a more comprehensive understanding of the unique issues and challenges faced by small agencies, so that they can evaluate and work with small agencies more effectively. CAPPRT’s first Executive Director was among the founders of the Small Agency Administrators Network (SAAN), established in 1996 as a forum for small agencies to exchange information and improve understanding of the rules and requirements for operating a small federal agency. The current Executive Director has continued to be an active member.

SAAN has become instrumental in informing central government agencies about the small agency environment. For example, small agencies must respect the same rules for hiring staff as large departments. Like large departments, small agencies must submit a detailed annual accountability report on their staffing

actions, even if as few as two staffing actions have taken place in the year. Small agencies are required to submit over one hundred reports to Parliament or central agencies on a yearly basis—a heavy task for very small organizations with limited resources. SAAN plays an important role in helping Parliament and central agencies refine their requirements to better reflect the reality of agencies of diverse sizes.

In addition, CAPPRT's Chairperson participates in the Group of Heads of Federal Agencies, where participants meet regularly to exchange information and twice annually with Treasury Board Secretariat and Privy Council Office officials to discuss the introduction and implementation of operating requirements and of broad government policies. The CAPPRT Chairperson also participates in the federal Heads of Administrative Tribunals group, where tribunal heads meet with the Deputy Minister of Justice Canada three times annually to deal with issues of common interest, such as legal and ethical issues. This group set up a working group on official languages to examine issues related to the translation of tribunal decisions and the process for appointing members. The working group, which includes our senior legal counsel, will be making recommendations on ways to ensure that all tribunals can meet the linguistic requirements of the *Official Languages Act*. As well, CAPPRT's Chairperson has for the past several years been a board member of the Canadian Council of Administrative Tribunals.

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CAPPRT has also contributed to the Association of Labour Relations Agencies (ALRA), representing agencies in Canada and the U.S. Over the years, CAPPRT Executive Directors have participated in the organizing committee for the ALRA annual conference and have moderated and spoken on panels at the conference. The present Chairperson also participated on a panel in 2002.

THE ROAD AHEAD

The principal work of the Tribunal until now, that of defining bargaining sectors and certifying artists' associations to represent these sectors, has been largely accomplished. The vast majority of the possible bargaining sectors which can be applied for have now been certified. In the future, there could be applications for certification for the few remaining sectors, such as certain songwriters outside Quebec. There may also be applications for certification for new sectors which emerge due to new technologies or to new regulations adding more professions covered by the *Act*.

CAPPRT's future work will undoubtedly center on problems arising during bargaining. This means dealing with complaints such as alleged failure to bargain in good faith and applications to amend bargaining sector definitions. We expect developments in three different areas to have an impact on CAPPRT's future operations and on the results of its work:

1. Possible amendments to the *Status of the Artist Act* and other changes that may affect bargaining under the *Act*.

In 2002, the Department of Canadian Heritage conducted a statutory review of the *Act's* operations and provisions. Since the report and the government's response were tabled in Parliament in April 2003, a working group of government representatives has been doing follow-up work on the recommendations in the report, including studying potential amendments to the *Status of the Artist Act*, as well as exploring other policies and programs to improve the socio-economic circumstances of self-employed artists.

The Tribunal has only a small influence on whether bargaining actually takes place between parties after certification and whether any bargaining leads to the signing of a scale agreement. We deal only with any complaints of failure to bargain in good faith that are brought to us. The government can also have

some impact as the Minister of Labour may appoint a mediator to assist parties in bargaining. The Tribunal fully supports, among others, two of the report's recommendations that will assist in bringing negotiations to settlement and making some bargaining more efficient. One is an amendment to the *Act* allowing for the possibility of arbitration for settlement of a first contract, and the other is the creation of an association of government producers who will then bargain together with artists' associations, rather than bargaining by each individual department—a process that is longer and more costly.

In addition, the Tribunal also supports the recommendation that the process by which additional professional categories can become covered by the *Status of the Artist Act* should be reviewed. The Tribunal believes that the present process is cumbersome and lengthy and that it should be streamlined so that additional artists as appropriate may benefit from the *Act*.

