



HOUSE OF COMMONS  
CANADA

**REPORT OF THE SUB-COMMITTEE  
ON THE TAXATION OF VISUAL  
AND PERFORMING  
ARTISTS AND WRITERS**

STANDING COMMITTEE  
ON  
COMMUNICATIONS AND CULTURE

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Chairman: Douglas Fisher

Président: Douglas Fisher

*Minutes of Proceedings and Evidence  
of the Sub-Committee of the Standing Committee on  
Communications and Culture on*

*Procès-verbaux et témoignages  
du Sous-comité du Comité permanent des  
communications et de la culture sur*

# The Taxation of Visual and Performing Artists and Writers

# L'imposition des créateurs et des interprètes

RESPECTING:

CONCERNANT:

Order of Reference on the Taxation of Visual and Performing Artists and Writers

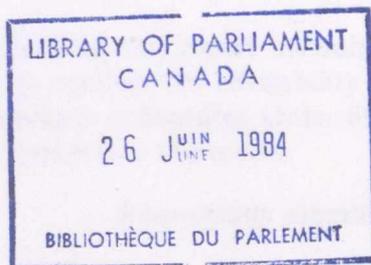
Ordre de renvoi concernant l'imposition des créateurs et des interprètes

INCLUDING:

Y COMPRIS:

The SECOND REPORT to the Standing Committee on Communications and Culture

Le DEUXIÈME RAPPORT au Comité permanent des communications et de la culture



Second Session of the  
Thirty-second Parliament, 1983-84

Deuxième session de la  
trente-deuxième législature, 1983-1984

4607754

# SUB-COMMITTEE ON THE TAXATION OF VISUAL AND PERFORMING ARTISTS AND WRITERS

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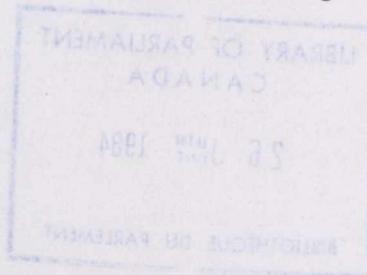
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The Standing Committee on Communications and Culture has the honour to presents its

## FIRST REPORT

In accordance with its Order of Reference of Tuesday, December 13, 1983, your Committee assigned responsibility to a Sub-committee to study the question of the Taxation of Visual and Performing Artists and Writers. The Sub-committee has submitted its second report to the Committee. Your Committee has adopted this report which reads as follows:

A copy of the relevant Minutes of Proceedings and Evidence of the Sub-committee on the Taxation of Visual and Performing Artists and Writers (*Issues Nos. 1 to 16 and 17 including the Second Report*) and a copy of the relevant Minutes of Proceedings and Evidence of the Standing Committee on Communications and Culture (*Issues Nos. 1 and 10*) are tabled.

Respectfully submitted

ROBERT GOURD

*Chairman*

The Sub-Committee on the Taxation of Visual and Performing Artists and Writers has the honour to presents its

## SECOND REPORT

In accordance with its Order of Reference of Tuesday, February 14, 1984, your Sub-committee considered the question of the Taxation of Visual and Performing Artists and Writers.

Your Sub-committee has adopted this report including thirty-one (31) recommendations and asks the Government to consider the advisability of implementing the recommendations contained herein and pursuant to Standing Order 69(13) and requests that the Government table a comprehensive response to this report.

Respectfully submitted

DOUGLAS FISHER

*Chairman*



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## RECOMMENDATIONS

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### INTRODUCTION

1. That the Department of Finance develop expertise in taxation policies relating to artists, and that Revenue Canada, Taxation develop and publicize guidelines and educate field personnel in the principles to be applied to the taxation of visual and performing artists and writers.
2. That the pre-budget consultation process with the Minister of Finance be expanded to include the arts community.
3. That a consultation process be developed between Revenue Canada and the arts organizations to give the department expertise in this field and to alert taxpayers in the arts about new issues in the administration of tax policies.
4. That Revenue Canada adopt the principle that full retroactivity in reassessing should not be strictly applied when a taxpayer's course of action was reasonable in all the circumstances, especially where a pattern of filing had been established upon which the taxpayer had been reasonably relying.
5. That reassessments relating to the business losses project computed before April 1, 1984 be conducted on the same basis as those subsequent to that date regardless of the existence of waivers.
6. That in the future, where the professionalism of artists and writers is at issue and results in a changed view of their status, that the change be effective for that year and future years, not retroactively, provided their course of action was reasonable in the circumstances.

### VISUAL ARTISTS AND WRITERS

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.
10. That the professionalism test de-emphasize the timing of profits and include the existence of revenue as only one of a number of other criteria.
11. That all losses resulting from direct artistic or writing expenses be fully deductible.
12. That indirect expenses normally carried by a taxpayer in any event be deductible only to the point where they reduce revenue to nil.
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.
15. That Revenue Canada be willing to assign a nil value to the inventory of professional visual artists.
16. That consideration be given to statutory changes to permit artists to use the modified accrual system at their option.

## **PERFORMING ARTISTS**

17. That Revenue Canada revise IT-312 to reflect the *Mermaid* case and clarify the role of duration in a contract.
18. That the criteria listed in the Bulletin indicating employment and self-employed status be revised.
19. That factors in the Bulletin allegedly indicating employment status but in fact essential to the organization of any group of performers, employees or not, be excluded.
20. That the assumption of a heavy burden of expenses create a presumption of self-employment for all performing artists.
21. That the cost of music, acting or general lessons be deductible for self-employed performers even if unrelated to a particular role.
22. That section 8 of the *Income Tax Act* be amended to allow deductions of all expenses and capital cost allowance incurred by symphony musicians for the purchase and upkeep of their musical instruments.
23. That performing artists be eligible for unemployment insurance coverage regardless of their status for taxation purposes.

## ACADEMICS

24. That Revenue Canada develop and exercise expertise in applying the reasonable expectation of profit test to academic activities where the application of the test poses the same kinds of problems that were identified for the professional visual arts and writing.

25. That the government address the question of employee deductions in general with a view to assisting those groups whose expenses demonstrably exceed the standard deduction now permitted.\*

## ADDITIONAL CONSIDERATIONS

26. That the government develop an averaging system for taxpayers with fluctuating incomes that will be available for those whose marginal rate of tax is below the maximum. The system should not involve an initial increase in cash payable.

27. That grants (other than educational grants) awarded to professional artists be treated as business income from which expenses can be deducted, subject only to the loss limitations in Recommendation 12.

28. That Revenue Canada update IT-257 to reflect the changes in the nature of Canada Council grants following the 1978 formation of the Social Sciences and Humanities Research Council of Canada.

29. That the form currently entitled "Notice of Assessment" be redesigned so that taxpayers will be adequately informed about the nature of the form and the powers of Revenue Canada to assess in detail at a later time.

30. That the tax system provide financial incentives for visual artists to donate their own works of art to charity.

31. That the government reconsider the federal sales tax, customs and excise issues identified by the Disney Report with a view to resolving longstanding areas of complaint by the artistic community.

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\* For Mr. Orlikow's dissenting opinion see p. 26.



## INTRODUCTION

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### BACKGROUND

The issue of the taxation of the arts is not new in Canada. Fifteen years ago, the Department of the Secretary of State began to study the matter when a number of problems had become apparent in the tax treatment of Canada's artists.

In the mid-seventies, the Department commissioned Russell Disney of Touche Ross to examine the issue. Mr. Disney had served for ten years as the treasurer of the Canadian Conference of the Arts. His 1978 report was a perceptive analysis of artists' lives and it made a number of far-reaching recommendations.

None of Disney's recommendations were implemented. Cabinet reviewed the report and referred it to a committee of officials from Secretary of State, Finance, Revenue Canada Taxation, Revenue Canada Customs and Excise, Employment and Immigration, and the Privy Council Office. This committee considered the report for two years but the various officials could not agree among themselves.

In the intervening years, some of the issues studied by Disney have remained as outstanding problems. New issues, such as the taxation of visual artists, which had not presented difficulties in the 1970s, also bubbled up to the surface and threatened to spill over in 1983.

In the intervening years, cultural policy advanced more positively, especially with the appointment and subsequent report of the Federal Cultural Policy Review Committee, popularly called the Applebaum-Hébert Report. That committee signalled the growing interest in and concern for the arts in Canada. It did not focus on taxation matters in any detail but it did respond to concerns from the artistic community. It urged the implementation of the Disney report in the interests of equity and fair treatment and reminded the government of continuing problems in this area. The report stated:

Among the proposals made to the Committee as possible remedies for the inadequate - even derisory - returns to artists in Canada were a number focused on tax treatment, many of them reflecting findings and recommendations of the 1978 Report prepared by Russell Disney for the Secretary of State on "Federal Tax Issues of Concern to the Arts Community in Canada". Some of these dealing with matters such as the treatment of artists' costs (and whether or in what circumstances artists should be considered as employees or self-employed), the valuation of works donated by artists to public institutions, and the income-averaging tax provisions available, sought little more than equitable treatment in comparison with other classes of taxpayers. Although such proposals may appear to the Department of Finance to require departures from standard practices, to the extent that they involve nothing more than simple equity they can scarcely be construed as special pleading, and this Committee supports them unreservedly.

(The Report of the Federal Cultural Policy Review Committee (Applebaum-Hébert) p. 83-84)

The conflicts that had been simmering for well over a decade came to a head in 1983. A Revenue Canada project examined taxpayers who were deducting business losses from employment income, including a large number of writers and visual artists. The artistic community and then the general public soon became aware that Revenue Canada's actions were widespread and that these actions had severe economic implications for the artists and writers involved.

On November 2, 1983, the Right Honourable Joe Clark proposed a Private Member's Notice of Motion to the House of Commons. He moved that a Parliamentary Committee study the *Income Tax Act* provisions relating to visual and performing artists and writers. He spoke about the long-standing problems of artists, about the Disney recommendations and about the importance placed on these issues by the Applebaum-Hébert report.

