

The Government Giveth and the Government Taketh Away - Two More Symphony Orchestras play the Taxation Blues

December 16, 1999 - The Windsor Symphony and Orchestra London both appear to have run afoul of the provincial tax man.

The two orchestras have been audited by the Ontario Department of Finance in recent months, as a result of which the musicians (and, indeed, the music directors/conductors even though they have stand-alone contracts) have been determined to be employees for the purpose of the Employer Health Taxes (EHT), rather than self-employed, and the organizations themselves liable for arrears of thousands of dollars in EHT. What the musicians are paid through their contracts with these orchestras is not enough to survive on and, as with other orchestra musicians across Canada, they work on the basis of multi contracts, augmenting their remuneration through teaching, and performing for many other engagers. As a spokesperson for Orchestras Canada stated yesterday in a CBC interview, government officials need to recognize the special circumstances of artists and "their right to a collective bargaining framework that is not seen as a hard indicator of an employer/employee relationship".

It is clear that governments, both national and provincial, do not see the irony of providing funding for not-for-profit cultural organizations through departments of culture on the basis that culture enriches our communities and society in general, and on the other hand penalising these same organizations by taxing them unduly. There seems to be little political will to coordinate the function of the different levels of government.

At the root of the problem is a fundamental difference of interpretation of the term "self-employed". The majority of symphony musicians in Canada believe themselves to be self-employed, and have co-existed with tax departments for several decades on that basis. But with the changing workplace environment, and more self-employed individuals in the workforce as a whole, these same tax departments seem to have forgotten that artists - who have been working as self-employed individuals since day one - have unique working conditions.

This was recognized by the Appelbaum-Hébert Report back in 1982 and more recently by the report of the Standing Committee on Canadian Heritage (1999). While the current dilemma involves provincial jurisdiction, it is worth noting that the Standing Committee recommended that:

"The Department of Canadian Heritage ensure ongoing federal initiatives examining issues of self-employment include the interests of self-employed artists and creators"; and

"The Minister of Canadian Heritage appoint a task force to review self-employment issues in the cultural sector. The task force should include representatives from the Department of Revenue, the Department of Finance, and the Department of Human Resources Development Canada, and should report its recommendations within one year."

The CCA urges the Minister of Canadian Heritage, Sheila Copps, to act on these recommendations in the shortest possible delay, and to appoint a task force to examine the reality of self-employment in the cultural sector. In addition to the government departments listed above, we strongly recommend that there be active representation from the cultural sector, both through the presence on the task force of self-employed artists and through the representation of arts service organizations.

In its written response to the Standing Committee report, the federal government indicated that action will be taken on this issue but that "an alternative approach will be pursued". It behoves the various levels of government to take the time to learn how artists live, work and earn their meagre salaries, and also the arts service organizations to ensure that MPs, MPPs and others in government are provided with information on these and other issues of concern to the cultural sector on an ongoing and timely basis.

To assist in the wider process of developing provincial status of the artist legislation, and building on one of the recommendations outlined in the CCA report *A Portrait of Canadian Arts Service Organizations in 1999*, the CCA is putting the final touches to a wide-reaching project. The objectives of the project are two-fold:

- to educate artists and arts groups on the background and current position of Status of the Artist legislation federally and in Quebec (the only province where it currently exists); and
- to engage artists, arts labour and service organizations, and provincial and federal officials in a discussion of Status of the Artist and to elicit opinions on future directions for development of the concept nationally and provincially.

This project will involve the various players in a discussion of the many facets of Status of the Artist legislation, including taxation issues. Canadian Actors Equity Association, ACTRA, the Canadian office of the American Federation of Musicians, and the Cultural Human Resources Council are among the arts service organizations which have expressed their desire to be active participants in the process.

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