Finally, the Tribunal believes that the Canadian Council on the Status of the Artist should be constituted as stipulated in Part 1 of the *Act*. It sees the council as an essential complement to the work of the Tribunal.

2. The extension of collective bargaining rights to self-employed artists in the rest of Canada outside of the federal and Quebec jurisdictions.

When the federal *Status of the Artist Act* was passed in 1992, Quebec was and still is the only province where these rights were recognized. At the time, parliamentarians thought that other provinces would grant similar rights. The federal jurisdiction under the *Status of the Artist Act* is small, covering work done by self-employed artists for broadcasters and federal institutions. The province of Saskatchewan is currently looking into introducing substantive provisions regarding the status of the artist. Also, the government of Ontario is currently working on creating an advisory council on the status of the artist, in fulfillment of an election promise. These positive steps could lead to benefits for artists and producers.

3. Widespread government efforts for more efficient management and extensive spending reviews.

Along with all federal government institutions, CAPPRT will be subject to the review of all government programs, which will determine which programs will continue and if they should be changed. Also, for the first time, the government will review the governance of all 55 small federal agencies, including CAPPRT. Through this effort, the government will decide whether each agency will continue to operate as a separate entity and whether agency structures should be changed or amalgamated with others.

In 1991, the issue of CAPPRT's creation as a separate agency was discussed at length during the standing committee hearings considering the *Status of the Artist Bill*. At the time, it was decided to create a new agency, instead of handing the responsibility to an existing tribunal, like the Canada Industrial Relations Board (CIRB), because the situation of self-employed artists is different from that of employees of federal employers such as the airlines and banks, and the relations between artists and producers are unique. Since CAPPRT's operations began in 1995, the issue of amalgamating it with other boards like the CIRB has been raised occasionally, including by some parties consulted during the statutory review of the *Status of the Artist Act* carried out by the Department of Canadian Heritage in 2002.



*2003/2004 Activities
in Brief*



1. INTRODUCTION

During the 2003-2004 fiscal year, the Tribunal received seven applications, including five applications for review and one complaint. There were seven cases pending from the previous fiscal year. The Tribunal rendered five interim decisions in four cases, and final decisions in eight cases. Among the latter were certifications of the Guild of Canadian Film Composers and of the Directors Guild of Canada. One complaint which was held in abeyance over several years was withdrawn after the parties came to an agreement.

Three 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 three certifications were renewed.

Since it began operations in May 1995, the Tribunal has received 32 applications for certification. Twenty-four artists' associations have been certified to represent 26 bargaining sectors defined by the Tribunal. One application has been dismissed, six applications have been withdrawn and one is pending.

Of the 33 other cases the Tribunal has processed since May 1995, 16 were reviews in which final decisions were rendered in 14 and two were withdrawn. There have been 12 complaints, most dealing with failure to bargain in good faith. Final decisions were rendered in three. Seven of the cases were withdrawn, as most cases were settled by the parties. Two are pending. There have been four applications for determination, for which one final decision was rendered, one was withdrawn and two are pending. There has been one consent to prosecute application, which was withdrawn. There have been no applications for revocation of a certification.

Pursuant to the *Status of the Artist Act*, a party may, under specific circumstances, challenge a Tribunal decision by requesting a judicial review by the Federal Court of Appeal. In April 2003, the Attorney General of Canada filed an application for judicial review of decision 2003 CAPPRT 041 which granted certification to the APVQ-STCVQ Federation. The applicant alleges that the Tribunal erred in its interpretation of the *Professional Category Regulations* by certifying several artistic professions which do not contribute directly to the creation of a production pursuant to the *Regulations*. The Tribunal was granted permission to intervene. The hearing was scheduled for May 18, 2004.

This is the third application for judicial review of a Tribunal decision. The first one, filed in 1998, was dismissed by the Federal Court of Appeal. The second one was withdrawn.

The new *Procedural Regulations of the Canadian Artists and Producers Professional Relations Tribunal* became effective on November 5, 2003. They provide artists, artists' associations, producers and other persons who participate in proceedings before the Tribunal with predictable and enforceable rules of practice and procedure. The *Tribunal Procedures*, a guide written in plain language, has been revised in accordance with the new *Procedural Regulations* and other changes not addressed by these *Regulations*. It will be available early in the new fiscal year.