Spokesmen for all three parties and the Departments of Finance and Culture and Communications supported Mr. Clark's motion and stressed the urgency of the situation. The motion, as amended, passed unanimously. The matter was referred to the Standing Committee on Communications and Culture, which struck a Sub-Committee for this purpose. In the Second Session, on February 14, 1984, the Order of Reference was renewed on the same terms.

The Sub-Committee is pleased to report that this non-partisan, co-operative atmosphere has continued among the Members throughout the course of its hearings and deliberations. The Sub-Committee has focussed on practical and sensible recommendations which can remove the long-standing discontent over taxation matters felt by the diverse groups across Canada's artistic sector. The Sub-Committee urges that its report will not suffer the same fate as the Disney report. The insecurity of the previous decades must be resolved.

## THE ORDER OF REFERENCE

The pertinent paragraph of the Order of Reference is as follows:

That the Standing Committee on Communications and Culture review all relevant provisions of the *Income Tax Act* relating to the taxation of

visual and performing artists and writers including, but not limited to, the criteria for establishing the professional status of visual and performing artists and of writers and the method for determining allowable business deductions for such artists and to recommend any changes that the Committee deems necessary and proper.

In accordance with its reference, the Sub-Committee made certain decisions. First, it has confined its recommendations, with one exception, to those matters within the purview of the *Income Tax Act* and its interpretation by the courts. Its inquiries have thus been narrower than those undertaken by Disney who made recommendations on such matters as federal sales tax anomalies. The Sub-Committee nevertheless wishes to draw to the attention of the government the fact that serious difficulties continue to exist in these related fields. These matters should be addressed if a truly integrated fiscal approach to the arts in Canada is to be achieved.

Secondly, the Sub-Committee has confined itself to taxation matters affecting individual artists and writers. Other matters of concern to the artistic community or relating to art in general were raised in briefs to the Sub-Committee: the treatment of art donations under the *Cultural Property Export and Import Act*; the tax treatment of renovations for heritage properties; the status of artistic unions under the *Canada Labour Code*; and the "Give-and-Take" proposal on the tax treatment of charitable donations. These issues will have to be examined in detail elsewhere. Finally, this report does not deal with copyright issues as these will be the subject of intensive study by the Standing Committee on Communications and Culture in the future.

The Sub-Committee has focussed on the status of artists, especially visual artists. The report analyses the nature of artists' and writers' "business", assesses the appropriateness of the test of "reasonable expectation of profit" when applied to that business and recommends ways of achieving a fair taxation policy for the community. The employment status and permissible deductions for performing artists, including symphony musicians, are also addressed, as are the issues presented to the Sub-Committee by the academic community.

The Order of Reference empowered the Sub-Committee to consider the views of interested parties and organizations. Representatives of eighteen arts organizations appeared before the Sub-Committee, as did three lawyers who have arts and taxation expertise and representatives from Revenue Canada.<sup>(1)</sup> The Sub-Committee received over two hundred briefs and letters.

The Sub-Committee commends the artistic community for the consistently high quality and comprehensiveness of its submissions and for its willing assistance to the Sub-Committee.

## **WORKING TOGETHER: INTEGRATED FISCAL POLICIES**

"... the major problem is that we have a kind of governmental schizophrenia here. On the one hand... Canada is among the most generous countries in the world in direct support of its artists through Canada Council and other grants ... On the other hand ... you turn around and you nickel and dime them to death with the tax system."

Arthur Drache (13:15)<sup>(2)</sup>

“That is not to say that Canada has not established an excellent record in supporting its cultural growth and development. We clearly have, and have accomplished much. The tax system, however, is not only having an adverse impact on our individual artists, but it is undermining and contradicting the policies and programs we have established to achieve our cultural objectives. It is doubly important, therefore, to restructure the tax régime as it applies to the arts and the cultural industries.”

Canadian Conference of the Arts (1A:3)

Artists praised the general level of government awareness and support of the arts in Canada even though many are upset with current tax policies and administration. They pointed out the irony that the government and the Canada Council actively assist the arts while tax policies and administration simultaneously hinder their creative activity.

The Sub-Committee agrees that a more consistent, integrated approach to the treatment of artists is essential. On the support side, the existence of grants and subsidies and the full range of assistance in the cultural field testifies to the importance of this sector to Canada as a nation. On the taxation side, at the very least, the law should not throw up obstacles to cultural achievement. Common sense should tell us that it serves no national purpose for Revenue Canada to tax away a Canada Council grant from a theatre, to present internationally recognized visual artists with large retroactive tax bills, or to fully tax government grants to professional artists regardless of the expenses the grant was intended to cover on the grounds that they were hobbyists. The time has come for the left hand to be aware of what the right hand is doing.

## WHY SPECIAL TREATMENT?

“We want no special consideration”

Union des Artistes (7:5) (translation)

“... we simply want fair and equitable treatment...”

Canadian Conference of the Arts (1:26)

“... you want to take the bull by the horns ... and say: Okay, the artists are special.”

Arthur Drache (13:16)

The Sub-Committee wants to be reasonable on the question of preferential or special treatment.

The Sub-Committee heard words like “equity”, “special status” and “specific treatment” from many witnesses. The Sub-Committee was repeatedly urged to recommend mere justice and not to favour the arts community, while at the same time many of the proposals presented would indeed create a favourable tax status for artists unavailable to other taxpayers.

There is an *economic* justification for proposing tax changes. Repeated and ample evidence was given that Canada's visual and performing artists and writers experience significantly different economic conditions than other Canadians. The markets for their works are uncertain, especially for the most experimental of their number. Prices paid for their efforts fluctuate beyond their control. Their level of training and expertise is very high, but commensurate economic returns are often deferred far into the future. Heavy expenses must be borne in the meantime. Individuals must often subsidize their work, most typically by taking employment in addition to their creative activities. Even when success does come, the ratio of their expenses to their income remains high.

To treat Canada's artists and writers in the same way as other business taxpayers is not economically equitable. It is possible to build on current tax policies to reflect artists' experiences *and* business practices.

In contrast, some witnesses urged that tax changes be purposely designed to foster the cultural sector because of its unique contribution to Canadian life. Although the Sub-Committee is sympathetic to this approach and understands the sentiments behind it, it has serious doubts that the *Income Tax Act* is the vehicle to effect such a policy. A positive cultural policy from other departments and agencies is the active ingredient to provide artists with a decent standard of living and a widespread market for their works. Taxation policy can reinforce these goals, but cannot achieve them in itself.

The Sub-Committee's approach, therefore, has been two-fold. First, it suggests proposals designed to reflect artists' economic circumstances. Secondly, it leaves more active forms of assistance to other groups and branches of government.

## EDUCATION AND TRAINING

"We certainly are going to issue instructions shortly, through our people, saying: as a very minimum, you have to ask these questions."

"There have been cases ... where we have looked at them and said: My God, you cannot do that!"

John Roberston, Director General, Audit Directorate (16:12)

Both Revenue Canada and Finance need to bolster their internal departmental expertise on the nature of artistic activity.

A quick look at Revenue Canada's Taxation section in the government telephone directory for the National Capital Region reveals the following specialized sections: partnerships and professions, mines, oil and forest industry, farm income, finance, insurance and leasing, merchandising and manufacturing, public utilities, and construction. Artists and writers are not included. The arts community need not feel affronted by the lack of a special section since many groups are not specifically named. Nor is there a specialized unit at the Department of Finance. This lack may be symbolic of what has appeared to the Sub-Committee to be a very real dearth of expertise and understanding of the arts.

A number of faults emerged with the assessing system. The practice of retroactively assessing for a four-year period will be discussed below as will certain changes in inventory treatment. Both caused financial hardship and uncertainty in the artistic community. Wit-

nesses also spoke of the insensitivity of assessors to artists and their work and reported denigrating comments made in the course of audits.

Language is an important part of understanding. To an assessor, the label "hobbyist" may mean only the opposite of "businessman." To the artists involved, it implies a serious misunderstanding of the artists' credentials and the nature of artistic activities. It adds fuel to an already heated emotional situation.

The Sub-Committee feels that personnel assessing the tax returns of artists must be more attuned to the realities of the sector and the sensitivities of the individuals involved. Consultation with the arts community will go a long way to establish trust in the same manner as it does with other sectors in society.

## **RECOMMENDATIONS**

- 1. That the Department of Finance develop expertise in taxation policies relating to artists, and that Revenue Canada, Taxation develop and publicize guidelines and educate field personnel in the principles to be applied to the taxation of visual and performing artists and writers.**
- 2. That the pre-budget consultation process with the Minister of Finance be expanded to include the arts community.**
- 3. That a consultation process be developed between Revenue Canada and the arts organizations to give the department expertise in this field and to alert taxpayers in the arts about new issues in the administration of tax policies.**

## **THE TAX SYSTEM, THE ASSESSING SYSTEM, AND TAXPAYER RESPONSIBILITY**

Members of the Sub-Committee asked witnesses to indicate which recommendations would require legislation to implement and which ones needed only a reinterpretation of the law or revised procedures. It was not an easy question and different witnesses making the same recommendation often could not agree on what was required. Some witnesses preferred speedy action through administrative changes. Others wanted the stability and security of amendments to the Act itself.

Where a legislative approach has seemed the only feasible or possible solution to a problem, the Sub-Committee has recommended it. The Sub-Committee prefers more immediate action taken administratively and has pressed for this easier, faster approach. For some problems, both avenues of change have been recommended in the attempt to provide both interim relief and longer-term certainty.

On the other hand, the Sub-Committee heard demands for change that cannot be met at all. It recognizes that some of the sentiments expressed by witnesses are the inevitable by-product of our self-assessing system of taxation. The Sub-Committee rejects the view implied by some witnesses that the mere fact of reassessment constitutes harassment. All taxpayers in a self-assessing system must be prepared to justify both the purpose and reasonableness of

any business deductions that they claim. No tax act or body of regulations can ever attain the degree of certainty that would eliminate the need for all scrutiny.

