



Canadian Artists and Producers
Professional Relations Tribunal

Tribunal canadien des relations
professionnelles artistes-producteurs

Annual Report

13th report

2006-2007



Canadian Artists and Producers
Professional Relations Tribunal

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Canadian Artists and Producers Professional Relations Tribunal Tribunal canadien des relations professionnelles artistes-producteurs

December 21, 2007

The Honourable Jean-Pierre Blackburn
Minister of Labour and Minister of the Economic
Development Agency of Canada for the Regions of Quebec
Ottawa, Ontario K1A 0J2

Dear Minister Blackburn:

In accordance with section 61 of the *Status of the Artist Act*, I am pleased to submit for tabling in Parliament the annual report of the Canadian Artists and Producers Professional Relations Tribunal for the period April 1, 2006 to March 31, 2007.

Yours respectfully,

A handwritten signature in black ink, appearing to read "Peter Annis". The signature is written in a cursive style with a large initial "P".

Peter Annis
Chairperson and Chief Executive Officer

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1. Members and staff of the Tribunal¹

Peter Annis
Chairperson and Chief Executive Officer

Elaine Mary Kierans
Vice-Chairperson

Lyse Lemieux
Member

Michael LaLeune
Member

Diane Chartrand
Executive Director and General Counsel

Karina Desmarais Yelle
Registrar and Legal Counsel

Manon Allaire
Acting Scheduling and Hearing Officer

Brian K. Stewart
Director, Planning, Research and Communications

Suzanne Séguin
Manager, Corporate Services

Sylvie Besner
Administrative and Financial Officer

¹ This reflects the composition of the Tribunal as of December 31, 2007. As noted in the text of the Report, there were changes in the membership of the Tribunal shortly after the end of the fiscal year. There have also been some recent changes in the staff of the Tribunal Secretariat.

2. Chairperson's Message

I was appointed Chairperson of the Canadian Artists and Producers Professional Relations Tribunal in June, 2007, and this Annual Report for the 2006-2007 fiscal year covers a period before my tenure began. Nevertheless, I consider it an honour and a pleasure to present the report.

One of the rewards of chairing the Tribunal is the opportunity to be involved with such an innovative model for labour relations. The Tribunal is a specialized body, with expertise in both labour relations and the arts and culture sector, administering a statutory regime of collective bargaining for independent self-employed artists. In Canada, the only other jurisdiction with a similar model is the province of Quebec. Internationally, nothing like it exists, despite the 1980 UNESCO resolution affirming the right of artists to the same legal, social and economic advantages enjoyed by other workers, and their right to organize collectively and defend their common interests.

Artists and producers play a central role in creating and defining the Canadian identity and spirit. They make our lives richer and our society vibrant, and they represent Canada internationally. A framework for labour relations that is both robust and flexible strengthens the arts and culture sector, contributing to better conditions for both artists and producers. Providing that framework is a public service of which we at the Tribunal are proud.

The model set up under the Status of the Artist *Act* is unusual not just because it applies to artists and producers, but also because it applies to independent self-employed contractors. Their employment relationship falls outside the traditional model of labour relations based on employers and employees. But this kind of employment relationship is increasingly common, as global economy transforms, and it may well become a dominant model. Independent self-employed contractors and businesses in all

sectors of the economy can learn a great deal from looking at the Status of the Artist Act and the Tribunal.

We should not pretend that the service we provide has eliminated the problems that gave rise to it in the first place. Artists and producers continue to face many challenges. Some are not new: the simple challenge of making ends meet in the cultural sector is probably as old as the arts themselves. And some, particularly in a major area of our jurisdiction, broadcasting, are new and reflect a rapidly transforming economic and technological landscape. As these challenges unfold, we will do all we can to help artists and producers face them together, fairly and equitably.

The Tribunal also faces its own challenges. We want to make our services better known and more readily available to artists, artists' associations and producers. The *Act* provides a number of advantages – in particular, services in mediating disputes – that could be more widely used than they are. And the Act is not perfect: we believe that amendments, such as a provision for arbitration where negotiations for first contracts are stalled, could make it more effective and useful to both artists and producers. Getting those amendments drafted is not in our control, of course—that responsibility rests with the Department of Canadian Heritage—but we certainly encourage amendments that would help the Act achieve Parliament's intent. I look forward to increasing the visibility and effectiveness of the Tribunal.

