

## **Notes On Informational Meeting**

*Held at the LMA Offices on December 16, 1999 with members of Orchestra London, Laura Brownell (Symphonic Services Canada), and members of the LMA Executive Board.*

The meeting was called to order at 1:40 P.M. by LMA President Paul Sharpe, who explained that this was to be an informational meeting to discuss the recent tax ruling by Ontario's Department of Revenue (Employer's Health Tax), as well as recent requests by the President of the Orchestra London Association (Bill Murphy) to re-open the Master Agreement currently in force between the Orchestra London Association and the LMA.

It was explained to the members of OLC that Mr. Murphy, contending that the "current agreement is not viable," had verbally requested the following concessions (these requests were presented only verbally and, although a written version of them has been requested by Mr. Sharpe, no written version of them is available except in Mr. Sharpe's hand-written notes taken during a personal meeting (called by Mr. Murphy) at which no third party was present):

### **For the short term:**

- Eliminate payment for so-called "unused" services between now and the end of the season. This would reduce our season-long pay during the current season (for full-time musicians) from our 256 guaranteed services to approximately 220 services (some 210 services are being utilized in the current season, but an additional 10 of the "unused" services have already been paid for). Mr. Sharpe couldn't say with certainty whether the request also was meant to include a component which would further reduce the pay of those full-time musicians (wind players or percussionists, mostly) whose services wouldn't be required in all of the remaining scheduled services of this season, or whether all full-time musicians would be paid for all remaining "used" services whether or not they were needed for all of those services.

### **For the longer term:**

- Permanently reduce the pay of full-time musicians to somewhere around 200 or 210 services per season, depending on how many services the OLC might have scheduled for those musicians (and eliminating pay for all "unused" services). Once again, the question went unanswered as to whether all full-time musicians would be paid for the same number of services under this scenario, or whether musicians would be paid only for the services in which they were actually used. There would presumably be, in any case, no guaranteed number of services for which any musician could expect to be paid -- only a vague expectation.

- Eliminate all pension payments by OLC on behalf of its musicians (currently, each part-time musician receives 2% pension payments and each full-time musician receives 7% payments).
- Eliminate from the Master Agreement all mention of, and provisions for, tenure or seniority pay.

Mr. Sharpe explained that this request by the President of the Orchestra London Association represents an effort by the Association to preserve its status as an engager of self-employed individuals, since the recent ruling in which the musicians were found to be employees was based on the following three criteria:

- The presence of a guaranteed income (by virtue of a guaranteed service provision),
- The presence of pension payments by OLC on behalf of its contracted musicians, and
- The presence of seniority provisions in the Master Agreement.

It was stressed that the removal of these portions of the Master Agreement, while they might re-establish the self-employed nature of Orchestra London's musicians, would have no bearing on the retroactive nature of the recent ruling, which all parties agree must in any case still be appealed and fought.

Mr. Sharpe told the attendees that he had been informed that (and was convinced that) the OLC Board of Directors had taken a close and hard look at the possibility of closing down the orchestra just last week. At that time the members of the Board had been suffering from grave concerns over the extent of their personal financial exposure, should the Orchestra fail at some future point with the orchestra's coffers empty and the tax bill payable. According to Provincial law, the members of the Board would share liability in a case of non-payment or evasion of the Employer's Health Tax, and the feeling existed at the time among some Board members that it would be better to pay the tax bill immediately, out of existing orchestra funds (effectively bankrupting the organization), rather than to wait until later when the orchestra would be deep into its line of credit and would have no cash available. (Hopefully the pending city loan will help eliminate some of these pressures.)

It was stressed that the article in December 16th's London Free Press concerning possible refunds to musicians of health tax payments was totally bogus, since none of us earns enough money to be making such payments in the first place. Any request for such a refund would likely lead to substantial problems for us, both as individuals and as an organization, and the article should be totally disregarded by all.

According to Mr. Sharpe, Bill Murphy has said that the current Master Agreement is totally unaffordable and that the Board of OLC wishes it had never been signed. Mr. Sharpe is quick to point out that, while only two months ago the orchestra came to the musicians looking for concessions of \$30,000 (which OLC insisted would be the sum total necessary to balance the budget for the season), it is now coming looking for concessions of \$150,000. Mr. Sharpe insists that this increase has to do only with the

operating budget, and has nothing to do with the \$128,000 tax assessment from the Province. The two issues, according to Mr. Sharpe, are totally independent of one another.