The Sub-Committee also feels that in a number of instances the specific deductions which some witnesses wish to make may not be prudent in the circumstances. The Sub-Committee notes the testimony of Arthur Drache in this regard:

I have seen an awful lot of the tax returns, the loss returns, and I think that in many cases the claims which are being made are outrageous, to produce the losses which they have got ... [A] person was writing off very large numbers for moving house, automobile expenses, and so on, exactly the kind of expenses, incidentally, that I as a lawyer am very leery of. I might be able to justify it but because I am prudent I do not make the claim. What they are doing, in many cases, is pushing the system as hard as they possibly can to get maximum deductions. (13:39-40)

Where claims are made in which personal benefit overlaps with professional or business activities, it is not surprising that Revenue Canada will investigate. Such expenses as hair styling for actresses, home offices, cars and travel have an element of personal consumption and form part of the grey area between personal and business use.

Problems arising from the provisions of the Act or case law are not so easily or quickly remedied. Wider deductions for university professors, deductions for instrument expenses by symphony musicians who are classified as employees and, possibly, the interpretation of "professional" and reasonable expectation of profit for visual artists and writers fall into this legislative category.

## **CHANGES IN INTERPRETATION**

A variety of witnesses testified that, in their opinion, changed interpretations of the law by Revenue Canada had caused many of the current problems, especially those related to reasonable expectation of profit. Representatives of Revenue Canada insisted that there had been no change in approach. They described a project where the computer had selected the files of taxpayers who had deducted business losses from employment income. In all, 5,900 files were studied. Of these, changes were made to 4,999 returns. Four hundred artists were included in that group. The departmental representatives stressed that they were merely following the law in reassessing them.

The breadth of the project and its impact on so many visual artists and writers in a short time span created the impression that a reinterpretation of the law had taken place. The lack of previous departmental inquiry into artistic losses deducted from other income along with the paucity of case law on the subject no doubt contributed to the conclusion that a new broom was at work.

In the final analysis, the Sub-Committee has concluded that the question is not important. Whether old or new, if the current interpretation of reasonable expectation of profit as applied to visual artists and writers is inappropriate or harmful, it should be changed.

## **RETROACTIVE ASSESSMENTS**

Being labelled hobbyists insulted artists' professionalism and feelings of self-worth. Being retroactively reassessed for four years, however, attacked them where it hurts the

most. Feelings of outrage over this practice run deep. When losses are disallowed over four years, very large tax bills result, especially since the income available to pay them is often low. And payment was demanded immediately.

There is no doubt that Revenue Canada was legally empowered to reassess for a four-year period. But was it justified in doing so? Was it acting reasonably in the circumstances? It is essential for the department to assess retroactively in many situations where deductions have clearly been incorrectly made, where expenses are unreasonable and where dishonesty or fraud have occurred.

The reassessments of visual artists were based on an opinion of Revenue Canada about their activities being presented to them for the first time. Artists who had been filing in good faith, in the same manner over the years and usually with professional assistance, suddenly found that losses for four years were disallowed and that they owed a large amount of tax. Neither the artists nor the activities, however, had changed.

This question is related to, but independent of the application of the reasonable expectation of profit test to artists and whether the test had changed. Even if no change had occurred in the interpretation, the test did change the status of these artists from business person to hobbyist. Moreover, the previous interpretation of their status had been both widespread and reasonable, from their point of view and that of their advisors. In this kind of situation, it is understandable that one group testified that Revenue Canada's actions were an ambush.

It appears that the department agrees partially with this view. In his appearance before the Sub-Committee, Mr. John Robertson who is the Director General of the Audit Directorate announced that reassessments made in this category after April 1, 1984 would cover only the current year and one prior year. Taxpayers who had settled before that time and signed waivers, however, would not receive refunds.

The Sub-Committee commends the first half of the announcement and the flexibility it shows, but not the second. It is firmly of the opinion that the initial four-year reassessments were admittedly unreasonable and that waivers should not now protect the department.

## RECOMMENDATIONS

4. That Revenue Canada adopt the principle that full retroactivity in reassessing should not be strictly applied when a taxpayer's course of action was reasonable in all the circumstances, especially where a pattern of filing had been established upon which the taxpayer had been reasonably relying.
5. That reassessments relating to the business losses project computed before April 1, 1984 be conducted on the same basis as those subsequent to that date regardless of the existence of waivers.
6. That in the future, where the professionalism of artists and writers is at issue and results in a changed view of their status, that the change be effective for that year and future years, not retroactively, provided their course of action was reasonable in the circumstances.

## VISUAL ARTISTS AND WRITERS

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### THE BUSINESS OF A VISUAL ARTIST AND WRITER

“... you have to recognize that if you are a sculptor the world is different.”

John Robertson, Revenue Canada (16:12)

“The world is a messy place...”

Peter Weinrich, Canadian Crafts Council (9:7)

The tax system characterizes visual artists who create, market and sell their own work as people in business, as are lawyers and widget makers. Like widget makers, artists are further classified as manufacturers. The Sub-Committee feels that the problems created by this approach must be solved through a comprehensive test of professionalism.

The working environment and careers of visual artists differ significantly from that of other individuals and businesses. The typical pattern of artistic careers includes a long period of growth, analogous to research and development in other sectors, before artistic reputations are established. Little revenue and even less profit may be expected during these years. In some cases, and history is replete with examples, artists' works do not yield profit during their lives, but become valuable only after the artists' death. The market for art is clearly not one that is predictable with any certainty. Finished works may be immediately saleable but more likely will not be. Nor will the eventual sale prices be known, or even predictable.

The expectation of making a profit is central to the definition of business both in popular language and in the tax system. An activity pursued with no possibility of profit is characterized as a hobby. Should the hobby produce revenue, expenses are deductible up to the limit of that revenue and no losses are allowed. When the activity reaches the point where it is reasonable to expect a profit, it becomes a business and all expenses are deductible, including those that result in losses.

Expectation of profit, then, is the test that separates a business from a hobby. As noted above, artists' working lives are unique and many will have trouble meeting an expectation of profit test if such profits are required in a short time span.

Compare the situation of visual artists to that of other manufacturers. The latter can estimate markets for their products and so predict their revenues and profit potential. They know the approximate prices that their products will bring and when they will sell. Visual artists may not know any of those facts in relation to their art. The "art business" differs considerably from other businesses and the application of a profit test poses serious problems. A similar analysis can be made of the business of writers.

Visual artists themselves present two opposing views on the general nature of art as a business, especially in connection with the profitability of their art. The minority view maintains that art is an end in itself to be pursued with little or no thought of profit. This group resists the application of any business concepts to the practice of art.

The more prevalent view holds that most artists want to sell their work. Sales and the money generated mean appreciation and often enhanced reputations which in turn lead to more sales. The groups which propose this view of the visual artists' work also stress that comparisons with other businesses still show the many deficiencies in the general business model presently applied to visual art.

The Sub-Committee prefers the second general approach. It is not willing to propose that the issue of the taxation of artists should be completely divorced from business concepts although it will recommend a reinterpretation of those concepts.

The logical extension of a complete abandonment of all business principles is that artists make no attempt to generate revenue by marketing their work. That, of course, is perfectly acceptable as a personal choice. Such individuals should not then expect to be able to claim business-like losses from other income. Any individuals making that choice must also remember that income, artistic or not, which results in profit will be taxable. The artist cannot opt out of that part of the system.

It is the opinion of the Sub-Committee that however unfamiliar business concepts may be to some artists, certain accommodations must be made. Indeed, most artists who appeared before the Sub-Committee agree with that conclusion and ask only that the accommodation be fair to them.

One solution would be to state that only consistently profitable artists or writers can be said to be in business and that all others (those with losses) are hobbyists. The Sub-Committee rejects this approach as over-inclusive and insulting to the artistic community.

The artistic community contains highly trained, dedicated, practicing artists; many have achieved widespread recognition in their fields and many teach at colleges and universities. In short, they are professionals. Our tax system implicitly constructs "business person" and "hobbyist" as opposites. It is equally possible to state that the opposite of hobbyist is professional.

The Sub-Committee has concluded that the most fruitful method of assessing reasonable expectation of profit and business in the visual arts and writing area is to introduce a professionalism test. In essence, the test would take a long-range view of profit and presume

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<sup>(3)</sup> 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.<sup>(4)</sup> 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.<sup>(5)</sup> 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*.

The Sub-Committee recommends that the following list of criteria be used to assess the professionalism of artists or writers.<sup>(6)</sup> The criteria are not listed here in any particular order of importance.

Professionals:

- 1) Earn or have earned a living wholly or in part by the practice of the visual arts or by writing;
- 2) Hold diplomas in fine or applied art or related field;
- 3) Teach or have taught in the field;
- 4) Exhibit frequently or otherwise market or promote their art or writing;
- 5) Win national or international prizes;
- 6) Have current memberships in professional organizations;
- 7) Gain recognition by other professional artists or writers in the country;
- 8) Receive grants from the Canada Council or provincial arts councils or cultural affairs departments;
- 9) Can demonstrate time spent and sustained output;
- 10) Receive revenue from artistic sources;
- 11) Have previous critical or financial success despite an intervening slack period;
- 12) Obtain publishing contracts (although the lack of contracts does not indicate non-professionalism).

The Sub-Committee makes no attempt to weight the characteristics, or to indicate an acceptable threshold number because individual circumstances vary greatly. It is highly unlikely that any individual could meet all the criteria. The weighing and balancing process characteristic of this kind of decision will continue but with the aid of increased expertise in Finance and Revenue Canada, and these concrete standards, future results should be fairer and more predictable than current processes provide.

The Sub-Committee proposes that artists and writers who can establish themselves as professionals can then deduct losses from professional artistic and writing activities from other income. The question remains about the extent to which losses should be deductible.

### **Artistic and Writing Losses**

In view of the concessions on the income side in applying the business test, the Sub-Committee has concluded that full deductibility of all losses on the regular business model is not required. It has previously recommended that the full application of the business test be modified by the criteria of professionalism in the case of artists or writers. Profit in a restricted time span will not play the role it appears to now, and even the absence of revenue will not necessarily be definitive. Losses, therefore, can also be restricted.