The Tribunal adopted a new corporate image and developed a new brochure, kiosk and look for its Web site and *Information Bulletin*.

Tribunal representatives continued to participate in or attend various events. For example, the Executive Director gave a presentation on the *Status of the Artist Act* at the Association des juristes pour l'avancement de la vie artistique. Staff also distributed information again at the annual workshop organized by the Material Management Institute, an association of federal government goods and services purchasers.

2. CASE DEVELOPMENTS

The following section presents a summary of the developments during the fiscal year respecting cases opened during the fiscal year and cases pending at the end of the previous fiscal year. All written Reasons for Decisions are available on the Tribunal's Web site.

2.1 Applications for Certification

Guild of Canadian Film Composers (File No. 1310-02-002)

A public hearing had been held in the previous fiscal year on March 12, 2003 regarding this matter and a related application from the Société professionnelle des auteurs et des compositeurs du Québec (SPACQ) to amend its certification.

On May 20, 2003, the Tribunal issued Decision 2003 CAPPRT 043 granting certification to the Guild of Canadian Film Composers (GCFC) to represent for purposes of collective bargaining a geographic sector covering the whole of Canada except Quebec, composed of:

"all professional independent contractors engaged by a producer subject to the *Status of the Artist Act* to perform the function of author, composer or author-composer, including all the associated work required by these functions, in order to deliver to the producer music, lyrics, and music with lyrics where the said music or lyrics are intended for film, videotape, digital media or any other audiovisual media or analogous process, or any other process now known or to be invented which modifies or replaces the aforementioned technology and processes, with the exception of:

The artists covered by the certification granted to the Société professionnelle des auteurs et des compositeurs du Québec (SPACQ) by the Canadian Artists and Producers

Professional Relations Tribunal on May 17, 1996, as amended by the Tribunal on May 20, 2003.

And subject to:

- a) The agreement concluded between the Guild of Canadian Film Composers and the Society of Composers, Authors and Music Publishers of Canada (SOCAN) on May 6, 2002; and
- b) The agreement concluded between the Guild of Canadian Film Composers and the Société du droit de reproduction des auteurs, compositeurs et éditeurs au Canada (SODRAC) Inc. on May 13, 2002."

Before issuing Decision 2003 CAPPRT 043, the Tribunal issued Decision 2003 CAPPRT 042, granting SPACQ's request to amend its certification submitted in light of the GCFC's application for certification. SPACQ's certification was changed to cover a sector limited to the province of Quebec.

Directors Guild of Canada (File No. 1310-02-003)

A hearing was held regarding this matter on April 15, 2003. On July 16, 2003, in Decision 2003 CAPPRT 044, the Tribunal granted certification to the Directors Guild of Canada to represent, for purposes of collective bargaining, a sector composed of:

"all independent contractors, who are permanent residents of Canada or Canadian citizens, engaged in any production by a producer subject to the *Status of the Artist Act*, to perform the function of director, assistant director or first assistant director, excluding:

- a) artists covered by the certification granted to the Association des réalisateurs et réalisatrices

du Québec by the Tribunal on December 30, 1997; and

- b) assistant directors and first assistant directors covered by the certification granted to the Regroupement APVQ-STCVQ by the Tribunal on March 4, 2003."

Independent Media Arts Alliance (IMAA) / formerly Independent Film and Video Alliance
(File No. 1310-02-004)

The Vice-chairperson was appointed to gather further evidence, examine all evidence and make a report on whether the IMAA meets the definition of "artists' association" under section 5 of the *Status of the Artist Act*. This process was ongoing at the end of the fiscal year.

2.2 Applications for Review

Société professionnelle des auteurs et des compositeurs du Québec (SPACQ)
(File No. 1350-02-008)

On May 20, 2003, in Decision 2003 CAPPRT 042, the Tribunal granted SPACQ's request to amend its certification by creating a geographic sector limited to the province of Quebec. The sector represented by SPACQ for purposes of collective bargaining was amended to:

"a sector composed of all independent contractors engaged in a production in Quebec, by a producer subject to the *Status of the Artist Act*, with the exception of a national private English-language broadcaster, to perform the function of lyricist, composer and lyricist-composer, including the work required for those positions for delivering the music and/or songs commissioned by the producer. In the case of the National Film Board of Canada ("NFB"), a "production in Quebec" shall mean a production initiated by an NFB production centre located in Quebec."

