Appendix H

SOR/2014-176

STATUS OF THE ARTIST ACT PROCEDURAL REGULATIONS

Status of the Artist Act

December 18, 2014

1. This instrument repeals the *Canadian Artists and Producers Professional Relations Tribunal Procedural Regulations* (SOR/2003-343, before the Committee on March 12, 2009, December 3, 2009, April 25, 2013, and April 10, 2014), in connection with which ten matters had been raised.

2. New points are dealt with in the attached correspondence, some of which are similar to those raised in relation to the repealed regulations, notably issues concerning subjectivity, inconsistent language, English-French discrepancies, and procedural gaps.

CK/mh

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December 18, 2014

Ms. Elizabeth E. MacPherson
Chairperson
Canada Industrial Relations Board
C.D. Howe Building
240 Sparks Street, 4th Floor West
OTTAWA, Ontario K1A OX8

Dear Ms. MacPherson:

Our File: SOR/2014-176, Status of the Artist Act Procedural Regulations as amended by SOR/2014-242

I have reviewed the above-mentioned instrument prior to placing it before the Joint Committee, and note that it repeals the *Canadian Artists and Producers Professional Relations Tribunal Procedural Regulations,* SOR/2003-343. As a result, our file in relation to those Regulations will be closed. With respect to the *Status of the Artist Act Procedural Regulations,* I would appreciate your advice with respect to the following points.

1. The Regulations were made on June 20, 2014, but not registered until July 8, 2014. Subsection 5(1) of the *Statutory Instruments Act* requires regulation-making authorities to transmit a regulation for registration within seven days after it was made. It appears that this requirement was not complied with, and the Committee will likely value an explanation as to why this was so.

2. As a general principle, the same terms should be used to convey the same meaning throughout the Regulations, as different terms are presumed to be intended to convey different meanings. There are a variety of instances where different terms are used in these Regulations even though it seems likely that the same meaning is intended. In particular, I note the following:

- While the word "description" in the English version is usually rendered as "description" in the French version, it is sometimes rendered instead as either

"exposé" (paragraphs 9(1)(c) and 32(h)) or "détail" (paragraphs 32(g) and 33(f)). If the same meaning is intended in each instance, the French version should be amended so that the same term is used each time; if different meanings are intended, the English version should be amended to reflect those differences.

- In instances where the English version refers to a proceeding, the French version refers alternately to "affaire" (sections 2, 21(1)(e) and 43(1)), "procédure" (sections 8(1)(a), 12(2)(b), 15(1), 15(3), 21(1)(a), 42 and 43(2)), "instance" (sections 16(1) and 19) or "conférence" (section 41(2)).

- In instances where the English version refers to "grounds," the French version generally refers to "les moyens" (paragraphs 5(c), 10(1)(b), 28(d), 32(f), 33(e), 34(2)(b), and 38(d)), but instead refers to "motifs" in paragraph 9(1)(c) and to "raisons" in paragraph 39(1)(d).

- Similarly, in instances where the French version refers to a "délai," the English version alternately refers to "time limits" (subsection 3(1)), "a time limit or deadline" (subsection 3(2)), "time" (subsections 7(2), 8(2), 9(4), 10(3) and 25(4)), and a "time period" (subsections 9(1), 13(3), 21(5)(b), 24(2), 24(3) and 25(2)).

- Finally, there are discrepancies in how the Board's power to create exceptions to established rules is described. In one provision of the English version, the phrase "Unless otherwise stated by the Board" is used (subsection 3(1)), while two other provisions instead use the phrase "Unless the Board directs otherwise" (subsections 21(2) and 21(4)). Is there a difference in what the Board must do to "state" otherwise and to "direct" otherwise? I note that three different formulations are used in the French version of these provisions (respectively, "A moins d'indication contraire du Conseil," "Sauf directives contraires du Conseil," and "A moins que le Conseil n'en décide autrement"), further complicating how they are to be interpreted. Again, if the same meaning is intended in each instance, the same language should be used.

3. Paragraph 5(f)

The English version of this paragraph indicates that an application filed with the Board must include a copy of any supporting document. The French version, however, requires the filing of a copy of only those supporting documents already filed ("une copie de tout document déposé à l'appui de la demande"). It would seem that the word "déposé" appears in error in this paragraph, as well as in paragraphs 7(1)(g), 8(1)(e), 28(g), 32(j), and 39(1)(f). The French version of paragraphs 9(1)(e), 10(1)(e), 33(i), 34(2)(d) and 38(g), however, do not contain the word "déposé."

4. Section 6

This section states:

> On receipt of an application, other than an application referred to in section 24, 29 or 35, the Board must, to the extent possible, give notice of the application in writing to a person whose rights may be directly affected by the application.

Related provisions suggest that the notice provided by the Board must include certain information, even though section 6 is silent on this point. For example, it would seem that the notice must include the file number assigned by the Board (paragraph 7(1)(b)) and an address for any person to be served with a document (paragraph 12(2)(b)). Any information the Board is required to include with the notice should be described in section 6, rather than being left to be inferred from other provisions.

5. Paragraph 7(1)(b)

This paragraph indicates that a response to an application must include "the Board's file number of the application to which the response relates." While this paragraph and paragraphs 9(1)(b) and 10(1)(a) indicate that the Board assigns a file number to the application itself, paragraphs 8(1)(a) and 21(1)(a) instead indicate that the Board assigns a file number to the proceeding. Are these distinct file numbers? If not, a single formulation should be adopted throughout the Regulations.

6. Paragraph 7(1)(c), French version

The English version of this paragraph indicates that a response to an application must include "a full response to any allegations or issues raised in the application and full particulars of any additional relevant facts." The French version, however, refers to full particulars of any additional relevant facts connected to the response ("reliés à la réponse"). At best, this additional wording seems to add nothing to the provision, which already refers to "relevant" facts and so does not invite unconnected facts. At worst, this additional wording could result in relevant facts not being included, if they cannot be said to be connected to "the response" specifically, rather than to the matters at issue in the proceeding. Removing these words from the French version would address this potential problem, while also bringing the French more in line with the English.

Similar comments apply to paragraphs 5(c) ("reliés à la demande"), 8(1)(b) ("reliés à la réplique"), 28(d) ("reliés à la demande"), 32(f) ("reliés à la plainte"), 33(e) ("reliés à la demande"), 34(2)(b) ("reliés à la question"), and 38(d) ("reliés à la demande").

7. Subsection 9(1)

This subsection refers to the "time period set out in any public notice referred to in subsections 24(1) or 35(2)." While the public notice referred to in subsection 24(1) must indicate the time period for filing competing applications as a result of subsection 24(2), there is no such requirement with respect to the public notice under subsection 35(2). It would seem section 35 should be amended to identify the information required in the public notice.

8. Paragraph 9(1)(c)

This paragraph indicates that a request for leave to intervene under subsection 19(3) of the Act must include "an explanation of whether their interest is different from that of any other participant." How is the person submitting the request for leave to intervene expected to know at this point what other participants, including intervenors, there may be? This requirement would seem premature prior to the Board deciding which intervenors will be granted leave and making that information available.

9. Paragraph 9(1)(d)

This paragraph indicates that a request for leave to intervene under subsection 19(3) of the Act must include "an indication of how the intervention will assist the Board in furthering the objectives of the Act," but the Act does not explicitly identify its objectives. Are there specific provisions that could instead be referred to in order to provide guidance to intervenors on what information is sought here, for example sections 2 and 3 of the Act, which set out general principles, or section 7, "Purpose"?

Similar comments apply to section 17 of the Regulations.

10. Sections 9 and 10, French version

The French version of these sections does not use consistent language in describing the request for leave to intervene. In some instances, the phrase "requête visant à obtenir l'autorisation d'intervenir" is used, while in other instances "requête en intervention" is used instead. The same formulation should be used consistently.

11. Paragraph 10(1)(b)

In other instances where a person is required to submit information to the Board, they are generally required to submit full particulars of the relevant facts. Here, however, a person submitting a request for leave to intervene is required to submit "full particulars of the facts" as well as "relevant dates." Why are only intervenors expressly required to submit "relevant dates"?

12. Section 11

This section states: "Subject to section 16, a person who files a document with the Board, other than an application, must serve without delay a copy of that document on all participants and any other person named in any notice that the person has received and must inform the Board of the time and manner of service."

First, what is meant by "any other person named in any notice"? "Participant" is defined as any applicant, respondent or intervenor, so it seems unclear who else would be "named."

Second, this obligation is "subject to section 16," which presumably means that the document must be served unless the Board declares it to be confidential and makes an order under paragraph 16(4)(d). How does section 11 operate if the person is obligated to serve the documents "without delay" but also subject to an order of the Board under section 16? It would seem that either the person can serve the documents without delay, which could compromise the confidentiality objectives of section 16, or the person can wait for the Board to decide whether or not to make a declaration, in which case the documents would not be served "without delay."

13. Subsection 13(1)

The French version of this subsection should refer to "des éléments de preuve" instead of "une preuve." I refer you, for example, to section 16(h) of the Act in this regard.

14. Paragraph 13(1)(a)

This paragraph requires the participant to file with the Board six copies of "any document filed with the application, response or reply, as the case may be." Is it intended that intervenors must also file six copies of any documents filed with their written submissions under section 10? If so, it would seem that this paragraph should be amended to refer to "written submissions" as well as to applications, responses, and replies. If this is correct, should paragraph 13(1)(b) also refer to written submissions?

15. Paragraph 13(1)(b)

The two versions of this paragraph would seem to be discrepant. The English version requires the participant to file "a list of witnesses expected to be called that includes their names and occupations, along with a summary of the information that is expected to be provided on issues raised in the application, response or reply." The French version, however, requires the participant to provide a summary of the information that each of the witnesses is expected to provide ("un sommaire de l'information que chacun d'eux est censé fournir"). If the intent is that the participant must provide information about expected evidence from each witness individually,

rather than just the general evidence that all the witnesses will provide, it would seem that the English version should be amended to be clear in this regard.

16. Subsection 13(4)

The two versions of this paragraph are discrepant. The English version authorizes the Board to refuse to consider any document or hear any witness that is presented by a participant who fails to comply with certain requirements. The French version, however, only authorizes the Board to refuse to consider any document or any testimony presented at the hearing; it does not authorize the Board to refuse to hear a witness.

17. Section 14

This section describes how to determine the date of filing of a document with the Board when it is sent by registered mail or "in any other case," presumably for the purposes of the time periods in subsection 13(2). How is the date of service of a document on a participant determined for the purposes of the time periods in subsection 13(3)?

18. Subsection 16(3)

The two versions of this paragraph are discrepant. The English version requires the Board to consider whether disclosure of the document would cause "specific direct harm" to a person. The French version, however, refers only to "direct" harm ("préjudice direct"). The requirement that the harm be "specific" should either be added to the French version or removed from the English version.

19. Subsection 16(4)

This provision states that if the Board declares that a document is confidential, it may

> (*a*) order that the document or any part of it not be placed on the public record;
>
> (*b*) order that a version or any part of the document from which the confidential information has been removed be placed on the public record;
>
> (*c*) order that any portion of a hearing, including any argument, examination or cross-examination, that deals with the confidential document be conducted in private;

> (*d*) order that the document or any part of it be provided to the participants, or only to their legal counsel or authorized representative, and that the document not be placed on the public record; or
>
> (*e*) make any other order that it considers appropriate.

Paragraphs (a) and (b) would seem to have the same effect, since subsection 16(1) sets out the general principle that the Board must place a document on the public record unless it has been declared confidential. If there is an order under paragraph (a) that the confidential part of the document not be placed on the public record, would it not follow from subsection 16(1) that the non-confidential part of the document would be placed on the public record? Further, what is the practical difference in paragraph (b) between a "version" of a document from which the confidential information has been removed and a "part" of a document from which the confidential information has been removed? In practice, it seems that paragraphs (a) and (b) are redundant. Similarly, the second part of paragraph (d) ("and that the document not be placed on the public record") also seems to have no legal effect beyond what paragraph (a) already provides. If this is correct, the redundant aspects of this provision should be repealed.

In addition, paragraph (d) suggests that there are situations in which the Board would order that the document or part of it be provided only to a participant's legal counsel but not to the participant. This seems extraordinary, as does the suggestion that the document could be provided to an authorized representative who is not legal counsel but still not to the participant. In what circumstances would a non-counsel representative have more right of access than the participant being represented?

20. Section 17, as amended by SOR/2014-242

Section 2 of SOR/2014-242 replaced section 17 of the *Status of the Artist Act Procedural Regulations* with the following:

> Despite any other provision of these Regulations, the Board, or an employee of the Administrative Tribunals Support Service of Canada who is authorized to act on behalf of the Board, must not disclose evidence that could reveal membership in an artists' association, opposition to the certification of an artists' association or the wish of any artist to be represented, or not to be represented, by an artists' association, unless the disclosure would further the objectives of the Act.

I am unsure what or whom this provision covers that would not already be covered by the *Privacy Act*. It would seem that the protected information would meet the definition of "personal information" set out in section 3 of that Act since it is "information about an identifiable individual," in particular as it relates to "the personal opinions or views of the individual" in paragraph (e). Similarly, the exception for the disclosure of that personal information would seem to already be authorized

under provisions such as paragraph 8(2)(b) of the *Privacy Act*, which states that "personal information … may be disclosed … for any purpose in accordance with any Act of Parliament or any regulation made thereunder that authorizes its disclosure," and paragraph 8(2)(m), which permits the disclosure of personal information:

> for any purpose where, in the opinion of the head of the institution,
>
> (i) the public interest in disclosure clearly outweighs any invasion of privacy that could result from the disclosure, or
>
> (ii) disclosure would clearly benefit the individual to whom the information relates.

