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Symphonic Services Division

June 8, 1999

TO: Officers of Canadian Locals

RE: Impact of the Thunder Bay Tax Court decision on collective bargaining.

Enclosures:

1. *Officers' Edge* article.
2. Orchestras Canada legal opinion summary (Peter Clarke of Heenan Blaikie)
3. AFM legal opinion (Michael Wright of Cavalluzzo, Hayes, Shilton, McIntyre, & Cornish)

There have been a number of new developments since the appearance of the enclosed *Edge* article. At the time that article was written, the central concern was that symphony managers might request changes in existing collective agreements in a bid to avoid becoming employers. This is still a real and valid concern. Many of you have in fact been successfully dealing with such requests, working with managers to develop language that is less likely to point to an employment relationship while retaining the fundamental benefits and protections contained in your agreements.

What is less easy to deal with in this environment, is the producer/engager with whom you do not yet have a bargaining relationship. Many of you are facing unprecedented resistance from free-lance orchestras, from lower budget orchestras that engage professionals, and from even more established professional ensembles with whom you would like to form an agreement. The problem stems in large part from the fact that the managers of these orchestras have all received and read the Orchestras Canada summary in which Peter Clarke states that "the underlying facts still point to the master agreement as the most damaging fact" to support the Tax Court ruling that the musicians of the TBSO are employees.

Michael Wright's opinion letter, while far from a comprehensive solution to this problem, does provide information that can help you deal with these situations. In his letter, Wright cites labour statutes and examples from case law to support his contention that the Tax Court judge in the Thunder Bay case was in error in making the "bald assertion...that simply because there is a collective agreement in operation each core musician is therefore an employee."

The problem, of course, is that the Tax Court ruling stands as law until we have a chance to make these arguments in a future case, and possibly in front of a higher court. But the Wright opinion, in combination with the firm resolve of your symphonic members, is of value to you today. It allows you to join other AFM locals and their members across the country as they state clearly to the performing organizations they work for, that a) The law clearly finds dependent contractors (self-employed for tax) to be eligible for collective bargaining, and b) Locals and their members will be loathe to trade away fundamental protections such as job and income security in exchange for what is at best an uncertain future with Revenue Canada.

Several locals are working with SSD and with symphonic managers to develop creative solutions designed to maximize the chances of the musicians remaining self-employed while meeting their respective bargaining objectives. Feel free to contact us for further information.

Sincerely,

Laura Brownell
SSD Canada