Canadian Artists Representation/le Front des artistes canadiens (CARFAC)
(File No. 1350-03-009)

On April 28, 2003, CARFAC filed an application to amend its certification. A public notice in this matter was published in the *Canada Gazette*, Part 1 on May 31, 2003. Several interventions were received and the applicant filed representations in response.

A panel of the Tribunal was convened on October 7 and 29, 2003 and the Tribunal rendered Decision 2003 CAPPRT 047 on December 9, 2003, granting CARFAC's request to amend its certification by substituting the word "engaged" for the word "commissioned" in its certification order. The Tribunal found that the request was reasonable and that it would bring the sector description in line with that of other sectors it had granted.

Canadian Broadcasting Corporation (CBC)
(File Nos. 1350-03-010 and 1350-03-011)

On June 16, 2003, the CBC filed an application to review Decisions 2003 CAPPRT 042 concerning SPACQ and 2003 CAPPRT 043 concerning GCFC. A panel was convened on August 25, 2003 to consider the written representations filed by the parties. On September 8, the Tribunal rendered Decision 2003 CAPPRT 045, granting CBC's request to add the following wording to SPACQ's sector description: "In the case of the CBC, a 'production in Quebec' shall mean a production initiated by one of its establishments located in Quebec". The wording of the GCFC's sector description was also amended to take this modification into account.

APVQ-STCVQ Federation
(File No. 1350-03-012)

On July 2, 2003, the APVQ-STCVQ Federation filed an application for review of Decision 2003 CAPPRT 041 which granted certification to the Federation. The Federation requested that the independent contractors who perform the artistic function of still photographer be added to their sector.

After seeking and receiving interventions on the matter, a panel was convened on September 15, 2003 to consider the parties' written representations. On the basis of new evidence, the Tribunal granted the Federation's request in Decision 2003 CAPPRT 047, issued October 20, 2003. It also amended the sector description of the Canadian Association of Photographers and Illustrators in Communications to exclude the photographers from it when they work as still photographers in Quebec. The Federation is now called the Alliance québécoise des techniciens de l'image et du son.

2.3 Complaints and other applications

Société des auteurs de radio, télévision et cinéma vs. TVOntario
(File No. 1330-97-003-C)

This complaint of failure to bargain in good faith had been held in abeyance for several years at the request of the applicant while the parties were engaged in negotiations. The applicant requested withdrawal of the complaint after the parties signed a first scale agreement. On February 2, 2004, the Tribunal granted the request.

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

The Union des artistes had filed a complaint in 2002 alleging that TVA was not bargaining in good faith. On April 23, 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 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)

The London Musicians' Association (LMA) filed a complaint of failure to bargain in good faith pursuant to subsection 32(a) of the *Status of the Artist Act* against Rogers Television London. A hearing on the matter was scheduled for November 18-19, 2003. On October 31, 2003, the Tribunal granted the request from the parties to adjourn the proceeding until further notice as they wanted to conduct negotiations. The Tribunal denied Rogers Television's request to appoint a mediator in the case. The matter was pending at the end of the fiscal year.

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

The CBC had filed an application in February 2003 for a declaration of illegal pressure tactics carried out by the Writers' Guild of Canada. On May 16, 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. The case was pending at the end of the fiscal year.

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). The question to be determined was 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, on September 25, 2003. A panel was convened on December 18, 2003, January 16, 2004 and February 20, 2004 to consider the parties' written representations. A decision in the case was pending at the end of the fiscal year.

