



Canadian Artists and Producers Professional Relations Tribunal

2005-2006
Estimates

Part III - Report on Plans and Priorities

Canadian Artists and Producers Professional Relations Tribunal

2005-2006
Estimates

Report on Plans and Priorities

Approved:

The Honourable Joseph Frank Fontana
Minister of Labour and Housing

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Section I: Overview

Message from the Chairperson

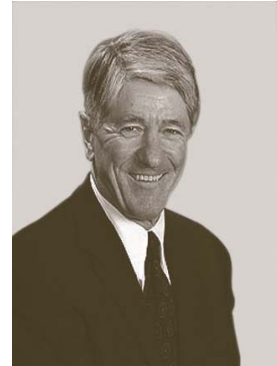
I am pleased to present the 2005-2006 *Report on Plans and Priorities* for the Canadian Artists and Producers Professional Relations Tribunal (CAPPRT or the Tribunal). This report outlines its intended direction for the next three years based on the lessons learned from practice.

CAPPRT will continue to fulfill its statutory responsibilities: determining sectors of cultural activity suitable for collective bargaining and certifying artists' associations to represent self-employed artists working in these sectors; and dealing with complaints of unfair labour practices and other matters brought forward by artists, artists' associations or producers.

CAPPRT maintains as a priority for 2005-2006 to assist in preparing amendments to the *Status of the Artist Act* and other changes which would make the *Act* more effective. This work is being carried out with the Department of Human Resources and Skills Development under the lead of the Department of Canadian Heritage, in response to its evaluation report tabled in April 2003.

In fiscal year 2005-2006, CAPPRT will celebrate its 10th anniversary since it became fully operational. We will organize various activities to mark this occasion and emphasize the benefits gained by artists and producers under Part II of the *Status of the Artist Act*.

The Canadian Artists and Producers Professional Relations Tribunal remains firmly committed to the development and maintenance of constructive professional relations among artists, artists' associations, producers, and producers' associations and will continue to contribute to the economic and social well-being of its client community. The goal of this work is to achieve a thriving and successful cultural sector in Canada.



David P. Silcox
Chairperson and Chief Executive Officer
February 10, 2005

Summary Information

Reason for Existence

The mandate of the Canadian Artists and Producers Professional Relations Tribunal is to administer Part II of the <i>Status of the Artist Act</i> which governs professional relations between self-employed artists and producers in the federal jurisdiction. By carrying out its mandate, CAPPRT contributes to developing constructive relations between these parties.

Financial Resources

2004-2005	2005-2006	2006-2007
\$2,230,000	\$2,217,000	\$2,217,000

Human Resources

2004-2005	2005-2006	2006-2007
10 FTEs	10 FTEs	10 FTEs

Departmental Plans and Priorities

Operating Environment

The economic contribution of the arts and culture sector is significant. In 2001, the sector contributed \$38.5 billion to the Canadian economy, or almost 4 percent of gross domestic product, according to Statistics Canada's revised figures using its new *Canadian Framework for Culture Statistics*.

Although the works of Canadian artists enrich our daily lives and represent Canadians at home and abroad, the valuable contribution of artists is not reflected in their earnings. According to the most recent Statistics Canada census data, artists' average income rose to \$27,200 in 2000, up 23 percent from 1995. However it remained below the average income of all workers in Canada (\$31,800), despite the higher than average level of education of artists. A high proportion of artists are self-employed; for example, almost 70 percent of visual artists and close to 50 percent of writers and craftspersons work as independent entrepreneurs according to the census. An estimated 100,000 self-employed artists fall under the Tribunal's jurisdiction. In addition to having lower earnings, many self-employed artists do not have the advantages enjoyed by workers who are employees, such as employment insurance, training benefits and pension funds.

**The economics
of artistic
endeavours**

The federal government has various institutions, programs and policies to recognize and support artists and producers. The *Status of the Artist Act* and CAPPRT are part of this support system. However, the impact of the *Act* is limited due to its application to a small jurisdiction. Most work in the cultural sector falls under the jurisdiction of the provinces, which includes the vast majority of film and television programming production, sound recording, art exhibitions, theatrical production and book publishing. To date, Quebec is the only province with legislation granting collective bargaining rights to self-employed artists. Since the introduction of enabling

**Need for
provincial
legislation**

legislation on the status of the artist in 2002, the Saskatchewan government has been studying the possibility of introducing a legal collective bargaining framework for some artistic work in that province. The province of Ontario has launched an official study of status of the artist in Ontario as one of the responsibilities of its new Minister's Advisory Council for Arts and Culture.

