

Implementation

“... I am going to continue to do what we are doing... I am going to follow the precedents that have been set for me ... That is the business concept.”

John Robertson, Revenue Canada (16:43)

As will be seen from the preceding quotation, Mr. Robertson who appeared for Revenue Canada indicated that he had no authority to depart from full business principles, applicable to artists and writers as to any other business people. The Sub-Committee took issue with Mr. Robertson on that point then, and continues to do so now, believing that the matter is much more a question of interpretation than legislation.

The Sub-Committee was constantly aware that some recommendations require legislation to implement and others need only a reinterpretation of the law. This question is of special significance in the area of reasonable expectation of profit.

While respecting Mr. Robertson's opinion, the Sub-Committee wishes to make the following points. First, the precedents in this area are not as clear-cut as implied. The concept of professionalism has been applied with different results in the *Schip* and *Needham* cases mentioned before as has the requirement for substantial revenue. Courts have also been willing to take a long-range view when deciding whether the expectation of profit is reasonable or not. This is clear from the *Matthews* case in which a tree farming cycle required up to one hundred years before profits were assured; the Court held that the expectation of profit was reasonable.⁽⁷⁾ Both Revenue Canada and the courts are used to thinking of business not as a monolith; but rather as many different types of enterprises which have their own distinguishing characteristics.

In summary, the Sub-Committee has concluded that the groundwork in both law and practice has been laid for the application of its proposed professionalism criteria and that statutory changes are not required in this area. Should this view not prevail, however, the Sub-Committee urges the government to introduce the necessary statutory changes.

RECOMMENDATIONS

13. That Revenue Canada utilize the criteria of professionalism as an interpretative aid;
14. That if that is not feasible, the government amend the *Income Tax Act* to permit the flexibility which would result from the application of the criteria.

INVENTORY TREATMENT FOR VISUAL ARTISTS

“I propose to ... recommend ... that the department now accept the Disney report recommendation on this issue.”

John Robertson, Revenue Canada (16:6)

Preceding sections of this Report have outlined how the business of the artist differs from other businesses. The label “manufacturer” places further stress on the activities of the