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CCA SEEKS MEMBERS' OPINIONS

CCA members, both individuals and organizations, and many others in the cultural sector, have expressed increasing concern over the rising number of examinations by the Canada Customs and Revenue Agency (CCRA) into the relationships between arts organizations and artists (see previous CCA bulletins this year: #17 Employer/Employee relationships in the Arts; #31 All Not Quiet on the Status Front; #37 Arts Companies should examine Contractual Relationships).

There is no easy solution to this problem: CCRA states emphatically that it is incumbent on the organizations to ensure they run their businesses according to the law (the Income Tax Act). What arts organizations see as an independent contractor situation can be viewed as an employer/employee situation by CCRA. Depending on the terms of the contract, hard earned access to benefits, vacation, and pension plans (among other clauses) are all viewed as indicators of employee status, even though in some areas of jurisdiction artists have achieved the right to benefits and collective bargaining while maintaining their independent status.

While it seems as though Canada's cultural community suffers from cyclical barrages on taxation issues, it is only when an independent contractor, artist or otherwise, makes an application for Employment Insurance (for which he or she is not entitled as a self-employed individual), that these examinations are triggered. Once triggered, CCRA must examine the contractual relationship(s) between the artist(s) and the organization and increasingly finds these to be of the employer/employee type in their view.

The current spate of examinations is particularly ironic given that stabilization and sustainability of, and capacity building in, arts and cultural institutions have been touted as priorities for the federal government. These policy initiatives, which are fostered by the Department of Canadian Heritage, seem to be running counter to CCRA's attempts to move more performing arts companies towards becoming employers.

Frequently Asked Questions

Q. How does an organization which, in good faith, has been acting as a producer, know if CCRA would view it as an employer?
A. CCRA states it is always available to provide rulings on an organization's standing. If you want to know where your organization stands, you can ask CCRA for an administrative ruling, but be prepared to be deemed an employer, as in the recent case of the Royal Winnipeg Ballet.

Q. What happens when an arts organization is deemed an employer by CCRA?
A. Firstly, if CCRA believes the organization has been operating in good faith, the period assessed for back payments would likely not extend beyond the current year, although the CCRA could legally assess up to four years of payments in back taxes - a considerable hit for any organization, let alone a not-for-profit one. In these cases, the employer must pay both its own share of EI and CPP and that of its employees. For the new "employees", there are also financial penalties although an argument for back EI claims might be feasible.

Q. How are these back taxes covered?
A. We understand that CCRA is prepared to be flexible in terms of payments - it has no desire to put performing arts organizations out of business. However, it will be up to each individual organization to develop strategies to cover these costs. Some of these might include: * increased fundraising * increasing ticket prices * reducing payroll

Q. What happens to reasonable expenses currently claimed by self-employed artists?
A. Once an artist is deemed an employee, he or she will be severely limited in what and how much can be claimed against earned income. There could be an assessment going back into previous years for personal income taxes owing.

Q. What happens to copyright?
A. If a work is created by an artist while hired as an employee, copyright, including moral rights, will rest with the employer unless there is a specific contractual provision to the contrary.

Q. What is CCA doing?
A. CCA, in trying to find common ground between the various stakeholders on this issue, has brought together a working group consisting of national arts service organizations, arts labour associations, and performing arts companies. This group has initiated a position - a message to CCRA - which we are asking our members to examine at this time.

Message- The current "default" position is that individuals are employees, unless there is overwhelming evidence to the contrary set out in the contract. The working group would like to change this presumption, at least for those working in the cultural sector, to one of independent contractor status. The following is a statement which the working group has agreed is a reasonable initial position to take:

"Given that audits by CCRA of performing arts companies are increasingly ruling that there is an employer-employee relationship with artists, would you be in favour of artists being presumed to be independent contractors for income tax purposes, in accordance with the Status of the Artist Act, unless otherwise indicated in their contract."

CCA wants to hear from its members on this issue! Do you agree with the above statement? Yes No Name: _____ Organization: _____ (please print clearly - this information is for CCA only) Return date: Please fax back your answer, or email philippa.borgal@ccarts.ca by Tuesday January 7, 2003.

Next steps: The working group will be drafting a rebuttal to a CCRA interpretation bulletin on the question of employment versus self-employment in the cultural sector, early in the new year. Other initiatives are also on the drawing board and CCA members will be apprised of these as they develop further. Going forward, we would like to have a broader sense of the position of CCA members, both organizations and individuals.

For more information: Kevin Desjardins Communications and Public Relations Manager (613) 238 3561 ext.11 Fax (613) 238 4849 info@ccarts.ca www.ccarts.ca