The question was posed of whether Bill Murphy said that the orchestra would have to close down if the requested concessions weren't forthcoming. Mr. Sharpe replied that Mr. Murphy said more or less that this was the case -- that a possible shut-down was certainly implied.

Mr. Sharpe told the gathering that, prior to requesting a loan from the city, OLC had asked for a grant from the city (in light of the city's current surplus of \$10 to \$15 million). That request was rejected outright, at which point the orchestra retreated to its next option which was to request the loan. Mr. Sharpe stated that the city's politicians believe that the city's arts community is neither strong enough or united enough to affect the result of any upcoming election, and it is for this reason that the request for a grant was rejected. Meanwhile, it was stated that, while OLC has a good credit rating with the city due to its on-time repayment of its last loan, that repayment to the city was accomplished only by borrowing funds from other sources.

Indications lead to the belief that the orchestra's banker isn't likely to be a big problem for OLC for the moment, as the orchestra has a credit line available to it of some \$200,000. However, Sig Martin indicated that the credit line, as it now stands, may not be enough to get us through a great many upcoming payrolls.

At this point, a question was posed which came up time and again through the rest of the discussions: How can the Local and/or the musicians have any meaningful discussion or make any informed decision regarding any possible concessions in the absence of accurate and up-to-date financial information from the orchestra? By extension, how can the parties seriously consider any concessions when they don't appear in writing and exist only in Mr. Sharpe's notes from his personal meeting with Bill Murphy? Regarding the former, it was acknowledged that the orchestra is in a rather delicate position, but at the same time the orchestra was seen as being overly anxious to keep all financial matters secret. The distress of the musicians over the excessive secretiveness of the OLC organization is a subject which reappeared on numerous occasions throughout the afternoon's discussions.

Mr. Sharpe stated that he has asked Orchestra London for the following to assist us in our deliberations:

- a copy of the ruling by EHT (requested but not provided by OLC)
- verification of OLC's present financial state (requested but not provided by OLC)
- a timetable of OLC's appeal of the ruling (requested but not provided by OLC, although the appeal is not expected to begin until sometime in early January)

Laura Brownell indicated that, in marked contrast with the insular attitude shown by OLC, the Windsor Symphony had been prompt in forwarding a copy of the recent decision against it to the Symphonic Services Division.

Laura Brownell reiterated that there are a number of the things in our Master Agreement which make us look like employees:

tenure  
guarantees  
pension  
seniority  
etc.....

She emphasized that the punitive portion of this ruling must be vigorously fought -- that it implies a negligence and willingness to circumvent the law, by the Orchestra London Board and management, which nobody among us believes has existed.

She stated that as we fight the punitive portion of the ruling, we have two options:

- We can fight the entire ruling, including that portion which establishes us hereafter to be employees, or:
- We can fight only the retroactive part and accept that from now on we'll be employees.

She told us more or less the same thing in another way: that we have two (or perhaps three) options before us:

- We can determine that we are unwilling to give up the protections and benefits of a collective agreement, and therefore accept the ruling that we are employees,
- We can try to establish ourselves as “dependent contractors”, which would preserve many of the tax advantages of self-employed status but leave us eligible for collective bargaining (this is a fairly fuzzy area legally, and may be rather difficult to achieve), or:
- We can accept the route favored by OLC and Orchestras Canada, and give up the protections and benefits of a collective agreement in order to maintain our self-employed status.

She worries that if we choose to fight against our employee status, we will lose our ability to strike a collective agreement with OLC. She points out that, as self-employed individuals, we have no legal right to demand collective bargaining. An orchestra's Board may, for its convenience, enter into a collective agreement with a group of self-employed musicians, but it has no legal obligation to do so. Only those bodies of workers who are employees and have certified a union as their bargaining representative have the legal

right to demand a negotiated settlement and to strike in the absence of a negotiated agreement arrived at in good faith.

A major issue which remains unknown is whether OLC can afford to have us as employees. Without an opportunity to see the orchestra's current financial situation, this can not be known.

Laura was asked whether she has a personal preference among the two (or three) scenarios presented above. She stated unequivocally that her personal preference is for musicians to have employee status and for them to be working under the protection of collective agreements.