I note that the Board is no longer listed among the government institutions that are subject to the *Privacy Act* as a result of section 421 of the *Economic Action Plan 2014, No. 1*, S.C. 2014, c. 20. The Administrative Tribunals Support Service of Canada was added to the Act at the same time that the Board and other boards and tribunals supported by the ATSSC were removed, however, which seems to suggest that the Board is intended to be covered indirectly, through the ATSSC. If this is correct, then it is unclear what legal effect this section is intended to have beyond what the *Privacy Act* already provides.

21. Section 19

This section states: "The Board may order, in respect of two or more proceedings, that they be consolidated, heard together, heard consecutively or severed." Is there authority elsewhere for the Board to order severance in respect of a single proceeding?

22. Subsection 21(4)

This subsection states that "[a] person who is summoned to an oral hearing must attend at the time and date specified, as well as each day of the hearing, unless the Board directs otherwise." How will the person who is summoned know on which days the hearing is to be held in order to be able to satisfy the regulatory requirement to appear each day of the hearing? What "time and date" does the summons specify? For example, is it the time and date at which the hearing first begins, the time and date at which the person is expected to give evidence, or some other time and date or period?

23. Section 22

This paragraph relates to providing notice of a constitutional question. According to this section, notice must be given "as soon as the circumstances giving rise to the question become known and no later than 10 days before the day on which the question is to be argued." What are the consequences if notice is provided some

time after the circumstances become known but more than 10 days before the day on which the question is to be argued? The requirement to provide notice as soon as the circumstances become known would seem to be more aspirational than enforceable.

A larger question relates to whether section 22 has any independent legal effect. Apart from expressing a wish that notice of a constitutional question be given more than 10 days before the question is to be argued, what legal obligation does section 22 create beyond what other provisions of the Regulations, the *Federal Courts Act* and the *Federal Courts Rules* already require? In particular, section 57 of the *Federal Courts Act* already requires notice to be served on the Attorney General of Canada and the attorney general of each province at least 10 days before the day on which the question is to be argued, and section 69 of the Rules requires the notice to be provided in Form 69, so subsection 22(2) is redundant, as is at least most of subsection 22(1). Further, would there not already be a requirement that the participant file a copy of the notice with the Board and serve a copy on the other participants as a result of provisions such as paragraph 5(f) and section 13 of the Regulations? If so, section 22 in its entirety is redundant and should be repealed. At most, it would seem that section 22 should simply indicate that when a Notice of Constitutional Question has been served in accordance with section 57 of the *Federal Courts Act,* a copy must also be filed with the Board and served on the other participants.

24. Subsection 23(1)

This subsection sets out what must be included in an "application for certification." Since section 1 defines "application" to mean "any application or complaint made to the Board under the Act," it would seem that section 5 of the Regulations also applies to an application for certification. Is this intended?

The same question applies with respect to applications for revocation of certification under section 28, joint applications to change the termination date of a scale agreement under section 31, complaints under section 32, applications for a declaration of an unlawful pressure tactic under section 33, applications for review under section 38, and applications to file a copy of a determination or order in the Federal Court under section 39. In some instances, it may be that meeting the requirements of these provisions would also satisfy the requirements of section 5. Nevertheless, it would seem that section 5 should be amended to clarify that it applies only to those applications that are not dealt with elsewhere in the Regulations.

25. Paragraph 23(1)(d)

This paragraph states that an application for certification must include "an estimate of the number of members of the applicant who work in the proposed sector." Paragraph (e) indicates that the application must also include the applicant's membership list, identifying the members who work within the proposed sector. Given that the information required under paragraph (e) would seem to identify the

exact number of members of the applicant who work in the proposed sector, why must the application also contain an estimate of the number of members of the applicant who work in the proposed sector?

26. Paragraph 23(1)(g)

The English version of this paragraph uses both "its" and "their" to refer to the applicant. For clarity and consistency with other provisions, "its" should be changed to "their."

As well, there is a discrepancy between the English and French versions of this paragraph. The English version refers to the applicant's "constitution," which is rendered in the French version of the Act as "documents constitutifs." The French version of paragraph 23(1)(g), however, uses the term "statuts" which in the Act is used as the equivalent of "articles of association." This discrepancy should be addressed.

27. Subsection 24(2)

This subsection specifies what must be included in the Board's notice of an application for certification.

The notice must include "a description of the proposed sector." Is this intended to be more specific than the "general description of the sector for which certification is sought" that the applicant must include under paragraph 23(1)(b)? If not, the same language should be used in both instances.

The notice must also include "the time period for filing competing applications and expressions of interest from artists, artists' associations, producers and other interested persons in respect of the proposed sector." What is meant by "expressions of interest" in this context? If this is intended to refer to notices of intervention and applications for leave to intervene, those terms should be used instead for clarity and consistency. This would also be consistent with subsection 25(2), which indicates that the notice must indicate the time period for filing notices of intervention. Currently, that obligation is only set out indirectly in subsection 25(2), rather than being set out directly in subsection 24(2).

Finally, paragraph 25(2)(b) indicates that the notice referred to in subsection 24(1) must also include the file number assigned by the Board. Again, this requirement should be expressly stated in subsection 24(2) rather than being left to be inferred from other provisions.

28. Paragraph 25(2)(c)

This paragraph states that a notice of intervention must include the intervenor's "position with respect to the determination sought." Should this instead refer to the

certification sought, for purposes of clarity? I note that there are two distinct determinations described in the Act that are relevant to the ultimate decision of whether to certify an artists' association. First, under subsection 26(1) of the Act, the Board "shall determine the sector or sectors that are suitable for bargaining." Then, after making this first determination, the Board "shall determine the representativity of the artists' association" under subsection 27(1) of the Act. As a result, the reference in this paragraph to "the determination sought" appears to be ambiguous, when what is likely being sought is the intervenor's position on the certification more generally.

29. Paragraph 31(b)

This paragraph indicates that a joint application to change the termination date of a scale agreement must include a copy of all scale agreements "and any other document that the Board requires." It seems likely that the Board would only identify the other required documents after the joint application had already been filed. How does this paragraph operate in terms of timing?

30. Paragraph 32(b)

This paragraph states that a complaint made under section 53 of the Act must include "the name, postal and email addresses and telephone and fax numbers of the person or organization that is the object of the complaint, or of any person who may be affected by the complaint."

First, it appears that the "or" in this paragraph should instead be an "and."

Second, the equivalent in the French version of "any person who may be affected by the complaint" is "toute personne que la plainte peut intéresser," or any person who may have an interest in the complaint, which could be interpreted more broadly than the English version. By way of contrast, the equivalent of "affected by" in other provisions, including subsection 35(1) and paragraph 38(b), is "touché par." This wording would seem to be preferable here as well.

Finally, will the complainant know the contact details for "any person who may be affected by the complaint"? I note that this would appear to include persons indirectly affected by the complaint, unlike section 6 and paragraph 39(1)(b) of the Regulations, which are limited to those who are "directly affected."

31. Paragraph 32(d)

The reference to "actions or circumstances" in the English version of this paragraph reflects the language of subsection 53(2) of the Act. The French version should do the same by referring to "des mesures ou des circonstances" rather than to "des agissements ou des circonstances."

32. Paragraph 32(e), French version

In other provisions, the phrase "full particulars" in the English version is rendered in the French version as "un exposé complet." For consistency, the same should be done here.

33. Paragraph 32(g), English version

The French version of this paragraph refers to a "décision," which is consistently rendered throughout the Regulations as a "determination" in English. For consistency, the same should be done here.

The same comments apply to the English version of paragraph 33(f).

34. Paragraph 32(h)

The English version of this paragraph requires a description of the remedy sought, but the French version requires a detailed description.

35. Paragraph 33(b)

This paragraph states that an application for a declaration of an unlawful pressure tactic must include "the name, postal and email addresses and telephone and fax numbers of any artist, artists' association or producer that, in the opinion of the applicant, could have an interest in the application." This establishes a different test compared to other similar provisions, which generally require the contact information for those who may be affected or directly affected by the application. The formulation in this paragraph would seem to be broader, in that a person may have an interest in the application despite not being affected or directly affected by it. Further, it is more subjective in that contact details are only required for those who, "in the opinion of the applicant," have an interest in the application. Is this intentional? If so, why?

36. Subsection 34(4)

This paragraph states, with respect to the referral of an arbitration question to the Board, that "[e]ach party has the opportunity to respond to the other party's submissions within 10 days after the day on which those submissions are filed." What is meant by "the opportunity to respond"? If this in fact means that a response must be filed within 10 days, then it should say so. I refer you to subsections 9(3) and 25(3) as examples.

37. Subsection 37(2)

The English version refers to "persons who were participants to the determination or order," while the French version refers to persons who were participants in the proceedings that led to the determination or order ("les personnes

qui étaient des participants à l'instance ayant donné lieu à la décision ou à l'ordonnance"). The latter would appear to be correct.

38. Paragraph 39(1)(b)

In other provisions, the analogue of "affected by" is "touché par," rather than "visé par" as in this paragraph. I refer you in this regard to section 6, subsection 35(1), and paragraph 38(b) for examples.

39. Subsection 41(1)

Subsection 41(1) states:

> 41. (1) If a participant, after being given an opportunity to comply by the Board, fails to comply with a rule of procedure under these Regulations, the Board may
>
> (*a*) summarily dismiss or refuse to hear the application, if the non-complying participant is the applicant; or
>
> (*b*) decide the application without further notice, if the non-complying participant is the respondent or intervenor.

Aspects of this subsection seem vague and subjective, and could result in participants being treated unfairly. In particular, there is no guidance with respect to what is meant by "an opportunity to comply," either in terms of how much time will be given to comply or how many warnings will be given before one of the consequences will follow. Similarly, the subsection simply says that the Board "may" take one of the listed actions; no indication is given as to what the Board is to consider in making this decision. Finally, I note that if the non-complying participant is an intervenor, the Board may decide the application without further notice. Could a decision to decide the application without further notice due to the intervenor's failure to comply ever unfairly disadvantage the other parties? If so, a less drastic option may be more suitable when all participants are complying except an intervenor, such as disallowing further participation from that intervenor in the proceedings.

40. Subsection 41(2)

This subsection states: "If a participant does not attend a pre-hearing proceeding or a hearing after having been given notice, the Board may decide the matter in the participant's absence."

The term "pre-hearing proceeding" is not used elsewhere in the Regulations or in the Act. To what precisely does it refer in this context? Will a pre-hearing proceeding be held in each instance where the Board determines that an oral hearing is necessary under section 20 of the Regulations? Is a person who is summoned to an

oral hearing expected to attend the pre-hearing proceeding? If there is a need to retain the reference to pre-hearing proceedings, these aspects of this subsection should be clarified.

In this connection, I note that subsection 41(2) appears to largely duplicate subsection 20(3) of the Regulations: "If a participant fails to appear after having been given notice, the Board may proceed and dispose of the matter in that participant's absence." Could subsection 41(2) simply be repealed?

Yours sincerely,

C Kirkby

Cynthia Kirkby
Counsel

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December 22, 2014

Ms. Cynthia Kirkby
Counsel
Standing Joint Committee for
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c/o The Senate
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Dear Ms. Kirkby;

Reference: Status of the Artist Act Procedural Regulations

Thank you for your letter of December 18, 2014 concerning the above-cited subject. As my term as Chairperson of the Canada Industrial Relations Board (the CIRB) will terminate as of December 27, 2014, your letter will be referred to the incoming Chairperson for reply. However, please take note that, as of November 1, 2014, the CIRB is no longer a department and has no staff of its own. Support services, including legal counsel, are provided by the Administrative Tribunals Support Services Canada (the ATSSC). The governance structure between the ATSSC and the CIRB and the other affected tribunals has not yet been established.

I am therefore unable to provide you with an estimate as to when the CIRB will be in a position to provide you with a complete response to your letter.

Sincerely,

Elizabeth MacPherson
Chairperson/Présidente
Canada Industrial Relations Board/
Conseil canadien des relations industrielles

Canada

STANDING JOINT COMMITTEE
FOR
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April 27, 2015

Ms. Ginette Brazeau
Chairperson
Canada Industrial Relations Board
C.D. Howe Building
240 Sparks Street, 4th Floor West
OTTAWA, Ontario K1A 0X8

Dear Ms. Brazeau:

Our Files: SOR/2014-176, Status of the Artist Act Procedural Regulations as amended by SOR/2014-242

I refer to Ms. Elizabeth MacPherson's letter of December 22, 2014, and wonder whether you are now in a position to respond to my letter of December 18, 2014.

Yours sincerely,

C Kirkby

Cynthia Kirkby
Counsel

/mn

STANDING JOINT COMMITTEE
FOR
THE SCRUTINY OF REGULATIONS

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D'EXAMEN DE LA RÉGLEMENTATION

a/s LE SÉNAT, OTTAWA K1A 0A4
TÉL: 995-0751
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August 31, 2015

Ms. Ginette Brazeau
Chairperson
Canada Industrial Relations Board
C.D. Howe Building
240 Sparks Street, 4th Floor West
OTTAWA, Ontario K1A 0X8

Dear Ms. Brazeau:

Our Files: SOR/2014-176, Status of the Artist Act Procedural Regulations as amended by SOR/2014-242

I refer once more to Ms. Elizabeth MacPherson's letter of December 22, 2014, and wonder whether you are now in a position to respond to my letter of December 18, 2014.