There are several models for loss deduction that the Sub-Committee considered. The first is full deductibility of all business losses from total income as currently permitted. The second is a restricted loss provision modelled on the provision for taxpayers with farming losses whose chief source of income is not farming (section 31). This limits the amount that may be claimed as a loss. The third is a restricted loss provision based not on amounts, but on the kind of expenses that may comprise losses.

After careful consideration, the Sub-Committee rejected the farming loss model as unnecessarily complicated and difficult to apply to artists. Because so many artists also work in art-related fields, there is a closer integration between their artistic and employment activities than exists for individuals who take up farming as a sideline. Hobby farmers are both more numerous and more easily identified than individuals who pursue art as a sideline.

The Sub-Committee notes that there are two kinds of expenses artists and writers incur. First, there are those that are integral to artists' work and its marketing and that are expended directly for that purpose: the artist's paints, brushes and canvas; the sculptor's materials and heavy equipment; the writer's typewriter; promotion expenses for all groups. These expenses should be deductible in full even where they produce losses.

Secondly, there are personal expenditures that taxpayers will likely incur in any event, but which, because of a degree of business use, will be normally deductible. These expenses are more indirectly related to the artistic activities and include mortgage interest (or rental) payments applicable to a home studio or office, and capital cost allowance on a car. They occupy that grey area of deductions between personal and business use.

For example, direct expenses that would not have been incurred except for artistic activities include gas for the car used to travel for promotion purposes. On the other hand, expenses that would have been incurred in any event include the purchase price of the car. From an accounting point of view, these latter expenses would be deducted last, to see if losses result.

The Sub-Committee does not propose to deny deductibility to those kinds of expenses, merely to preclude their deduction where losses would result. As revenue increases for the artist, more of these costs would be absorbed. The Sub-Committee finds a model for this kind of loss restriction in the fact that capital cost allowance cannot be used to create a loss in rental apartment buildings.

## RECOMMENDATIONS

- 10. That the professionalism test de-emphasize the timing of profits and include the existence of revenue as only one of a number of other criteria;**
- 11. That all losses resulting from direct artistic or writing expenses be fully deductible;**
- 12. That indirect expenses normally carried by a taxpayer in any event be deductible only to the point where they reduce revenue to nil.**

## 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.<sup>(7)</sup> 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

visual artist because of the requirement that the artist value his or her inventory. This section of the Report will recommend that inventory valuation be discontinued.

The Disney Report understood that Revenue Canada was willing to establish as administrative policy that no value should be ascribed to uncommissioned and unsold work in process and to finished product inventory. Apparently this practice was never implemented, or has subsequently changed, and a degree of confusion among visual artists has ensued over the contents and value of their inventory.

Visual artists were unanimous that full inventory valuation is inappropriate to the sector. Delaying the deduction of some or all expenses until the products are sold is suitable for a typical manufacturer whose turnover is rapid and reasonably predictable and who can liquidate unsold inventory easily. For visual artists, such delay can mean carrying expenses for an indefinite period, given the uncertainty of the art market. Because most visual artists are by no means wealthy, the economic burden of these expenses can be great.

The Sub-Committee agrees that inventory evaluation is inappropriate for visual artists and urges that Revenue Canada adopt the system envisaged by the Disney Report. The Sub-Committee has concluded that the cash system, or modified accrual, should be available to visual artists as it is for farmers and fishermen. The Sub-Committee recommends that the department make these changes administratively to the greatest extent possible. Departmental representatives appearing before the Sub-Committee indicated a willingness to follow this course.

In the long term, it may be that a statutory change is either desirable or required. The Sub-Committee has concluded that section 28 could be amended to effect this change or a similar section enacted relating to professional visual artists.

## RECOMMENDATIONS

- 15. That Revenue Canada be willing to assign a nil value to the inventory of professional visual artists;**
- 16. That consideration be given to statutory changes to permit artists to use the modified accrual system at their option.**



## PERFORMING ARTISTS

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### EMPLOYEES OR SELF-EMPLOYED?

The Sub-Committee has concluded that it is time for a change in the general approach to the employment status of performing artists. Canada's tax system classifies working individuals as employees or self-employed. For most taxpayers, the status is clear and the results appropriate. The status of some performing artists, however, may be very difficult to determine. The Sub-Committee believes that performing artists should generally be presumed to be self-employed for income tax purposes.

Witnesses from the performing arts referred to the Interpretation Bulletin entitled "Musicians and Other Performers"<sup>(8)</sup> in discussing the question of employee and self-employed status and pointed out numerous deficiencies in it.

The Bulletin states that:

The question to be decided is whether the contract between the parties is a contract of service or is a contract for services. A contract of service generally exists if the person for whom the services are performed has the right to control the amount, the nature and the direction of the work to be done and the manner of doing it. A contract for services exists when a person is engaged to achieve a prescribed objective and is given all the freedom he requires to attain the desired result."

(para. 4)

Although this is an accurate statement of the law, serious difficulties arise in applying the test to performing artists. Indeed, the Bulletin itself states that for a performing artist, "this factor of supervision and control of the manner in which he does his work may not be as critical and decisive." (para. 5) Nevertheless, the Bulletin insists that the nature and terms of the contract decide the issue.

The difficulties with this approach become apparent when the Bulletin comments on specific contractual terms that indicate one status or the other. Any performing artist whether a dancer, musician or actor who contracts as an individual to form part of a group (such as an actor contracting for a role in a play) will probably have a number of employee attributes listed in the Bulletin. For example, the employing group will likely have:

- (a) ... the right to decide on or change the size of the group with which the artist performs;
- (b) ... continuing authority to dictate the time and place of the artist's performance including rehearsals, ... without obtaining the artist's agreement;
- (c) [the right to] unilaterally change the dates, times and places from those ordinarily scheduled or increase the number of rehearsals or performances.

(para. 8)

Those three criteria (among others) are listed as employee characteristics. The Subcommittee notes that they are characteristic of most *groups* of performing artists, but not necessarily of the *individuals* who have contracted to be part of the group. The criteria tell us how groups of performers function, but little about the individual performers involved. A degree of group control should not necessarily dictate the status for tax purposes of the professional performer. To use these criteria which apply to groups as attributes of the individuals' status, therefore, virtually dictates a finding of employee status.

The reason, however, that many performing artists are *not* classified as employees becomes clear when the Bulletin's criteria for self-employed status are examined. An individual artist may be self-employed if he or she:

- (b) provides his own instruments and other apparatus;
- (c) has a number of engagements with different persons during the course of a year;
- (d) regularly takes auditions or makes application for engagements;
- (e) retains the services of an agent on a continuing basis;

(para. 9)

The criteria are incomplete, difficult to apply, and may lead to contradictory conclusions. Most performing artists share a number of those characteristics and almost all fit criterion (b). Although the fact that self-employed artists provide their own instruments is mentioned, the list omits any mention of requirements for artists to pay for other items such as their own make-up, clothes and lessons. These factors may be the sharpest distinction between many artists and other employees. Mention of the duration of a contract as a factor is also omitted yet the department's approach to symphony contracts stresses their length.

Disney analyzed the nature of performing artists' work and concluded that their work patterns are unique. Whereas typical employees usually work for one employer, performing artists often work part-time on a number of engagements at the same time. Because engagements are usually temporary, artists must continually attempt to generate new contracts,

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-

tion in appropriate cases and that such a course is in keeping with the manner in which this kind of issue is normally resolved.

## RECOMMENDATIONS

17. That Revenue Canada revise IT-312 to reflect the *Mermaid* case and clarify the role of duration in a contract;
18. That the criteria listed in the Bulletin indicating employment and self-employed status be revised;
19. That factors in the Bulletin allegedly indicating employment status but in fact essential to the organization of any group of performers, employees or not, be excluded;
20. That the assumption of a heavy burden of expenses create a presumption of self-employment for all performing artists.

## SPECIFIC DEDUCTIONS

Performing artists presented to the Sub-Committee two distinct problems. The first, their general status as employees or self-employed, has been addressed above. The second problem is the more diffuse and difficult one of specific deductions. Deductions such as lessons undertaken to increase skill or expertise in general have been characterized by the department as either capital or personal expenses and disallowed completely. Other deductions have been limited or made subject to stringent tests.

In both situations, representatives of performing artists called the decisions unfair. One group called for certainty in the ability to deduct and most wished to see the range of allowable deductions broadened.

The Sub-Committee is sympathetic to the reactions of any taxpayer required to explain an expense to Revenue Canada. This process always seems to be emotional. Taxpayers' concerns are compounded if the auditor seems unfamiliar with the nature of the business involved. However, there is no stigma to a reassessment or to a request to verify or explain deductions.

The predictability sought by some witnesses is important but absolute certainty is impossible. Even if a definitive list of permissible deductions for performing artists were enacted, auditors would still ask questions because expenses would still need to be reasonable in the circumstances. All taxpayers must be prudent in the deductions they seek to make.

Indeed, such a course is counter-productive if it limits eligible deductions to those named. No list can foresee all possibilities. The present test of business deductibility is very broad: any expense is deductible if incurred to gain income from business, provided it is reasonable in the circumstances and not of a capital nature. This business-purpose test seems open-ended and flexible enough to accommodate performers' expenses. The Sub-Committee recommends no statutory change.

The line between business expenses and personal living expenses is difficult to draw in some cases. Different assessors may reach different conclusions in situations which appear similar. This may indicate two things: undesirable inconsistency or valid differences in cases. Increased expertise in the arts by Revenue Canada should help to resolve these areas of dispute and eliminate undesirable inconsistency where possible.

The Sub-Committee has concluded that some incidents of disallowed expenses could have been avoided if Revenue Canada officials had been better informed about the performers' work and more knowledgeable about the expenses incurred. Representatives of the department and the performing arts community need more regular consultation and the Sub-Committee urges that this be started at once.

