



UNA VOCE

January 2001 Vol.8 No.2

- Electronic Media Committee Report
- Keep your Local informed
- Taxation and the Arts – the one that won't go away
- SSD Canada Newsletter – The Recording Industry

An Opinion From Out West

(Message from the President)

In the October 2000 issue of the International Musician, AFM Vice-President from Canada Dave Jandrisch explained why there is not a need for a Canadian counterpart to the AFM's U.S. lobbyist. In the first half of his article, as part of his reasoning for not having a lobbyist, he gives a condensed explanation of the differences between lobbying Canadian and American systems of government. In the second half he points out the various lobbying efforts that the Canadian Office staff is involved in. While everything that Vice-President Jandrisch says is true, I believe he overstates the differences between the two countries and misses the point of having an official lobbyist.

The article does not make logical sense. At first he argues that there is no point in lobbying in Canada because of our parliamentary system. He then outlines all the lobbying activity the Canadian Office is involved in. If it's not worth it, why is the Canadian Office lobbying? Which begs the question, why do corporate and non-corporate interests spend the millions of dollars they do every year to lobby the government?

The Vice-President also assumes that we would want an MP from the ruling party to take a position that is not in keeping with the government position. Depending on the issue, the government may have the same viewpoint as the AFM. We may want to request an MP's help on an issue that is contrary to party policy. In such cases, an MP risks being ostracized, being relegated to the backbenches or having to leave the party. However in the case of the former Reform Party (and let me say at the outset that this

is not an unpaid political announcement!), the leader, Preston Manning, did allow Reform MPs to vote according to their constituency. Depending on the issue, so have other parties - ruling or not. So there *is* historical precedence for MPs voting against party line.

Similarly, VP Jandrisch ignores the value of lobbying the various portfolio critics from the opposition parties. Certainly this would have more effect in a minority government, but even with majority governments standing committees are composed of MPs from all the parties represented in the House of Commons. In 1999 the standing committee on Culture and Heritage was in Halifax for a cross-country forum. I was invited to represent OCSM-OMOSC and indeed the committee was composed of Liberals, NDP, Bloc, Progressive Conservative (never mind that the PC representative did not attend), with a Reform Deputy Chair. Another aspect of lobbying that the Vice-President ignores is going after the civil servants who do the legwork on various issues that the MPs simply do not have time for. In such a way you can influence the agenda or set the tone for the particular issue before it gets to the MP.

As the Vice-President states, the Canadian Office is lobbying. However it is generally agreed that the most effective lobbying is done when it is consistent. As McLuhan stated, "the medium is the message." When the person lobbying for the Canadian Office changes, the message cannot be as consistent. Civil servants and MPs reach a certain comfort level when the person they are meeting is familiar. They develop a relationship.

But more than anything we need an official, dedicated lobbyist because the staff at the Canadian Office is already incredibly busy. What time does Laura Brownell, SSD Canada, have for lobbying about Status of the Artist when, among other things, she has to look after 19 OCSM orchestras at various stages of negotiations, contract problems, questions from individuals and organizations, not to mention all the non-OCSM orchestras and their individual musicians? What time does Vice-President Jandrisch have for the WTO, WIPO, Department of Canadian Heritage, Human Resources Development Canada, Canada Customs and Revenue Agency, when he has Locals to deal with, Federation agreements such as the

CBC to negotiate and administer, IEB meetings to attend, etc., etc. For this reason, OCSM-OMOSC has twice submitted resolutions to the AFM Canadian Conference requesting the appointment of a lobbyist. Twice they have refused to take our resolution to the Canadian Office, citing lack of financial resources for a lobbyist. However, as the Vice-President is aware, there are some options he could explore without paying another staff salary.

It is OCSM-OMOSC's opinion that the Canadian Office does not have the human resources to lobby effectively and efficiently, which is something the AFM members in the U.S. have come to expect and appreciate. It is not a sign of weakness to ask for help. The Canadian musicians need it; and the Canadian Office deserves it.

Rob McCosh, President OCSM-OMOSC

Electronic Media Committee Report

At last year's OCSM Conference, the Media Committee devoted most of its time to considering an OCSM position on Internet issues in view of the new Internet Agreement being used by our colleagues in the U.S. That agreement has been reported in the International Musician and is available on the AFM web site.

Our main concerns with that agreement were the lack of both national standards and required up-front payments. These, combined with the rapid convergence of broadcasting and recording, and the CBC factor, suggested a different approach for Canada. The CBC Agreement contains an industry equitability clause that allows the Corporation, should the AFM enter into an agreement with another party on more favourable terms, to produce under those terms. We therefore must be careful not to undercut ourselves when considering any agreement related to CBC activity, including the Internet.