Yours sincerely,

C Kirkby

Cynthia Kirkby
Counsel

/mh

Canada Industrial Relations Board Conseil canadien des relations industrielles

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Chairperson's Office – Bureau de la Présidente

September 11, 2015

Ms. Cynthia Kirby
Counsel
Standing Joint Committee for
the Scrutiny of Regulations
c/o The Senate
Ottawa, Ontario
K1A 0A4

Dear Ms. Kirby;

Thank you for your letter of August 31, 2015 concerning the *Status of the Artist Act Procedural Regulations*.

I apologize for the delay in providing a response to the questions raised in your letter of December 18, 2014. As you are probably aware, and as a result of the coming into force of the *Administrative Tribunal Support Service Canada Act* on November 1, 2014, **all** the Board's resources and staff have now been transferred to the ATSSC. This organizational transition has been the focus of the Board and its former personnel for the last several months and has prevented the Board from pursuing other important activities.

Consequently, I will require more time to provide a detailed analysis and complete response to your very important and detailed questions.

I will commit to having a response to you by December 18, 2015 and ask for your kind patience and indulgence in this matter.

Sincerely,

Ginette Brazeau
Chairperson
Canada Industrial Relations Board/
Conseil canadien des relations industrielles

Canada

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December 18, 2015

Ms. Cynthia Kirkby
Counsel
Standing Joint Committee for
the Scrutiny of Regulations
c/o The Senate
Ottawa, Ontario
K1A 0A4

Dear Ms. Kirkby;

Reference: Your File: SOR/2014-176, *Status of the Artist Act Procedural Regulations* as amended by SOR/2014-242

Further to our letter of September 11, 2015, we have now had an opportunity to more fully consider the comments and suggestions made in your correspondence of December 18, 2014 following your review of the *Status of the Artist Act Procedural Regulations* (*Regulations*) and we provide the following in response.

1. Concerning the timing of the registration of the *Regulations*, we advise that subsequent to the making of the *Regulations* in both languages on June 20, 2014, an error was noted in the English language version. This correction caused a delay as the English version had to be re-issued and re-stamped, which was done on July 4, 2014. The *Regulations* were then registered four days later, on July 8, 2014.

2. You outline that in several sections of the *Regulations*, where a single English term is used, there are varying French terms used to convey the same meaning. We agree that there are some inconsistencies in the specific words chosen for the French language version. One of the objectives of drafting these *Regulations* was to make new regulations under the *Status of the Artist Act* (SAA) that were better aligned with the current practices and procedures of the Board. Accordingly, in many instances, the language used was drawn from the former *CAPPRT Regulations*, the current CIRB *Regulations* and new language that reflects the current drafting conventions. Accordingly, it is possible that with these varying influences, certain inconsistencies were adopted unwittingly.

   In some circumstances, we agree that modifications could be made to the French version of the *Regulations* that would eliminate the inconsistencies while maintaining the intended meaning in both languages. In other circumstances, two different meanings are intended, and in each case modifications could be made to reflect the same intended meaning in each language.

Similar comments about consistency in the use of terms used throughout the *Regulations* have been made in paragraphs 10, 30, 32, 33, 34 and 38 of your letter. We have noted your concerns in this regard and will address these potential inconsistencies during the next review of these *Regulations*.

3. Concerning paragraph 5(f), you have noted that the word "déposé" appears to have been included in error as it suggests that the section requires the filing of a copy of only those supporting documents that have already been filed. We agree that the word "déposé" should be removed from paragraph 5(f) as well as from the other sections cited as containing the same error. We have noted this error and will address this during the next review of these *Regulations*.

4. You have indicated that the notice the Board is required to give pursuant to section 6 does not specify any particular informational requirements, while other sections seem to suggest that there are some, such as the Board's file number or an address for service. You recommended that any information the Board is required to include in the notice be described in section 6 so they do not have to be inferred from other sections.

   Whenever an application is received, the Board will as a matter of course go through various steps to open a case file, assign a file number and identify the proper participants to the application. This process includes transmitting a copy of the application to the named respondent(s). The notice required under section 6 contemplates giving notice to other potentially affected persons. Whether notice is given and the nature of the notice to be given will vary from case to case and will depend upon the type of application in question. Accordingly, there are no specific informational requirements that need be stated in section 6.

5. You have noted that in certain sections there is a requirement that the person include the Board's file number in its submission. The references are inconsistent, however, referring to the relevant "application" or the relevant "proceeding". We advise that there is no intended distinction and the references throughout should refer to the file number of the "application" to which the [response/reply/submission] relates. It appears that this modification was made in some sections but not all. We have noted this error and will address this during the next review of these *Regulations*.

6. You suggest removing the words "reliés à la réponse" from the French version of paragraph 7(1)(c) as they are unnecessary and potentially problematic. Paragraph 7(1)(c) was modified and took several different formulations in both languages over the course of the drafting sessions before it was finalized. Perhaps the addition of "reliés à la réponse" to the French formulation was not needed in the end. We have noted your comments concerning this paragraph and will address this language during the next review of these *Regulations*.

7. Because subsection 9(1) refers to the time period set out in any public notice issued under subsections 24(1) or 35(2), you have suggested that section 35 be amended to identify the information that is required to be in the public notice given pursuant to subsection 35(2). This would make it similar to subsection 24(2), which provides that the public notice to be given under subsection 24(1) must indicate certain things, including the time period for filing competing applications.

Because of the different nature of the two types of applications that are subject to the public notice requirements, different considerations apply. With respect to subsection 24(2), it is a statutory requirement that the public notice stipulate the time period for filing competing applications. With respect to applications under section 35 to review the scope of the sector, there is no similar statutory or other requirement to set out a time period or any other information in the public notice. Therefore, we see no need to amend section 35 in the manner you suggest. However, depending upon the circumstances, the Board may decide to include certain information including a specific time period for filing submissions related to that application, and that is why it remains appropriate to reference both subsections 24(1) and 35(2) in subsection 9(1).

8. Concerning the requirements for requests for leave to intervene, (paragraphs 9(1)(c) & (d)) we believe that those who have enough of an interest in a matter to request leave to intervene, will be sufficiently aware of the positions of the main participants to the application. Even if not aware of every possible additional intervenor, those requesting leave to intervene will be required to explain their specific and unique interest in the matter. This language is similar to that contained in the CIRB *Regulations* which has served the Board well. The Board sees no need to add any additional requirements or clarification.

9. Concerning paragraph 10(1)(b), you ask why only an intervenor is required to submit relevant dates. There was much discussion surrounding our attempts to modify this paragraph during the drafting sessions. We note your concern and will revisit this paragraph during the next review of these *Regulations*.

10. You have asked what is meant by "any other person named in any notice that a person has received", referred to in section 11. In addition to participants, namely applicants, respondents and intervenors, a notice may refer to an interested party that has been identified by the Board as being one whose rights may be directly affected but who has not yet requested or been granted intervenor status.

11. You have expressed what you see as a conflict created within section 11 whereby a person is obligated to serve documents without delay, but subject to any Board order declaring a document to be confidential. This provision expressly allows a person to hold back on serving those documents that they believe should be declared confidential while making a request under section 16. The document may not be served, subject to a request for a confidentiality order made under section 16. We do not see this as raising any conflict in a person's obligations.

12. We agree that the wording "des éléments de preuve" is preferable to "une preuve" found in the French version of subsection 13(1) and have noted your comment.

13. We agree that paragraphs 13(1)(a) and 13(1)(b) should make reference to written submissions (of an intervenor) as well as to an application, response or reply in connection with the requirement to file copies of the documents filed in support of the pleadings, for an oral hearing. We have noted this error for the next review of the *Regulations*.

14. We can confirm that the intent of paragraph 13(1)(b) is to have a summary of the information <u>each</u> witness is to provide, rather than a general summary. We agree that

some clarification in the English language may be helpful and have noted the discrepancy for the next review of these *Regulations*.

15. You have identified a discrepancy between the English and French versions in several different subsections. In many cases, the language used mirrors the language contained in the CIRB *Regulations* with respect to which the Board has not experienced any confusion or misinterpretation. The examples you have identified are found in the following subsections:

    Subsection 13(4) concerns the Board's ability to refuse to "hear a witness" if there is non-compliance by a participant versus the French language version which speaks of the Board's ability to refuse to "consider any testimony presented". The Board made it clear during the drafting process that the Board wished to retain the English language version which gives the Board the ability to refuse to hear a witness.

    Subsection 16(3) concerns the use of the term "specific direct harm" in connection with disclosure of a document, while the French version speaks to only "direct harm/préjudice direct".

    Paragraph 23(1)(g) speaks of the applicant's "constitution", while the French version references "statuts" or the "articles of association". You suggest that the term used in section 17 of the SAA, "documents constitutifs" would be preferable, for consistency.

    We have noted your concern regarding the discrepancies in meaning between the two languages and will consider whether any modification to one of the versions is required, during the next review of these *Regulations*.

16. You have asked how the date of service of a document is determined for purposes of subsection 13(3) concerning documents to be filed before an oral hearing. The date of service for purposes of this subsection is the date upon which the person serving the documents sends those documents to the other participants in a manner stipulated by section 12. The person serving the documents must inform the Board of the time and manner of service, in accordance with section 11.This provision contemplates that the person filing documents for an oral hearing will first serve the documents on the other participants and include a confirmation of service when it then files the documents with the Board. In this way, the documents are both served and filed within the time period specified in subsection 13(2).

17. Concerning subsection 16(4), which sets out what the Board may order in the event it declares that a document is confidential, you have suggested that some of the options available to the Board seem redundant and should therefore be repealed. We see that these options have some subtle differences and wish to be clear about all the various options open to the Board. The Board does not want to limit its options in any way, and sees no need to repeal any aspects of this provision.

    Further, we see nothing extraordinary about permitting counsel or other authorized representatives of the participants to view and speak to documents on a preliminary basis, normally during a hearing, as a means of determining its relevance to the proceedings before making a final determination on disclosure.

18. You suggest that section 17, as amended by SOR/2014-242, dealing with confidentiality of artists' wishes is unnecessary as such information would be governed and protected by the *Privacy Act*. The confidentiality provision contained in these *Regulations* and in the CIRB *Regulations* which protects the confidentiality of the wishes of artists and employees is fundamental to the certification processes under both the SAA and the Code and constitutes an essential aspect of the *Regulations* governing those processes. Moreover, as you correctly noted, the CIRB is no longer listed among the government institutions that are subject to the *Privacy Act*. While it is accurate to say that the ATSSC will manage the case files on behalf of the Board, ownership of the content of those files remains with the Board. Consequently, the Board considers it important to ensure that the provision of the *Regulations* that protects the confidentiality of documents that could reveal the wishes of the artists with respect to representation under the SAA remains in place.

19. Concerning section 19, you have asked whether there is authority elsewhere for the Board to sever a single proceeding. We are unsure as to the concern you may have in this regard, as the Board does have statutory authority in section 20(2) of the SAA to decide one or more of the issues raised in a proceeding and reserve jurisdiction to later decide the remaining issues.

20. Subsection 21(4) provides that a person summoned to an oral hearing must attend on the date specified and each day of the hearing unless the Board directs otherwise. You have asked how that person would know of the other hearing dates. The participant who requests the summons must continue to inform the person summoned as to any further hearing dates, in accordance with subsection 21(5).

21. Concerning section 22, which requires the giving of Notice of Constitutional Question, you have suggested that the specific language used may not be enforceable, as the timing for giving the notice is vague. The intent is to encourage participants to give the notice as soon as known, but in any event, "at least 10 days in advance of" or "no later than 10 days before" the question is to be argued. There was some discussion about this wording during the drafting sessions, and it appears that the end result may not have had the desired effect. We have noted your comments and will revisit this paragraph during the next review of these Regulations.

    You have also recommended that it be repealed, as being redundant. The Board saw fit to retain this provision given that many parties are unaware of their obligation to file such a notice which is found in a different Act with its own Rules of Practice and Procedure. Many participants may be unfamiliar with this requirement that exists outside the SAA regime. Having this provision in the *Regulations* provides guidance and utility, helping to avoid delays and adjournments of hearings due to the failure of a participant to comply with the notice requirement.

22. You have raised a concern that section 5 dealing with the general requirements for applications would also apply to section 23(1), certification proceedings, and other specific applications. You therefore recommend that section 5 be amended to clarify that it only applies to those applications not dealt with elsewhere in the *Regulations*. The Board does not agree that such an amendment is necessary or advisable. These *Regulations* were prepared and amendments were made to the existing CAPPRT *Regulations* specifically to address the concerns your Committee raised with those CAPPRT *Regulations* as well as with the CIRB *Regulations*. Previously, the SJCSR

made numerous comments and recommendations about removing references to other sections within the same Regulation and creating stand alone provisions so that participants are not required to flip back and forth to cross reference requirements. Accordingly, the Board deliberately removed the types of references you recommend here. Section 5 is intended to and does apply to all applications and those specific applications that contain additional information requirements such as section 23(1), have the section 5 requirements reproduced and then have the additional requirements listed. The Board believes that this formulation is both workable and preferable.

