

that professional artists or writers because of their training, dedication, and professional achievements can hope to have a reasonable expectation of profit.

A professionalism test in this context would direct Revenue Canada in the proper approach to the business of the creative artist. Canadian case law has on occasion used the professionalism of a taxpayer as one criterion in assessing expectation of profit⁽³⁾ but in other cases the acknowledged professionalism of the artist has not been sufficient to overcome the fact that current revenues were very low, generating no profits.⁽⁴⁾ Furthermore, the courts are already accustomed to examining the unique features of individual businesses and taxpayers in deciding whether there exists a reasonable expectation of profit.

A number of mechanisms would be possible to implement such a test. The Sub-Committee recommends a new statutory category of losses from professional artistic activity because it is straightforward yet offers a degree of certainty for visual artists and writers. Criteria for professionalism would be developed in an Interpretation Bulletin.⁽⁵⁾ Visual artists and writers would thus have a recognized status and Revenue Canada would have a stated and uniform assessing policy.

RECOMMENDATIONS

7. That section 111(1) of the *Income Tax Act* be amended to permit the deduction of losses from professional artistic activities;
8. That the criteria for professionalism be incorporated into an Interpretation Bulletin;
9. That the professionalism test define reasonable expectation of profit in the context of the visual arts and writing.

TOWARDS CRITERIA FOR PROFESSIONAL VISUAL ARTISTS AND WRITERS

“Finding one simple definition, [of artist] is like trying to determine the sex of angels. We feel it is an impossible quest.”

Yvon Dufour, Union des Artistes (7:26, translation)

It is clear from the preceding discussion that the Sub-Committee has chosen to concentrate on professionalism as a test. The Sub-Committee believes that the criteria examined below will be of primary relevance in evaluating the professionalism of visual artists and writers for the purpose of establishing when losses (and the kind of losses) from these activities can be deducted from other income.

The role that revenue should play in this assessment is difficult. One view maintains that revenue from artistic activities need play no role in determining professionalism. As discussed above, however, the Sub-Committee believes that business concepts have importance for professional artists. Professional artists actively market their work through galleries, shows and exhibitions, or other methods. Where revenue results, that is evidence of professionalism; where it does not, active marketing in itself is still strong evidence provided other criteria are also present. In short, the Sub-Committee wishes to replace the current emphasis on *profit* within a short time frame, with a criterion of *revenue*.