Since CBC negotiations begin soon and Internet issues are likely to be addressed, we felt it prudent to consider the broad picture at and after those meetings. In the interim, Internet projects involving orchestras will be handled on a case by case basis by the Canadian Office with the understanding that each would require approval (vote) of the musicians involved, of the Local, and prior consultation with OCSM and SSD Canada. (*see the SSD Newsletter for more details*)

There was one area for which we believed provisions could and should be established now, that being use by orchestras of their own product on their own web sites for things like promoting upcoming concerts, educational programs etc. We have recommended that an agreement be drafted for this purpose incorporating the following:

- Streaming format only.
- Product from existing material or taken from regularly scheduled service(s) under orchestra's agreement (no separate sessions).
- Required approval of musicians (majority vote) and Local.
- Continued use after initial approval subject to annual review / approval.
- No payment required if the segment is 4 minutes or less, and not comprising a complete movement or work.
- In all other cases minimum payment per musician at the greater of 10% of their weekly fee (80% of per-service fee) or \$50.00, plus 10% pension. Covers up to 90 minutes of product for up to 1 year.

If your orchestra has a web site and is interested in setting up something like this, contact SSD Canada.

The bulk of media activity of OCSM orchestras last season was, of course, CBC remotes. These were up slightly from the previous season. There was a major change, however, in the length of pick-ups. (CBC remote fees are based on both the length of the pick-up and the number of plays). The full concert rate has always been the 135-minute rate, which in most cases was enough to cover the time of the concert from first downbeat until final cutoff. Early last season a Calgary producer indicated that CBC believed it could record a full concert and pay the 90-minute rate if the aggregate timing of the works was less than 90 minutes. It appears this is being applied elsewhere, as the number of 135-minute pick-ups dropped by half and the 90-minute pick-ups increased ten fold! The Canadian Office is dealing with the issue. The number of "one year window" buys (unlimited broadcast for one year) continues to increase.

My thanks to the Locals for their help and cooperation in compiling data on electronic media activity. It gets better every year but won't be perfect until we can access a central database including all information for all orchestras. That's being worked on.

Thank you also to the Committee members – Marc Beliveau, OSM; Susan Lipchak, TSO; Ron Milne, VSO and; Francine Schutzman, NACO – for their patience, "after hours" hours, and quick grasp of some complicated issues!

*Mark Johnson, Media Committee Chair
Calgary Philharmonic Delegate*

Coughing, crinkling candy wrappers... "it's for you"

The National Post Online (Dec. 22, 2000) reports that, in China, cellphone use during concerts has become so widespread that "many think little of holding long conversations on their cellphones, raising their voices to be heard above the music or dialogue." One reviewer counted 16 separate phone calls at a recent BBC Scottish Symphony concert in Beijing. "The Shanghai Grand Theatre is now testing equipment similar to that used by the People's Liberation Army to jam incoming signals. It is expected to be installed early next year."

OCSM-OMOSC enjoys a good record for returning Delegates. Last year we had only four first-time delegates and one of them has a thought on the value of keeping the lines of communication open.

It was my first OCSM conference. I had always paid my OCSM dues like everyone else with some ignorance as to what the organization actually did for me. It wasn't as though I'd never been on a committee before. I had been a member of the Board of Directors for Toronto Local 149 for three years, I had been a member of the Theatre Musicians Association, on the National Ballet Orchestra Committee, and three times on the negotiation committee for the same orchestra. I felt fairly savvy, informed and confident in my understanding of the inner workings of the world in which I worked. Then I attended the OCSM conference in Calgary last August. I was overwhelmed. For four days I was closeted in a room with representatives of every OCSM orchestra and with members of various local musicians' associations and members of the American Federation of Musicians from Canada and the United States. Every individual who spoke during those four days was an articulate, informed, creative thinker willing to share any information or experience they felt might be of use to others. Regardless of the size, length of season, or budget of their orchestra, each representative had something to contribute and something to learn from this exchange.

I feel that my OCSM dues and the cost of sending a delegate to the conference every year is money well spent. I also feel, however, that the board members of our Locals do not always share this sentiment. It is not that the Locals are necessarily unwilling to consider the needs of the orchestral musicians in their community, rather that they are frequently left out of the loop. If the Local is covering the costs of sending one or more OCSM delegate to the conference each year, those delegates must help their Local board members understand the benefits of the conference.

A phone call, a written report or an offer to speak to the board of directors about the conference will help to ensure that your Local will support OCSM and understand its value to their members.

My participation in the 2000 OCSM Conference reinforced my certainty that communication and solidarity are the keys to our survival as orchestral musicians.

Shelley Brown, NBO Delegate

**The Chalmers Conference
Taxation and the Arts:
Employment versus Self-Employment
Nov. 22, 2000**

Francine Schutzman attended the afternoon session of this one-day forum on Taxation which was hosted by the Canadian Conference of the Arts (see <www.ocsm-omosc.ca> for a link to the CCA). Also attending were Laura Brownell, Dave Jandrisch, Len Lytwyn (from the AFM Canadian Office) and Eddy Bayens, President of the AFM Canadian Conference. The session consisted of a panel and discussion moderated by Bruno Jean of the Department of Canadian Heritage.

