

Excerpt from November 2002 Canadian Actors' Equity Association Newsletter

## Appeal Sought On Tax Ruling

by Patricia Joyce, communications director

A recent ruling by the Canada Customs and Revenue Agency (CCRA) on dancers with the Royal Winnipeg (RWB) raises questions for the future tax status of performing artists in Canada. The ruling with respect to several of the dancers at the RWB judges the status of the dancers to be employees for the purpose of CPP and EI eligibility. Canadian Actors' Equity Association executive director Susan Wallace explained,

*"The CCRA's ruling is a serious concern for Equity. The judgment negates arguments we have made that these dancers run their affairs as independent contractors and illustrates the ill-fit between existing tax law, which has been designed for traditional working situations, and the working reality of artists in Canada. We are working with the dancers and the ballet on an appeal strategy to have this order reversed."*

Three artists, representing three classes of dancers, are covered in the ruling: corps de ballet, soloist and principal. All three have been found to be employees. The ruling, although made with respect to these three artists only, will result in an audit of the RWB's practices for other similarly employed artists, and will require the RWB to make deductions for all other artists in the company as they are similarly engaged.

The dancers covered under the ruling together with the ballet made a request to the CCRA for a determination in 1999 following a number of controversial and financially disastrous decisions by the CCRA that musicians within major Canadian symphonies should have been engaged as employees. In the symphony cases, debilitating retroactive tax remittances were demanded and there were implications on the contractual arrangements for the artists.

The sudden surge of tax rulings against performing arts companies has sent shock waves through the cultural sector. A group of orchestras, theatres, arts labour organizations and arts service associations was convened by the Canadian Conference of the Arts this spring to respond to the CCRA's new application of traditional tax law on the cultural sector. Equity has participated in efforts by the coalition to draft an economic impact study through the Department of Heritage in order to communicate the potential ramifications of future assessments. Susan Wallace said,

*"While the CCRA has had tax law on its books for nearly 30 years that could realign many independent contractors in the arts as employees, historically the law has rarely been applied, as it has long been understood as poorly designed to deal with our unique contractual arrangements. The financial impact of defining artists as employees would be destabilizing for our sector: artists would pay into programs they would largely not qualify to receive any benefit from; tax credits for necessary and legitimate expenses would be in question and the tax burden on companies would erode already stretched budgets. If the CCRA intends to wedge its peg into our world, we believe it is now time for a new law that more appropriately fits the live performing arts."*

The apprehension over the misapplication of tax law within performing arts groups is shared with the growing body of independent contractors and seasonal workers in Canada who face the threat of having their tax status reassessed based on mainstream working conditions. The cultural sector has addressed the misconception that artists are looking for special tax-treatment by pointing to fishers, hair dressers and others who have been recognized by the CCRA as having unique contractual arrangements which are not contemplated within traditional tax law.

Already Equity is aware of two recent rulings similar to the RWB ruling, one in Dawson City, Yukon and one in Calgary, Alberta. Members who are similarly affected by such rulings or who hear of other like rulings should immediately contact Equity's controller Doug Irons, so that Equity can pursue appeals on its

member's behalf. Members will be kept apprised of this urgent situation through bulletins on e-drive and through the Equity newsletter.

Equity members concerned about their tax status and deductions should consult with their accountant and refer to the CCRA's interpretation bulletins with regards to the performing arts, such as IT 525R-Income Tax Performing Artists, located on the CCRA's web-site: [www.rc.gc.ca](http://www.rc.gc.ca) or call to request a copy: 1-800-959-5525. Members wishing to voice their opinions on the employment status of artists can write to their MPs, visit: [www.parl.gc.ca/information/about/people/house/PostalCode.asp](http://www.parl.gc.ca/information/about/people/house/PostalCode.asp) to locate your MP by postal code.