



Canadian Artists and Producers
Professional Relations Tribunal

Tribunal canadien des relations
professionnelles artistes-producteurs

Annual Report

12th report
2005-2006



Canadian Artists and Producers
Professional Relations Tribunal

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September 29, 2006

The Honourable Jean-Pierre Blackburn
Minister of Labour
Ottawa, Ontario
K1A 0J2

Dear Minister Blackburn:

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, 2005 to March 31, 2006, for tabling in Parliament.

Yours respectfully,

A handwritten signature in black ink, appearing to read 'John M. Moreau'.

John M. Moreau, Q.C.
Acting Chairperson and Chief Executive Officer

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1. Members and staff of the Tribunal¹

John M. Moreau Q.C.
Acting Chairperson and Chief Executive Officer

Lyse Lemieux
Member

Michael LaLeune
Member

Diane Chartrand
Acting Executive Director and General Counsel

Lorraine Farkas
Senior Advisor to the Executive Director

Karina Desmarais-Yelle
Registrar and Legal Counsel

Ginette Demeule
Scheduling and Hearing Officer

Brian K. Stewart
Director, Planning, Research and Communications

Manon Allaire
Administration and Communications Officer

Stefany Chénier
Research Officer

Gilles Gareau
Chief, Administrative Services

Sylvie Besner
Administrative and Financial Officer

¹ This reflects the composition of the Tribunal as of September 29, 2006. As noted in the text of the Report, there were a number of changes in the membership of the Tribunal during the fiscal year and shortly thereafter. There have also been some recent changes in the staff of the Tribunal Secretariat.

2. Mandate

Since 1995, the Canadian Artists and Producers Professional Relations Tribunal 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 four agencies that regulate labour relations in the federal jurisdiction. The other three are the Canada Industrial Relations Board, which deals with labour relations mainly between private sector employers in the federal jurisdiction and their employees, the Public Service Staff Relations Board, which deals with labour relations between most federal government institutions and their employees, and the Public Service Staffing Tribunal, which deals with complaints from federal public service employees related to internal appointments and lay-offs. 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, including 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 the Tribunal'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 annual *Departmental Performance Report*.

3.1 INTRODUCTION

The Tribunal began 2005-2006 with five cases pending from the previous fiscal year. All five were concluded in 2005-2006. During the year, the Tribunal received seven applications – three complaints, two applications for determinations, one application for certification, and one application for review of a Tribunal decision. The Tribunal rendered interim decisions in six cases, and final decisions in three. Two applications were withdrawn.

A case that was closed in 2004-2005 was reopened. At the request of one of the parties, the Tribunal reviewed its February 2005 decision to accept withdrawal of an application for declaration of illegal pressure tactics. As a result of the review, the Tribunal rescinded its decision, and the case is currently in abeyance pending a hearing.

As mentioned in previous reports, certification cases are a decreasing part of the Tribunal's business. Many of the bargaining sectors covered by the *Act* have been defined and artists' associations have been certified to represent them. The Tribunal received only one application for certification during the fiscal year. The application was incomplete, as the association's bylaws did not meet the requirements of the *Act*. (The *Act* specifies that an artists' association cannot be certified unless its by-laws establish membership requirements, give members the right to take part and vote in meetings and to partici-

pate in a ratification vote on a scale agreement, and provide members with the right of access to a copy of the association's yearly financial statement. The by-laws must also not discriminate unfairly so as to prevent an artist from becoming or continuing as a member of the association.) The application remained incomplete at the fiscal year's end.

Twelve certification orders 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 12 certifications were renewed.

Following on its successful meetings in the previous fiscal year with artists' associations, the Tribunal organized meetings with producers subject to the *Status of the Artist Act*. Tribunal staff met with federal government institutions, with broadcasters in Toronto and Montreal, and with the National Film Board, to assist these groups of producers in carrying out successful negotiations with artists' associations. Staff clarified the rights and obligations of producers under the *Act*, facilitated the sharing of information, and discussed bargaining problems and how producers could deal with them.

It was clear that many of the producers are continuing to learn how to apply this relatively new legislation, and the Tribunal plans to hold further information sessions. Participants suggested that in future this type of information session include artists' associations and producers together. The Tribunal will consider this suggestion in organizing the next round of sessions.