The afternoon began with Niall Brady, Secretary of the Embassy of Ireland, speaking about the current situation in that country. All (creative) artists are self-employed, and income arising from the sale of works is tax-exempt (since 1969). Guidelines exist that determine whether or not the piece of art in question is original and creative. It must have either cultural merit or artistic merit. Performing artists, however, get a salary and are employees.

Betty Webster, representing Orchestras Canada (OC), gave an overview of the situation in Canada. She reported that eight of the 92 orchestras which comprise OC have employee status. In the Thunder Bay decision, OC argued that the four tests currently employed by Revenue Canada to determine tax status are inappropriate. In terms of Canada as a whole, Ms. Webster stated that "Orchestras Canada wants the status quo to remain." Failing that, orchestras and managements should decide together if they want a change of status. If one musician applies for EI, the whole orchestra shouldn't be subject to a status change. The orchestra community doesn't want to consider a situation in which all orchestras have employee status unless there is a long lead-in time (i.e. 10 years), there is additional help for additional costs, and there is no retroactivity (of taxes due).

Anne-Marie Desroches of the Union des Artistes talked about the need for 5-year income averaging for artists, since they work independently and their income fluctuates greatly from year to year. Artists should be self-employed, no matter how many contracts they have. The government says that these measures will cost a lot, but Ms. Desroches

isn't convinced of that. At the moment, more than one quarter of artists in Quebec is self-employed, as opposed to 11% of the rest of the province. Culture is a priority in Quebec, but the policy is hard to figure out, says Ms. Desroches.

Arthur Drache (a lawyer whose specialty is charitable institutions) gave some examples of people who have been incorrectly deemed employees, in Drache's opinion. He, too, says that the current four tests are not really good ones. He likes the competition test: does the individual have the right to work for other people? He offered a rather startling solution to the current mess: a binding election in which the workers and the employer decide status. One would choose either business status (with deductions allowed) or capital status, with capital gains being taxed (if I understood him correctly). This situation already exists with commodity traders. In an orchestra, for example, each person would choose a status which he would retain as long as he remains with that orchestra. You could have a self-employed principal trumpet sitting next to an employee second trumpet. Drache suggests trying out this system with orchestras first and, if it works, extending it to other groups.

Three representatives from Revenue Canada, whose names I didn't catch, said that the tax department, which is concerned with CPP and EI, doesn't care what our tax status is. In the Tax Act, there is no definition of what an employee is. Although many of the current rulings have been appealed, most have been maintained. If you want a situation changed, you should go to the Department of Finance or HRDC. The first speaker likes Drache's election option but wonders what will happen if an employer and a worker don't agree. One of the other speakers brought out what we already know: that so much is open to individual interpretation when dealing with tax matters.

During the question period, several points were made on various topics:

- 1) Regarding Drache's proposal, Eddy Bayens pointed out the impracticality and undesirability of individual election of tax status. He said that it could work only if done on the basis of an entire orchestra choosing a given status, and then only if the election is guaranteed in writing by the applicable government agency.
- 2) Drache said that income averaging should be implemented only if it benefits the country as a whole, not just as a bonus for artists. Farmers had income averaging but lost it. It would benefit many seasonal workers. He also said that there were no problems when CPP and EI were handled outside Revenue (before 1972).
- 3) In Ireland, there is no obvious public resentment of the fact that artists are in a special tax category. Rather, there seems to be appreciation of the fact that this situation has brought foreign artists to live in Ireland.

- 4) Everyone seemed to be in agreement that the four tests for employment status are not good ones. Heritage, the CCA, Bruno Jean and tax experts have been working together to develop guidelines. It was pointed out that any new guidelines would be useless unless they're legislated. And no solution will be acceptable if it leads to scrapping the collective agreements.

Francine Schutzman, Secretary OCSM-OMOSC

Robert Burgess

We are saddened to hear of the death of Robert Burgess on Jan. 2, 2001. Bob was Legal Counsel to OCSM in its formative years. Nicholas Kilburn, the second Chairman of OCSM, was honoured to deliver the eulogy at the service on Jan. 13. Here is an excerpt:

"Bob and I came together because of music but I never heard him play and I don't think he ever heard me. But he was a good enough trombonist to be able to support himself through law school with money he made playing gigs...

"In the early eighties Bob and his wife Michele helped me with a presentation to the Applebaum-Hébert Committee for *Federal Cultural Policy Review*. This commitment to music and musicians led me to suggest to my successor as Chairman of OCSM that he invite Bob to become 'Honorary Counsel to OCSM'. This he accepted and continued to provide advice to the members of Canada's symphony orchestras until he retired and sold his practice. This not only involved countless telephone conversations and conference calls but at least two annual meetings which would occur throughout the country. At the August annual meeting Industry Canada, Heritage Canada, the Canada Council, the AFM, the CBC indeed all agencies involved with the performing orchestral arts would attend. I doubt that the annual honorarium would have covered his OCSM phone bills. I know from countless reports that Bob always had time for his musical colleagues as indeed he did for all his friends."

**Contact UNA VOCE:
Steve Mosher, Editor
149 Woodington Ave.
Toronto, ON M4C 3K7
<smosher@interlog.com>**