In taking on this new position, I have been well served by a very capable staff, and by my fellow Tribunal members, who have impressed me with their knowledge, dedication and enthusiasm. I want to take this opportunity to thank them all, and I look forward to working with them to enhance productive professional relations in the arts and culture sector.

3. Mandate

The Canadian Artists and Producers Professional Relations Tribunal administers Part II of the *Status of the Artist Act*, which governs professional relations between self-employed artists and federally regulated producers. The Tribunal is an independent, quasi-judicial federal agency, whose goal is to encourage constructive professional relations between these parties.

Labour relations, and employment more generally, are normally a matter of provincial jurisdiction under the Constitution Act, but in certain sectors they fall within the authority of the federal Parliament. These sectors include telecommunications, chartered banks, aviation, international and inter-provincial transportation, telecommunications, broadcasting, and federal government institutions. The latter two are the areas in which the Tribunal has jurisdiction.

The Tribunal is one of four agencies that regulate labour relations within federal jurisdiction². Its 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).

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 principal statutory responsibilities:

- To define sectors of cultural activity suitable for collective bargaining between artists' associations and producers,
- 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 prescribe appropriate remedies.

Artists' associations certified under the Act 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.

² The others are the Canada Industrial Relations Board, which deals with labour relations between private sector employers in federal jurisdiction and their employees, the Public Service Staff Relations Board, which deals with labour relations between 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.

4. The work of the Tribunal: contributing to a vibrant cultural sector

4.1 INTRODUCTION

Culture and the arts are important to Canada and Canadians. They enrich our lives, represent us at home and abroad, and contribute significantly to Canada's economy. One would never guess the importance of artists' contributions, however, if one were to judge from their earnings and economic condition. Artists' average incomes are well below the average for all workers in Canada, despite their higher than average level of education. Many artists, because they are self-employed, do not have the advantages of employment insurance, training benefits and pension funds. Maintaining a viable and vibrant cultural sector in Canada has over the years required innovative encouragement from all levels of government.

The *Status of the Artist Act* and the Canadian Artists and Producers Professional Relations Tribunal are an important part of the Government of Canada's support for artists and producers.

The Tribunal's primary responsibility is to provide its client base – artists, artists' associations, and producers – with the structured labour relations framework set out in the *Status of the Artist Act*. This labour relations framework contributes to stability in cultural industries, which in turn encourages artists to pursue their chosen careers and helps to ensure that producers have access to a stable and dependable labour force of artists. The Tribunal also provides its client base with assistance and support related to the collective bargaining process. Tribunal staff members carry out communications and outreach work to make the Act and its provisions more widely known to the Tribunal's clients and encourage them to make use of its provisions. In addition, staff members provide support to Tribunal members in their case work, and conduct research on issues related to the arts and cultural sector.

4.2 CASE DEVELOPMENTS

The Tribunal's communications strategy, research agenda, and outreach activities became a major focus over the course of the fiscal year. The Tribunal has always worked to ensure that artists' associations and producers understand the *Status of the Artist Act* and what it can do for them. This is of increasing importance with the acceleration of changes in the broadcasting industry, one of the principal areas of the Tribunal's jurisdiction. The transformations in broadcasting – mergers, convergence, new technologies, and the weakening of traditional business models – require new efforts from the Tribunal to facilitate certification and negotiation under the Act, and to recognize and respond to new producers and associations.

Typically, the Tribunal puts out between one and three information bulletins in a year, to advise the public of cases and to draw clients' attention to services. In 2006-2007, two information bulletins were issued. One of these placed special emphasis on mediation as a means for artists' associations and producers to resolve disputes without proceeding to a hearing.

The Tribunal updated its Web site regularly to ensure that the information on it is timely and accurate. It also significantly modified and reorganized the site, to emphasize the services that the Tribunal can make available to artists, artists' associations, and producers. This is a continuing project, particularly with modifications based on feedback from Web site users.

Staff members have in the past held information sessions for artists' associations and producers to clarify the obligations and rights of parties in bargaining under the Act, and to allow organizations to share their information and experiences with each other. While the information sessions have been useful and well-received

by clients, there is limited value in repeating them in rapid succession. Recognition of this led the Tribunal to revise its communications strategy, focusing on how the Tribunal can be of service to its clients.

4.3 CHANGES AT THE TRIBUNAL

During fiscal 2006-2007, one member's term came to an end, and shortly after the end of the fiscal year, we saw significant further changes in the membership of the Tribunal, with the appointment of a new Chairperson and a new Vice-Chairperson.