The Sub-Committee stresses that the onus must remain with taxpayers to justify their deductions. Furthermore, the Sub-Committee cannot recommend ways to eliminate all possibility of friction in individual cases.

There is one specific deduction the Sub-Committee wishes to comment on. Most performing artists take lessons in the course of their careers, the motives for which will vary from performer to performer. Even the most accomplished musicians take lessons to retain their high skill level. An actor may take singing lessons in anticipation of a role which may or may not later materialize. Actors or singers may be engaged for a specific role and require lessons related directly to the performance of that role. Although the lessons in each of those three cases are clearly related to the performers' profession, only the third may be deductible.

Current Departmental practice is found in Interpretation Bulletin 311. Paragraph 1 permits the deduction of "the cost of music, acting or other lessons incurred for a particular role or part." Paragraph 2 prohibits the "cost of music, acting or other lessons incurred for the purpose of general self-improvement" on the grounds that they are either capital items or personal and living expenses.

The Sub-Committee finds the distinction between general and particular lessons in the Bulletin unrealistic and arbitrary. This kind of deduction parallels that allowed self-employed professionals such as lawyers or doctors who attend courses and workshops to stay current or expand their skills. Lawyers do not need to relate their courses to cases they are concurrently handling, nor doctors to the management of a specific patient. The Sub-Committee therefore recommends that self-employed performers be put on the same footing as other professionals so that all lessons related to their work are deductible.

## **RECOMMENDATION**

- 21. That the cost of music, acting or general lessons be deductible for self-employed performers even if unrelated to a particular role.**

## **THE SYMPHONY MUSICIAN: A SPECIAL PROBLEM**

"... we have a messy situation dealing with musicians."

Don Brooks, Revenue Canada (16:24)

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.<sup>(9)</sup> Insurance, maintenance and repair for these instruments can amount to \$300-\$500 per year.<sup>(10)</sup> 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.

Secondly, it would also achieve a measure of equity between symphony musicians. There is no rational reason why individuals performing the same services in different cities should be exposed to the widely differing tax burden that results from a differing tax status.

The Sub-Committee will recommend below further equalization in the treatment of symphony musicians through the extension of unemployment insurance coverage to self-employed performers. Symphony musicians as performers would benefit from this.

## RECOMMENDATION

- 22. That section 8 of the *Income Tax Act* be amended to allow deductions of all expenses and capital cost allowance incurred by symphony musicians for the purchase and upkeep of their musical instruments.**

## UNEMPLOYMENT INSURANCE AND THE PERFORMING ARTIST

Disney recommended that self-employed performing artists be eligible for unemployment insurance coverage. The Sub-Committee now makes this same recommendation. Disney pointed out that, prior to the administrative consolidation of unemployment insurance coverage and National Revenue in 1972, many performers were eligible for unemployment insurance despite being self-employed for tax purposes. After 1972, dual status was not permitted and the self-employed performer was no longer eligible.

Canadian experience as well as current practice in other jurisdictions (including the United States) illustrates that there is no intrinsic reason why extending coverage to performing artists should be difficult or impossible administratively. The difficulty comes from the rigid distinction used in Canada between the self-employed and the employee, a distinction which becomes blurred in the performing arts.

In other situations where the distinction is similarly unclear, the Unemployment Insurance Commission is permitted to extend coverage by regulation and has done so in the case of taxi and bus drivers, hairdressers, and employees of placement agencies. Alternatively, the Commission can extend coverage to individuals engaged in a business provided that regulations passed under this section are subject to an affirmative resolution of Parliament.

Disney states that such an extension was considered by the Commission in 1973 although no action was taken. The problems identified then no doubt remain but these are technical matters that experience teaches us can be worked out. Certainly such a change in social benefits would make a significant impact on the economic security of Canada's performing artists.

## RECOMMENDATION

- 23. That performing artists be eligible for unemployment insurance coverage regardless of their status for taxation purposes.**



## ACADEMICS

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Academics appeared before the Sub-Committee to represent a number of different elements of their constituency. They spoke in part for visual artists, many of whom are professors or teachers of art. In this regard, they supported the recommendations made by the visual arts groups and proposed similar solutions themselves. The Sub-Committee has concluded that its recommendations as listed above are applicable to all such artists, whether professors or not, and so need not comment further on this group.

The second problem the academic community presented to the Sub-Committee was related to the reasonable expectation of profit test in fields other than the visual arts. A number of professors generate revenue from their research, publishing or contracting activities and some show losses when all deductions are claimed. In the past, they were deducting these losses against employment income. This group was identified by the same computer project that identified visual artists showing losses. Many of their claims were disallowed and reassessments resulted. The academics requested on behalf of these professors that the Sub-Committee recommend a loosening of the business test.

The Sub-Committee is sympathetic to this problem, but feels unable to deal with it in any specific way for several reasons. First, its jurisdiction is limited to performing and visual artists and writers. Although most academics write, unless they come within the definition of professional writer, they are outside the Sub-Committee's Order of Reference. Secondly, the details of every case undoubtedly vary greatly and the Sub-Committee is in no position to analyze the situation and make recommendations as was possible for the visual artists. Again, the reference has limited the witnesses and discussion on this topic.

Nevertheless, the Sub-Committee reiterates in this connection the comments made previously about expertise on the part of the department. Knowledge about the details of their business is essential if taxpayers are to feel they have been treated fairly.

The third group has a major problem relating to employment expenses. Many academics incur substantial expenses related to their employment and required by it that are not

recognized as deductions under the Act and so must be paid with after-tax dollars. Employment contracts along with criteria for hiring and tenure all make clear the necessity for regular, substantial scholarship activities to maintain and advance academic status. In addition, research must often be conducted in order to teach existing or new courses, especially at senior levels. Because little or no revenue or profit can be expected from these activities, there is no possibility of deducting any of these expenses as part of a business. As employees, these academics are therefore limited to the maximum \$500 employment expense deduction. For some, that may be sufficient but for others it does not begin to cover the amounts incurred. This problem has become even more pressing with the tightening of university budgets and the shortage of grants to assist research.

Witnesses requested the Sub-Committee to recommend the amendment of section 8 of the *Income Tax Act* dealing with employee deductions to permit academic expenses as outlined above. The Sub-Committee must again state that its jurisdiction does not encompass these questions. On the other hand, it was impressed by the general similarity between the problems of performing artists classified as employees, especially symphony musicians, and the academics. In both cases the expenses are essential to their employment and greatly exceed those of the typical employee, for whom the standard deduction is normally sufficient.

The Sub-Committee questions the rigid distinction our system makes between the expenses of the self-employed and those of employees. It notes that many other countries including the United States make little or no distinction in this regard; others like France provide a sliding scale of generous deductions for various employment groups that more accurately reflects the expenses of employee taxpayers. It urges further study of this problem to determine whether inequities currently result from employee status and how these questions may be addressed.

## **RECOMMENDATIONS**

- 24. That Revenue Canada develop and exercise expertise in applying the reasonable expectation of profit test to academic activities where the application of the test poses the same kinds of problems that were identified for the professional visual arts and writing;**
- 25. That the government address the question of employee deductions in general with a view to assisting those groups whose expenses demonstrably exceed the standard deduction now permitted.**

## **DISSENTING OPINION BY MR. ORLIKOW: TAXATION AND ACADEMICS**

Though the reluctance of the Sub-Committee in not addressing the question of the tax situation of Canadian academics can be understood given its mandate, the Sub-Committee is leaving the way open for the continued discouragement of the research and academic community by not dealing with this problem.

As the testimony of the Canadian Association of University Teachers (CAUT) and other groups indicates, Revenue Canada often appears unable or unwilling to understand how academics really function and how teaching and research are interrelated.

The mandate of this Sub-Committee should be interpreted widely enough to seek an end to Revenue Canada's restrictive interpretations that serve only to discourage and make it more difficult for academics.

It is clear that the federal government has not developed a coherent policy towards artists and scholars employed by universities. On the one hand, federal departments and agencies such as NSERC, SSHRC, MRC and the Secretary of State provide financial support for the arts, university research and scholarship, but on the other hand, Revenue Canada's restrictive rulings often partially counteract the value of such aid. It is clearly inconsistent on the part of government to call for the development and protection of the arts in Canada (and to appoint a Royal Commission to examine the question) and at the same time to countenance the singling out of artists and writers by disallowing deductions for professional expenses. It is similarly inconsistent for Mr. Lalonde to prepare legislation to provide tax incentives to encourage research and development and then to tax in a restrictive manner employees such as academics who conduct much of this country's research.

In order to have a consistent policy towards research, research-related as well as teaching-related activities, s. 8(1)(i) of the *Income Tax Act* should be amended to allow employees to deduct from employment income expenses incurred by employees in the conduct of their research or teaching duties which are required by their employment contract, or necessary for promotion, salary increments and tenure.

A reasonable solution to the problem would be to accept the first recommendation of the CAUT brief to the Sub-Committee:

That where employees are required to conduct activities of a scholarly, artistic or research nature, properly receipted expenses which are not reimbursed by an academic institution or grant be deductible from employment income by such employees in the year of expenditure.

The *Income Tax Act* already provides for the deduction of research expenses from grants. (Section 56(1)(o)).

By this recommendation, CAUT proposed that the deductions allowed under s. 56(1) be added to s. 8(1)(i). In addition, CAUT proposed that s. 8(1)(i) be further amended to allow deductions for professional expenses incurred:

- a) in the purchase of scholarly, scientific, professional books, journals, videotapes, artistic materials, and/or computer programmes, and including computer time;
- b) for up to two professional, scientific or scholarly meetings per year;
- c) for membership dues in professional, scientific and/or learned societies.

Academic activity, whether it be to create and teach art or to undertake research, write and teach, has the common objective of pushing back the frontiers of knowledge and creativity. The above recommendations recognize this reality and seek to avoid the error and inconsistency of establishing conditions for one group of individuals yet restrict their application to others in the same community. I believe these recommendations are consistent with the fair and equitable treatment of the artistic and academic community and should have been included in the Sub-Committee's Report.