The Tribunal improved and updated its Web site, revising the visual presentation of the site and the organization of its contents, and adding new sections to give information on active cases, judicial reviews, historical background, evaluations and audits, and speeches and presentations. The site also provides, as is required of every government of Canada institution's Web site, information on travel and hospitality expenses for selected government officials, contracts entered into for amounts over \$10,000, and the reclassification of jobs.

Our *Information Bulletins* featured information to assist parties subject to the *Act*, including summaries of Tribunal decisions, advice and reminders about requirements under the *Act*, and issues that had arisen in our meetings with producers.

The year saw a number of changes in the membership of the Tribunal. On June 6, 2005, Mr. Michael LaLeune was appointed as a new part-time member of the Tribunal for a three-year term. The appointment of Mr. David P. Silcox, Chairperson and Chief Executive Officer, ended on February 28, 2006. Mr. Silcox had been a part-time member of the Tribunal since December 1995, and Chairperson and Chief Executive Officer since March 1998. The appointment of Vice-chairperson Ms. Marie Sénécal-Tremblay ended on March 31, 2006. Ms. Sénécal-Tremblay had been a part-time member since March 2001, and Vice-chairperson since April 2002. Mr. John Moreau, Q.C., a part-time member since March 2001, has been Acting Chairperson and Chief Executive Officer since April, 2006. Shortly after the end of the fiscal year, on May 1, 2006, the appointment of Mr. John Van Burek, a part-time member since May 2002, also came to an end.

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 Web site.

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*.

After filing submissions, the parties to the arbitration, the Union des artistes and TVA, reached a settlement, and on July 26, 2005, at the request of the parties and the arbitrator, the Tribunal closed the file.

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

This was an application for review of an earlier decision by the Tribunal.

In 2003, the CBC had filed an application (File No. 1340-03-001) for a declaration of illegal pressure tactics by the Writers' Guild of Canada. The application was subsequently put in abeyance pending settlement discussions, and in February, 2005, the CBC requested that the application be withdrawn "without prejudice." The Tribunal granted the request to withdraw the complaint, but declined to characterize the withdrawal as being "without prejudice."

On March 31, 2005, the CBC filed an application for review of the Tribunal's decision. The CBC maintained that the Tribunal did not have the authority to allow the withdrawal of its application in a manner different from that contemplated in its letter to the Tribunal.

On May 27, 2005, a Tribunal panel rescinded the decision to accept the withdrawal of the complaint, and stated that it would not accept the withdrawal to be qualified as "without prejudice." The Tribunal noted that it could entertain an application for withdrawal of the application in the future, or exercise its rights to discontinue the application. (File 1340-03-001 remained open at the end of the reporting period.)

Stephen H. Petch vs. the Writers Guild of Canada (WGC)
(Files No. 1330-04-001 and No. 1340-04-002)

Mr. Petch, a writer, filed a complaint against the WGC, alleging that it had breached its duty of fair representation under section 35 of the *Status of the Artist Act*. He 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), concerning further use of the dramatic scripts, were more favourable than those provided under the agreement between the WGC and the CBC².

The WGC brought a motion to dismiss the complaint, alleging that a *prima facie* case of the breach had not been made and that the complaint was not made in a timely fashion. On June 17, 2005, a Tribunal panel dismissed the motion.

On January 23, 2006, the Tribunal issued Decision 2006 CAPPRT 050 in which it allowed the complaint and issued a declaration that the WGC breached its duty of fair representation by acting in a manner that was arbitrary. The Tribunal also made a declaration that there were no terms in the complainant's contracts with the CBC that were more favourable than those in the scale agreement between WGC and the CBC.

Stephen H. Petch vs. the Writers Guild of Canada (WGC)
(File No. 1350-06-001)

On February 24, 2006, the WGC filed an application for review of Decision 2006 CAPPRT 050 (Files No. 1330-04-001 and No. 1340-04-002, above). The WGC asked the Tribunal to review its decision on the grounds that it breached its duty of procedural fairness, committed an error in law, and committed a serious error of fact.

The case remained open at the end of the fiscal year.

