

**FISCAL ISSUES AFFECTING INDIVIDUAL ARTISTS  
AN UPDATE**

**Prepared for  
Arts Policy  
Communications Canada**

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## **INTRODUCTION**

This paper has been developed in keeping with the terms of reference established by the Arts Policy directorate of Communications Canada. Its object is to review federal government legislation and administration on fiscal matters affecting individual artists, to identify improvements and outstanding problems, and to suggest how the latter might be addressed.

For the most part, the paper is based on the findings of a fairly extensive literature review and on consultations with representatives of individual artists' organizations, unions and professional associations.

Tax legislation and administration, social security programs, and related initiatives of interest to individual artists are explored. There are three main sections: the general concepts and context; specific issues under the headings of income tax, social security, GST, and other factors; and, finally, a look at what might positively be done to improve the situation.

Over the years there has been more time devoted to the income tax matters affecting artists and the arts than to any other specific fiscal issue. That emphasis is reflected in these pages. However, many other questions have been raised as well including federal sales tax, employment status, social security, customs, and cultural policy generally.

Considerable resources from the arts community and from governments have been devoted to these issues over the last fifteen years. As a result there is substantial documentation available, prepared by individuals, arts organizations, task forces, government departments, and parliamentary committees, as well as by researchers working on their behalf. Much of what follows has been compiled from these sources and from community consultation. A list of those consulted and a bibliography are included at the end of the paper.

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## **SOME CONTEXT**

The purpose of this paper is to examine fiscal matters affecting individual artists. This chapter outlines who and what is being discussed, explains some terms, and provides a basic context for what follows.

### **Fiscal Matters**

The Gage Canadian Dictionary defines *fiscal* as *financial*. It is in this sense that the word is used throughout this paper. Fiscal issues, therefore, are discussed under three broad categories: taxation, of both income and consumption; income maintenance and social security mechanisms; and, other matters having an impact on the bottom line.

In many respects the fiscal situation for artists has improved over the last decade or so. However, other developments have been negative, either in themselves or by virtue of negating some hard-won improvements. Many issues have not changed. With the exception of the Goods and Services Tax (GST), most fiscal issues currently of interest to artists are not new.

Among the topics to be discussed are the Income and Excise Tax Acts, their administration and related regulations; unemployment insurance and other social security programs; and, legislative and policy initiatives which enhance or inhibit opportunities for artists to earn a living from their chosen profession.

### **Individual Artists**

Writers, painters, composers and songwriters, actors, craftspersons, dancers, musicians and singers, poets and playwrights all fit within the rubric of individual artist. Each and every artist is also part of the broader cultural sector. In fact, few would be able to practise their art or find an audience for it without the organizational infrastructure of the sector.

Since the early '80s there has been considerable research on artists and on the sector broadly (and much more detailed research is now under way at Employment and Immigration and Statistics Canada). Past research has reinforced some widely

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held assumptions and shattered a few myths. Some common findings might be useful, always bearing in mind that few, if any, artists fit the generic profile.

Artists may work as employees or be self-employed, more often the latter and sometimes both. They earn their living through a variety of mixed employment strategies which may include non-arts related work.

Artists are more highly educated than the average Canadian. Yet, despite their education, artists earn less than those in other professions with comparable education and experience. In fact, when only arts-related income is considered, artists earn less than the average Canadian worker. And, on average, their net artistic income is likely to be only half of their gross personal income because of high art-related expenses. Artistic income is also highly volatile, often fluctuating widely from one year to the next.

There is a definite gender gap in terms of artistic income, with men earning considerably more than women and holding positions of higher authority. Affiliated artists tend to earn more than unaffiliated. And, of course, established artists tend to earn more than those who are new to the profession.

Artists work hard at their profession and at fostering their careers. They often subsidize their artistic work from other income. Nevertheless, artists are generally happy with what they do and show little desire to change careers. They would, however, greatly welcome fuller appreciation and understanding of the value of their work from the public. Artists are all too aware of their relative lack of occupational prestige and of the poor recognition given their creative accomplishments and contributions to the larger society.