The necessity for provincial legislation was recognized by the Standing Committee on Canadian Heritage in its ninth report in 1999. This view was expressed again in the Department of Canadian Heritage's evaluation of the provisions and operations of the *Status of the Artist Act* carried out in 2002¹ (referred to as "evaluation report" in this document).

The Tribunal supports the adoption of status of the artist legislation by more provinces and will continue to provide information to policy makers and others interested in the benefits of such legislation.

Global competition and the convergence of broadcasting and telecommunications technologies have led to horizontal and vertical integration in the media production, programming and distribution industries. Negotiating scale agreements in an environment of continual organizational upheaval is challenging for producers and artists' associations alike. Moreover, in some cases it is difficult for the parties, and ultimately for labour boards, to determine where provincial jurisdiction ends and federal jurisdiction begins. Canadian Heritage's evaluation report indicated that a shortcoming of the *Act* was the fact that the *Status of the Artist Act* does not apply to producers sub-contracted by producers within the federal jurisdiction.

**The changing
industry
environment**

The CRTC has determined that some Internet transmissions constitute broadcasting, although it has exempted these broadcasters from the necessity of obtaining a license for the time being. It appears that the CRTC's decision broadens the Tribunal's jurisdiction to include unlicensed Internet broadcasters, although the Tribunal has yet had to rule on this subject. As expected, it is taking time for parties to initiate negotiations in this emerging sector. However, in traditional broadcasting and the federal sector, provisions have been negotiated in scale agreements affecting some artists, such as actors and writers, to deal with the transmission of works and performances over the Internet.

The process of negotiating scale agreements can be daunting. Many artists' associations are small, lack financial resources and have little or no experience in labour relations. As a result, despite the fact that collective bargaining has the potential to improve artists' earnings, some artists' associations may not be able to enter into negotiations immediately following certification because the negotiation process can be long and costly.

**Financial
difficulties of
artists'
association**

Because they lack sufficient time and resources, artists' associations would rather negotiate with producers' associations than with individual producers. And many government producers would prefer to designate one department as their lead negotiator. One of the recommendations in the evaluation report was to give consideration "to establishing one bargaining authority for all

¹ Available on the Internet at: www.pch.gc.ca/progs/em-cr/eval/2002/2002_25/tm_e.cfm

federal government departments”. The Tribunal supports this recommendation, as it would facilitate the bargaining process and make it more cost-effective.

Like all federal institutions, CAPPRT faces the challenge of carrying out its statutory responsibility and dealing with the heavy burden of transparent and accountable reporting, while at the same time being careful in the spending of public funds. At its creation in 1993, CAPPRT adopted efficient business practices, and in the spirit of the day soon adopted a clear statement of objectives, high standards for service delivery, a comprehensive performance measurement framework and transparent reporting on its activities and results. CAPPRT’s management team embraced this framework at its inception and has been continually guided by it as it evolves.

**Small
agency
challenges**

As a very small agency, CAPPRT faces a particular challenge in operating in that there are a myriad of tasks for a small staff. This is compounded by the fact that the workload is unpredictable and changing, as parties themselves decide whether to bring cases to CAPPRT. To face these particular challenges, CAPPRT has always followed the practice of contracting to government departments and the private sector for many of the services not required on a full-time basis. CAPPRT also selects staff who have multiple skills, are flexible, and are interested in having a variety of responsibilities and taking initiative. Jointly with another small agency, we recently hired a financial analyst who is working for the two agencies, a unique situation in the federal government. Until then, we contracted with the private sector for that service. Furthermore, Tribunal members are appointed on a part-time basis, a fact which adds to our economic efficiency as they are called on and paid only as needed; however this makes scheduling more difficult as they have other commitments. All Tribunal members are currently bilingual, a situation which facilitates the scheduling of cases. CAPPRT also provides accommodation to the small office of Environmental Protection Review Canada, which leads to greater efficiency for the government.