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

In 2002, the Union des artistes filed a complaint alleging that TVA was not bargaining in good faith, as required under subparagraph 32(a)(i) of the *Status of the Artist Act*. In 2003, the Tribunal granted the request of the parties to suspend a scheduled hearing as they wanted to attempt to reach a settlement.

In June 2005, the Union des artistes requested that the complaint be withdrawn. The Tribunal granted its request and closed the file.

² Under the *Status of the Artist Act*, scale agreements set the minimum conditions of employment and compensation: in a sector covered by a scale agreement, a producer cannot engage an artist in a contract that is less favourable to the artist than the rights and benefits set out in the scale agreement. The *Act* is specific, however, that the contract can be more favourable to the artist, and that a scale agreement is not to be applied so as to deprive an artist of a right or benefit under a contract that is more favourable. Assessment of whether a right or benefit is more favourable is the responsibility of the Tribunal, according to subsection 33(5) of the *Act*.

**Referral for determination by André Sylvestre, arbitrator
(File No. 1340-05-001)**

In July 2005, pursuant to section 41 of the *Status of the Artist Act*, an arbitrator asked the Tribunal to determine whether certain artists fell under the scale agreement between the Union des artistes and Société Radio-Canada. More specifically, the Tribunal was asked to determine whether artists interpreting voices “off-camera” were covered by the scale agreement.

A pre-hearing conference was held on March 16, 2006. Following this conference, the parties disagreed on the scope of the grievance and jointly requested that the arbitrator clarify it. The Tribunal thus referred the matter back to the arbitrator. The matter remained open at the end of the fiscal year.

**J.A. Baker vs. Alliance of Canadian Cinema, Television and Radio Artists (ACTRA)
(File No. 1330-05-002)**

Mr. Baker filed a complaint on September 28, 2005, alleging that ACTRA had violated the provisions of the *Status of the Artist Act* by refusing to provide him with proper representation in his grievance against a film producer that he claimed was preventing him from working. On December 22, 2005, the Tribunal dismissed the complaint on the basis that the complainant had not presented *prima facie* evidence—that is, evidence that, if it were not contradicted, would allow the Tribunal to conclude that ACTRA had contravened the provisions of the *Act*.

**Referral for determination by Lyse Tousignant, arbitrator
(File No. 1340-05-002)**

In December 2005, an arbitrator dealing with a grievance between Société Radio-Canada and the Union des artistes asked the Tribunal to determine, pursuant to section 41 of the *Status of the Artist Act*, whether the scale agreement

applied to a researcher when this person was “on camera” in the context of a production. The parties jointly requested a stay of the proceedings, which the Tribunal granted on May 8, 2006, without fixing a day for reconvening. The matter is still pending.

**Canadian Actors’ Equity Association (“Equity”) vs. Canadian Heritage
(File No. 1330-05-003)**

Equity filed a complaint on December 15, 2005, against Canadian Heritage. Equity had sent a notice to bargain to Canadian Heritage in 2001 for the purpose of entering into a scale agreement, but the two parties had failed to reach an agreement. Equity alleged that Canadian Heritage never intended to enter into a scale agreement, and that it had misrepresented its position with respect to the scale agreement.

Following the complaint, the parties agreed to try to resolve the issues through mediation, and on January 19, 2006, Canadian Heritage made a request to the Minister of Labour for mediation assistance. The Tribunal granted the request to hold the complaint in abeyance pending the outcome of the mediation. Mediation was successful and the parties reached an agreement. On June 15, 2006, the Tribunal agreed to Equity’s request to withdraw its complaint, and closed the file.

