

*American Federation of Musicians
Symphonic Services Division
Canada*

February 2000

Status of the Artist Legislation

Symphonic Services and the Canadian Office are currently working with other artists' organizations (Canadian Conference of the Arts, Canadian Actors' Equity Association, Directors' Guild of Canada, Writers' Guild) to have Status of the Artist legislation passed at the provincial level across Canada.

The purpose of Status of the Artist legislation is to ensure that artists have the same benefits and freedoms held by the majority of other Canadian workers, including the right to equitable remuneration for their work. This does not mean according special treatment to artists. Instead, it recognizes that special legislation is required to respond to the unique manner in which professional artists work.

Existing provincial labour codes have been set up to deal with relationships between employees and employers in traditional workplaces. Usually they don't cover artists, who are predominantly independent contractors. Engagers in most cases do not "employ" artists. Instead, they contract for their services (e.g. as a performer) for specific periods of time or for a number of uses. Often an artist has multiple engagers in the course of a year. What artists need is separate legislation that addresses their unique working arrangements.

Currently Québec is the only province with its own legislation in place, and as well, since 1992 any work done under federal jurisdiction has been covered by the federal Status of the Artist law. With legislation in place at the provincial level, the artistic community will enjoy a much greater level of protection and stability. Artists' associations such as the AFM, acting as collective bargaining agents, will be able to represent self-employed, free-lance artists and negotiate with engagers to establish minimum fees and working conditions. This will give artists the rights and protections that other Canadian workers already have, while acknowledging their unique working conditions. Information on the federal Tribunal can be found on the Internet at:

<http://homer.ic.gc.ca/capprt>

For more information on Status of the Artist, contact Symphonic Services.

Strike Fund

With incidences of job action increasing in our community (in the past two years, at least 4 orchestras have gone on strike or withheld services), it may be time for your orchestra to look at participation in the AFM Strike Fund. For many years the AFM Strike Fund rules restricted Fund participation to orchestras with collective agreements covering 50 musicians, with at least 25 of them earning a minimum of \$15,000 per year. In 1997 the AFM Convention passed a minor reform package that opened the doors a little bit wider. Your OCSM and AFM representatives have spent the last two years developing a more comprehensive reform package and this summer the 1999 AFM Convention passed a reform package that makes it possible for every OCSM orchestra to participate in the AFM Strike Fund at a level appropriate for your orchestra. Orchestral musicians earning as little as \$4,500 per season are now eligible for Fund membership. Three important points to remember are that: once an orchestra joins the fund, it is always in the fund; there is a vesting period of two seasons before an orchestra is eligible for benefits; and, if your orchestra does go on strike there is a one-week period before benefits begin (benefits increase as the work stoppage progresses).

For more information, please contact Symphonic Services.

U.S. Auditions

If you are planning on auditioning for a U.S. orchestra, be advised that some American orchestras are now requiring proof of eligibility to work in the States before they will allow you to audition. Because of problems that some Canadian musicians experienced this year, AFM Treasurer Tom Lee wrote a letter to the President of the American League of Symphony Orchestras outlining the details of the reciprocal agreement which is in place between the U.S. and Canadian

governments. This agreement allows Canadian musicians to audition for jobs in the U.S. and makes them eligible for a P2 work permit if they win an audition. OCSM members who have been invited to U.S. auditions are advised to contact Symphonic Services and obtain audition letters, which help you cross the border without incident, and also demonstrate to audition committees that as a Canadian member of the AFM, you are eligible to obtain a P2 work permit if you are offered employment in the States.

Tax/Employment Status: News from the Front

The taxman has struck again. This time the unwelcome news has come from the Employer Health Tax (EHT) auditors of the Province of Ontario. As the result of a region-wide audit of not-for-profit organizations, both the Windsor Symphony and Orchestra London have been found by the Ontario Ministry of Finance to be employers of their contracted musicians, including Windsor's Music Director. The most punishing parts of these rulings are the retroactive assessments, totaling \$65,000 for Windsor and \$128,000 for London. The EHT itself represents an additional cost to the organizations of 1.95% of payroll on an ongoing basis. It is important to understand that these latest rulings come from the Province of Ontario only and do not necessarily affect the employment status of these organizations with Revenue Canada. The EHT auditors have made it clear, however, that they share information with Revenue Canada.

These new rulings and the accompanying retroactive assessments are causing the AFM and other interested parties to question the prevailing strategy which has been to change a few words in our agreements and then lie low and hope for the best. Some symphonic organizations are considering a more proactive approach, such as asking Revenue Canada for a ruling in exchange for assurance that there will be no retroactive assessment. Others are asking Locals to reopen existing agreements in the hope that these agreements can be restructured in such a way that an employment relationship will not be found. The Thunder Bay experience in this regard is instructive in that a major overhaul of the agreement that was submitted to Revenue Canada failed to result in a finding of self-employed status for the musicians. Although cases that arise will continue to be assessed on the basis of unique local facts and circumstances, it is becoming apparent that benefits such as guaranteed ongoing work, tenure, pension, and participation in organizational decision-making (e.g. audition committees) will not likely survive the scrutiny of Revenue Canada or provincial finance ministries if the retention of self-

employed status remains the ultimate goal. It is this tough new reality that is gradually causing some musicians and their symphonic organizations to realize that there might be worse things than being employees.

The AFM is working closely with Locals, individual symphony managers, and Orchestras Canada. All organizations are freely sharing information and experiences and are participating in joint lobbying efforts. Resources that are available include an excellent legal summary (CCH Canadian Limited) of recent court decisions on the employee/self-employed question, copies of various relevant decisions, and a legal opinion procured by the AFM on the question of directors' liability. Most of these items and other related materials are available to registered users of the AFM website at <http://www.afm.org/cmesa>, the home of the Canadian Musicians' Employment Status Archive which is created and maintained by Paul Sharpe, President of AFM Local 279, London.

SSD Canadian Materials

Many resource materials are currently available through the Symphonic Services office. In addition to the OCSM Wage Chart, we have materials on:

- committee structure and procedures
- contract administration and negotiation
- contract boilerplate language

Electronic media agreements include:

- CBC Radio and TV
- PRLA
- Personal Use, Archival Use
- Symphonic Limited Pressing

We have also have available:

- Summary of New CBC Radio/TV Provisions
- Phono Agreement Symphonic Recording Scale Summary
- OCSM Orchestra Settlement Summary

For these or any other resource materials contact the Symphonic Services Canadian office at (416) 391-5161, send us a fax at (416) 391-5165, or send an e-mail to Laura at lbrown@ican.net, or Christine at clittle@afm.org.

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