Plans and Priorities

Departmental Priorities

	Planned Spending			Type of Priority
	2005-2006	2006-2007	2007-2008	
1. Deal with matters promptly and competently	\$1,000,000	\$1,000,000	\$1,000,000	Ongoing
2. Fully inform and assist clients	\$ 600,000	\$ 600,000	\$ 600,000	Ongoing
3. Work on amendments to the <i>Act</i> and other changes	*			Ongoing

* No specific budget has been allocated to this priority as the cost involved is included in the first two priorities.

Strategic Outcome: (Total Planned Spending - \$1,840,000)

The Tribunal will achieve its strategic outcome of developing constructive relations between self-employed artists and producers in its jurisdiction by implementing its priorities as follows.

1. Deal with requests under the legislation promptly and competently

The Tribunal continues to deal with new issues and to establish its own jurisprudence since there is only one other jurisdiction in Canada with similar legislation (Quebec). This “newness” presents a challenge for timeliness in decision making on some cases. It is important that we maintain a strong research capacity to ensure that the Tribunal’s decisions are fair and reflect the realities of the client community. We will continue to organize information and training sessions for Tribunal members on new and relevant topics as they arise. In order to plan and operate more efficiently and effectively, CAPPRT implemented a new case management database in 2004-2005. It will complete work to make it fully operational, for example, completing the French version.

2. Fully inform and assist clients

After organizing meetings with artists’ associations in late 2004-2005, CAPPRT will hold meetings with the producers subject to the *Act* in 2005-2006. In these meetings, CAPPRT reviews the provisions in the *Act* concerning negotiations between artists’ associations and producers, and an official from Human Resources and Skills Development Canada outlines the assistance they can provide to parties during negotiations, for example, information on wage increases and latest trends in contract provisions, and analyses of collective agreements on-line. The objective of the meetings is to assist the client community in carrying out successful negotiations. These meetings are among the activities taking place to mark CAPPRT’s tenth anniversary year which began in May 2004.

With respect to other kinds of assistance, we will continue to encourage parties to resolve as many differences as possible prior to a hearing. When appropriate, staff will investigate the situation and provide mediation assistance. This informal approach to resolving differences will reduce the number of hearings and panel decisions, and save time and money for CAPPRT and its clientele.

3. Work on amendments to the *Act* and other changes

CAPPRT staff will continue to work with staff from Canadian Heritage (DCH) and Human Resources and Skills Development Canada on obtaining amendments to the *Status of the Artist Act* and other changes which would make the *Act* more effective in achieving expected results, as was pointed out in the evaluation report of 2003. Although CAPPRT is not in control of this work (it is the responsibility of DCH), these changes are a priority for CAPPRT. Various amendments, such as requiring arbitration in specific situations for the settlement of first agreements, and other changes recommended in the evaluation report would facilitate the goal of successful negotiations following certification.

Financial Management and Modern Comptrollership

The government has now adopted the Management Accountability Framework to guide it in the achievement of its objectives for improved management. It is an all-encompassing framework that brings together the management-focussed initiatives underway in various spheres, such as Modern Comptrollership, Human Resources Modernization, Service Improvement and Government On-Line.

With regard to management improvement initiatives, CAPPRT will continue to work in partnership with three other small quasi-judicial agencies: the Competition Tribunal, the Copyright Board and the Transportation Appeal Tribunal. The focus of the cluster group for 2005-2006 will be on developing and implementing an action plan in response to the results of a compliance audit of our financial and contracting practices conducted in 2004-2005; participating in one or more projects under the Management of Government Information Initiative; looking at the feasibility of and identifying areas in which an evaluation could be conducted; reviewing performance indicators; and giving consideration to a partnership arrangement for the implementation of certain aspects of the new *Public Service Modernization Act*, namely the setting up of labour management consultative committees, a dispute resolution process and policy development.

Section II: Analysis of Program Activities by Strategic Outcome

Program Activity Name: Processing of Cases

Financial Resources

2004-2005	2005-2006	2006-2007
\$2,230,000	\$2,217,000	\$2,217,000

Human Resources:

2004-2005	2005-2006	2006-2007
10 FTEs	10 FTEs	10 FTEs

Strategic Outcome

Constructive professional relations between self-employed artists and producers in the federal jurisdiction

The indicators and targets below are used to monitor whether CAPPRT is achieving its strategic outcome. As seen in the table below, we are still in the development stage with respect to some measures and targets for our strategic outcome. A rapid analysis of scale agreements under the *Status of the Artist Act* was carried out recently and the results showing changes in artists' conditions were reported in the Departmental Performance Report 2003-2004. Further developmental work will be carried out under our work plan for the cluster group.

