

Prior to 1974, all symphony orchestra musicians in Canada were considered self-employed individuals working under a contract for services. In that year, the Pension Appeals Board agreed with Revenue Canada that the musicians at the Vancouver Symphony Orchestra were, in fact, employees. The case originated because some members of the orchestra wished pension and unemployment insurance coverage.

Musicians at the Winnipeg, Calgary, and Quebec orchestras have also been re-classified as employees. The Toronto Symphony Orchestra has recently been examined and its members determined to be self-employed. As a result of the various decisions, musicians in different cities have different tax status and are eligible for different social security benefits even though they perform the same kind of work and bear the same kind of expenses. Musicians who do not play for symphony orchestras are much less likely to have this problem because they work for many more employers.

These inequities in treating symphony musicians perfectly illustrate the difficulty of applying the self-employed/employee distinction to performing artists. Symphony musicians may have sufficient attributes of employee status to warrant that finding - as has, in fact, been the case for the orchestras mentioned. But musicians still have the very heavy expenses associated with self-employment, expenses estimated to comprise up to 25% of their earned income. For example, the *average* cost of their musical instruments is \$43,000.⁽⁹⁾ Insurance, maintenance and repair for these instruments can amount to \$300-\$500 per year.⁽¹⁰⁾ These are in addition to other expenses for lessons and clothes. Only self-employed musicians can deduct their actual expenses and take depreciation on their instrument. Employees are limited to the standard employment deduction.

The Sub-Committee firmly believes that the situation is undesirable. Rationalization is needed. The Sub-Committee views selfemployed status as the most appropriate to handle these heavy expenses. Some witnesses suggested a general provision deeming symphony orchestra members to be self-employed. A similar solution was discussed above for performing artists in general.

The Sub-Committee is reluctant to step in where others have found such difficulty in drawing that conclusion. Once again, it reminds both orchestras and musicians to take their own responsibility for arranging contracts to achieve the best results. However, the Sub-Committee accepts the musicians' statement that, with the best will in the world, that may not be possible.

The Sub-Committee has tailored its recommendations so that symphony orchestra musicians classified as employees are not treated unduly differently than their counterparts in other cities. Section 8 of the Act dealing with employee deductions should be amended to permit the deduction of all expenses, including capital cost allowance, relating to the instrument of a symphony musician who is an employee.

Such an amendment would create equitable treatment in two respects. First, it would achieve fairer treatment between symphony musicians and other employees in general by recognizing the extent of the instrument expenses in much the same way that section 8 recognizes the extraordinary expenses of such groups as railway and transport company employees and salesmen. This approach would specifically target the major expense that distinguishes employee musicians from other employees - their instruments - and still leave the general employment deduction to cover the other expenses.