4. Case statistics

All files ¹	1996 1997	1997 1998	1998 1999	1999 2000	2000 2001	2001 2002	2002 2003	2003 2004	2004 2005	2005 2006	Annual average ²
Brought forward from previous fiscal year	18	15	14	11	11	8	7	7	5	5	10
New applications received	10	6	1	3	3	7	6	7	5	7	6
Days of hearings held ³	20	9	6	2	16	12	12	10	6	16	11
Interim decisions rendered	2	2	0	1	8	8	2	5	3	6	4
Final decisions rendered	10	6	4	1	3	5	4	8	4	3	5
Cases withdrawn	3	1	0	2	3	3	2	1	2	2	2
Renewals	n/a	n/a	2	11	3	5	11	3	6	12	n/a
Pending at fiscal year end	15	14	11	11	8	7	7	5	5	7	9

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

	2005-2006	2004-2005
Operating expenditures	\$278,243	\$426,640
Salaries, wages and other personnel costs	\$807,901	\$900,317
Total spending	\$1,086,144	\$1,326,957
Unspent*	\$707,736	\$513,043
Total allocation	\$1,793,880	\$1,840,000

*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, 2005 and March 31, 2006, copies of which were provided to the Tribunal, is found below.

Artists' Associations	Producers	First*
Associated Designers of Canada	National Arts Centre	✓
Association québécoise des auteurs dramatiques	Théâtres Associés Inc.	
Canadian Actors' Equity Association	Canadian Heritage	✓
Guild of Canadian Film Composers	National Capital Commission	
Union des artistes	CTV Inc.	✓
	Réseau TQS	
	Groupe TVA, JPL Production, and JPL Production II	
Writers Guild of Canada	National Film Board of Canada	

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

Scale agreements concluded

A list of scale agreements concluded between April 1, 2005 and March 31, 2006, copies of which were provided to the Tribunal, is found below.

Artists' Associations	Producers	First*
ACTRA Performers Guild	Vision TV	
Canadian Actors' Equity Association	Canada School of Public Service	
	National Capital Commission	
Playwrights Guild of Canada	Professional Association of Canadian Theatres	
Union des artistes	Théâtres Associés Inc. (Stage Directors)	
	Théâtres Associés Inc. (Performers)	
	Fort Langley National Historic Site	✓
Writers Guild of Canada	Société Radio-Canada	
	National Film Board of Canada	

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

Appendix 2 — Members' biographies

A. Current members



John M. Moreau Q.C.
Calgary, Alberta
**Acting Chairperson
and Chief Executive
Officer**

John M. Moreau has been a part-time member of the Tribunal since March 2001, and was designated Acting Chairperson and Chief Executive Officer, as per subsection 11(5) of the *Status of the Artist Act*, on April 3, 2006. He holds a Bachelor of Arts (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.



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*.



Michael LaLeune
Herring Cove, Nova Scotia

Michael LaLeune was appointed as a part-time member of the Tribunal on June 6, 2005. Mr. LaLeune holds a Bachelor of Music from the University of Western Ontario and currently serves on the National Advisory Board of the Royal Conservatory of Music in Toronto and the National Advisory Council for the Canadian Centre for Cultural Management.

Since 2004, Mr. LaLeune has been the Executive Director for the Nova Centre for the Performing

Arts. He held several management positions over the years for organizations such as the Congrès Mondial Acadien 2004, Grou Tyme Acadien Festival, Atlantic Theatre Festival, Nova Scotia Kitchen Party, Nacel Inc., East Coast Arts Productions, Symphony Nova Scotia, Ontario Arts Council and the Toronto Symphony Orchestra. He has also given numerous professional performances as a concert soloist and cabaret singer across Canada, including at the Stratford Shakespearean Festival.

B. Former members seized with a case (as per subsection 14(3) of the *Status of the Artist Act*)³



David P. Silcox
Toronto, Ontario

David P. Silcox became a part-time member of the Tribunal in December 1995 and was appointed Chairperson and Chief Executive Officer on March 1,

1998. Mr. Silcox's mandate expired on February 28, 2006.

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
Montréal, Québec

Marie Senécal-Tremblay became a part-time member of the Tribunal in March 2001 and Vice-chairperson in April 2002. Her appointment expired on March 31, 2006.

Ms. Senécal-Tremblay 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.

³ Subsection 14(3) of the *Act* allows a former member of the Tribunal to take part in the hearing and determination of a matter of which he or she was previously seized.



John Van Burek

Toronto, Ontario

John Van Burek was a part-time member of the Tribunal from May 2002 until May 5, 2006. Mr. Van Burek obtained a Bachelor of Arts Degree from the Saint Anselm

College in Manchester, New Hampshire, a Master of Arts 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.

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].