<i>Indicator</i>	<i>Target</i>
Percentage of complaints resolved without a hearing	At least half of all complaints are resolved without a hearing.
Negotiation of first agreements	All certified artists' associations have negotiated at least one new scale agreement within five years of being certified.
Greater recognition and improved wages and working conditions for artists	Targets are being developed.
A stable and predictable working environment for artists and producers	Targets are being developed.

CAPPRT has several performance measures or indicators that assist us in monitoring whether its priorities are being achieved. The following tables provide the performance indicator and target for each.

Priority 1: Deal with requests under the legislation promptly and competently

One of the indicators used to monitor promptness—the average time it takes to render a final decision after a completed application is received—has been changed to include all cases, whereas previously the indicator only included certification cases, as was mentioned in the last *Report on Plans and Priorities*. Most of the Tribunal’s business now deals with matters other than applications for certification, such as complaints and applications for review. The targeted time for the revised indicator was set at 200 days, based on the Tribunal’s past experience and practices of other labour boards.

CAPPRT’s first priority also includes the processing of cases competently. To have such a priority or objective is controversial as some argue that judging the quality of decisions rendered by a quasi-judicial body compromises the independence of its members. On the other hand, the government has committed to operate in an effective and efficient manner and to report in a transparent manner on the achievement of its objectives.

The competence of the Tribunal has two aspects: rendering decisions within the parameters of the legislation it administers and being effective in advancing the goals of the *Status of the Artist Act*. It is the first aspect that is being dealt with here and the indicator used to measure this is an objective measure—the percentage of applications for judicial review that have been allowed by the Federal Court of Appeal.

It should be noted that applications for judicial review may be successful in situations where the Tribunal has:

- acted without jurisdiction, acted beyond or refused to exercise its jurisdiction; or
- failed to observe principles of natural justice or other procedures it is required by law to observe; or
- acted or failed to act, by reason of fraud or perjured evidence.

This indicator remains controversial and as a result it is under review. The review includes a study of the related performance measurement practices of other administrative tribunals.

The other aspect of competence—that Tribunal decisions lead to the desired results—is measured under the Tribunal’s strategic goal.

<i>Indicator</i>	<i>Target</i>
Average time to issue reasons for a decision after the hearing in all cases	Maximum of 60 calendar days
Average time to process all cases (from the date of receipt of the completed application to the date of the decision)	Maximum of 200 calendar days
Percentage of Tribunal decisions upheld under judicial review.	More than 50 percent

Priority 2: Fully inform and assist clients

<i>Indicator</i>	<i>Target</i>
Quality and timeliness of information bulletins	At least three information bulletins are issued annually. Clients are satisfied (as determined by client consultations).
Quality of the Tribunal's Web site	The Web site contains timely and accurate information and meets Government On Line standards. Clients are satisfied (as determined by client consultations).
Success of information sessions for clients	Clients are satisfied, as determined by survey of attendees.

Priority 3: Work on amendments to the *Act* and other changes

The Tribunal Secretariat is assisting the Department of Canadian Heritage (DCH) in the preparation of possible amendments and other changes as recommended in the evaluation of the *Act*. DCH has indicated that amendments will be proposed to Cabinet in early fiscal 2005-2006.

Section III: Supplementary Information

Management Representation Statement

I submit for tabling in Parliament the 2005-2006 Report on Plans and Priorities for the Canadian Artists and Producers Professional Relations Tribunal.

This document has been prepared based on the reporting principles contained in the *Guide for the Preparation of 2005-2006 Part III of the Estimates: Reports on Plans and Priorities and Departmental Performance Reports*:

- It adheres to the specific reporting requirements outlined in the Treasury Board Secretariat guidance;
- It is based on CAPPRT's approved accountability structure as reflected in its Management Resources and Results Structure;
- It presents consistent, comprehensive, balanced and accurate information;
- It provides a basis of accountability for the results achieved with the resources and authorities entrusted to it; and
- It reports finances based on approved planned spending numbers from the Treasury Board Secretariat.

David P. Silcox
Chairperson and Chief Executive Officer
February 10, 2005

Mandate, Role and Responsibilities

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

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

The self-employed artists within the Tribunal's jurisdiction include artists covered by the *Copyright Act* (such as writers, photographers and music composers), performers (such as actors, musicians and singers), directors, and other professionals who contribute to the creation of a production, such as those doing camera work, lighting and costume design.