There is a certain irony in the fact that artists are the personification of the highly-educated, creative and flexible workforce which is deemed essential to future Canadian competitiveness -- and at the same time they are among the most poorly compensated of Canadian workers.

### Employment Status

Until the early 1970s unemployment insurance (UI) was administered by the Unemployment Insurance Commission while income tax administration rested with Revenue Canada,

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**Taxation.** This division of responsibilities allowed *de facto* 'dual status' for artists who could claim UI from the Commission and file income tax as self-employed individuals. In 1972, however, this flexibility disappeared. Revenue Canada has since insisted on one primary status for purposes of unemployment insurance (UI), income tax, and Canada Pension Plan (CPP).

Employment status is a major factor in many of the fiscal issues affecting artists -- and, of course, other workers with similar characteristics. Employment status has a bearing on income tax, access to many social security programs and GST registration.

For income tax purposes, a self-employed artist may deduct work-related expenses incurred to produce income. However, a self-employed individual has limited access to social benefit programs, most notably unemployment insurance and registered pension plans. The only income supplements or social security benefits available to self-employed artists are those negotiated by their representative associations (and the agreements are technically illegal since only the employed have the legislated right to bargain collectively). Self-employed artists may have to register for the GST and charge the 7% tax on their services or their creative work.

Employed artists, on the other hand, have very limited employment-related expense deductions for income tax. Employees are likely to enjoy more income stabilization benefits such as unemployment insurance, including maternity benefits; extended health, dental and disability insurance; vacation pay, and pension or other retirement plans. Employees also have the advantage of employer contributions to most of these plans. Employees generally need not concern themselves with the GST except as consumers and therefore responsible for paying the tax charged on purchased goods and services.

The question of employment status is complicated by the fact that many creative and performing artists often engage in both employment and self-employment in the same year or even at the same time. This mixed employment has sometimes led to confusion.

Today, artists' employment status is based largely on the terms of individual contracts, leading to some apparent anomalies. Broadcast journalists, for example, are generally engaged as employees but actors in dramatic series as self-

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employed performers. Many symphony orchestras are employers while the others engage self-employed musicians. Stage managers may find themselves employed in one situation and self-employed in another despite the fact that they are performing virtually identical tasks. (Some of the anomalies in broadcasting may disappear following the current restructuring of unions within the CBC.)

### The Arts & Culture Sector

In order to improve their situation artists have grouped together in a wide variety of organizations. Some, such as the AF of M, Union des artistes, ACTRA and Equity resemble unions. Others -- CARFAC, the Crafts Council, and the Writers' and Playwrights Unions -- function more like professional associations.

There are also organizations such as the ACTRA Fraternal Benefits Society, the Dancer Transition Centre and the Writers' Development Trust which offer specific services. The Canadian Conference of the Arts serves as the national cross-disciplinary advocate for the arts and culture sector at the federal level.

The individual artist -- creator or performer -- is the foundation upon which rests much of the activity of the cultural sector in Canada. Theatres and performance halls, galleries and museums, recording studios and publishers, film and broadcasting companies would have no raison d'être without artists. At the same time these companies and institutions play the vital role of bringing artist and audience together.

The cultural sector is often described as a continuum: from original creation to performance or production, through distribution, presentation and consumption to interpretation and conservation. The functions are highly interdependent. The sector, then, is a complex series of symbiotic relationships: writer and publisher, actor and production company, artist and gallery, composer and orchestra, recording company and radio station -- and, ultimately, the audience.

Furthermore, neither artists nor other cultural sector workers exist in isolation. They are part and parcel of the Canadian workforce, economy, and society. Thus the issues which affect artists go far beyond those federal policies, programs and laws addressed specifically to creator or performer.



