

incurring expenses for advertising, for an agent, for lessons, for audition and accompanist fees and for travel. These expenses will be incurred regardless of the status flowing from the resulting contract.

Many other jurisdictions, including the United States, make no distinction between performing artists who are employees and those who are self-employed when it comes to expense deduction. France permits its performing artists to deduct all documented expenses or to claim a standard deduction ranging from 20-25% of their income (with a generous ceiling), depending on the area of expertise. Clearly, both systems are more attuned to the actual expenses which performing artists experience regardless of their status. The Sub-Committee concludes that, especially in comparison with the United States' practices on employment status, Canada's tax system should not provide a disincentive to remain in this country.

The Sub-Committee therefore urges increased emphasis on the performers' work patterns in general rather than the present narrow focus on individual contracts and on the application of a control test which has minimal relevance to group situations in the performing arts. Performers are personally responsible for a far greater burden of expenses than are typical employees and this fact should in itself tip the balance in their favour to create a presumption of self-employment.

This seems to be the current state of the law with regard to actors following a decision in the Federal Court by an Umpire under the *Unemployment Insurance Act*. In deciding that actors engaged by the Mermaid Theatre Society of Wolfville, N.S. were self-employed, the judge stated:

Duration of employment certainly has a bearing on the matter, as I would think that actors engaged by a stock theatre company and performing on a more or less year-round basis save for vacation periods would be considered as engaged under a contract 'of service'. On the other hand actors engaged merely to rehearse and perform in a specific play would appear to be operating on a free lance basis and be self-employed, even if they happen to be engaged by the same employer several times during the course of a year, or perhaps from year to year. In between times they can and do seek other employment in their profession, and even while under engagement by the employer they are free to obtain other work provided it does not interfere with rehearsal or production time.

This statement is helpful with regard to actors. The Sub-Committee thinks that the presumption of self-employed status should be applied to performing artists generally; the presumption could be displaced by evidence showing typical employee status such as reimbursement for all or most expenses and security of tenure. Questions about the duration of a contract should also be clarified and the Sub-Committee wants this factor to be given much less emphasis than in the past.

Numerous performing artist groups invited the Sub-Committee to recommend a general provision in the *Income Tax Act* deeming them to be self-employed. The Sub-Committee is reluctant to endorse such a broad measure in part because of the wide precedent that would be created and because of the clarification made by the *Mermaid* decision. The Sub-Committee thinks that adherence to these revised criteria will create the self-employed presump-