The Tribunal has the following statutory responsibilities:

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

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

Organizational Information

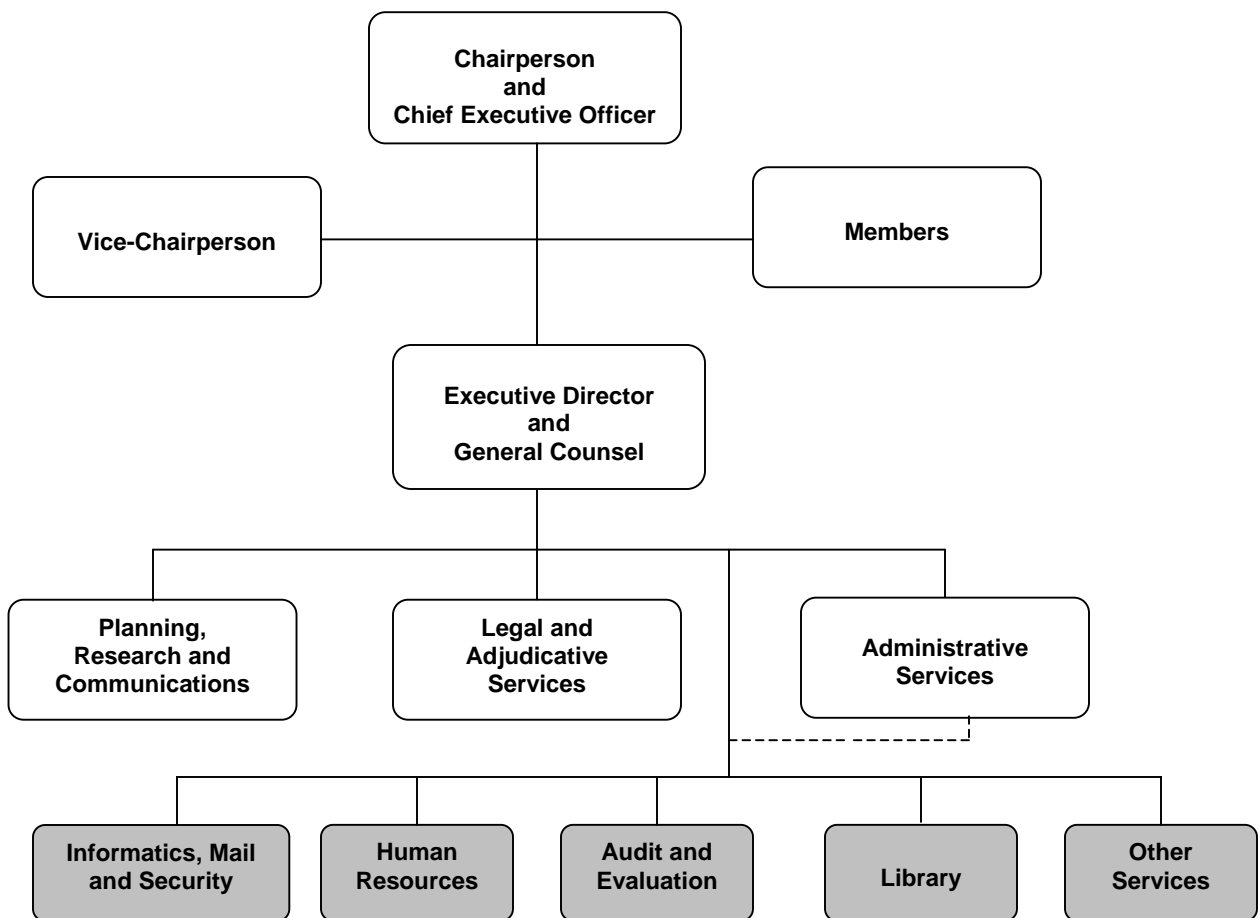
The Tribunal reports to Parliament through the Minister of Labour.

The Tribunal is currently composed of a Chairperson, a Vice-chairperson and three (of allowable four) other members. Members are appointed by the Governor in Council, and all five members are part-time appointees.