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Government initiatives, positive or negative, in many areas -- social security, labour relations, health and safety, regional and industrial development, among others -- have a real impact on artists as well.

**Rôle of Government**

Governments set policies, pass laws, develop regulations and deliver programs. Generally speaking, public policy finds its life through legislation and regulation or through programs.

Laws and, to a lesser extent, programs are generally intended to apply rather broadly and are, therefore, often designed to be as 'generic' as possible. This systemic desire for wide application almost inevitably leads to some inequity since the general seldom deals adequately with all the specifics. Many of the disagreements between artists and the departments of National Revenue and Employment and Immigration, for example, have arisen not because government is being difficult with the creative community but because they are applying laws devised for manufacturers or full-time employees.

Laws may be designed to prohibit or to encourage certain types of activity. Legislation sometimes includes provisions for direct financial assistance, such as those governing old age security or unemployment insurance. Laws may also simply provide a legal structure to allow for more appropriate ways of conducting affairs -- regulation and de-regulation, collective bargaining, copyright, contract law.

By way of illustration, the Public Lending Right Commission was established as a program to deliver compensation to writers for the public use of their work and is funded on an annual basis through a Parliamentary appropriation. The Copyright Act, on the other hand, is a legal mechanism establishing the legal right of creators to control the use of their work and to demand compensation from others making use of it.

The postal subsidy was a program which pre-dated Confederation whereby government transferred money to the postal service to ensure low rates for delivery of printed matter -- newspapers, magazines and books -- with the aim of keeping the Canadian public informed. Bill C-58 and Tariff Item 9958 are legal provisions designed to strengthen the Canadian magazine

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industry by, respectively, encouraging advertising in Canadian periodicals and discouraging the availability in Canada of split-run editions of foreign magazines.

Thus, it can be seen that any given policy may be implemented through a program or legislation and regulation.

**Federal Players**

The Minister of Finance is responsible for drafting all tax laws (and for making many other financial decisions). Revenue Canada, Taxation and Revenue Canada, Customs and Excise are responsible for the interpretation and administration of the Income and Excise Tax Acts respectively. Since the 1970s, Revenue has also played a role in determining the employment status of taxpayers, a task that previously lay with the Employment and Immigration Commission.

Among the other departments of government with responsibilities touching directly or indirectly on the affairs of artists are:

- \* Communications, with a mandate including almost all cultural activity and cultural agencies, official Cabinet spokesperson for the arts, grants and contributions programs;
- \* Consumer and Corporate Affairs, administration of the Copyright Act, false advertising;
- \* Employment and Immigration, unemployment insurance policy, training;
- \* Health and Welfare, safety standards, product labelling;
- \* External Affairs and International Trade, cultural relations, international trade agreements, Investment Canada;
- \* Justice, freedom of expression;
- \* Labour, collective bargaining; and,
- \* Statistics Canada, data collection and interpretation.

Clearly then, decision-making and policy-setting affecting artists and the cultural sector do not rest solely with the Minister of Communications.

**Government Action**

With regard to fiscal matters, the most far-reaching government initiatives have been the two phases of tax reform: income tax in 1987 and the introduction of the GST in 1991.

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But fiscal policies, programs and legislation are almost constantly changing in less dramatic ways (witness the new and longer Guide published each year to help us complete our income tax returns).

Major amendments to federal income tax law alone include:

- \* elimination of all forms of income averaging for all taxpayers;
- \* reduction in the number of tax brackets and lowering of marginal tax rates;
- \* elimination of the \$500. employment expense deduction and the \$100. charitable donation deduction;
- \* implementation of 'clawback' provisions for payments received under various universal social programs;
- \* change from a system of deductions to one of credits to determine the amount of tax payable; and,
- \* imposition of a surtax on tax payable.

In addition, the Federal Sales Tax (an inequitable and administratively cumbersome tax paid by manufacturers) was replaced by the broader and much more visible Goods and Services Tax (GST). The GST is collected by almost everyone selling goods or providing services but ultimately it is paid by consumers.