## ADDITIONAL CONSIDERATIONS

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### INCOME AVERAGING

The question of income averaging was addressed by a number of witnesses. This issue is relevant for all taxpayers who have fluctuating incomes but artists and writers as a group have particular needs. Several suggestions were made to the Sub-Committee including the reintroduction of income averaging annuity contracts for artistic and literary income and block averaging over a set period as is now available for farmers and fishermen. The Sub-Committee agrees that something should be done.

The Sub-Committee acknowledges that the current system of forward averaging largely benefits taxpayers already paying the top marginal rate. The system permits taxpayers to exclude their extraordinary or increased income from the current year and to prepay tax at the highest marginal rate. In a subsequent year when the taxpayers' income drops and marginal rate falls, they may bring some or all of that amount back into income and claim a rebate based on the difference between the lower rate and the prepaid rate. Where the extra income would have been taxed at the highest rate in any case<sup>(11)</sup>, the taxpayers benefit from the arrangement and pay no extra cash in the initial year. In all other cases, however, taxpayers will pay increased cash in that year.

The Sub-Committee is sympathetic to the complaints of taxpayers including artists and writers of modest means who have concluded that the present forward averaging system offers them little or no practical tax relief when their income fluctuates. Too often, these taxpayers need to keep their cash, even when the fluctuation is upward. The Sub-Committee is reluctant to become involved in the technical details of an appropriate averaging system, but it has concluded that some additional mechanism should be developed to benefit lower-income taxpayers whose income varies from year to year.

### RECOMMENDATION

- 26. That the government develop an averaging system for taxpayers with fluctuating incomes that will be available for those whose marginal rate**

**of tax is below the maximum. The system should not involve an initial increase in cash payable.**

## **GRANTS**

A number of problems have arisen recently over the taxation of grants, especially Canada Council grants, to artists. One difficulty is closely related to the test of reasonable expectation of profit and the reclassification of large numbers of artists as hobbyists. It followed that once Revenue Canada had concluded that artists were not in business but were hobbyists, then any grants they received were not business income. As a result, the grant was added to the artists' income as it should be but the expenses which the grant was intended to cover were not deductible, as they would have been from business income.

The Sub-Committee accepts the Canada Council's statement that they do not support hobbyists but only bona fide professional artists, selected through peer adjudication and usually in competition. Indeed, the Sub-Committee has already urged that the receipt of such grants should be strong evidence of professionalism for tax purposes.

The Sub-Committee is of the opinion that once the overriding issues of reasonable expectation of profit and professionalism are ironed out, equitable treatment of grants should follow. Grants will be treated as business income (or income from professional artistic activities) and expenses will be deductible in the normal fashion. Those grants awarded for educational purposes should continue to be the exception to this treatment.

Further problems have arisen because the Interpretation Bulletin relating to Canada Council grants (IT-257) was written before the Social Sciences and Humanities Research Council of Canada (SSHRC) began operations in April 1978 and assumed responsibility for the programs previously administered by the humanities and social sciences division of the Canada Council. The SSHRC funds university-based academic research.

Because the Interpretation Bulletin has not been revised, a misconception over research grants has arisen from the point of view of the Canada Council. Council grants include ceilings for project costs but these are low and it is normal for artists' costs to exceed the ceiling. If a grant has been characterized as a research grant, these excess expenses will be disallowed.

Consistency and the nature of Canada Council grants would seem to require that these grants should be treated as business income and not as a research grant.

## **RECOMMENDATIONS**

- 27. That grants (other than educational grants) awarded to professional artists be treated as business income from which expenses can be deducted, subject only to the loss limitations in Recommendation 12.**
- 28. That Revenue Canada update IT-257 to reflect the changes in the nature of Canada Council grants following the 1978 formation of the Social Sciences and Humanities Research Council of Canada.**

## FALSE CONFIDENCE

Frequently, witnesses told the Sub-Committee of their surprise when Revenue Canada reassessed them. The Sub-Committee has commented above on the ill-advised practice of a four-year reassessment in certain circumstances and implementation of the recommendations in this regard should minimize both the surprise and financial impact of reassessments.

There is one further measure that is also needed. In the Sub-Committee's opinion, the initial Notice of Assessment sent to all taxpayers subsequent to filing each year is seriously deficient in alerting them to both the nature of the Notice and the extensive powers of the department. The design of the form is a major problem. For example, the name "Assessment" implies that an active check of the return has been completed and the contents generally accepted. In fact, at this stage, the department has conducted only a numerical check and it can proceed with a detailed assessment at any time in the next four years. The words "No balance remains to be paid by you or refunded to you" on some forms or "AS DECLARED" on other forms also lead taxpayers to conclude that they have an acceptable return.

At the bottom of the form in very small, albeit heavy type are the words "Important - See Reverse". Taxpayers who do read the very small print on the back still may not understand the implications of the information contained there because of its indirect and vague wording and not realize that their returns may be audited in the future.

The Sub-Committee has concluded that the Notice of Assessment form should be redesigned, beginning with the name. The form should clearly state that it is merely an initial confirmation or correction of taxpayers' arithmetic and that the department has the statutory right to examine the return in detail for four years, and indefinitely in the case of fraud or misrepresentation. This latter information appears on the form now, but it is oblique. Most important, the form should state this information in clear, emphatic language so that the significance can be immediately understood.

## RECOMMENDATION

- 29. That the form currently entitled "Notice of Assessment" be redesigned so that taxpayers will be adequately informed about the nature of the form and the powers of Revenue Canada to assess in detail at a later time.**

## DONATIONS

Visual artists told the Sub-Committee that the tax treatment of donations of their own work to charity is unfair and offers them no incentive to donate. They compared their situation to that of collectors. Collectors will receive a charitable receipt for the full market value of the donation allowing them to deduct the full dollar amount in most cases.

On the income side, because the donation is considered capital property, collectors will take into income only half the amount by which the work of art has appreciated in value since the time of purchase. Collectors thus have a tax incentive to contribute to charity: the full fair market value is deductible; only half the capital gain is taxable.

On the other hand, visual artists who donate their own work are donating inventory and its full fair market value must be taken into income. Even with a charitable receipt permitting full deduction, artists are monetarily no further ahead: the amount coming into income is the same amount as the charitable deduction. If the amount of the donation exceeds 20% of the artists' income, the full value of the donation will not even be deductible in that initial year.

The artists point out that there is no financial incentive for them to donate to charity. The Sub-Committee agrees that the position of visual artists donating their own work is an undesirable anomaly. The encouragement of such donations through deductible receipts is already a feature of our income tax system and the Sub-Committee believes its benefits should be extended to this group.

### RECOMMENDATION

- 30. That the tax system provide financial incentives for visual artists to donate their own works of art to charity.**

### OTHER TAX ISSUES

As mentioned in the introduction to this Report, the title of the Disney Report, "Federal Tax Issues of Concern to the Arts Community in Canada", shows that its reach was considerably broader than this Sub-Committee's which has been restricted to the *Income Tax Act*. Nevertheless, a number of groups pointed out to the Sub-Committee that many of the problems in the customs, excise and sales tax area explored by Disney remained. Some, in fact, are now worse. Without examining in detail any of the technical aspects, the Sub-Committee urges the government to address again these recurring matters. To do so is essential in order to achieve the integrated approach described above needed for the arts community.

### RECOMMENDATION

- 31. That the government reconsider the federal sales tax, customs and excise issues identified by the Disney Report with a view to resolving longstanding areas of complaint by the artistic community.**

## NOTES

- (1) For a list of witnesses appearing before the Sub-Committee see Appendix A.
- (2) References are to the issue and page number of the Minutes of Proceedings and Evidence of the Sub-Committee on the Taxation of Visual and Performing Artists and Writers. An "A" indicates an appendix to the Minutes.
- (3) See *Alan R. Needham v. Minister of National Revenue*, 74 D.T.C. 1057 (T.R.B.). In this case the taxpayer was a writer.
- (4) See *Schip v. M.N.R.*, 83 D.T.C. 190 (T.R.B.). Schip was a fine art photographer.
- (5) Revenue Canada, Taxation, publishes Interpretation Bulletins for the guidance of taxpayers. The Bulletins have no legal status but do set out the department's view of the correct interpretation of the *Income Tax Act* and the jurisprudence.
- (6) The criteria, including sources, have been included in chart form as Appendix B.
- (7) *R. v. Matthews*, 74 D.T.C. 6193 (F.C.T.D.).
- (8) IT-312, May 3, 1976.
- (9) Mr. Donald Whitton, First Vice-President, Organization of Canadian Symphony Musicians, 10:12.
- (10) *Ibid.*, 10:13.
- (11) In 1983, this rate applied to taxpayers with taxable incomes over \$56,592.00.