Case Statistics

All files ¹	95-96	96-97	97-98	98-99	99-00	00-01	01-02	02-03	03-04	95-04
BROUGHT FORWARD FROM PREVIOUS FISCAL YEAR	N/A	18	15	14	11	11	8	7	7	N/A
NEW APPLICATIONS RECEIVED	22	10	6	1	3	3	7	6	7	65
DAYS OF HEARINGS HELD ²	8	20	9	6	2	16	12	12	10	95
INTERIM DECISIONS RENDERED	7	2	2	0	1	8	8	2	5	35
FINAL DECISIONS RENDERED	3	10	6	4	1	2	5	4	8	43
CASES WITHDRAWN	1	3	1	0	2	4	3	2	1	17
RENEWALS	N/A	N/A	N/A	2	11	3	5	11	3	35
PENDING AT FISCAL YEAR END	18	15	14	11	11	8	7	7	5	5

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

2 Includes public hearings and paper hearings.



Members of the Tribunal

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

Ms. 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 Montreal Museum of Fine Arts and the Montreal Children's Museum project. Since 2000, she has been a board member of the Drummond Foundation.

MOKA CASE
Dartmouth, Nova
Scotia

Moka Case has been a part-time member of the Tribunal since April 1999. Ms. Case has been active in the cultural sector for over thirteen years and has a broad experience in the live performing arts. She is currently the artistic director of the Nova Scotia Multicultural Festival. Ms. Case was the artistic director of the Baddeck International New Media Festival and she has been the music industry development consultant for the Province of New Brunswick's Sound Initiative program and the Atlantic Canada Opportunity Agency. She has been a member and chair of the East Coast Music Association Board. At the Théâtre Capitol Theatre Inc. in Moncton, she was interim general manager. Ms. Case has served as a jury member on numerous peer assessment committees including the Juno Awards, the Canada Council for the Arts, the Canadian Broadcasting Corporation and the Foundation to Assist Canadian Talent on Record.

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
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. He 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 1 / Mandate, Role and Responsibilities

The Canadian Artists and Producers Professional Relations Tribunal administers 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.

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

The self-employed artists in 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 statutory mandate:

- * 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
- * To deal with complaints of unfair labour practices and other matters brought forward by artists, artists' associations and producers, and to prescribe appropriate remedies for contraventions of Part II of the *Status of the Artist 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.

The Tribunal reports to Parliament through the Minister of Labour. Part II of the *Act* assigns specific responsibilities to the Minister of Canadian Heritage as well.

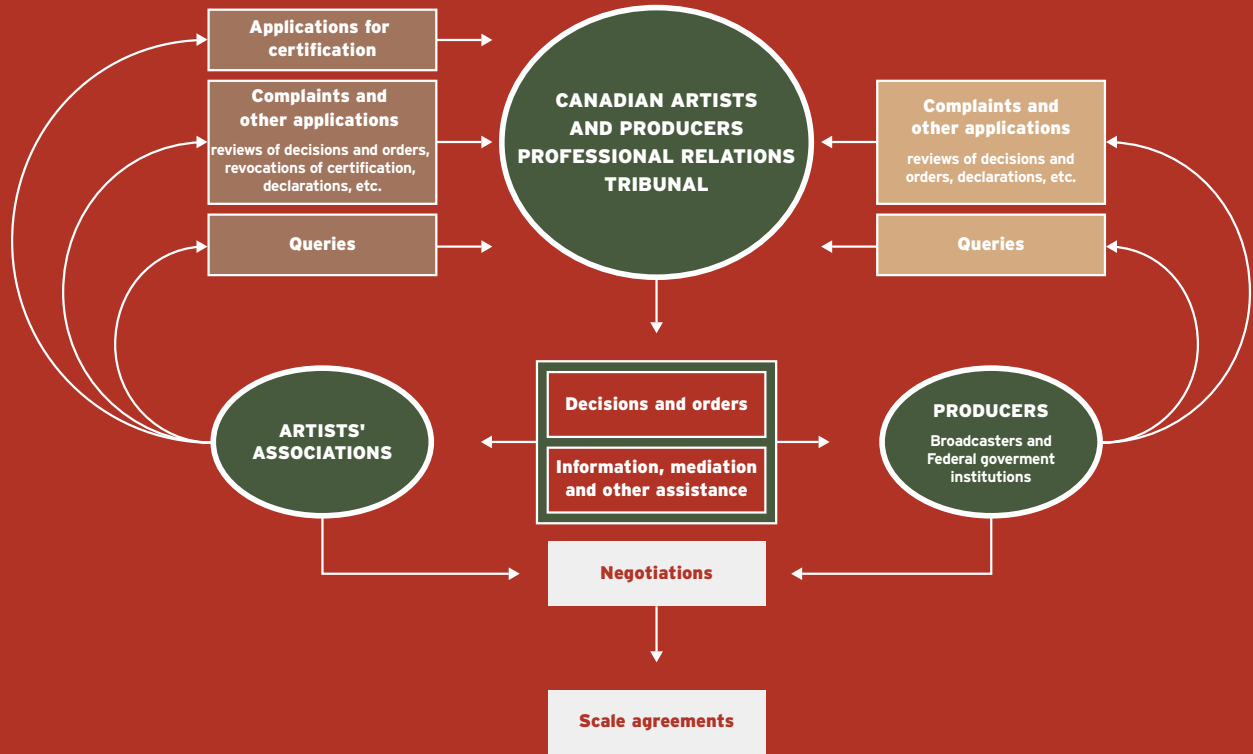
The *Status of the Artist Act* requires or permits the Tribunal to undertake the following activities:

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]

APPENDIX 2 / Key Processes

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APPENDIX 3 / Negotiation Activity Under the *Status of the Artist Act*

- Current scale agreements -

Association Name	Producer	First*
ACTRA	CBC - RADIO	
	CBC - TELEVISION	
	CITYTV - TELEVISION	
	CJOH TV	
	CTV TELEVISION NETWORK LIMITED	
	GLOBAL COMMUNICATIONS LIMITED - TELEVISION	
	NFB	
	TVONTARIO	
	VISION TV	√
ADC	PACT	
AFM	CBC - RADIO	
	CBC - TELEVISION	
	NFB	
	TV ONTARIO	
APASQ	TAI	
AQAD	TAI	√
CAEA	CCMD	√
	NAC (MUSIC DEPARTMENT)	√
	NAC (QUEEN'S JUBILEE GALA)	√
	NCC	√
	PACT	
GMQ	CIBL-MF	
	COGECO RADIO-TÉLÉVISION INC.	
	COMMISSION DES CHAMPS DE BATAILLE NATIONAUX	√
	CONSORTIUM DE TÉLÉVISION QUÉBEC CANADA INC. (TV5)	
	GROUPE TVA INC.	
	MUCHMUSIC / MUSIQUE PLUS	
	RÉSEAU DE TÉLÉVISION QUATRE SAISONS INC.	
	SOCIÉTÉ DE RADIO-TÉLÉVISION DU QUÉBEC	
PGC	PACT	
SARTEC	CONSORTIUM DE TÉLÉVISION QUÉBEC CANADA INC. (TV5)	
	GROUPE TVA INC.	√
	ONF	
	SRC	

*No scale agreement existed before the *Status of the Artist Act*

- Current scale agreements -

Association Name	Producer	First*
	TÉLÉ-QUÉBEC	
	TVONTARIO	✓
SPACQ	GROUPE TVA INC.	✓
	ONF	✓
	SRC	✓
	TÉLÉ-QUÉBEC	✓
UDA	ANCIENS COMBATTANTS CANADA	✓
	ARTV	✓
	CNA (OPÉRA ET LYRIQUE)	✓
	COGÉCO RADIO/TÉLÉVISION	
	COMMISSION DES CHAMPS DE BATAILLE NATIONAUX	✓
	CONSORTIUM DE TÉLÉVISION QUÉBEC CANADA INC. (TV5)	
	GROUPE TVA, JPL PRODUCTION ET JPL PRODUCTION II	
	MUSIQUEPLUS (STATION MUSIMAX)	✓
	MUSIQUEPLUS (STATION MUSIQUEPLUS)	✓
	ONF	
	RÉSEAU DE TÉLÉVISION QUATRE-SAISONS	
	SRC	
	TAI	
	CFAP-TV QUÉBEC	
	CFAP-TV QUÉBEC (ANNONCES PUBLICITAIRES)	✓
	TVONTARIO (TFO)	
UNEQ	PATRIMOINE CANADIEN	✓
WGC	ACCESS NETWORK	
	CBC - RADIO	
	CBC - TELEVISION	
	CTV (AND CANWEST GLOBAL SYSTEMS)	
	NFB	
	TVONTARIO	