Many of these changes have been implemented with a view to simplifying and 'purifying' legislation which had been amended over time to achieve ends well beyond collecting monies to replenish federal government coffers. For example, the Income Tax Act has long been used as an instrument of social policy and the Unemployment Insurance Act goes far beyond simply insuring the employed against periodic unemployment.

While the changes have not always resulted in purity or simplicity, the change in attitude about the purpose of the Income Tax Act has had a definite influence on the nature of amendments which Finance is prepared to discuss.

Change is not restricted to federal policy; there have been numerous changes at the provincial level as well. Again, citing tax changes only: in some provinces higher rates of income tax, imposition of surtaxes or flat taxes and increases in Provincial Sales Tax (PST) rates. There has also been some movement toward harmonization of PST with the GST, i.e. application of PST to more goods as well as to services. However, provincial laws and policies are not the focus of this paper and will be referred to only in passing.

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With specific regard to the arts, and the broader cultural sector, one area of high activity for the federal government in recent years has been study and review. The first study of tax issues and the arts community was commissioned by the Secretary of State (then responsible for the arts) in 1978. Since that time, there have been many more studies and reports on tax issues, on the arts, on various artistic disciplines, as well as on the cultural industries, agencies and broad questions of cultural policy.

**Fiscal Issues & Individual Artists**

Among the many reports on the arts and culture sector released from 1986 through 1993, no fewer than seven deal to some degree with fiscal issues and the arts. That means one report per year, not including government responses to task forces and to Standing Committee on Communications and Culture.

The documents most directly pertinent to this exercise include:

- \* **Funding of the Arts in Canada to the year 2000 - The Report of the Task Force on the Funding of the Arts (Bovey), 1986;**
- \* **The Status of the Artist - Report of the Task Force (Siren/Gélinas), 1986;**
- \* **The Canadian Artists' Code drafted by the Canadian Advisory Committee on the Status of the Artist, 1988;**
- \* **Rethinking the Status of the Artist: Toward a Balance of Equity and Excellence, Ekos Research Associates, 1989;**
- \* **five reports by the Standing Committee on Communications and Culture --**  
**Report on the Taxation of Visual and Performing Artists and Writers (Fisher), 1984;**  
**Taxation of Artists and the Arts, 1987;**  
**Review of Taxation of Artists and the Arts, 1988;**  
**Status of the Artist, 1989;**  
**The Ties that Bind, 1992; and,**
- \* **government replies to each.**

Most aspects of the fiscal environment have changed so considerably since 1978, and even since 1986, that a complete review of all recommendations made in the interim is not

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really worthwhile. Some proposals have been overtaken by events, some have been implemented in whole or in part, some appear to be "intractable of resolution". Most major issues are discussed in later chapters.

### The Environment

The issues currently of concern, as cited by organizations representing individual artists, include some of those raised repeatedly over the years as well as new ones arising from changes in policy and legislation. Among the newest concerns are those arising from the GST.

It is worth noting that none of the organizations contacted were aware of any widespread 'crisis' for artists at the present time. There are, however, long-standing issues which remain unresolved. And, of course, there are serious concerns about the impact of recent funding cuts to the Canada Council and other agencies and associations. And there is perceived lack of government commitment to legislation and regulations providing structural support.

In any discussion of financial matters it is pointless to ignore the fact that public sector coffers at all levels are empty. The recession has resulted in an unprecedented number of bankruptcies and in high unemployment, which is likely to continue. Most Canadians have less real disposable income today than in 1986, in fact only about as much as they had in 1976.

Given these unpleasant realities, it is well to remember that there are different ways of implementing policies. There are laws and regulations as well as programs. Programs have taken a beating of late and there seems to be little reason to expect much improvement in the short or even the medium term. Unfortunately, legal structures such as C-58 and Tariff item 9958 also appear to be weakening. Or, like copyright, film distribution, status of the artist and Baie Comeau, are certainly not being strengthened.