# APPENDIX "A"

## MEETINGS AND WITNESSES

Witnesses	Issue	Date
<b>Alliance of Canadian Cinema, Television and Radio Artist (ACTRA):</b>	4	March 14, 1984
Mr. Bruce H. MacLeod, President;		
Mr. Paul Siren, General Secretary.	17	May 1st, 1984
<b>American Federation of Musicians of the United States and Canada:</b>	10	March 28, 1984
Mr. L. Alan Wood, Vice-President for Canada;		
Mr. C. T. Adams, Administrative Assistant.		
<b>Association of Canadian Orchestra:</b>	10	March 28, 1984
Mr. Michael Allerton, President;		
Mr. Hedley Roy, Vice-President;		
Mr. John Smith, Legal Adviser.		
<b>Canada Council:</b>	2	March 8, 1984
Mrs. Maureen Forrester, Chairman;		
Mr. Jean-Jacques Fortier, Vice-Chairman;		
Mr. Timothy Porteous, Director;		
Mr. Claude Gauthier, Treasurer;		
Mr. Hendrik Swaneveld, Tax Specialist.		
<b>Canadian Actor's Equity Association:</b>	6	March 20, 1984
Mr. Daphne Goldrick, Vice-President Internal;		
Mr. B. J. Legge, Q.C., Barrister and Solicitor;		
Mr. Graham Spicer, Executive Director;		
Mr. Christopher Marston, Assistant Executive Director.		
<b>Canadian Artists' Representation:</b>	5	March 15, 1984
Mrs. Pat Durr, National Representative;		
Jane Condon, National Director.	17	May 1st, 1984
<b>Canadian Artists Representation of Ontario:</b>	14	April 5, 1984
Mr. Mark Burnham, Past-Spokesperson.		
<b>Canadian Association of University Teachers:</b>	3	March 13, 1984
Dr. Sarah J. Shorten, President;		

Witnesses	Issue	Date
Professor Walter Mis, Faculty of Law, University of Alberta; Dr. Donald Savage, Executive Secretary; Professor Virgil Hammock, Fine Arts Department, Mount Allison University; Richard Bellair.		
<b>Canadian Conference of the Arts:</b>	1	March 7, 1984
Ms. Micheline Tessier, President;		
Mr. Brian Anthony, National Director.	17	May 1st, 1984
<b>Canadian Crafts Council:</b>	9	March 27, 1984
Mr. Peter Weinrich, Executive Director.	17	May 1st, 1984
<b>"Conférence des associations de créateurs et créatrices du Québec":</b>	12	April 3, 1984
Mrs. Claudette Fortier, General Director of "SARDEC";		
Mrs. Tatiana Demidoff Séguin, President of "Conseil de la Sculpture du Québec";		
Mrs. Jacqueline Lemay, Executive Director of "SPACQ".		
<b>Drache, Goldstein, Rotenberg &amp; Horwitz:</b>	13	April 4, 1984
Mr. Arthur Drache, Q.C., Barrister and Solicitor.		
<b>Independent Film Alliance du Cinéma Indépendant:</b>	11	April 3, 1984
Mrs. Fran Gallagher-Shuebrook, Chairperson;		
Mrs. Mary Armstrong, National Co-ordinator;		
Mrs. Lois Siegel, Filmmaker.		
<b>Organization of Canadian Symphony Musicians:</b>	10	March 28, 1984
Mr. Donald Whitton, First Vice-President;		
Mr. John Trembath, Secretary.		
<b>Professional Art Dealers Association of Canada Inc.:</b>	17	May 1st, 1984
Mrs. Edith Yeomans, Executive Administrator.		
<b>Quain, Dioquardi:</b>	15	April 11, 1984
Mr. March Denhez, Barrister & Solicitor.		
<b>Revenue Canada:</b>	16	April 12, 1984
Mr. John R. Robertson, Director General, Audit Directorate;		
Mr. Don S. Brooks, General Director, Verification and Collections.		

**Witnesses**

**APPENDIX "B"**

**Issue**

**Date**

**Royal Canadian Academy of Arts:**

Mr. Gerald Tooke, National Director.

17 May 1st, 1984

**Save the Arts in Canada:**

Mr. Garry Conway.

11 April 3, 1984

**The Law Union of Ontario:**

Mr. Paul Sanderson, Barrister and Solicitor.

14 April 5, 1984

**The League of Canadian Poets:**

Mr. Gary Geddes, Member;

Mr. John Wilson, Executive Director.

8 March 22, 1984

**The Writers' Union of Canada:**

Mr. Michael A. Gilbert, Ph.D., Chairman, Tax Committee.

8 March 22, 1984

**"Union des artistes":**

Mrs. Marie-Lou Dion, Président, Committee on the Status of Artists;

Mr. Marc Trahan, Legal Counsel;

Mr. Yvon Dufour, Actor;

Mr. Serge Demers, Director;

Mr. Serge Turgeon, Actor.

7 March 21, 1984



## APPENDIX "B"

### PROFESSIONAL ARTISTS AND WRITERS

CHARACTERISTICS	SOURCE			
	International Association of Art (No revenue connection)	Canada Council	U.S. Regulations ("Profit Motive" factors)	Other
1. Earn or have earned a living wholly or in part by the practice of the visual arts or by writing.	X			
2. Hold diplomas in fine or applied art or related field.	X	X	X	
3. Teach or have taught in the field.	X	X	X	
4. Exhibit frequently or otherwise market and promote their art or writing.	X	X	X	
5. Win national or international prizes.	X	X	X	
6. Have current membership in professional organizations.	X		X	X Union des Artistes
7. Gain recognition by other professional artists or writers in the country.	X	X	X	X Conférence des Associations de Créateurs et Créatrices du Québec
8. Receive grants from the Canada Council or provincial arts councils or cultural affairs departments.		X		X Conférence des Associations de Créateurs et Créatrices du Québec
9. Can demonstrate time spent and sustained output.		X	X	
10. Receive revenue from artistic sources.		X	X	
11. Have previous critical or financial success despite an intervening slack period.			X	
12. Obtain publishing contracts (although the lack of contracts does not indicate non-professionalism).				X The Writers's Union of Canada



## APPENDIX "C"

### ORDERS OF REFERENCE, THE FIRST REPORT AND MINUTES OF PROCEEDINGS

#### ORDERS OF REFERENCE

Tuesday, December 13, 1983

*ORDERED*,—That the Standing Committee on Communications and Culture review all relevant provisions of the Income Tax Act relating to the taxation of visual and performing artists and writers including, but not limited to, the criteria for establishing the professional status of visual and performing artists and of writers and the method for determining allowable business deductions for such artists and to recommend any changes that the Committee deems necessary and proper;

That such review include the hearing and consideration of the views of interested parties and organizations; and

That the evidence adduced before the Standing Committee on Communications and Culture in the first session of this Parliament, be referred to the Committee.

*ATTEST*

C.B. KOESTER

The Clerk of the House of Commons

Tuesday, February 14, 1984

*ORDERED*,—i) That a Sub-Committee composed of five members including three (3) members of the Liberal Party, one (1) from the Progressive Conservative Party and one (1) from the New Democratic Party, be constituted in order to consider the Order of Reference of December 13, 1983 relating to the taxation of visual and performing artists;

ii) That the Sub-Committee be empowered to send for persons and records, to sit while the House is sitting, to sit during periods when the House stands adjourned, to print from day to day such papers and evidence as may be ordered by it and to authorize the Chairman to hold meetings to receive and authorize the printing of evidence when a quorum is not present;

iii) That the Sub-Committee report to the Committee not later than the end of March, 1984.

*ATTEST*

RICHARD DUPUIS

Clerk of the Committee



# REPORT TO THE STANDING COMMITTEE ON COMMUNICATION AND CULTURE

Wednesday, April 4, 1984

The Sub-Committee on the Taxation of Visual and Performing Artists and Writers has the honour to present its

## FIRST REPORT

In accordance with the Order of Reference of Tuesday, February 14, 1984, your Sub-Committee has commenced consideration of the said Order of Reference relating to the Taxation of Visual and Performing Artists and Writers and requests leave to resume consideration of its Order of Reference after the end of March 1984.

Respectfully submitted,

DOUGLAS FISHER

*Chairman*



## MINUTES OF PROCEEDINGS

TUESDAY, MAY 1st, 1984  
(19)

[Text]

The Sub-Committee on the Taxation of Visual and Performing Artists and Writers met this day *in camera* at 3:45 o'clock p.m., Mr. Fisher, Chairman, presiding.

*Members of the Sub-Committee present:* Messrs. Burghardt, Fisher and Orlikow.

*In Attendance: From the Library of Parliament:* Ms. Françoise Coulombe, Research Coordinator and Ms. Margaret Young, Research Officer.

*Witnesses: From the Sub-Committee on Fiscality of the Canadian Conference of the Arts:* Messrs. Brian Anthony, Gerald Tooke, Peter Weinrich and Paul Siren; Ms. Jane Condon and Ms. Edith Yomans.

The Sub-Committee resumed consideration of its Order of Reference dated Tuesday, February 14, 1984 relating to the Taxation of Visual and Performing Artists and Writers. (See *Minutes of Proceedings and Evidence dated Tuesday, February 21, 1984, Issue No. 1(1)*).

The Sub-Committee began the consideration of a Draft Report to the Standing Committee.

At 5:40 o'clock p.m., the Sub-Committee adjourned to the call of the Chair.

THURSDAY, MAY 3, 1984  
(20)

The Sub-Committee on the Taxation of Visual and Performing Artists and Writers met this day *in camera* at 9:10 o'clock a.m., Mr. Fisher, Chairman, presiding.

*Members of the Sub-Committee present:* Messrs. Burghardt, Fisher, Orlikow and Scott.

*In attendance: From the Library of Parliament:* Ms. Françoise Coulombe, Research Coordinator and Ms. Margaret Young, Research Officer.

The Sub-Committee resumed consideration of its Order of Reference dated Tuesday, February 14, 1984 relating to the Taxation of Visual and Performing Artists and Writers. (See *Minutes of Proceedings and Evidence dated Tuesday, February 21, 1984, Issue No. 1(1)*).

At 10:00 o'clock a.m., the Sub-Committee adjourned to the call of the Chair.

THURSDAY, MAY 10, 1984

(21)

The Sub-Committee on the Taxation of Visual and Performing Artists and Writers met this day *in camera* at 10:05 o'clock a.m., Mr. Fisher, Chairman, presiding.

*Members of the Sub-Committee present:* Messrs. Burghardt, Fisher, Orlikow and Scott.

*In attendance: From the Library of Parliament:* Ms. Françoise Coulombe, Research Coordinator and Ms. Margaret Young, Research Officer.

The Sub-Committee resumed consideration of its Order of Reference dated Tuesday, February 14, 1984 relating to the Taxation of Visual and Performing Artists and Writers. (See *Minutes of Proceedings and Evidence dated Tuesday, February 21, 1984, Issue No. 1(1)*).

The Sub-Committee resumed consideration of a Draft Report to the Standing Committee.

At 11:05 o'clock a.m., the Sub-Committee adjourned to the call of the Chair.