23. You have indicated that paragraphs 23(1)(d) and (e) are redundant requirements as one can find the information requested in (d) by looking through and counting the number of members from the information provided under (e). The Board does not agree that they are entirely redundant, as each serves a specific purpose. The intent of the two paragraphs 23(1) (c) and (d) is to have the applicant provide an instant snapshot of the percentage of the number of artists in the sector that are members of the applicant. A current copy of the membership list is then required under (e) as evidence of membership and evidence of artists' wishes. The Board believes this is both practical and appropriate.

24. Concerning paragraph 23(1)(b), you have identified the requirement of the applicant to give a "general description" of the sector for which it seeks certification, while requiring in subsection 24(2), that the Public Notice contain a "description" of the sector. We have noted this discrepancy for the next review of these *Regulations*.

25. Concerning subsection 24(2), you have asked whether the reference to "expressions of interest" was meant to refer to notices of intervention and requests for leave to intervene and also whether there may be any other forms. The Board will confirm whether there are other forms of expressions of interest that were intended to be captured here and consider whether any revision to this subsection is required to reflect the specific forms of filings that may be made during the specified period.

26. Concerning paragraph 25(2)(c), you suggest that the intervenor be required to state its position with respect to the "certification" sought as opposed to the "determination" sought, for clarity. The Board does not agree that this would add clarity, but instead, sees that it would limit the information being requested under this subsection. Each application for certification will be different and the paragraph, read in its entirety, asks for the intervenor's written submissions that include, among other things, its position with respect to the determination sought. It already asks for the general submissions concerning the certification application as well as asking for the specific position taken on the determination sought.

    Moreover, such modification would also make this provision inconsistent with all of the other sections where the participants are asked to provide their position with respect to the determination or order sought, such as sections 7, 8 and 10 concerning Responses, Replies and Interventions. Accordingly, the Board sees no reason to modify the wording as suggested.

27. You have identified a potential problem in paragraph 31(b) whereby the participants are to provide, with an application, any document the Board requires, since they may not know at the time of filing what those documents may be. We have noted this anomaly

and will consider whether some revision to this section is needed to rectify this, during the next review of these *Regulations*.

28. Concerning paragraph 32(b), we note your comments concerning the language that requires a complainant to provide contact information for persons who may be affected by the complaint. The Board agrees this should be in addition to those who are the object of the complaint and the "or" should be changed to an "and" to reflect this. Further, although the French language used is the same as that in the CIRB *Regulations*, the Board will consider whether modification to the French language is advisable to better reflect that the information must be given for those "affected" by the complaint as opposed to those who may have an "interest" in it and consider whether it is meant to be limited to those who are "directly" affected by it. We agree that some clarification in the language may be helpful and have noted your comments.

29. We agree that the wording "des measures ou des circonstances" is preferable to "des agissements ou des circonstances" found in the French version of paragraph 32(d) and have noted your comment.

30. You suggest that paragraph 33(b) appears to introduce a different test to be used and is one that may have broader application for determining who else may be affected by an application or who, in this case, in the opinion of the applicant, may have an interest in the application. This section, which deals specifically with complaints of unlawful pressure tactics, is intended to permit a broader application than most, because it is more likely that certain individuals may be implicated by their conduct, acting in their individual capacity, as opposed to that of an artists' association or producer under the Act and may be personally named over and above the traditional participants. Nevertheless, we note your comment and the Board may revisit whether the language could be modified to be more consistent with other similar provisions.

31. Paragraph 34(4) provides that each party has "the opportunity" to respond to the others' submission within 10 days. You suggest that the provision should be stated more directly and be consistent with other provisions containing time limits for filing. For the most part, this was the original language from the CAPPRT *Regulations* and reflects the fact that the referral of a question to arbitration is a different type of process than that in place for the processing of applications and complaints. It is expected that there may be no responses filed and therefore the wording was different. Nevertheless, we note your comment and the seemingly inconsistent language employed here and the Board will consider whether the language could be modified to be more consistent with other similar provisions.

32. We agree that the French wording in subsection 37(2) is more precise and that "persons who were participants in the proceedings that led to the determination or order" is preferable to "persons who were participants to the determination or order". We have noted your comment.

33. You have indicated that you find subsection 41(1) to be somewhat vague and subjective concerning the Board's powers upon non-compliance with the *Regulations*. The Board does not agree. The provision is simply intended to advise participants that there may be consequences to non-compliance. The Board is aware that it is subject to the rules of natural justice and procedural fairness which will govern the application of this section of the *Regulations*.

34. You have pointed out the reference to "pre-hearing proceedings" found in subsection 41(2). This language was intended to reflect the language of the CIRB *Regulations*. However, it appears that this may not be appropriate language for these *Regulations*, because, unlike the *Code*, which was amended in 1999 to permit the Board to order pre-hearing procedures, no such amendment was made to the SAA. We have noted this potential problem and will consider whether modifications are necessary, during the next review of these *Regulations*.

We trust this adequately responds to your request for advice on the points raised in your correspondence of December 18, 2014.

We also advise that the Board has no immediate plans to undertake a review of these *Regulations*, and note that since the Board was given responsibility for the administration of the SAA in 2013, the Board has received no new applications under the Act.

Sincerely,

Ginette Brazeau
Chairperson / Présidente
Canada Industrial Relations Board/
Conseil canadien des relations industrielles

STANDING JOINT COMMITTEE
FOR
THE SCRUTINY OF REGULATIONS

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January 25, 2016

Ms. Ginette Brazeau
Chairperson
Canada Industrial Relations Board
C.D. Howe Building
240 Sparks Street, 4th Floor West
OTTAWA, Ontario K1A 0X8

Dear Ms. Brazeau:

Our Files: SOR/2014-176, Status of the Artist Act Procedural Regulations as amended by 2014-242

I am in receipt of your letter of December 18, 2015, regarding the *Status of the Artist Act Procedural Regulations*, and would appreciate your further advice before presenting the Regulations to the Committee.

With respect to why the requirement to transmit Regulations for registration within seven days of their making was not met in respect of SOR/2014-176, your letter indicates that an error was noted in the English language version subsequent to its making in both languages on June 20, 2014, as a result of which the corrected English version was "re-issued and re-stamped" on July 4. It is unclear what is meant in your letter by the English version having been "re-issued." Pursuant to section 16 of the *Status of the Artist Act*, the Board is authorized to make regulations; there is no authority for another entity to "correct" or "re-issue" the Regulations made by the Board. I note also that section 3 of the *Statutory Instruments Act* requires proposed regulations to be sent for examination ("stamping"), not regulations that have already been made. Were the corrected Regulations made by the Board, and on what date?

Section 6

With respect to what information the Board must include in providing notice of an application, you have indicated that the nature of the notice to be given will vary

from case to case and will depend upon the type of application in question. You have also indicated, however, that "[w]henever an application is received, the Board will as a matter of course go through various steps to open a case file, assign a file number and identify the proper participants to the application" (emphasis added). This suggests that in each instance, the Board assigns a file number to the application. As noted in my original letter, various provisions require a person submitting a document to the Board to include the file number the Board has assigned to the application in its submission (including paragraph 7(1)(b), in a response to an application). If the Regulations require a person to identify the file number assigned by the Board, why do they not require the Board to notify the person of that number in the first place?

Paragraph 9(1)(d)

Paragraph 8 of your letter refers to paragraphs 9(1)(c) and (d) of the Regulations, but the substance does not seem to address the issue raised in relation to paragraph (d), which requires an explanation of how an intervention "will assist the Board in furthering the objectives of the Act." Since the Act does not explicitly identify its objectives, are there specific provisions that could instead be referred to, such as such as sections 2, 3 and 7 of the Act?

Section 11

Your response on this point does not appear to take into consideration the entirety of the Board's power to declare a document confidential under subsection 16(2). In those instances where the person is making a request for such a declaration, it would indeed seem the documents need not be served "without delay" as would otherwise be required by section 11. However, the Board may also declare that a document is confidential on its own initiative under subsection 16(2). A person cannot meet the requirement to serve a document "without delay" if he or she must wait to see whether the Board will, on its own initiative, make an order declaring that document confidential.

Section 14

Since this provision specifically identifies how the date of filing of a document with the Board is determined, it was asked how the date of service of a document on a participant is determined. Your response states that the date of service "is the date upon which the person serving the documents sends those documents to the other participants in the manner stipulated by section 12." This rule does not appear in the Regulations, however, and in any event its application could be ambiguous without an indication of how the date of sending is to be determined. For example, the date on which the documents are deposited in a mailbox might be several days before they are collected and postmarked, so the date on which they were "sent" could be disputed.

Section 14 establishes the rules only in respect of filing a document with the Board: the date of filing is the date on which a document sent by registered mail is

mailed (paragraph (a)), and the date on which a document is received by the Board in any other case (paragraph (b)). The Regulations should also establish how the date of service is to be determined, so it can be determined whether the time periods for service have been satisfied.

I note also that your statement that the Regulations contemplate "that the person filing documents for an oral hearing will first serve the documents on the other participants and include a confirmation of service when it then files documents with the Board" does not appear to be correct. Section 11 states:

> Subject to section 16, a person who files a document with the Board, other than an application, must serve without delay a copy of that document on all participants and any other person named in any notice that the person has received and must inform the Board of the time and manner of service.

The obligation is to serve a copy of the document that is filed with the Board and to inform the Board of the time and manner of service, not to file a copy of the document that has already been served and include in that filing a confirmation of service. Further, it is unclear how the Board's power to declare a document confidential could operate if documents are served on participants prior to being filed with the Board. As an additional point, then, if the intent of the Regulations is to require service before filing, it would seem further amendments are also required.

Subsection 16(4)

Your response refers to "subtle differences" in the powers enumerated in this subsection that the Board may exercise after it has declared a document to be confidential. It would be appreciated if you could elaborate on those subtle differences, particularly in response to the questions raised in my original letter in respect of paragraphs (a), (b) and (d):

- If there is an order under paragraph (a) that the confidential part of the document not be placed on the public record, would it not follow from subsection 16(1) that the non-confidential part of the document would be placed on the public record?

- What is the practical difference in paragraph (b) between a "version" of a document from which the confidential information has been removed and a "part" of a document from which the confidential information has been removed?

- What legal effect does the second part of paragraph (d) ("and that the document not be placed on the public record") have beyond what paragraph (a) already provides?

With respect to paragraph (d) specifically, your description of section 16 does not seem to reflect what that section actually provides. You write:

> we see nothing extraordinary about permitting counsel or other authorized representatives of the participants to view and speak to documents on a preliminary basis, normally during a hearing, as a means of determining its relevance to the proceedings before making a final determination on disclosure.

The powers available to the Board under subsection 16(4) only arise once it has declared a document confidential. Prior to making this determination, as per subsection 16(3), the Board "must consider whether disclosure of the document would cause specific direct harm to a person and whether the specific direct harm would outweigh the public interest in its disclosure." It is possible, although the Regulations are silent on this point, that the Board would hear arguments that speak to these considerations prior to making the declaration of confidentiality. As the opening portion of subsection 16(4) indicates, however, it is only if the Board declares that a document is confidential that it may then make an order under paragraph (d) "that the document or any part of it be provided to the participants, or only to their legal counsel or authorized representative." There is nothing in subsection 16(4) that suggests that this order is "preliminary" to "making a final determination on disclosure." Rather, this order may only occur once the Board has declared a document to be confidential. This being the case, an explanation as to circumstances in which the Board would grant access to confidential documents to a representative while simultaneously denying access to a participant would be valued.

Section 17

The question raised in relation to this section of the Regulations is what legal rule it effects given the existence of similar provisions in primary legislation, namely the *Privacy Act*. As has been discussed in relation to recent amendments to section 35 of the *Canada Industrial Relations Board Regulations, 2012* (SOR/2014-243), it may be that the reference to the Board has independent legal effect since the Board is no longer listed as a "Government Institution" in the Schedule to that Act. The reference to the Administrative Tribunals Support Service of Canada would seem to be redundant, however, unless the Board is able to identify specific ways in which section 17 of the Regulations protects the confidentiality of or permits the disclosure of information beyond what is provided under the *Privacy Act*.

Section 19

This section states: "The Board may order, in respect of two or more proceedings, that they be consolidated, heard together, heard consecutively or severed." The similar provision in the *Canada Industrial Relations Board Regulations, 2012,* section 20, does not refer to severance: "The Board may order, in respect of two or

more proceedings, that they be consolidated, heard together or heard consecutively." While administrative efficiencies could clearly result from authorizing the Board to consolidate two or more proceedings or to hear them together or consecutively, it was unclear why the Regulations would authorize the Board to sever two or more proceedings (rather than to sever one proceeding into two or more proceedings). Does your response on this point indicate the Board's position is that it has statutory authority to sever a single proceeding by virtue of subsection 20(2) of the *Status of the Artist Act,* and authority to sever two or more proceedings by virtue of section 19 of the Regulations? Since "two or more proceedings" already refers to distinct proceedings, why would they need to be severed?

Subsection 21(4)

This subsection requires a person who is summoned to an oral hearing to attend at the time and date specified, "as well as each day of the hearing, unless the Board directs otherwise." I asked what information is included in the summons to ensure the person summoned will know on which days the hearing is to be held in order to be able to satisfy this requirement. In response, your letter refers to subsection 21(5), which requires the participant who requests the summons to inform the person summoned as to any further hearing dates. That subsection only applies when an oral hearing is adjourned, however, and so would not be of assistance to a person who is summoned to appear, for example, on the second day of a hearing scheduled to last more than one day. Does the summons, in all instances, identify "each day of the hearing" so that the person is able to satisfy this obligation?