Furthermore, the impact of technological change is only beginning to be felt. For example, it is likely that the CRTC regulations for Canadian content on television will soon be subject to the pressures of a 200-channel universe. Technological advances have already placed considerable stress on copyright.

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Yet neither the reality of public sector debt nor the impact of the new technology-based economy precludes positive action. But the lack of commitment reflected in "Unique Among Nations" does mean that achieving positive action will require a great deal of work.

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## INCOME TAX

### A Bit of History

"Few if any of the Federal tax issues of current concern to the arts community are new. Organizations or individuals have made submissions at one time or another to various branches of the government in connection with many of them, but they have not as yet been resolved satisfactorily. Some specific tax issues have been dealt with by legislative amendment, amendment of regulations, or changes in administrative interpretation and policy. Many of the issues discussed in this report must therefore represent a hard core residue considered by the government to be especially intractable of resolution." (Disney 1)

These words, written fifteen years ago by the late Russell Disney, are equally applicable today. They also make it abundantly clear that tax issues, one of the key fiscal matters affecting artists, are not a new concern for the arts. The continuing truth of Disney's observation may be lamentable but it is also instructive.

While positive action has indeed been taken in recent years, problems continue. Some current problems predate the Disney Report and some are new, arising from subsequent changes in income tax, federal sales tax and social policy legislation and administration.

### Repeated Recommendations

Depending on their mandate and focus, the various bodies which have reviewed fiscal issues and the arts have made recommendations at varying levels of detail. Nevertheless, in the reports released from 1986 on, there are seven recommendations which appear repeatedly:

- \* that some form of income stabilization or averaging for artists be established;
- \* that incentives be devised to encourage increased private sector investment in the arts;
- \* that grants to employed artists be treated a business income;
- \* that charity-like status be made available to national arts service organizations;
- \* that self-employed artists be allowed to deduct art-related expenses from other income;

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- \* that visual artists be given the same incentives to donate from inventory as is enjoyed by other donors (i.e. collectors);
- \* that employed artists be able to deduct expenses related to their artistic employment in the same way as self-employed artists may.

There has been some action on the last five, but none whatsoever on income averaging or incentives for private sector donors.

It is worth noting that the Disney (1978), Applebaum/Hébert (1982) and Fisher (1984) reports all contained recommendations on donations from inventory as well. The last two also had recommendations on income averaging (which would not have been an issue for Disney as there was a policy of general income averaging in place at the time). In other words, these are not new issues.

A number of equally important issues appear less frequently among the recommendations because, by the late eighties, they had become irrelevant or were being addressed. The Goods and Services Tax (GST) only came into effect in January 1991, too recently for it to appear in any of these reports.

**Employment Status**

One of the longest standing issues within the arts community is employment status. For visual artists and writers, the income tax question relates primarily to reasonable expectation of profit -- being deemed by Revenue to be a self-employed professional or a hobbyist for income tax purposes. The problem was largely resolved by the development and implementation of Revenue Canada's Bulletin IT-504.

For performing artists the issue is whether they are deemed to be employees or self-employed. The determination is made on a case by case basis so there is never any guarantee that the rule of thumb will always be applied. Québec has provided a worthwhile example. Bill 90 on the status of the artist prompted the development of a new interpretation bulletin by Revenu Québec which includes the presumption of self-employed status for all performing artists who engage with producers and are members of a recognized artists' organization.

The uncertainty for most performers in Canada causes some concern both for the performers and for performing arts



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companies. If deemed to be employees, self-employed performers could have their work-related expenses disallowed and the engaging companies could find themselves liable for the employer portion of social security payments, UI and CPP/QPP at a minimum. There are, however, those within the performing arts community who feel that two statuses may be preferable to a single, cut and dried status with no flexibility.