The Tribunal has a straight-forward organizational structure which permits it to carry out its mandate with a minimum of staff. The part-time Chairperson is the Chief Executive Officer of the Tribunal. The daily management of staff and operations of the Tribunal is the responsibility of the Executive Director and General Counsel who reports to the Chairperson. Ten staff members carry out the functions of legal counsel, registrar, planning, research, communications, mediation and administrative services. Staff are multi-skilled in order to take on various kinds of tasks as required. Also, the Tribunal outsources some corporate services that are not required on a full time basis; for example, it contracts with Canadian Heritage for human resources services, and with Industry Canada for informatics, security and mail services. It has arrangements with the other two federal labour boards to use their hearing rooms and library services.

Figure 2 illustrates the Tribunal’s organizational structure.

Figure 2. Organization Chart



■ Services provided on contract or by other arrangements

Table 1: Departmental Planned Spending

(\$ thousands)	Forecast Spending 2004-2005	Planned Spending 2005-2006	Planned Spending 2006-2007	Planned Spending 2007-2008
PROCESSING OF CASES				
Budgetary Main Estimates	1,840	1,827	1,827	1,827
Non-Budgetary Main Estimates	0	0	0	0
Less: Respendable revenue	0	0	0	0
Total Main Estimates	1,840	1,827	1,827	1,827
Adjustments*	0	0	0	0
Net Planned Spending	1,840	1,827	1,827	1,827
Less: Non-respendable revenue	0	0	0	0
<i>Plus: Cost of services received without charge**</i>	390	390	390	390
Net Cost of Program	2,230	2,217	2,217	2,217
Full Time Equivalents	10	10	10	10

* Adjustments include funds received for adjustments to collective agreements affecting terms of employment and for internal audit.

** Includes the cost of accommodation provided by the Tribunal to the office of Environmental Protection Review Canada

The planned spending does not vary over the next three years. For the Tribunal, it is business as usual. New initiatives, such as those related to Modern Comptrollership, will be financed out of the reallocation of existing resources.

Table 2: Net Cost of Department for the Estimates Year

(\$ thousands)	Total
Net Planned Spending (Total Main Estimates plus Adjustments as per the Planned Spending Table)	1,827
<i>Plus: Services Received without Charge</i>	
Accommodation provided by Public Works and Government Services Canada (PWGSC)	325
Contributions covering employer's share of employees' insurance premiums and expenditures paid by TBS (excluding revolving funds)	65
Workers' compensation coverage provided by Human Resources and Skills Development	0
Salary and associated expenditures of legal services provided by Justice Canada	0
<i>Less: Non-responsible Revenue</i>	0
2005-2006 Net Cost of Program	2,217

Section IV: Other

Statute and Regulations

<i>Status of the Artist Act</i>	S.C. 1992, c.33, as amended
<i>Status of the Artist Act Professional Category Regulations</i>	SOR 99/191
<i>Canadian Artists and Producers Professional Relations Tribunal Procedural Regulations</i>	SOR/2003-343

Contact Information

Canadian Artists and Producers Professional Relations Tribunal
240 Sparks Street, 1st Floor West
Ottawa, Ontario K1A 1A1

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Facsimile: (613) 947-4125

Email: info@capprt-tcrpap.gc.ca

Website: www.capprt-tcrpap.gc.ca

Publications and Other Relevant Documents²

Canadian Artists and Producers Professional Relations Tribunal Annual Report

Canadian Artists and Producers Professional Relations Tribunal Departmental Performance Report (annual)

Canadian Artists and Producers Professional Relations Tribunal Information Bulletins (three per year)

Canadian Artists and Producers Professional Relations Tribunal Procedures, 2004.

Guide for Self-Represented Parties, Canadian Artists and Producers Professional Relations Tribunal, 2004.

The Status of the Artist Act Annotated, Canadian Artists and Producers Professional Relations Tribunal, available only on the web, updated regularly.

² All are available on the Tribunal's web site: www.capprt-tcrpap.gc.ca

Evaluation of the Provisions and Operations of the Status of the Artist Act, prepared by Prairie Research Associates Inc. for Canadian Heritage, July 2002, tabled in Parliament on April 1, 2003.

Government Response to the Evaluation of the Provisions and Operations of the Status of the Artist Act, tabled in Parliament on April 1, 2003.

Client Feedback on the Performance of the Canadian Artists and Producers Professional Relations Tribunal, prepared by Cultural Enterprises International for CAPPRT, April 30, 2000.

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].