Section 22

With respect to concerns that section 22 simply duplicates obligations found in the *Federal Courts Act* and the *Federal Court Rules*, your letter indicates:

> The Board saw fit to retain this provision given that many parties are unaware of their obligation to file such a notice which is found in a different Act with its own Rules of Practice and Procedure. Many participants may be unfamiliar with this requirement that exists outside the SAA regime. Having this provision in the *Regulations* provides guidance and utility, helping to avoid delays and adjournments of hearings due to the failure of a participant to comply with the notice requirement.

As discussed in *Sullivan on the Construction of Statutes* in the section "The Presumption Against Tautology" (6th edition, pp. 211-214), it is presumed that legislators avoid pointless repetition and courts will, as much as possible, avoid adopting interpretations that would render provisions meaningless or pointless or redundant. This includes situations where one enactment simply repeats what another enactment has already provided.

If guidance is required to alert the public to the existence of legal requirements then the appropriate vehicles are bulletins, information circulars, websites and other such administrative means. Regulatory provisions that have no independent legal effect, since they simply repeat what is already provided for elsewhere, should be repealed.

Subsection 23(1)

In relation to this subsection, your letter states:

> You have raised a concern that section 5 dealing with the general requirements for applications would also apply to section 23(1), certification proceedings, and other specific applications. You therefore recommend that section 5 be amended to clarify that it only applies to those applications not dealt with elsewhere in the *Regulations*. The Board does not agree that such an amendment is necessary or advisable. These *Regulations* were prepared and amendments were made to the existing CAPPRT *Regulations* specifically to address the concerns your Committee raised with those CAPPRT *Regulations* as well as with the CIRB *Regulations*. Previously, the SJCSR made numerous comments and recommendations about removing references to other sections within the same Regulation and creating stand alone provisions so that participants are not required to flip back and forth to cross reference requirements. Accordingly, the Board deliberately removed the types of references you recommend here. Section 5 is intended to and does apply to all applications and those specific applications that contain additional information requirements such as section 23(1), have the section 5 requirements reproduced and then have the additional requirements listed. The Board believes that this formulation is both workable and preferable.

I have reviewed the correspondence in relation to both the *Canadian Artists and Producers Professional Relations Tribunal Procedural Regulations* (SOR/2003-343) and the *Canada Industrial Relations Board Regulations* (SOR/2001-520, SOR/2011-109, SOR 2012-305 and SOR/2014-243), but remain unsure what recommendations of the Joint Committee you are referring to. I note that Mr. Peter Bernhardt, currently General Counsel to the Committee, objected to a type of cross-reference in subsection 12(1) of the CIRB Regulations in a letter dated July 22, 2002, but that related to logical issues with the cross-reference and unnecessary duplication despite it. Further, on January 22, 2013, Mr. Bernhardt objected to the indication that subsection 12.1(2) was "subject to section 16," but that was because similar provisions did not also indicate this, thereby creating an inconsistency in how those similar provisions were to be treated. If the Board has interpreted these recommendations as meaning that references to other provisions should be avoided and stand-alone provisions should be created in all instances, this misunderstands the nature of those objections. It

would be appreciated if you could identify any other comments and recommendations that your response on this point contemplates.

That matter aside, since "those specific applications that contain additional information requirements such as section 23(1), have the section 5 requirements reproduced and then have the additional requirements listed" (emphasis added), there is no need for those specific applications to also meet the requirements of section 5. This being the case, section 5 should be amended to clarify that it applies only to those applications that are not dealt with elsewhere in the Regulations.

Paragraph 23(1)(d)

The information that must be included in an application for certification includes the following:

> (c) an estimate of the number of professional freelance artists working in the proposed sector;
>
> (d) an estimate of the number of members of the applicant who work in the proposed sector;
>
> (e) a current copy of the applicant's membership list that is certified by the applicant's authorized representative and that indicates
>
> (i) each member's name and current postal address, and
>
> (ii) if the applicant also represents individuals who do not work within the proposed sector, a list of the members who work within the proposed sector;

In my original letter, I noted that paragraph (d) appears to be redundant, since the exact number of members of the applicant who work in the proposed sector will be included in the application as a result of paragraph (e) (or subparagraph (e)(ii) in those instances where the applicant also represents individuals who do not work within the proposed sector). Your reply stated:

> You have indicated that paragraphs 23(1)(d) and (e) are redundant requirements as one can find the information requested in (d) by looking through and counting the number of members from the information provided under (e). The Board does not agree that they are entirely redundant, as each serves a specific purpose. The intent of the two paragraphs 23(1)(c) and (d) is to have the applicant provide an instant snapshot of the percentage of the number of artists in the sector that are members of the applicant. A current copy of the membership list is then required under (e) as evidence of membership and evidence of artists' wishes. The Board believes this is both practical and appropriate.

If the intent is to have the applicant "provide an instant snapshot of the percentage of the number of artists in the sector that are members of the applicant," why do the Regulations not simply require the applicant to include "an estimate of the percentage of artists working in the proposed sector who are members of the applicant"? Does the Board take steps to verify the accuracy of the estimates provided under paragraphs (c) and (d) prior to calculating this percentage? Given that the list under paragraph (e) will in all likelihood be generated electronically, so that it is at least orderly and possibly also numbered, it continues to seem unnecessary to require the applicant to submit an estimate of the number of members as well as a list identifying each member.

That aside, in considering your response on this point, the question of the significance of the phrase "professional freelance artists" in paragraph (c) has also arisen. This phrase does not appear elsewhere in the Regulations or in the parent Act, section 5 of which defines an "artist" as "an independent contractor described in paragraph 6(2)(b)," which in turn refers to professionals. By virtue of section 16 of the *Interpretation Act*, the meaning of "artist" is the same in the Regulations as in the Act, so "artist" in the Regulations already means a professional. Is the reference in paragraph (c) to "freelance" artists intended to describe a subset of the "independent contractors" captured by the Act? If not, it would seem this paragraph should simply refer to "artists," since that term already means professionals who operate as independent contractors ("entrepreneurs" in the French version of the Act).

Paragraph 23(1)(g)

Paragraph 15 of your reply addresses the second paragraph of my original letter in respect of paragraph 23(1)(g), but not the first. What is the Board's position with respect to addressing the inconsistency in the English version of this paragraph, which uses both "its" and "their" to refer to the applicant?

Subsection 24(2)

Is the Board now able to reply to the questions in the third paragraph of my original letter in respect of what is meant in subsection 24(2) by "expressions of interest"?

Further, your response did not specifically address the fourth paragraph of my original letter with respect to this subsection. As discussed above in relation to section 6, since the Regulations require a person to identify the file number assigned by the Board, why do they not require the Board to notify the person of that number in the first place?

Paragraph 25(2)(c)

The issue raised with respect to this paragraph was whether it should require the intervenor to include their position with respect to the "certification" sought, rather than the "determination" sought. This is because, in the particular context of an application for certification, there are two separate determinations the Board must make: the sector or sectors that are suitable for bargaining, as per section 26 of the Act, and the representativity of the artists' association, as per section 27 of the Act. As a result, the reference in this paragraph to "the" determination is ambiguous.

Your response states:

> The Board does not agree that this would add clarity, but instead, sees that it would limit the information being requested under this subsection. Each application for certification will be different and the paragraph, read in its entirety, asks for the intervenor's written submissions that include, among other things, its position with respect to the determination sought. It already asks for the general submissions concerning the certification application as well as asking for the specific position taken on the determination sought.

Paragraph 25(2)(c) in its entirety reads as follows:

> (2) A notice of intervention must be filed in writing within the time period specified in the notice published or provided under subsection 24(1) and include the following: …
>
> > (c) a written submission of the intervenor that includes a description of their interest in the matter and their position with respect to the determination sought;

There is nothing in paragraph 25(2)(c) that asks for "general submissions concerning the certification application" as well as asking for the specific position taken on the determination sought. While general submissions on the certification may be provided in any given notice of intervention, they are not specifically required by the paragraph when read in its entirety. Presumably, then, they ought to be.

Your response continues:

> Moreover, such modification would also make this provision inconsistent with all of the other sections where the participants are asked to provide their position with respect to the determination or order sought, such as sections 7, 8 and 10 concerning Responses, Replies and Interventions. Accordingly, the Board sees no reason to modify the wording as suggested.

Unlike sections 7, 8 and 10, section 25 is specific to an application for certification. Section 25 of the Regulations refers directly to sections 26 and 27 of the Act, which in turn describe two distinct determinations the Board is required to make. Sections 7, 8 and 10 relate to applications generally, rather than to an application for certification specifically, and so the same ambiguity as to which statutory meaning of "determination" in the context of an application for certification is intended does not arise in those sections. As a result, it is not clear that consistency between these sections should be paramount, rather than intelligibility alongside the parent Act. In addition, while your response suggests this paragraph cannot be modified because it would create inconsistency with sections 7, 8 and 10, I note those sections all refer to the "determination or order sought," while paragraph 25(2)(c) refers only to "the determination" sought. In other words, these sections are already inconsistent.

Paragraph 33(b)

The question raised with respect to this paragraph was whether the language used was intentionally broader and more subjective than that used in other provisions. Your response confirms that paragraph 33(b), in the specific context of complaints of unlawful pressure tactics, "is intended to permit a broader application than most," suggesting that a deliberate distinction is drawn in the Regulations between a person who has an interest in an application and a person who is affected or directly affected by it. Your response is silent with respect to the subjective nature of the phrase "in the applicant's opinion," however. Is it this aspect of paragraph 33(b) that the Board may revisit to determine whether the language could be more consistent with other similar provisions?

Subsection 41(1)

In response to concerns about vagueness and subjectivity in this subsection, your reply indicates:

> The provision is simply intended to advise participants that there may be consequences to non-compliance. The Board is aware that it is subject to the rules of natural justice and procedural fairness which will govern the application of this section of the *Regulations*.

Subsection 41(1) does more than simply advise participants that there may be consequences to non-compliance; it sets out those consequences. It authorizes the Board to dismiss or refuse to hear the application, or decide the application without further notice, based on unknown criteria, as a result of the non-compliance of a participant who has been given an unspecified opportunity to comply. It also authorizes the Board to give "second chances" without specifying the parameters for that decision. It is not an answer to say that, despite the text of the provision, the Board will adhere to principles of natural justice and procedural fairness. The Joint Committee has always taken the view that regardless of whatever procedural rights may exist at common law, it is preferable to set out such rights expressly, so as to

avoid the possibility that a person may need to resort to the time and expense of judicial proceedings in order to determine the exact nature of their rights. Clarifying these rights in the legislation itself promotes consistency, certainty and the perception of fairness.

Finally, my original letter suggested it may be appropriate to authorize the Board to implement less drastic consequences when the only non-complying participant is an intervenor, such as disallowing that intervenor from further participation in the proceedings. Does the Board agree that this is a power it should have?

Subsection 41(2)

Your reply suggests that subsection 41(2) has legal effect in the context of the CIRB Regulations, where there are pre-hearing procedures, but not in the context of these Regulations, where there are not. Your reply then indicates the Board "will consider whether modifications are necessary." If this provision does not apply to these Regulations, and, as noted in my original letter, largely duplicates another provision in any event, would the Board not agree that the necessary modification is repeal?

Finally, with respect to those items that your letter indicates will be addressed during the next review of the Regulations, you further advise that the Board has no immediate plans to undertake such a review. This being the case, would the Board consider making the promised amendments independent of a broader review of the Regulations, so that these matters are not unnecessarily prolonged?

I look forward to receiving your comments concerning the foregoing.

Yours sincerely,

C Kirkby

Cynthia Kirkby
Counsel

/mh

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July 11, 2016

Ms. Ginette Brazeau
Chairperson
Canada Industrial Relations Board
C.D. Howe Building
240 Sparks Street, 4th Floor West
OTTAWA, Ontario K1A 0X8

Dear Ms. Brazeau:

Our File: SOR/2014-176, Status of the Artist Act Procedural Regulations as amended by SOR/2014-242

I refer to my letter of January 25, 2016, to which a reply would be appreciated.

Yours sincerely,

C Kirkby

Cynthia Kirkby
Counsel

/mh

Canada Industrial Relations Board Conseil canadien des relations industrielles

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July 25, 2016

Ms. Cynthia Kirkby
Counsel
Standing Joint Committee for
The Scrutiny of Regulations
c/o The Senate
Ottawa, Ontario
K1A 0A4

Dear Ms. Kirkby,

Reference: *Status of the Artist Act Procedural Regulations*

Thank you for your correspondence dated July 11, 2016; please accept my sincere apology for the delay in providing a response to your letter of January 25, 2016. I have now had an opportunity to review your further commentary and questions in regard to your ongoing review of the *Status of the Artist Act Procedural Regulations*.

I very much appreciate your thorough review of the *Regulations* and of my detailed response to your initial queries and concerns. I welcome and noted your most recent comments and guidance. However, as indicated, the Board is not intending to conduct an immediate review of the *Regulations* at this time.

The Board undertook extensive consultations with its client community before these *Regulations* were enacted and they have been designed to meet the needs of both the Board and of the client community and respond to their stated concerns. To date, we have had no complaints or concerns raised nor any challenges to its application or interpretation. In light of this and considering the limited resources of the Board, a review of these *Regulations* has not been identified as a high priority at this time.

Our letter of December 18, 2015 provided a detailed response to the issues raised. Any further examination or study of the *Regulations* will be undertaken in the context of a more comprehensive review or update of these *Regulations*. We have noted your concerns and will certainly bear these in mind when the Board next undertakes a review of the regulatory framework under the *Status of the Artist Act*.