For almost two decades now the performing arts community has advocated a return to dual status for performers or, at least, the presumption of self-employed status for all performing artists. (The Disney Report had a recommendation to this effect, which went on to recommend that unemployment insurance be made accessible to creative artists as well. Disney noted that many other jurisdictions had found ways to accomplish this.)

Needless to say, this 'best of both worlds' has not found acceptance with policy makers. It is interesting to note that Revenue Canada, Taxation adopted the term 'dual status' in its recent Tax Information for Professional Artists. The Revenue interpretation, quite different from that of the arts community, is that an artist can be engaged in an employment situation and working as a self-employed professional at the same time or during the course of a given tax year. The two types of activity are, however, still treated differently for tax and other purposes.

### Specific Tax Issues

Over the last decade a number of legal and administrative changes have been implemented to the benefit of individual artists.

#### i) Prizes and Awards --

Artistic prizes for meritorious achievement were exempted from income tax in the 1987 budget.

#### ii) Cash vs Accrual Accounting --

Since the mid-1980s, creative artists have been able to deduct travel expenses in the year in which they are incurred and visual artists have been able to value their inventory at nil for income tax purposes. The effect of these changes is that

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visual artists and writers may keep their books on a cash (vs accrual) basis, claiming income as it is received and expenses as they are incurred, so long as they do it consistently.

**iii) Grants as Business Income --**

Problems associated with the tax treatment of grants seems to have resulted as much from confusion and lack of information as from any real problem with the application of the law.

Grants received by self-employed artists would generally be considered as business-related income and therefore would be declared as such. Expenses related to the grant would be tax-deductible as business-related costs.

Most Canada Council grants are considered to be business income and all related expenses are therefore tax deductible. There is an IT Bulletin (IT-257) which deals exclusively with this subject although it is not as clear as it might be.

There is some potential difficulty for artists working exclusively in non-art-related employment and not engaging in any self-employed artistic activity. In this case a grant might be considered "other" income and any amount over \$500 might be taxable. But surely these situations are minimal.

**iv) Deductible Costs for Employed Artists --**

Some income tax relief has been provided for employed artists, in two distinct initiatives.

The first, outlined in the Government Response to the 1987 Standing Committee Report, provides for employed musicians to claim capital cost allowance (CCA) for the purchase of their instruments and to deduct the maintenance, insurance, and rental costs as well. The second, announced in tandem with the tabling of the Status of the Artist bill, allows all employed artists to deduct employment-related artistic expenses from income, up to the lesser of 20% of taxable income or \$1,000.

These provisions recognize that artists often have unusually high expenses even when they work as employees. And they are certainly welcome. However, the limitations are real. \$1,000 is 20% of only \$5,000 of taxable income. And the maximum includes any CCA claimed on instruments and vehicles.

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**v) Reasonable Expectation of Profit --**

Reasonable expectation of profit is the concept in the Income Tax Act which determines whether or not a person is in business and therefore allowed to deduct related expenses for tax purposes. It applies only to self-employment. If you have no expectation of profit, you are not in business, are deemed a hobbyist, and are unable to deduct costs.

One of the more significant developments for self-employed visual artists and writers was the publication in 1986 of IT Bulletin 504 (revised in 1989) which lays out factors to be considered in determining reasonable expectation of profit for these creators; it goes so far as to acknowledge that it may take a 'lifetime' to actually realize a profit (rather than the three to five years which Revenue allows for most businesses).

Although IT Bulletins are administrative guidelines only and do not have the force of law, IT 504 has subsequently been published in the Canada Gazette to underline its validity and enhance the likelihood of its being referred to during judicial proceedings.

It is important to note that Revenu Québec and Revenue Canada work very closely together and administration of the two regimes is usually identical. However, Revenu Québec has not recognized IT-504 and has not yet developed a comparable interpretive guide. There is the possibility that visual artists and writers in Québec might be treated differently from artists elsewhere vis-à-vis their expectation of profit, and thus their professionalism.