The appointment of Mr. John Van Burek, a part-time member since May 2002, ended on May 1, 2006.

Ms. Elaine Mary Kierans was appointed part-time Vice-Chairperson on May 15, 2007.

Mr. Peter Annis was appointed as part-time Chairperson and Chief Executive Officer Officer on June 4, 2007. He replaced Mr. John Moreau, Q.C., whose term as Acting Chairperson and Chief Executive Officer ended at that time. Mr. Moreau had been a part-time member since March, 2001, and Acting Chairperson and Chief Executive Officer since April, 2006.

4.4 CASE ACTIVITY

The Tribunal began 2006-2007 with 5 cases pending from the previous fiscal year. During the year, the Tribunal received one new application. The Tribunal rendered two interim decisions and four final decisions. Two cases were withdrawn.

Certification cases are a decreasing part of the Tribunal's business, something we have mentioned in previous Annual Reports, the Report on Plans and Priorities, and the Departmental Performance Report. Most of the major bargaining sectors covered by the Act have been defined

and artists' associations certified to represent them.

The Tribunal received an application for a revision of the wording of one of its certification decisions. A review of the decision showed that the applicant had correctly identified an ambiguity in the wording, and the application was granted.

In last year's Annual Report, we commented on a case in which the Tribunal rescinded a decision after one of the parties requested a review, and then placed the case in abeyance pending a hearing. The parties took no further action on the file, and in January, 2007, the Tribunal advised the parties in writing that the file was discontinued.

Four 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 four certifications were renewed.

4.5 CASE DEVELOPMENTS

The following section presents a summary of the developments during the fiscal year respecting significant cases carried over from the previous fiscal year or opened during fiscal 2006-2007. 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.

Writers Guild of Canada (WGC) (File No 1350-06-001)

This was an application for a review of a Tribunal decision in a complaint of failure of the duty of fair representation.

The Writers Guild of Canada filed an application for review of Decision 2006 CAPPRT 050 (Files No. 1330-04-001 and No. 1340-04-002, reported in our 2005-2006 Annual Report). The WGC asked the Tribunal to review its decision on the grounds that it had breached its duty of procedural fairness, committed an error in law, and committed a serious error of fact.

A panel of the Tribunal convened and considered the application on the basis of written submissions.

On August 11, 2006, in Decision 2006 CAPPRT 051, the Tribunal found that it was not appropriate to review Decision No. 050 on the grounds submitted, and dismissed the WGC's application.

Canadian Broadcasting Corporation (CBC)
(File No. 1340-03-001R)

This case concerned a disagreement as to the conditions under which the Tribunal accepted a request for withdrawal.

In 2003, the CBC filed an application for a declaration of illegal pressure tactics by the Writers' Guild of Canada (File No. 1340-03-001). In 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."

In March, 2005, the CBC filed an application for review of the Tribunal's decision (File No. 1350-05-001), maintaining that the Tribunal did not have the authority to allow the withdrawal in a manner different from that requested.

In May, 2005, the Tribunal panel rescinded the decision to accept the withdrawal of the complaint, and the file remained open.

On January 9, 2007, after informing the parties

that this file had been dormant for more than a year, the Tribunal closed the file.

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

This case involved the question of whether a scale agreement applied to particular artists.

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 referred the matter back to the arbitrator.

On August 8, 2006, the Arbitrator advised the Tribunal that, following a joint request from the parties, he had put the file on hold sine die. In September 2006, the Tribunal was advised that the parties had come to an agreement in principle. At the end of the fiscal year, the Tribunal was awaiting completed documentation of the ratification of the agreement.

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

This was another case where the Tribunal was asked to consider whether a scale agreement applied to a particular position.

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.

On November 14, 2006, the parties informed the Tribunal that they had reached an agreement and that they were withdrawing from the file. The request to withdraw the matter before the Tribunal was granted on November 24, 2006. The file is now closed.

Canadian Actors’ Equity Association (“Equity”) v. Department of Canadian Heritage (File No. 1330-05-003)

This was a complaint of failure to bargain in good faith.

Equity filed a complaint on December 15, 2005, against the Department of Canadian Heritage. In 2001, it had sent the Department a notice to bargain for the purpose of entering into a scale agreement, but the two parties had failed to reach an agreement. Equity alleged that the Department of 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, the Department 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.

