

## TAX STATUS UPDATE

### **Recent developments.**

The Canada Customs and Revenue Agency (CCRA) has found the **Kitchener-Waterloo Symphony (KWS)** to be an employer of its musicians. This determination was made at the request of an individual musician. The KWS has chosen not to appeal the ruling. The master agreement for the current season contains new language that is consistent with a relationship of employment.

After careful consideration of the unique facts of their respective situations, **Orchestra London** and the **Saskatoon Symphony** have determined that they have a relationship of employment with their musicians. Both organizations are in the process of concluding new agreements that reflect that reality.

In response to a joint union-management request for a ruling the dancers of the **Royal Winnipeg Ballet (RWB)** have been found to be employees. The dancers are covered by a collective agreement between Canadian Actors' Equity and the RWB. The agreement sets out terms and conditions that are in many respects similar to those of full-time symphonic musicians. At the time of writing it is still unclear whether there will be an appeal of this decision.

The **Confederation Centre** (Charlottetown Festival) has won its appeal of a CCRA ruling that found a musician engaged by the Centre to be an employee. The success of this appeal at the Tax Court level solidifies the AFM's position that a musician who is engaged for a defined run of a theatrical production is self-employed for tax purposes.

In response to a musician's application for EI benefits, **Lone Wolf Productions** has been found by the CCRA to have been an employer of the musicians, actors and dancers who were engaged for a sixteen-week summer season in Dawson City, Yukon. The arts community is pooling its resources in support of a pending appeal of this decision.

### **Implications for symphonic musicians.**

A CCRA audit or ruling will take place upon the request of an individual or an organization. An audit and subsequent ruling will also occur in the case of an individual application for EI benefits. Recent CCRA rulings have been consistent with

the draft interpretation guidelines that were presented earlier this year to the performing arts community, in that the CCRA continues to find a relationship of employment in many situations. Performing arts organizations have in many cases been successful in appealing these rulings, notably in cases where there is no ongoing expectation of employment beyond a season or run. To date the only attempt to appeal a finding of employment status in an orchestra with salaried, tenured musicians, has been the case of the Thunder Bay Symphony. That appeal was unsuccessful at the Tax Court level.

Symphonic musicians and their organizations must evaluate their relationships in light of available case law and changing industry standards. If an organization determines that it is in fact an employer, it must comply with tax legislation in order to avoid retroactive assessments and penalties.

### **AFM action update.**

Stakeholders in the performing arts sector are working together with a view to putting an end to the cycle of rulings and appeals. First, consensus within the sector must be reached as to which artists are employees and which are self-employed. Then consensus must be reached between the sector and the CCRA. The decisions and determinations that are made must be lawful so that they will not be overturned by court decisions.

The Canadian Conference of the Arts (CCA) is fronting this sector initiative. In May of this year the CCA convened a meeting of performing arts producers' and artists' organizations to see if a consensus position could be developed. The AFM attended that meeting and was subsequently appointed to a sub-committee charged with developing an action plan. The firm of Ernst and Young has been commissioned to conduct a study of the economic impact on performing arts organizations and artists of a change to employee status. That study is underway. A joint industry group, including the AFM, has met in Ottawa with Senator Tommy Banks who has pledged his assistance in dealing with this issue.

Consensus within the sector has not yet been reached. Within the industry there is a difference of opinion as to whether or not it is feasible or even desirable to have all artists declared to be independent contractors. The issue is being

debated in an environment of change. The number of performing arts organizations who have either self-identified or have been found to be employers of musicians and/or dancers, is increasing and many musicians prefer to be employees. There are many other artists and organizations that feel strongly that they are not in an employment relationship and are determined to avoid a change in status. All agree, however, that the majority of performing artists are in fact self-employed and should be treated as such.

The AFM is working within the CCA group towards the engagement of a tax specialist for the purpose of rebutting the CCRA's draft guidelines. The objective is to use facts and sound legal arguments to educate the CCRA as to the unique nature of artists' work so that the CCRA will in turn provide appropriate direction to its regional assessors. Political action may also be an option. But in the short term the industry needs to take concrete action in the areas where we have achieved industry consensus, in order to protect the self-employed status of the true free-lance performer.

#### **Income Tax Summaries**

The AFM Canada office has researched and summarized many pertinent documents that are available on the government website ([www.ccradrc.gc.ca](http://www.ccradrc.gc.ca)). These summaries, along with the documents themselves, are available upon request. Some of the relevant documents include:

##### ***IT-525R – Income Tax Act, Performing Artists***

This document summarizes the Tax Act as it pertains to performing artists, including musicians. It provides an overview of the types of expenses self-employed and employed artists can claim.

***IT-514 - Work Space in Home Expenses***, deals with home office/practice space expenses for self-employed individuals.

***IT-352R2 – Employee's Expenses, Including Work Space in Home Expenses***, for employees, covers home office/practice space as well as other employee's expenses. This document also mentions *Form 2200 – Certificate of Employer*, which is required by employees to deduct home office and other expenses.

Summaries of the ***Employment Insurance Plan*** and ***Canada Pension Plan*** are also available from our office. The government website for information on EI and CPP is: [www.hrdc-drhc.gc.ca](http://www.hrdc-drhc.gc.ca)

#### **CALGARY PHILHARMONIC UPDATE**

At the time of writing the Calgary Philharmonic Society is enjoying an unprecedented level of activity. There is a local facilitator under contract who is conducting a strategic planning process. There is a "skeleton" crew of administrative personnel hard at work in the office. There are staffers from various funding agencies milling about, attending meetings, and issuing ultimatums. There is an out-of-town consultant whose role is

unclear. All of these people are on handsome contracts or are being paid salaries and benefits.

But the musicians have been laid off and the concert hall is silent.

It is hoped that by the time Canada's symphonic musicians read this, the musicians of the Calgary Philharmonic will be back at work in full force, enriching the lives of the people in their community. To that end, the AFM is working closely with the Calgary Local to ensure that everything that can be done will be done to put an end to what can only be characterized as a relentless and deliberate attack on music and musicians.

#### **SOUNDINGS**

In August of this year the delegates to the annual OCSM Conference voted to proceed with involvement in a joint Orchestras Canada/Canada Council initiative known as "Soundings." A team has been assembled that will travel across the country conducting interviews and meetings with stakeholder groups with a view to gathering insights and information from the orchestra community. It is hoped that the project report will lead to future developments in the form of concrete assistance for orchestras in need.

The "Soundings" team may request a meeting with the musicians in your orchestra. In order to be fully informed participants musicians should procure and analyze financial information from their own orchestras. They should also make sure they are up to speed on industry level issues. The SSD has a large amount of information that can instantly be made available through electronic means. It is available to you upon request.

#### **On-line at the AFM**

Many of our services and resources are available on-line at [www.afm.org](http://www.afm.org).

In the members only area, you can access the symphonic forum discussion panel, read the International Musician, including audition ads, and view wage charts from OCSM, ICSOM and ROPA. You can also request orchestra contracts, and find links to orchestra websites.

In the Canadian SSD area, you'll find settlement summaries, Status of the Artist documents, the 1999 Summary of CBC Radio and TV provisions, a copy of the Symphonic Limited Pressing Agreement, frequently asked recording questions, and back issues of the SSD Newsletter in both official languages. If you have suggestions for other items you'd like to see on-line, contact us!

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