**vi) Tax Deductible Expenses --**

The original problem here was restricted to creative artists who were sometimes deemed by Revenue to be hobbyists rather than professionals since they were not making profit from their artistic work. For example, many artists teach and use their teaching income to subsidize their artistic activity. Revenue has challenged the deduction of artistic expenses from this employment income on the grounds that there was no demonstrated likelihood of making a profit from the self-employed artistic activity.

IT 504, by clarifying reasonable expectation of profit, largely eliminated the need for an amendment to the Act regarding deductibility of artistic expenses from other

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income, at least for visual artists and writers. If self-employed artists are deemed to have an expectation of profit, they are considered to be in business and, if they are in business, any expenses incurred in order to produce income are fully deductible for income tax purposes (with certain restrictions which apply to all self-employed taxpayers). Thus, a practising artist with a reasonable expectation of profit who also teaches is now able to deduct a loss from artistic practice from otherwise taxable income earned from teaching. While there may be no profit, there may be a reasonable expectation thereof under IT 504.

There are two limitations on deductible expenses. 1) Only 80% of the cost of business-related meal and entertainment expenses may be claimed. And, 2) if an artist has their studio or office in their home, the costs related to it may be deducted only to the point where they reduce business-related income to nil; home office/studio expenses may not be used to create a business loss (where business-related expenses for the year total more than business income). However, all other business-related expenses, such as supplies, equipment, and travel, are fully deductible even if they create a loss and, if they do, the loss may be carried forward.

The 80% ceiling on deductible expenses for business-related meals and entertainment was established on the premise that some of these costs would be incurred in any case (i.e. one has to eat) and to discourage corporate abuse, particularly of entertainment costs. It is most unlikely that Revenue and Finance are prepared to make any modifications to these meal and entertainment limitations.

Home office or studio expenses are more of a concern to visual artists and writers than performers. These work-space costs, by virtue of being in the home, are regarded as 'indirect' expenses. They may not be used to create a business loss and, therefore, may not be deducted from otherwise taxable income from other sources (such as employment or investment).

Home studio expenses may be deducted to the point where they reduce self-employed business income to nil. Any such 'indirect' expenses which cannot be claimed because, when added to other direct expenses, they would create a loss for the year, may be carried forward and deducted the following year -- from business income of course.

These two tax amendments are good examples of how laws designed to address quite different taxpayers also have an

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impact on artists. There are a couple of arguments to be made about the inequity resulting from the limitation on home office and studio expenses. A sculptor who rents a studio down the street is entitled to deduct the full cost thereof in the year in which it is incurred, but an artist working from home, may not. And the situation for an artist working solely as a self-employed professional is not the same as for an accountant or lawyer doing extra work away from their place of employment or, for that matter, an artist using a studio at the university. If the home office/studio is the only workplace, the related costs should be deductible.

There is another question of deductibility which has affected a small number of performing artists. It relates to difficulties with Revenue regarding accommodation and living costs during long-term engagements away from home. The cases are not numerous and so far have been settled satisfactorily but are worth mentioning.

Performing artists sometimes have the good fortune to secure relatively long contracts, such as those at the Stratford and Shaw festivals, which require them to live nearby for extended periods. Revenue Canada, Taxation apparently does not always accept these home-away-from-home living expenses. (Touring contracts of similar duration appear to present no problem.)

The Income Tax Act, however, contains an 'exclusion from income' provision for travel and accommodation allowances paid to employees working at 'remote work sites'. So, if the problem becomes more widespread, it can be argued that if such allowances can be exempt from employment income, then similar self-employment expenses should be acceptable as deductions.

vii) Fluctuating Income --

It is a well-known fact that the majority of artists are less than adequately compensated for their artistic endeavours, especially in light of their education and years of experience. For many artists the difficulties presented by low levels of artistic income are exacerbated by wide income fluctuations from year to year.