*No scale agreement existed before the *Status of the Artist Act*

- Outstanding notices to bargain for first agreements -

Association Name	Producer
ACTRA	17 FEDERAL INSTITUTIONS
	18 SPECIALTY CHANNELS
	ALLIANCE ATLANTIS BROADCASTING
	YTV CANADA INC.
AFM	ROGERS TV (LONDON, ONTARIO)
CAEA	CANADIAN HERITAGE
	CANADIAN MUSEUM OF CIVILIZATION CORPORATION
	NAC (VARIETY PROGRAMMING)
	NAC (GOVERNOR GENERAL'S PERFORMING ARTS AWARD)
CARFAC	NATIONAL GALLERY OF CANADA AND CANADIAN MUSEUM OF CONTEMPORARY PHOTOGRAPHY
DGC	NFB
GMQ	CKRL - MF
	CANADIAN HERITAGE (CELEBRATIONS CANADA)
PWAC	CANADIAN HERITAGE
	PWGSC
	TBS
RAAV	MUSÉE DES BEAUX-ARTS DU CANADA
SPACQ	RÉSEAU DE TÉLÉVISION QUATRE-SAISONS
TWUC	CANADIAN HERITAGE
UDA	FONDATION DES PRIX DU GOUVERNEUR GÉNÉRAL
	RÉSEAU TQS (ANNONCES PUBLICITAIRES)
	SRC (ANNONCES PUBLICITAIRES)
	TÉLÉ-MÉTROPOLE ET TM MULTI-RÉGIONS (ANNONCES PUBLICITAIRES)
UNEQ	TPSGC
	CONSEIL DU TRÉSOR
WGC	CANADIAN HERITAGE
	TBS AND 65 FEDERAL INSTITUTIONS

- Certified artists' associations which have no scale agreements
and no outstanding notices to bargain -

APVQ - STCVQ
ARRQ
CAPIG
GCFC
CMAQ
EAC/ACR

APPENDIX 4 /

Use of Tribunal's Budget Allocation (in thousands of dollars)

Fiscal Year	Operations	Salaries	Benefits	Total Spent	Allocation	Unspent ¹
95-96	\$ 805	\$ 518	\$ 112	\$ 1,435	\$ 1,692	\$ 257
96-97	\$ 663	\$ 450	\$ 125	\$ 1,238	\$ 1,705	\$ 467
97-98	\$ 549	\$ 469	\$ 146	\$ 1,164	\$ 1,726	\$ 562
98-99	\$ 603	\$ 527	\$ 170	\$ 1,300	\$ 1,698	\$ 398
99-00	\$ 563	\$ 447	\$ 142	\$ 1,152	\$ 1,701	\$ 549
00-01	\$ 584	\$ 568	\$ 138	\$ 1,290	\$ 1,697	\$ 407
01-02	\$ 479	\$ 600	\$ 140	\$ 1,219	\$ 1,710	\$ 491
02-03	\$ 610	\$ 699	\$ 146	\$ 1,455	\$ 1,739	\$ 284
03-04	\$ 511	\$ 798	\$ 141	\$ 1,450	\$ 1,789	\$ 339

¹ Returned to federal treasury

APPENDIX 5 / Previous Tribunal Members

MARIE-PAULE POULIN <i>Chairperson</i>	Ontario <i>From June 1993 to September 1995</i>
ARMAND LAVOIE <i>Member</i>	New Brunswick <i>From March 1995 to February 1998</i>
MEEKA WALSH <i>Member</i>	Manitoba <i>From March 1995 to February 2000</i>
ANDRÉ FORTIER <i>Vice-chairperson</i> <i>Acting Chairperson</i>	Quebec <i>From March 1995 to February 1999</i> <i>From September 1995 to February 1998</i>
ROBERT BOUCHARD <i>Member</i> <i>Vice-chairperson</i>	Quebec <i>From April 1997 to March 1999</i> <i>From April 1999 to March 2002</i>
CURTIS BARLOW <i>Member</i>	Prince Edward Island <i>From March 1998 to February 2001</i>
ROBIN LAURENCE <i>Member</i>	British Columbia <i>From May 2000 to May 2002</i>