I will certainly keep you apprised of any proposed plan to move forward with regulatory amendments in the future.

Sincerely,

Ginette Brazeau
Chairperson
Canada Industrial Relations Board

Annexe H

TRANSLATION/TRADUCTION

DORS/2014-176

RÈGLEMENT SUR LES PROCÉDURES SE RAPPORTANT À LA LOI SUR LE STATUT DE L'ARTISTE

Loi sur le statut de l'artiste

Le 18 décembre 2014

1. Le présent instrument abroge le *Règlement sur les procédures du tribunal canadien des relations professionnelles artistes-producteurs* (DORS/2003-343, examiné par le Comité les 12 mars 2009, 3 décembre 2009, 25 avril 2013 et 10 avril 2014) en rapport avec lequel dix questions avaient été soulevées.

2. De nouveaux points sont abordés dans les lettres ci-jointes, dont certains ressemblent à ceux qui avaient été soulevés relativement au *Règlement* abrogé, notamment des points concernant la subjectivité, des incohérences dans les termes employés, des divergences entre la version française et la version anglaise et des lacunes en matière de procédure.

CK/mh

TRANSLATION/TRADUCTION

Le 18 décembre 2014

Madame Elizabeth E. MacPherson
Présidente
Conseil canadien des relations industrielles
Édifice C.D. Howe
240, rue Sparks, 4e étage Ouest
OTTAWA (Ontario) K1A 0X8

Madame,

N/Réf. : DORS/2014-176, Règlement sur les procédures se rapportant à la Loi sur le statut de l'artiste, modifié par DORS/2014-242

J'ai examiné l'instrument susmentionné avant de le soumettre au Comité mixte et je constate qu'il abroge le *Règlement sur les procédures du tribunal canadien des relations professionnelles artistes-producteurs*, DORS/2003-343. Par conséquent, le dossier concernant ce *Règlement* sera fermé. En ce qui concerne le *Règlement sur les procédures se rapportant à la Loi sur le statut de l'artiste*, j'aimerais connaître votre avis sur les points suivants.

1. Le *Règlement* a été pris le 20 juin 2014, mais n'a été enregistré que le 8 juillet 2014. Le paragraphe 5(1) de la *Loi sur les textes réglementaires* exige que l'autorité réglementaire transmette le *Règlement* en vue de son enregistrement dans les sept jours suivant la prise du *Règlement*. Il semble que cette exigence n'ait pas été respectée et le Comité souhaitera probablement qu'on lui fournisse des explications au sujet de cette omission.

2. En principe, on devrait employer les mêmes mots pour exprimer le même message partout dans le *Règlement*, étant donné que l'emploi de termes différents est présumé traduire la volonté de transmettre un sens différent. On trouve dans ce *Règlement* de nombreux passages où des termes différents sont employés alors qu'il y a lieu de penser qu'on voulait leur attribuer le même sens. Je relève notamment les exemples suivants :

- Alors que le terme « description » dans la version anglaise est habituellement rendu par le mot « description » dans la version française, il est parfois rendu plutôt par le mot « exposé » (alinéas 9(1)c) et 32h)) ou par le mot « détail » (alinéas 32g) et 33f)). Si l'on souhaitait employer ces mots dans le même sens dans chaque cas, il faudrait modifier la version française pour employer le même terme dans chaque cas. Au contraire, si l'on entendait donner un sens différent à ces termes, c'est la version anglaise qui devrait être modifiée pour tenir compte de ces différences.

- Dans les passages où la version anglaise emploie le mot « proceeding », la version française emploie, selon le cas, les mots « affaire » (articles 2, 21(1)e) et 43(1)), « procédure » (articles 8(1)a), 12(2)b), 15(1), 15(3), 21(1)a), 42 et 43(2)), « instance » (articles 16(1) et 19) et « conférence » (article 41(2)).

- Dans les passages où la version anglaise utilise le mot « grounds », la version française emploie le plus souvent « moyens » (alinéas 5c), 10(1)b), 28d), 32f), 33e), 34(2)b) et 38d)), mais utilise plutôt le terme « motifs » aux alinéas 9(1)c) et « raisons » à l'alinéa 39(1)d)).

- De même, dans les passages où la version française parle d'un « délai », la version anglaise parle, soit de « time limits » (paragraphe 3(1)), soit de « a time limit or deadline » (paragraphe 3(2)), de « time » (paragraphes 7(2), 8(2), 9(4), 10(3) et 25(4)) et de « time period » (paragraphes 9(1), 13(3), 21(5)b), 24(2), 24(3) et 25(2)).

- Enfin, on constate des divergences dans la façon dont est expliqué le pouvoir conféré au Conseil de créer des exceptions aux règles établies. Dans une disposition de la version anglaise, on trouve l'expression « Unless otherwise stated by the Board » (au paragraphe 3(1)) tandis que c'est la formulation « Unless the Board directs otherwise » qui est employée dans deux autres dispositions (aux paragraphes 21(2) et 21(4)). Y a-t-il une différence entre ce que le Conseil doit « indiquer » (« state ») ou « décider » (« direct »)? Je constate que la version française emploie trois formulations différentes dans ces dispositions (respectivement : « À moins d'indication contraire du Conseil, » « Sauf directives contraires du Conseil » et « À moins que le Conseil n'en décide autrement »), ce qui en complique davantage l'interprétation. Là encore, si l'on veut attribuer le même sens dans chacun de ces exemples, on devrait employer les mêmes termes.

3. Alinéa 5f)

Suivant la version anglaise de cet alinéa, toute demande déposée par écrit auprès du Conseil doit comporter une copie de tout document déposé à l'appui de

la demande (« a copy of any supporting document »). La version française exige toutefois seulement que soit déposée une copie des documents déjà déposés (« une copie de tout document déposé à l'appui de la demande »). Il semblerait que le mot « déposé » ait été inséré par erreur dans cet alinéa, ainsi qu'aux alinéas 7(1)g), 8(1)e), 28g), 32j) et 39(1)f). On ne retrouve toutefois pas le mot « déposé » dans la version française des alinéas 9(1)e), 10(1)e), 33i), 34(2)d) et 38g).

4. Article 6

Cet article dispose :

> Sur réception d'une demande, autre qu'une demande visée aux articles 24, 29 ou 35, le Conseil en avise par écrit, dans la mesure du possible, toute personne dont les droits peuvent être directement touchés par la demande.

Les dispositions connexes donnent à penser que l'avis donné au Conseil doit renfermer certains renseignements, bien que l'article 6 soit muet sur la question. Par exemple, il semblerait que l'avis doit comporter le numéro de dossier attribué par le Conseil (alinéa 7(1)b)) ainsi que l'adresse de signification de toute personne à qui un document doit être signifié (alinéa 12(2)b)). L'article 6 devrait préciser les renseignements que le Conseil doit fournir dans l'avis et l'on ne devrait pas avoir à le déduire d'autres dispositions.

5. Alinéa 7(1)b)

Suivant cet alinéa, toute réponse à une demande doit comporter « le numéro de dossier attribué par le Conseil à la demande faisant l'objet de la réponse ». Bien que cet alinéa, ainsi que les alinéas 9(1)b) et 10(1)a), indiquent que le Conseil attribue un numéro de dossier à la demande elle-même, les alinéas 8(1)a) et 21(1)a) indiquent plutôt que le Conseil attribue un numéro de dossier à l'instance à la procédure elle-même. S'agit-il de numéros de dossier distincts? Sinon, une seule formulation devrait être employée partout dans le *Règlement*.

6. Alinéa 7(1)c), version française

La version anglaise de cet alinéa indique que toute réponse à une demande « must include a full response to any allegations or issues raised in the application and full particulars of any additional relevant facts ». Toutefois, la version française parle d'un exposé complet des faits pertinents supplémentaires reliés à la réponse. Cet ajout semble, dans le meilleur des cas, ne rien apporter de plus à cet alinéa, qui parle déjà des faits « pertinents » et qui n'invite donc pas à soumettre des faits qui ne seraient pas reliés à la réponse. Dans le pire des cas, cet ajout pourrait faire en sorte que des faits pertinents ne seraient pas pris en compte si on ne peut affirmer

qu'ils sont reliés précisément à « la réponse » plutôt qu'aux faits en litige. La suppression de ces mots de la version française réglerait ce problème potentiel tout en assurant une meilleure cohérence entre la version française et la version anglaise.

Les mêmes observations valent pour l'alinéa 5c) (« reliés à la demande »), 8(1)b) (« reliés à la réplique »), 28d) (« reliés à la demande »), 32f) (« reliés à la plainte »), 33e) (« reliés à la demande »), 34(2)b) (« reliés à la question ») et 38d) (« reliés à la demande »).

7. Paragraphe 9(1)

Ce paragraphe mentionne le « délai prévu dans tout avis public visé au paragraphe 24(1) et 35(2) ». Bien que l'avis public visé au paragraphe 24(1) doive préciser le délai imparti pour le dépôt des demandes concurrentes en raison du paragraphe 24(2), cette exigence ne se retrouve pas dans le cas de l'avis public prévu au paragraphe 35(2). Il semblerait que l'article 35 devrait être modifié pour préciser les renseignements exigés dans l'avis public.

8. Alinéa 9(1)c)

Aux termes de cet alinéa, toute requête visant à obtenir l'autorisation d'intervenir au titre du paragraphe 19(3) de la Loi doit comporter « un exposé [...] sur toute divergence d'intérêts par rapport à tout autre participant à l'instance ». Comment peut-on s'attendre à ce que la personne qui présente une requête visant à obtenir l'autorisation d'intervenir sache à ce moment qui peuvent être les autres participants et notamment les intervenants? Cette exigence semblerait prématurée avant que le Conseil n'ait décidé quelles personnes seront autorisées à intervenir et tant que le Conseil n'a pas autorisé la communication de ces renseignements.

9. Alinéa 9(1)d)

Aux termes de cet alinéa, toute requête visant à obtenir l'autorisation d'intervenir au titre du paragraphe 19(3) de la Loi doit comporter « des précisions quant à la façon dont l'intervention aidera le Conseil à promouvoir les objectifs de la Loi », sans toutefois préciser la nature des objectifs en question. Ne devrait-on pas plutôt renvoyer à des dispositions précises pour offrir certaines indications aux intervenants quant aux renseignements recherchés, par exemple en renvoyant aux articles 2 et 3 de la Loi qui énoncent des principes généraux, ou à l'article 7 (« Objet »)?

Des observations semblables valent quant à l'article 17 du *Règlement*.

10. Articles 9 et 10, version française

La version française de ces articles manque d'uniformité pour désigner la requête visant à obtenir l'autorisation d'intervenir. À certains endroits, on emploie l'expression « requête visant à obtenir l'autorisation d'intervenir », tandis qu'ailleurs, on emploie plutôt l'expression « requête en intervention ». On devrait employer la même formule partout par souci d'uniformité.

11. Alinéa 10(1)b)

Dans d'autres cas où une personne est tenue de soumettre des renseignements au Conseil, elle doit en règle générale présenter un exposé complet des faits pertinents. À cet alinéa, toutefois, l'auteur d'une requête en intervention est tenu de soumettre « un exposé complet des faits », ainsi que des « dates pertinentes ». Pourquoi seuls les intervenants sont explicitement tenus de soumettre « des dates pertinentes »?

12. Article 11

Cet article est ainsi libellé : « Sous réserve de l'article 16, quiconque dépose auprès du Conseil un document, autre qu'une demande, en signifie sans délai copie aux participants et à toute autre personne nommée dans tout avis qu'il a reçu, et informe le Conseil du moment et du mode de signification ».

En premier lieu, qu'entend-on par « toute autre personne nommée dans tout avis »? Un « participant » est défini comme étant le demandeur, l'intimé ou l'intervenant. On ne sait donc pas avec certitude qui d'autre pourrait être « nommé ».

En second lieu, cette obligation est formulée « sous réserve de l'article 16 », ce qui signifie vraisemblablement que le document doit être signifié, sauf si le Conseil déclare qu'il est confidentiel et qu'il rende une ordonnance en vertu de l'alinéa 16(4)*d*). Comment l'article 16 s'applique-t-il si l'intéressé est tenu de signifier les documents « sans délai », mais qu'il est par ailleurs assujetti à une ordonnance prononcée par le Conseil en vertu de l'article 16? Il semblerait que l'intéressé peut soit signifier les documents sans délai, ce qui pourrait compromettre les objectifs de confidentialité de l'article 16, soit attendre que le Conseil décide de déclarer ou non que les documents sont confidentiels, auquel cas ceux-ci ne seront pas signifiés « sans délai ».

13. Paragraphe 13(1)

La version française de ce paragraphe devrait parler « des éléments de preuve » au lieu d'« une preuve ». Je vous renvoie, par exemple, à l'alinéa 16h) de la Loi à ce propos.

14. Alinéa 13(1)a)

Cet alinéa oblige les participants à déposer auprès du Conseil, en six exemplaires, « tout document déposé avec la demande, la réponse ou la réplique, selon le cas ». Souhaite-t-on que les intervenants soient tenus également de déposer, en six exemplaires, tous les documents qui accompagnent leurs « observations écrites » conformément à l'article 10? Dans l'affirmative, il semblerait que cet alinéa devrait être modifié pour ajouter les « observations écrites » aux demandes, réponses et répliques qui y sont mentionnées. Si c'est bien le cas, l'alinéa 13(1)b) devrait-il également mentionner les observations écrites?