Reflecting on the lack of information regarding the finances of the orchestra, Dan Golden (member of the OLC finance committee) stated that the OLC finance committee hasn't met in 2 or 3 months, or at least hasn't informed him of any meeting in that time. The last time he was invited to such a meeting, it was only by chance, as he happened to be stopping in the OLC offices at the moment when such a meeting was about to begin. He expressed the opinion that the finance committee seems to be suspended as an entity, and that the Board appears to be taking over its functions. He stated that he has now made a formal inquiry into whether the finance committee is still in existence.

A member of OLC asked whether, if we were ruled to be independent contractors, it would be illegal for Orchestra London to recognize the Local as our bargaining agent. Laura said that it would not be illegal for them to do so (as they do now), but that there would be no obligation for them to do so. We can not certify any union as our bargaining agent if we are independent, and in the absence of union certification we can not compel OLC to negotiate with us collectively.

She stated that, even as self-employed members of the AFM, we can maintain our bargaining power as long as we stay united and the AFM has a monopoly over classical musicians in the local market. However, even if we were all to withhold our services and OLC were to be placed on the international unfair list, OLC would have the option of replacing us with non-AFM musicians. There are increasing cases, in right-to-work states down south, of non-union orchestras being engaged to break strikes or lock-outs in union shops.

Jeff Wall stated that there has been no meeting to date during this season of the full Executive Council of OLC (that is the Board Executive along with the Artistic Executive). Fred Phillips stated that this is despite phone calls to Bill Murphy stating that such meetings are necessary and desired by the members of the Artistic Executive. Concern was expressed that perhaps this body is heading in the same direction as the finance committee.

Mr. Sharpe stated that in his discussions with Bill Murphy he had been informed in no uncertain terms that OLC wishes, in addition to getting all of the above concessions from its musicians, to remove from its schedule all "money-losing" series and to eliminate

the Artistic Executive. These would certainly include the Sinfonia series and, most likely, a good bit of the Masterworks series. It was pointed out by several people that this would not only eliminate most of the artistic benefit of being a member of Orchestra London, but it would have a severely negative impact on OLC's ability to attract grant money from QAC and Canada Council. However, according to Mr. Sharpe, David Haward (OLC's General Manager) asserts that these funding agencies are far less demanding of artistic and Canadian content than they have formerly been and that cutting such series will have no negative impact on OLC's government funding.

The question arose of whether a signed Personal Services Agreement, which includes a guarantee of payment for 256 services, can be rendered invalid by a reopening of the Master Agreement and a reduction thereby in our paid service count. The answer, according to Ms. Brownell, is yes -- because with this ruling we are now employees rather than independent contractors and the individual Personal Services Agreements have therefore become virtually meaningless.

Laura Brownell reiterated her belief that she's not absolutely certain that we need to choose between the two draconian extremes (either employee status with substantially higher taxes or self-employed status with huge cuts in benefits & security). A middle ground might be found, such as that of dependent contractors, but it's a poorly established situation legally and might be difficult to achieve.

One member of the orchestra stated that, if we opt for the cut in numbers of services, we could adjust our service rate upwards and thus suffer no real cut in pay. Mr. Sharpe responded that, while one goal of Bill Murphy in his proposals was certainly to maintain the self-employed status of the musicians, there was absolutely no question that he was also looking to save a large amount of money, and that a compensatory increase in our service rate was not something he thought would ever be forthcoming from OLC.

Another member of the orchestra asked:

- What would be the costs to OLC of having us as employees rather than as self-employed individuals?
- How much might we expect to receive in Employment Insurance payments during the summer were we to become employees?
- Would the AFM/Local engage an accountant who would be able to prepare for us a statement of the benefits! costs of being employees vs. the benefits/costs of being self-employed?
- Could we have an accounting of the costs to other orchestras that are employee orchestras?

It was asked how much the Master Agreement would have to be changed if we were to become employees. The answer was that, except for removing those portions specifically referring to us as self-employed musicians, no changes would have to be made.

It was asked whether strike fund payments apply to musicians in cases of lock-outs?

Yes.

It was asked whether strike fund payments apply to musicians in cases of bankruptcy?

Yes.

Meeting adjourned at approximately 3:45.