

## **Tax Court Upholds Thunder Bay Symphony Decision**

**BY LAURA BROWNELL**

A recent Tax Court decision has kept the phone lines busy at the Canadian Office. On October 26 the Court issued a ruling that upholds the August 1996 finding by Revenue Canada that the musicians of the Thunder Bay Symphony are employees for tax purposes.

Although the decision leaves the TBSO with a worrying debt to Revenue Canada, they have decided against further appeals. The Canadian Office will be working closely with Orchestras Canada and with Local 591 to help address any shortrun financial concerns that may be facing the orchestra.

### **What can we expect as a result of this decision?**

Early indications from Revenue Canada point to "business as usual." Revenue Canada's decision-making is not industry-based. Rulings are issued infrequently, and are based on specific fact situations.

What may not be "business as usual" though, is the reaction of your symphony managers. You may find yourselves, in some cases, facing requests for changes to your agreements in an effort to ward off the taxman. There are management concerns about money, about director's liability, and in some cases, about labour status, although most acknowledge that our agreements are in fact collective agreements covered under provincial labour laws.

### **Should we agree to make changes to our collective agreements?**

We currently have six major Canadian orchestras whose musicians are employees. They are all managing quite well in that circumstance, and many musicians enjoy the benefits that flow from a stable employment relationship. Please remember that the cure can be worse than the disease. If you are asked to make changes to your agreement, we strongly suggest that you:

- Obtain full information and satisfy yourselves that it is truly in your long-run best interests to remain self-employed for tax purposes.
- Obtain legal advice in order to ascertain what would need to be changed in order to satisfy Revenue Canada's definition of self-employed.
- Examine those changes and evaluate the trade-off, i.e. what hard-won protections are being conceded in exchange for self-employed status? What are the long-run implications of making such concessions?
- Submit any draft/tentative new agreement for the consideration of the Canadian Office prior to signing.

The Canadian Office has accumulated a large library of legal opinions, tax and Employment Insurance information, and advice summaries. Our legal department and the resources of the Canadian Office will be made fully available to those of you who continue to wrestle with this issue.