15. Alinéa 13(1)b)

Les deux versions de cet alinéa ne semblent pas concorder. La version anglaise oblige le participant à déposer « a list of witnesses expected to be called that includes their names and occupations, along with a summary of the information taht is expected to be provided on issues raised in the application, response or reply » (la liste des témoins qu'il entend citer – avec leurs noms et professions – accompagnée d'un sommaire de l'information que chacun d'eux est censé fournir sur les questions soulevées par la demande, la réponse ou la réplique). Or, la version française oblige le participant à fournir « un sommaire de l'information que chacun [des témoins] est censé fournir ». Si l'on entendait obliger le participant à soumettre des renseignements portant sur le témoignage que chacun des témoins est censé fournir individuellement, plutôt que sur la preuve générale que l'ensemble des témoins fournira, il semblerait que la version anglaise devrait être modifiée pour bien le préciser.

16. Paragraphe 13(4)

Les deux versions de ce paragraphe ne concordent pas. La version anglaise autorise le Conseil à refuser de considérer tout document ou d'entendre tout témoin présenté par le participant qui ne s'est pas conformé à certaines exigences. La version française n'autorise toutefois le Conseil qu'à refuser de considérer que les documents et témoignages qui sont présentés à l'audience. Il n'autorise pas le Conseil à refuser d'entendre un témoin.

17. Article 14

Cet article explique comment calculer la date du dépôt d'un document auprès du Conseil dans le cas d'un envoi par courrier recommandé ou « dans tous les autres cas », vraisemblablement pour le calcul des délais prévus au paragraphe 13(2). Comment détermine-t-on la date de la signification d'un document à un participant pour le calcul des délais prescrits prévus au paragraphe 13(3)?

18. Paragraphe 16(3)

Les deux versions de ce paragraphe ne concordent pas. La version anglaise exige que le Conseil évalue si la communication d'un document causerait un « specific direct harm » à une personne (« préjudice direct spécifique »). La version française ne parle toutefois que d'un « préjudice direct ». L'exigence voulant que le préjudice soit « spécifique » devrait soit être ajoutée à la version française, soit être supprimée de la version anglaise.

19. Paragraphe 16(4)

Cette disposition énonce que, si le Conseil déclare qu'un document est confidentiel, il peut, selon le cas :

> a) ordonner que le document ou une partie de celui-ci ne soit pas versé au dossier public;
>
> b) ordonner qu'une version ou une partie du document dont les renseignements confidentiels ont été supprimés soit versée au dossier public;
>
> c) ordonner que toute partie d'une audience – y compris les plaidoiries, les interrogatoires et les contre-interrogatoires – qui porte sur le document confidentiel soit tenue à huis clos;
>
> d) ordonner que tout ou partie du document soit fourni aux participants ou seulement à leurs conseillers juridiques ou représentants autorisés, et que le document ne soit pas versé au dossier public;
>
> e) rendre toute autre ordonnance qu'il juge indiquée.

Les alinéas a) et b) semblent avoir le même effet, étant donné que le paragraphe 16(1) énonce le principe général que le Conseil verse au dossier public les documents à moins de les déclarer confidentiels. Si le Conseil ordonne, en vertu de l'alinéa a), que la partie d'un document ne soit pas versée au dossier public, ne découle-t-il pas du paragraphe 16(1) que la partie non confidentielle de ce document doit être versée au dossier public? De plus, quelle est la différence, en pratique, à l'alinéa b), entre une « version » d'un document dont les renseignements confidentiels ont été supprimés et une « partie » d'un document dont les renseignements confidentiels ont été supprimés? En pratique, il semble que les alinéas a) et b) soient redondants. De même, la seconde partie de l'alinéa d) (« et que le document ne soit pas versé au dossier public ») semble n'avoir aucun effet juridique au-delà de ce que l'alinéa a) prévoit déjà. Si c'est bien le cas, il y aurait lieu de supprimer les passages de cette disposition qui sont redondants.

De plus, l'alinéa d) donne à penser qu'il existe des situations dans lesquelles le Conseil ordonnerait qu'un document ou une partie d'un document ne soit communiqué qu'au conseiller juridique du participant et non à ce dernier, ce qui semble inusité, tout comme l'idée suivant laquelle le document pourrait être communiqué à un représentant autorisé qui n'est pas un conseiller juridique et que le document ne serait toujours pas fourni au participant. Dans quelles circonstances un représentant qui n'est pas un conseiller juridique aurait-il un droit d'accès plus grand que celui du participant qu'il représente?

20. Article 17, modifié par DORS/2014-242

L'article 2 du DORS/2014-242 a remplacé l'article 17 du *Règlement sur les procédures se rapportant à la Loi sur le statut de l'artiste* par ce qui suit :

> Malgré toute autre disposition du présent *Règlement*, le Conseil ou un membre du personnel du Service canadien d'appui aux tribunaux administratifs autorisé à agir au nom du Conseil ne peut communiquer des éléments de preuve qui pourraient révéler l'adhésion à une association d'artistes, l'opposition à l'accréditation d'une association d'artistes ou la volonté de tout artiste d'être ou de ne pas être représenté par une association d'artistes, sauf si la communication de ces éléments contribuerait à la réalisation des objectifs de la Loi.

Je ne vois pas très bien ce qui ou ce que cette disposition vise qui ne serait pas déjà visé par la *Loi sur la protection des renseignements personnels*. Il semblerait que les renseignements protégés répondraient à la définition des « renseignements personnels » que l'on trouve à l'article 3 de cette dernière loi, étant donné qu'il s'agit de renseignements « concernant un individu identifiable », notamment du fait qu'ils concernent « ses opinions ou ses idées personnelles » au sens de l'alinéa 3e). De même, l'exception concernant la communication de ces renseignements personnels semblerait déjà permise par l'alinéa 8(2)b) de la *Loi sur la protection des renseignements personnels*, qui prévoit que « la communication des renseignements personnels [...] est autorisée dans les cas suivants : [...] communication aux fins qui sont conformes avec les lois fédérales ou ceux de leurs règlements qui autorisent cette communication » et avec l'alinéa 8(2)m), qui permet la communication de renseignements personnels :

> [...] à toute autre fin dans les cas où, de l'avis du responsable de l'institution :
>
> (i) des raisons d'intérêt public justifieraient nettement une éventuelle violation de la vie privée,
>
> (ii) l'individu concerné en tirerait un avantage certain.

Je constate que le Conseil ne fait plus partie de la liste des institutions fédérales assujetties à la *Loi sur la protection des renseignements personnels* en application de l'article 421 de la *Loi nº 1 sur le plan d'action économique de 2014*, L.C. 2014, ch. 20. Le Service d'appui aux tribunaux administratifs du Canada a été ajouté à la loi en même temps que le Conseil et d'autres offices fédéraux bénéficiant de l'appui du SCDATA étaient supprimés de cette liste, ce qui donne toutefois à entendre que le Conseil est censé être visé indirectement, par le biais du SCDATA. Si c'est bien le cas, on ne sait pas avec certitude quels effets juridiques cet article est censé avoir au-delà de ceux que la *Loi sur la protection des renseignements personnels* a déjà.

21. Article 19

Cet article dispose : « Le Conseil peut ordonner que deux ou plusieurs instances soient réunies, instruites ensemble, instruites consécutivement ou instruites séparément ». Existe-t-il une autre disposition autorisant le Conseil à ordonner l'instruction séparée d'une instance?

22. Paragraphe 21(4)

Ce paragraphe prévoit que « [l]a personne assignée à comparaître doit se présenter à l'audience aux date et heure indiquées dans l'assignation à comparaître et être présente chaque jour d'audience, à moins que le Conseil n'en décide autrement ». Comment la personne assignée à comparaître peut-elle savoir à quelles dates l'audience doit se tenir pour pouvoir satisfaire aux exigences du *Règlement* l'obligeant à être présente chaque jour d'audience? Quelle « date et heure » l'assignation à comparaître indique-t-elle? Par exemple, s'agit-il de la date et de l'heure à laquelle l'audience s'ouvre, de la date et de l'heure à laquelle la personne est censée témoigner ou une autre date et heure ou une autre période?

23. Article 22

Cet article porte sur la signification d'un avis de question constitutionnelle. Suivant cet article, un avis doit être donné « dès que les circonstances qui sont à l'origine de la question sont connues et au plus tard 10 jours avant que la question soit débattue ». Qu'arrive-t-il lorsque l'avis est signifié après que les circonstances sont connues, mais après 10 jours avant que la question soit débattue? Il semble que l'obligation de signifier un avis dès que les circonstances sont connues constitue davantage un idéal qu'une obligation dont le non-respect entraîne des sanctions.

Une question plus large concerne celle de savoir si l'article 22 comporte des conséquences juridiques distinctes. Hormis le fait qu'il exprime le souhait que l'avis de question constitutionnelle soit donné plus de dix jours avant que la question soit débattue, quelles obligations légales l'article 22 crée-t-il en plus de celles qui sont

déjà prévues par le *Règlement*, la *Loi sur les Cours fédérales* et les *Règles des Cours fédérales*? En particulier, l'article 57 des *Lois sur les Cours fédérales* exige déjà qu'un avis de question constitutionnelle soit signifié au procureur général du Canada ainsi qu'aux procureurs généraux de chacune des provinces aux moins dix jours avant la date à laquelle la question constitutionnelle qui en fait l'objet doit être débattue, et l'article 69 des Règles prévoit que l'avis doit être rédigé selon la formule 69. Le paragraphe 22(2) est donc superflu, comme à tout le moins la plus grande partie du paragraphe 22(1). En outre, le participant n'est-il pas déjà tenu de déposer une copie de l'avis auprès du Conseil et d'en signifier une copie aux autres participants en raison de dispositions telles que l'alinéa 5f) et l'article 13 du *Règlement*? Si c'est bien le cas, l'article 22 au complet est redondant et devrait être abrogé. Il semblerait tout au plus que l'article 22 devrait simplement indiquer que, lorsqu'un avis de question constitutionnelle a été signifié conformément à l'article 57 de la *Loi sur les Cours fédérales*, une copie doit également en être déposée auprès du Conseil et être signifiée aux autres participants.

24. Paragraphe 23(1)

Ce paragraphe précise les éléments que doit comporter toute « demande d'accréditation ». Comme l'article 1 définit comme suit la « demande » : « [t]oute demande ou plainte faite au Conseil aux termes de la Loi », il semblerait que l'article 5 du *Règlement* s'applique également aux demandes d'accréditation. Est-ce bien l'intention voulue?

La même question se pose pour ce qui est des demandes d'annulation de certification prévues à l'article 28, des demandes conjointes de modification de la date d'expiration d'un accord-cadre prévu à l'article 31, des plaintes présentées en vertu de l'article 32, des demandes visant à faire déclarer illégaux des moyens de pression en vertu de l'article 33, des demandes de réexamen visées à l'article 38 et des demandes de dépôt d'une copie d'une décision ou d'une ordonnance du Conseil à la Cour fédérale visée à l'article 39. Dans certains cas, il se peut que le fait de répondre aux exigences de ces dispositions réponde également à celles de l'article 5. Néanmoins, il semblerait que l'article 5 devrait être modifié pour bien préciser qu'il s'applique uniquement aux demandes qui ne sont pas traitées ailleurs dans le *Règlement*.

25. Alinéa 23(1)d)

Cet alinéa prévoit qu'une demande d'accréditation doit comporter « une estimation du nombre de membres du demandeur qui travaillent dans le secteur visé ». L'alinéa e) précise que la demande doit comporter également la liste des membres de l'association du demandeur comportant les coordonnées des membres qui travaillent dans le secteur visé. Compte tenu du fait que les renseignements exigés en vertu de l'alinéa e) sembleraient préciser le nombre exact des membres du

demandeur qui travaillent dans le secteur visé, pourquoi la demande doit-elle alors comporter également une estimation du nombre de membres du demandeur qui travaillent dans le secteur visé?

26. Alinéa 23(1)g)

La version anglaise de cet alinéa emploie à la fois « its » et « their » pour parler du demandeur. Par souci de clarté et de cohérence avec les autres dispositions, il faudrait remplacer le pronom « its » par « their ».

De plus, la version française et la version anglaise de cet alinéa ne concordent pas. La version anglaise parle de la « constitution » du demandeur, ce qui est rendu dans la version française de la Loi par le terme « documents constitutifs ». Or, la version française de l'alinéa 23(1)g) emploie le terme « statuts » qui, dans la Loi, est employé comme l'équivalent de l'anglais « articles of association ». Cette incohérence devrait être corrigée.

27. Paragraphe 24(2)

Ce paragraphe précise ce que doit comporter l'avis de demande d'accréditation envoyé au Conseil.

L'avis doit comprendre « une description du secteur visé ». Est-ce que ce renseignement est censé être plus précis que la « description générale du secteur visé par la demande d'accréditation » que le demandeur doit inclure dans sa demande selon l'alinéa 23(1)b)? Si ce n'est pas le cas, on devrait employer le même libellé dans les deux cas.

L'avis doit également préciser « le délai imparti pour le dépôt des demandes concurrentes et des déclarations d'intérêt des artistes, des associations d'artistes, des producteurs et d'autres intéressés à l'égard du secteur visé ». Que veut-on dire par « déclarations d'intérêt » dans ce contexte? Si l'on entend les avis d'intervention et les demandes d'autorisation en vue d'intervenir, on devrait plutôt employer ces expressions par souci de clarté et de cohérence. L'emploi de ces termes assurerait également l'uniformité avec le paragraphe 25(2), qui indique que l'avis doit préciser le délai imparti pour déposer l'avis d'intervention. Dans l'état actuel des choses, cette obligation n'est énoncée que de façon indirecte au paragraphe 25(2) au lieu d'être exprimée explicitement au paragraphe 24(2).