TUESDAY, MAY 15, 1984

(22)

The Sub-Committee on the Taxation of Visual and Performing Artists and Writers met this day *in camera* at 3:56 o'clock p.m., Mr. Fisher, Chairman, presiding.

*Members of the Sub-Committee present:* Messrs. Burghardt, Fisher, Orlikow and Scott.

*In attendance: From the Library of Parliament:* Ms. Françoise Coulombe, Research Coordinator and Ms. Margaret Young, Research Officer.

The Sub-Committee resumed consideration of its Order of Reference dated Tuesday, February 14, 1984 relating to the Taxation of Visual and Performing Artists and Writers. (See *Minutes of Proceedings and Evidence dated Tuesday, February 21, 1984, Issue No. 1(1)*).

The Sub-Committee resumed consideration of a Draft Report to the Standing Committee.

At 5:05 o'clock p.m., the Sub-Committee adjourned to the call of the Chair.

THURSDAY, MAY 17, 1984  
(23)

The Sub-committee on the Taxation of Visual and Performing Artists and Writers met this day *in camera* at 9:53 o'clock a.m., Mr. Fisher, Chairman, presiding.

*Members of the Sub-Committee present:* Messrs. Burghardt, Fisher, Orlikow and Scott.

*In attendance: From the Library of Parliament:* Ms. Françoise Coulombe, Research Coordinator and Ms. Margaret Young, Research Officer.

The Sub-Committee resumed consideration of its Order of Reference dated Tuesday, February 14, 1984 relating to the Taxation of Visual and Performing Artists and Writers. (*See Minutes of Proceedings and Evidence dated Tuesday, February 21, 1984, Issue No. 1(1)*).

The Sub-Committee resumed consideration of a Draft Report to the Standing Committee.

At 12:00 o'clock p.m., the Sub-Committee adjourned to the call of the Chair.

TUESDAY, MAY 22, 1984  
(24)

The Sub-Committee on the Taxation of Visual and Performing Artists and Writers met this day *in camera* at 3:40 o'clock p.m., Mr. Fisher, Chairman, presiding.

*Members of the Sub-Committee present:* Messrs. Burghardt, Fisher, Orlikow and Scott.

*In attendance: From the Library of Parliament:* Ms. Françoise Coulombe, Research Coordinator and Ms. Margaret Young, Research Officer.

The Sub-Committee resumed consideration of its Order of Reference dated Tuesday, February 14, 1984 relating to the Taxation of Visual and Performing Artists and Writers. (*See Minutes of Proceedings and Evidence dated Tuesday, February 21, 1984, Issue No. 1(1)*).

The Sub-Committee resumed consideration of a Draft Report to the Standing Committee.

It was agreed,—That the Report be printed within turnover format and red special cover.

It was agreed,—That the Sub-Committee in its Report to the Standing Committee will request to maintain its existence.

At 4:50 o'clock p.m., the Sub-Committee adjourned to the call of the Chair.

THURSDAY, MAY 24, 1984

(25)

The Sub-Committee on the Taxation of Visual and Performing Artists and Writers met this day *in camera* at 10:10 o'clock a.m., Mr. Fisher, Chairman, presiding.

*Members of the Sub-Committee present:* Messrs. Burghardt, Fisher and Orlikow.

*In attendance: From the Library of Parliament:* Ms. Françoise Coulombe, Research Coordinator and Ms. Margaret Young, Research Officer.

The Sub-Committee resumed consideration of its Order of Reference dated Tuesday, February 14, 1984 relating to the Taxation of Visual and Performing Artists and Writers. (See *Minutes of Proceedings and Evidence dated Tuesday, February 21, 1984, Issue No. 1(1)*).

The Sub-Committee resumed consideration of a Draft Report to the Standing Committee.

At 11:45 o'clock a.m., the Sub-Committee adjourned to the call of the Chair.

TUESDAY, MAY 29, 1984

(26)

The Sub-committee on the Taxation of Visual and Performing Artists and Writers met this day *in camera* at 10:15 o'clock a.m., Mr. Fisher, Chairman, presiding.

*Members of the Sub-Committee present:* Messrs. Fisher, Orlikow and Scott.

*In attendance: From the Library of Parliament:* Ms. Françoise Coulombe, Research Coordinator and Ms. Margaret Young, Research Officer.

The Sub-Committee resumed consideration of its Order of Reference dated Tuesday, February 14, 1984 relating to the Taxation of Visual and Performing Artists and Writers. (See *Minutes of Proceedings and Evidence dated Tuesday, February 21, 1984, Issue No. 1(1)*).

The Sub-Committee resumed consideration of a Draft Report to the Standing Committee.

At 10:55 o'clock a.m., the Sub-Committee adjourned until 3:30 o'clock p.m. this day.

AFTERNOON SITTING

(27)

The Sub-committee on the Taxation of Visual and Performing Artists and Writers met this day *in camera* at 3:40 o'clock p.m., Mr. Fisher, Chairman, presiding.

*Members of the Sub-Committee present:* Messrs. Fisher and Orlikow.

*In attendance: From the Library of Parliament:* Ms. Françoise Coulombe, Research Coordinator and Ms. Margaret Young, Research Officer.

The Sub-Committee resumed consideration of its Order of Reference dated Tuesday, February 14, 1984 relating to the Taxation of Visual and Performing Artists and Writers. (*See Minutes of Proceedings and Evidence dated Tuesday, February 21, 1984, Issue No. 1(1)*).

The Sub-Committee resumed consideration of a Draft Report to the Standing Committee.

At 4:45 o'clock p.m., the Sub-Committee adjourned to the call of the Chair.

THURSDAY, MAY 31, 1984  
(28)

The Sub-Committee on the Taxation of Visual and Performing Artists and Writers met this day *in camera* at 3:35 o'clock p.m., Mr. Fisher, Chairman, presiding.

*Members of the Sub-Committee present:* Messrs. Fisher and Orlikow.

*In attendance: From the Library of Parliament:* Ms. Françoise Coulombe, Research Coordinator and Ms. Margaret Young, Research Officer.

The Sub-Committee resumed consideration of its Order of Reference dated Tuesday, February 14, 1984 relating to the Taxation of Visual and Performing Artists and Writers. (*See Minutes of Proceedings and Evidence dated Tuesday, February 21, 1984, Issue No. 1(1)*).

The Sub-Committee resumed consideration of a Draft Report to the Standing Committee.

At 3:55 o'clock p.m., the Sub-Committee adjourned to the call of the Chair.

TUESDAY, JUNE 5, 1984  
(29)

The Sub-Committee on the Taxation of Visual and Performing Artists and Writers met this day *in camera* at 9:55 o'clock a.m. Mr. Fisher Chairman, presiding.

*Members of the Sub-Committee present:* Messrs. Burghardt, Fisher, Orlikow and Scott.

*In attendance: From the Library of Parliament:* Ms. Françoise Coulombe, Research Coordinator and Ms. Margaret Young, Research Officer.

The Sub-Committee resumed consideration of its Order of Reference dated Tuesday, February 14, 1984 relating to the Taxation of Visual and Performing Artists and Writers. (See *Minutes of Proceedings and Evidence dated Tuesday, February 21, 1984, Issue No. 1(1)*).

The Sub-Committee resumed consideration of a Draft Report to the Standing Committee.

At 11:20 o'clock a.m., the Sub-Committee adjourned to the call of the Chair.

THURSDAY, JUNE 7, 1984  
(30)

The Sub-Committee on the Taxation of Visual and Performing Artists and Writers met this day *in camera* at 9:35 o'clock a.m., Mr. Fisher, Chairman, presiding.

*Members of the Sub-Committee present:* Messrs. Fisher and Orlikow.

The Sub-Committee resumed consideration of its Order of Reference dated Tuesday, February 14, 1984 relating to the Taxation of Visual and Performing Artists and Writers. (See *Minutes of Proceedings and Evidence dated Tuesday, February 21, 1984, Issue No. 1(1)*).

The Sub-Committee resumed consideration of a Draft Report to the Standing Committee.

At 11:05 o'clock a.m., the Sub-Committee adjourned to the call of the Chair.

TUESDAY, JUNE 19, 1984  
(31)

The Sub-Committee on the Taxation of Visual and Performing Artists and Writers met this day *in camera* at 9:20 o'clock a.m., Mr. Fisher, Chairman, presiding.

*Members of the Sub-Committee present:* Messrs. Burghardt, Fisher, Orlikow and Scott.

*In attendance: From the Library of Parliament:* Ms. Françoise Coulombe, Research Coordinator.

The Sub-Committee resumed consideration of its Order of Reference dated Tuesday, February 14, 1984 relating to the Taxation of Visual and Performing Artists and Writers. (See *Minutes of Proceedings and Evidence dated Tuesday, February 21, 1984, Issue No. 1(1)*).

The Sub-Committee resumed consideration of a Draft Report to the Standing Committee.

Mr. Orlikow moved, seconded by Mr. Burghardt,—That the Sub-Committee print 5,000 copies of the Issue No. 17 which includes the Second Report.

The question being put on the question, it was agreed to.

Mr. Scott moved, seconded by Mr. Burghardt,—That the Sub-committee according to the Standing Order 69(13) request a government answer to the recommendations of the Second Report.

The question being put on the question, it was agreed to.

Mr. Orlikow moved, seconded by Mr. Scott,—That the Second Report be adopted.

The question being put on the question, it was agreed to.

Ordered,—That the Chairman present the Report on the Taxation of Visual and Performing Artists and Writers as the Sub-Committee's Second Report to the Standing Committee on Communications and Culture and report to the said Committee.

On motion of Mr. Fisher, it was agreed,—That the Clerk of the Sub-Committee, Mr. Richard Dupuis and the two research officers, Françoise Coulombe and Margaret Young be congratulated for the excellent work they did for the Sub-Committee.

At 9:35 o'clock a.m., the Sub-Committee adjourned to the call of the Chair.

*Le greffier du Sous-comité*

Richard Dupuis

*Clerk of the Sub-Committee*