A number of associations and individuals have contacted the Tribunal intending to make

applications or complaints, but have not provided the necessary information to allow the Tribunal to deal with their applications. The Tribunal tried to assist the parties to provide the necessary information, but at year-end these cases were still incomplete.

More detailed information on the Tribunal’s activities and on the challenges it faces is available in the Tribunal’s annual *Departmental Performance Report*.

5. Case statistics

All files ¹	1997 1998	1998 1999	1999 2000	2000 2001	2001 2002	2002 2003	2003 2004	2004 2005	2005 2006	2006 2007	Average over past 10 years ²
Brought forward from previous fiscal year	15	14	11	11	8	7	7	5	5	5	9
New applications received	6	1	3	3	7	6	7	5	7	1	5
Days of hearings held ³	9	6	2	16	12	12	10	6	16	1	9
Interim decisions rendered	2	0	1	8	8	2	5	3	6	2	4
Final decisions rendered	6	4	1	3	5	4	8	4	3	4	4
Cases withdrawn	1	0	2	3	3	2	1	2	2	2	2
Renewals	n/a	2	11	3	5	11	3	6	12	4	6
Pending at fiscal year end	14	11	11	8	7	7	5	5	7	1	8

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

6. Spending

	2006-2007	2005-2006
Operating expenditures	\$401,636	\$278,243
Salaries, wages and other personnel costs	\$939,273	\$807,901
Total spending	\$1,340,909	\$1,086,144
Unspent*	\$558,921	\$707,736
Total allocation	\$1,899,830	\$1,793,880

*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, 2006 and March 31, 2007, copies of which were provided to the Tribunal, is found below.

Artists' Associations	Producers	First*
Union des artistes	ARTV	✓

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

Scale agreements concluded

A list of scale agreements concluded between April 1, 2006 and March 31, 2007, copies of which were provided to the Tribunal, is found below.

Artists' Associations	Producers	First*
Canadian Actors' Equity Association	Professional Association of Canadian Theatres Canadian Heritage	✓
Société des auteurs de radio, télévision et cinéma	National Film Board Société Radio-Canada	
Société professionnelle des auteurs et des compositeurs du Québec	Groupe TVA inc. Société Radio-Canada	✓ ✓
Union des Artistes	ARTV	✓

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

Appendix 2 — Members' biographies



Mr. Peter Annis

Ottawa, Ontario
Chairperson and Chief Executive Officer

Peter Annis is a practicing lawyer with extensive experience in the fields of civil litigation, labour law and alternate dispute resolution. Formerly a member of the

Department of Justice and a partner in the firm of Borden Ladner Gervais LLP, Mr. Annis concentrated much of his practice in the fields of administrative law and labour relations, particularly representing Francophone school boards, government institutions and First Canadian aboriginal bands. He was called to the bar in 1974 and was certified by the Law Society of Upper Canada as a specialist in civil litigation. He now practices as a sole practitioner.

In the latter part of Mr. Annis' career, he focused his practice on alternative dispute resolution and has established a successful mediation, arbitration and conflict investigation practice. He has conducted over 500 mediations in the Ontario court mandatory mediation program and has arbitrated numerous labour relations grievances and harassment investigations for government institutions. He was a part time member of the Ontario Human Rights Tribunal and of the Review Tribunal (Agriculture and Agri-foods).

Mr. Annis holds a Bachelor of Arts and a Bachelor of Law from Queen's University and a Doctorate from the University of Aix-en-Provence in France. He is a member of several professional associations and is a past President of the Association des juristes d'expression française de l'Ontario. He has also been a part-time lecturer

with the University of Ottawa's law faculty and is the author of numerous law journal articles and a monograph on bilingualism in the Ontario judicial system.

Mr. Annis was appointed part-time Chairperson of the Tribunal on June 4, 2007.

Ms. Elaine Mary Kierans

Toronto, Ontario
Vice-Chairperson

Elaine Kierans worked as a lawyer after graduating from McGill University in 1983, and remains an active member of the Law Society of Upper Canada. She also holds a business degree, specializing in labour relations, from McGill University.

Ms. Kierans has held numerous positions throughout her career including Vice-Chair of the Alcohol and Gaming Commission of Ontario. She also has sat on a number of boards, including those of Brighter Minds Media Inc. and the Toronto French School.

Ms. Kierans was appointed part-time Vice-Chairperson of the Tribunal on May 15, 2007.



Ms. 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.

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].