Enfin, l'alinéa 25(2)b) précise que l'avis mentionné au paragraphe 24(1) doit également comporter le numéro de dossier attribué par le Conseil. Là encore, cette exigence devrait être expressément mentionnée au paragraphe 24(2) plutôt que d'être déduite d'autres dispositions.

28. Alinéa 25(2)c)

Cet alinéa prévoit que l'avis d'intervention doit comporter la « position [de l'intervenant] relativement à la décision recherchée ». Ne devrait-on pas plutôt parler de l'accréditation recherchée, par souci de clarté? Je constate que la Loi mentionne deux décisions distinctes qui sont utiles pour rendre la décision finale quant à l'opportunité d'accréditer une association d'artistes. En premier lieu, aux termes du paragraphe 26(1) de la Loi, le Conseil « définit le ou les secteurs de négociation visés. Après avoir pris cette première décision, le Conseil « détermine [...] la représentativité de l'association d'artistes » en vertu du paragraphe 27(1) de la Loi. Par conséquent, « la décision recherchée » dont il est question dans cet alinéa semble ambiguë, d'autant plus que la décision recherchée est probablement la position de l'intervenant relativement à l'accréditation, de façon plus générale.

29. Alinéa 31b)

Cet alinéa précise que toute demande conjointe de modification de la date d'expiration d'un accord-cadre doit comporter une copie de tous les accords-cadres « et de tout autre document exigé par le Conseil ». Il semble que le Conseil ne préciserait les autres documents qu'il exige qu'une fois que la demande conjointe aurait déjà été déposée. Comment cet alinéa s'applique-t-il sur le plan temporel?

30. Alinéa 32b)

Cet alinéa précise que toute plainte présentée en vertu de l'article 53 de la Loi doit comporter « les nom, adresses postale et électronique et numéros de téléphone et de télécopieur de la personne ou de l'organisation visée par la plainte ou de toute personne que la plainte peut intéresser ».

En premier lieu, il semble que, dans cet alinéa, « ou » devrait être remplacé par « et ».

Deuxièmement, l'équivalent du passage suivant de la version anglaise : « any person who may be affected by the complaint » est, dans la version française : « toute personne que la plainte peut intéresser » ce qui peut être interprété comme ayant une portée plus large que la version anglaise. Par contraste, l'équivalent de l'expression « affected by » dans d'autres dispositions, et notamment au paragraphe 35(1) et à l'alinéa 38b) est, dans la version française : « touché par ». Il semble qu'il serait préférable d'employer cette formulation ici également.

Enfin, le plaignant sera-t-il au courant des coordonnées de « toute personne que la plainte peut intéresser »? Je constate que les personnes indirectement visées par la plainte pourraient être englobées par cet alinéa, à la différence de l'article 6 et

de l'alinéa 39(1)b) du *Règlement* qui ne s'applique qu'aux personnes « directement visées ».

31. Alinéa 32d)

La version anglaise de cet alinéa reprend le libellé du paragraphe 53(2) de la Loi en employant l'expression « actions or circumstances ». La version française devrait en faire autant en parlant « des mesures ou des circonstances » plutôt que « des agissements ou des circonstances ».

32. Alinéa 32e), version française

Dans d'autres dispositions, l'expression « full particulars » dans la version anglaise est rendue, dans la version française, par « un exposé complet ». Par souci d'uniformité, on devrait employer la même formulation dans cet alinéa.

33. Alinéa 32g), version anglaise

La version française de cet alinéa parle d'une « décision », terme qui est uniformément rendu en anglais dans le *Règlement* par « determination ». Par souci d'uniformité, on devrait employer le même terme ici.

Les mêmes observations valent pour la version anglaise de l'alinéa 33f).

34. Alinéa 32h)

La version anglaise de cet alinéa exige une description des mesures de redressement demandées, alors que la version anglaise exige un exposé détaillé.

35. Alinéa 33b)

Cet alinéa prévoit que toute demande visant à faire déclarer illégaux des moyens de pression doit comporter « les nom, adresses postales et électroniques et numériques de téléphone et de télécopieur de tout artiste, de toute association d'artistes ou de tout producteur qui, de l'avis du demandeur, pourrait avoir un intérêt dans la demande ». Il s'agit d'un critère différent de celui qui est prévu dans d'autres dispositions semblables, qui exigent en règle générale les coordonnées des personnes que la demande peut intéresser ou qui peuvent être directement visées par celle-ci. La formulation de cet alinéa semblerait plus large, en ce sens qu'une plainte peut intéresser une personne sans que celle-ci soit touchée ou directement visée par la demande. De plus, cet alinéa est plus subjectif, en ce sens que les coordonnées ne sont exigées que pour les personnes qui « de l'avis du demandeur » pourraient avoir un intérêt dans la demande. Cette formulation est-elle intentionnelle? Si c'est le cas, pourquoi?

36. Paragraphe 34(4)

Cet alinéa prévoit, s'agissant du renvoi d'une question par un arbitre ou un conseil d'arbitrage, que « [c]haque partie a la possibilité de répondre aux observations de l'autre partie dans les dix jours suivant la date du dépôt de celles-ci ». Qu'entend-on par « possibilité de répondre »? Si l'on veut effectivement dire qu'une réponse doit être déposée dans les dix jours, on devrait le dire clairement. Je vous renvoie au paragraphe 9(3) et 25(3), à titre d'exemple.

37. Paragraphe 37(2)

La version anglaise parle des « persons who were participants to the determination or order », [« personnes qui étaient des participants à la décision ou à l'ordonnance], tandis que la version française parle des personnes qui étaient des participants à l'instance ayant donné lieu à la décision ou à l'ordonnance. Il semblerait que la version française soit correcte.

38. Alinéa 39(1)b)

Dans d'autres dispositions, l'expression correspondant à « affected by » est « touché par » plutôt que « visé par » comme c'est le cas à cet alinéa. Je vous renvoie à cet égard à l'article 6, au paragraphe 35(1) et à l'alinéa 38b) à titre d'exemple.

39. Paragraphe 41(1)

Le paragraphe 41(1) dispose :

> 41. (1) Si un participant ne se conforme pas à une règle de procédure prévue au présent *Règlement* après que le conseiller lui a laissé la possibilité de s'y conformer, ce dernier peut :
>
> a) de façon sommaire, rejeter la demande ou refuser de l'entendre, si le participant en défaut est le demandeur;
>
> b) trancher la demande sans autre avis, si le participant en défaut est l'intimé ou un intervenant.

Ce paragraphe semble à certains égards vague et subjectif et pourrait entraîner un traitement inéquitable pour certains participants. En particulier, on n'y trouve aucune indication quant au sens de l'expression « possibilité de s'y conformer » qu'il s'agisse du délai dans lequel le participant a la possibilité de se conformer ou le nombre d'avertissements qu'il recevra avant de subir des conséquences. De même, le paragraphe prévoit simplement que le Conseil « peut » prendre l'une des mesures qui y sont énumérées, et aucune indication n'est donnée

quant aux facteurs dont le Conseil peut tenir compte pour prendre sa décision. Enfin, je constate que si le participant en défaut est un intervenant, le Conseil peut trancher la demande sans autre avis. La décision de trancher la demande sans autre avis en raison du défaut de l'intervenant de se conformer peut-elle défavoriser injustement d'autres parties dans certaines circonstances? Dans l'affirmative, une option moins radicale pourrait convenir davantage lorsque tous les participants se sont conformés à l'exception d'un intervenant. Le Conseil pourrait par exemple empêcher cet intervenant de continuer à participer à l'instance.

40. Paragraphe 41(2)

Ce paragraphe dispose : « Si un participant ne se présente pas à une conférence préparatoire ou à une audience après avoir été avisé de sa tenue par le Conseil, ce dernier peut trancher la question en son absence ».

L'expression « conférence préparatoire » ne se retrouve nulle part ailleurs dans le *Règlement* ou dans la *Loi*. À quoi précisément fait-on allusion dans ce contexte? Une conférence préparatoire doit-elle avoir lieu chaque fois que le Conseil estime qu'une audience est nécessaire en vertu de l'article 20 du *Règlement*? La personne qui est assignée à comparaître à une audience est-elle censée se présenter à une conférence préparatoire? S'il est nécessaire de conserver cette mention de la conférence préparatoire, il y aurait lieu de clarifier ces aspects de ce paragraphe.

À cet égard, je constate que le paragraphe 41(2) semble faire en grande partie double emploi avec le paragraphe 20(3) du *Règlement* qui dispose : « Si un participant ne comparaît pas à une audience après avoir été avisé de sa tenue, le Conseil peut tenir l'audience et statuer en son absence ». Pourrait-on simplement abroger le paragraphe 41(2)?

Veuillez agréer, Madame la Présidente, l'expression de mes sentiments distingués.

Cynthia Kirkby
Avocate

/mh

TRANSLATION/TRADUCTION

Le 22 décembre 2014

Madame Cynthia Kirkby
Conseillère juridique
Comité mixte permanent d'examen
de la réglementation
a/s Le Sénat du Canada
Ottawa (Ontario)
K1A 0A4

Madame,

Objet : Règlement sur les procédures se rapportant à la Loi sur le statut de l'artiste

Je vous remercie pour votre lettre du 18 décembre 2014 concernant le sujet mentionné en rubrique. Comme mon mandat à titre de présidente du Conseil canadien des relations industrielles (CCRI) se termine le 27 décembre 2014, votre lettre sera transmise à la prochaine présidente, qui y répondra. Je tiens toutefois à vous signaler qu'en date du 1er novembre 2014, le CCRI n'est plus un ministère et qu'il n'a plus de personnel en propre. Les services de soutien, et notamment ceux des conseillers juridiques, sont désormais assurés par le Service canadien d'appui aux tribunaux administratifs (le SCDATA). La structure de gouvernance du SCDATA et du CCRI et des autres tribunaux administratifs concernés n'a pas encore été établie.

Je ne suis donc pas en mesure de vous donner une estimation du moment où le CCRI pourra vous donner une réponse complète à votre lettre.

Je vous prie d'agréer, Maître, l'expression de mes sentiments distingués.

Elizabeth MacPherson
Présidente/Chairperson
Conseil canadien des relations industrielles/
Canada Industrial Relations Board

TRANSLATION/TRADUCTION

Le 27 avril 2015

Madame Ginette Brazeau
Présidente
Conseil canadien des relations industrielles
Édifice C.D. Howe
240, rue Sparks, 4e étage Ouest
OTTAWA (Ontario) K1A 0X8

Madame,

Objet : DORS/2014-176, Règlement sur les procédures se rapportant à la Loi sur le statut de l'artiste, modifié par DORS/2014-242

Je vous renvoie à la lettre du 22 décembre 2014 de Madame Elizabeth MacPherson et vous serais reconnaissant de me faire part quand vous serez en mesure de répondre à ma lettre du 18 décembre 2014.

Je vous prie d'agréer, Madame, l'expression de mes sentiments distingués.

Cynthia Kirkby
Avocate

/mn

TRANSLATION/TRADUCTION

Le 31 août 2015

Madame Ginette Brazeau
Présidente
Conseil canadien des relations industrielles
Édifice C.D. Howe
240, rue Sparks, 4e étage Ouest
OTTAWA (Ontario) K1A 0X8

Madame,

Objet : DORS/2014-176, Règlement sur les procédures se rapportant à la Loi sur le statut de l'artiste, modifié par DORS/2014-242

Je vous renvoie de nouveau à la lettre du 22 décembre 2014 à Madame Elizabeth MacPherson et aimerais savoir si vous êtes maintenant en mesure de répondre à ma lettre du 18 décembre 2014.

Je vous prie d'agréer, Madame, l'expression de mes sentiments distingués.

Cynthia Kirkby
Avocate

/mh

TRANSLATION/TRADUCTION

Le 11 septembre 2015

Madame Cynthia Kirkby
Comité mixte permanent
d'examen de la réglementation
a/s le Sénat
Ottawa (Ontario) K1A 0A4

Madame,

Je vous remercie pour votre lettre du 31 août 2015 concernant le *Règlement sur les procédures se rapportant à la Loi sur le statut de l'artiste.*

Je vous prie de m'excuser pour le retard à vous fournir des réponses aux questions soulevées dans votre lettre du 18 décembre 2014. Comme vous le savez déjà probablement, par suite de l'entrée en vigueur de la *Loi sur le service canadien d'appui aux tribunaux administratifs*, le 1er novembre 2014, **l'ensemble** des ressources et du personnel du Conseil a depuis été transféré au SCDATA. Ce transfert a accaparé le Conseil et son ancien personnel depuis plusieurs mois et l'a empêché de s'occuper d'autres activités importantes.

Par conséquent, j'ai besoin d'un délai supplémentaire pour vous fournir une analyse détaillée et une réponse complète aux questions très importantes et détaillées que vous soulevez.

Je m'engage à vous répondre d'ici le 18 décembre 2015 et je vous remercie à l'avance pour votre patience et votre compréhension.

Veuillez agréer, Maître, l'expression de mes sentiments distingués.

Ginette Brazeau
Présidente
Conseil canadien des relations industrielles/
Canada Industrial Relations Board