APPENDIX 6 / Tribunal Staff

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

MARC BOUCHER
*Analyst, Research and Communications
(absent on secondment)*

CAROLINE GRAVEL
Research Officer

GILLES CAREAU
Chief, Administrative Services

NANCY LÉVESQUE
Administrative and Financial Officer

APPENDIX 7 / Acronyms

Acronym	Name
ACTRA	ALLIANCE OF CANADIAN CINEMA TELEVISION AND RADIO ARTISTS
ADC	ASSOCIATED DESIGNERS OF CANADA
AFM	AMERICAN FEDERATION OF MUSICIANS OF THE UNITED STATES AND CANADA
AEA	ACTORS' EQUITY ASSOCIATION (AMERICAN)
APASQ	ASSOCIATION DES PROFESSIONNELS DES ARTS DE LA SCÈNE DU QUÉBEC
APVQ-STCVQ	ASSOCIATION DES PROFESSIONNELLES ET DES PROFESSIONNELS DE LA VIDÉO DU QUÉBEC AND SYNDICAT DES TECHNICIENS DU CINÉMA ET DE LA VIDÉO DU QUÉBEC
AQAD	ASSOCIATION QUÉBÉCOISE DES AUTEURS DRAMATIQUES
ARRQ	ASSOCIATION DES RÉALISATEURS ET DES RÉALISATRICES DU QUÉBEC
CAEA	CANADIAN ACTORS' EQUITY ASSOCIATION
CAPIC	CANADIAN ASSOCIATION OF PHOTOGRAPHERS AND ILLUSTRATORS IN COMMUNICATIONS
CAPPRT	CANADIAN ARTISTS AND PRODUCERS PROFESSIONAL RELATIONS TRIBUNAL
CARFAC	CANADIAN ARTISTS' REPRESENTATION / LE FRONT DES ARTISTES CANADIENS
CBC	CANADIAN BROADCASTING CORPORATION
CAVCO	CANADIAN AUDIO-VISUAL CERTIFICATION OFFICE
CCMD	CANADIAN CENTRE FOR MANAGEMENT DEVELOPMENT
GCFC	GUILD OF CANADIAN FILM COMPOSERS
CMAQ	CONSEIL DES MÉTIERS D'ART DU QUÉBEC
CNA	CENTRE NATIONAL DES ARTS
CRTC	CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION
DGC	DIRECTORS GUILD OF CANADA
EAC/ACR	EDITORS' ASSOCIATION OF CANADA / ASSOCIATION CANADIENNE DES RÉVISEURS
GMQ	GUILDE DES MUSICIENS DU QUÉBEC
NAC	NATIONAL ARTS CENTRE
NGC	NATIONAL CAPITAL COMMISSION
NFB	NATIONAL FILM BOARD
ONF	OFFICE NATIONAL DU FILM
PACT	PROFESSIONAL ASSOCIATION OF CANADIAN THEATRES
PGC	PLAYWRIGHTS GUILD OF CANADA
PWAC	PERIODICAL WRITERS ASSOCIATION OF CANADA
PWGSC	PUBLIC WORKS AND GOVERNMENT SERVICES CANADA
RAAV	REGROUPEMENT DES ARTISTES EN ARTS VISUELS
SARTEC	SOCIÉTÉ DES AUTEURS DE RADIO, TÉLÉVISION ET CINÉMA
SPACQ	SOCIÉTÉ PROFESSIONNELLE DES AUTEURS ET DES COMPOSITEURS DU QUÉBEC
SRC	SOCIÉTÉ RADIO-CANADA
TAI	THÉÂTRES ASSOCIÉS INC.

Acronym	Name
TBS	TREASURY BOARD SECRETARIAT (OF THE FEDERAL GOVERNMENT)
TPSGC	TRAVAUX PUBLICS ET SERVICES GOUVERNEMENTAUX CANADA
TWUC	THE WRITERS' UNION OF CANADA
UDA	UNION DES ARTISTES
UN	UNITED NATIONS
UNEQ	UNION DES ÉCRIVAINES ET ÉCRIVAINS QUÉBÉCOIS
UNESCO	UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION
WGC	WRITERS GUILD OF CANADA