A visual artist preparing for a major solo exhibition or a writer working on a novel will have very little income during the creative period but may (one hopes) make up for it when, and if, the show or manuscript sells. Thus, the creative years are years of low income coupled with high expenses, a situation which may leave virtually no net income.

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Dramatic swings in net income were not a real problem until the 1980s. For years there had been a policy of general averaging whereby Revenue automatically compared income from the current year with previous years and averaged numbers to arrive at tax payable.

General averaging was then replaced by forward averaging, a rather complicated mechanism requiring up-front payment of taxes (at an appropriately high level) in the year of higher than average income. This approach did not prove popular and has since been revoked.

As long ago as the Carter Commission in the 1960s it was noted that there can be no truly progressive tax regime without income averaging. Despite the many recommendations and the obvious need among self-employed artists, none of the proposals of the last decade has been given serious consideration. Since the income tax reform measures, effective since 1988, the department of Finance has argued that fewer tax brackets (3) and lower marginal tax rates (17%, 26%, and 29%) make income averaging virtually unnecessary.

But any benefits flowing from federal income tax reform have been negated by higher levels of provincial taxation together with the imposition of surtaxes and flat taxes. The basic federal surtax for 1992 is 4.5% and there is an additional surtax of 5% of federal tax payable over \$12,500. And Ontario, with the largest artistic population in the country but not (yet) the highest taxes, has increased its tax rate from 49% of federal tax payable in 1986 to 54.5% for 1992. Ontario has also implemented a surtax at 7% on provincial tax payable over \$5,500 and 14% over \$10,000; both tax rates and surtaxes are already scheduled to increase for 1993 and may well be raised even more when the 1993 budget comes down.

The following tables indicate quite clearly that two individuals with the same total income over a five year period would not have the same tax liability. Both have a total five-year gross income of \$200,000, one at a steady \$40,000 per year and the other with wide fluctuations.

Expenses are assumed to be a constant percentage of gross income, 25% in Table 1 and 50% in Table 2. Admittedly the constant percentage assumption is unrealistic, especially in Table 2. A certain portion of costs is fixed so expenses

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would not rise in direct proportion to increased income. Both tables are for self-employed taxpayers, so C/QPP contributions have been included in the tax payable.<sup>1</sup>

**TABLE 1 - Income Tax**

<b>ARTIST A - Fluctuating Income</b>					
	Year 1	Year 2	Year 3	Year 4	Year 5
Gross	20,000	20,000	40,000	100,000	20,000
Expenses	5,000	5,000	10,000	25,000	5,000
Net	15,000	15,000	30,000	75,000	15,000
Tax	2,723	2,723	5,279	18,263	2,723
Total tax/ CPP liability					\$ 31,711
<b>ARTIST B - Steady Income</b>					
	Year 1	Year 2	Year 3	Year 4	Year 5
Gross	40,000	40,000	40,000	40,000	40,000
Expenses	10,000	10,000	10,000	10,000	10,000
Net	30,000	30,000	30,000	30,000	30,000
Tax	5,279	5,279	5,279	5,279	5,279
Total tax/ CPP liability					\$ 26,394
Extra tax paid on fluctuating income					\$ 5,316

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<sup>1</sup> Tax liability amounts were arrived at with the assistance of CanTax Personal Income Tax Software for 1992 using Ontario as the province of residence.

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Table 1 clearly shows that the artist whose income fluctuates bears an unfair tax burden -- over \$1,000 a year on average with expenses at 25%.

The inequity is reduced somewhat when expenses account for half of gross income, as illustrated in Table 2. But net income is also significantly lower.

**TABLE 2 - Income Tax**

<b>ARTIST A - Fluctuating Income</b>					
	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
<b>Gross</b>	20,000	20,000	40,000	100,000	20,000
<b>Expenses</b>	10,000	10,000	20,000	50,000	10,000
<b>Net</b>	10,000	10,000	20,000	50,000	10,000
<b>Tax</b>	1,196	1,196	3,069	10,780	1,196
<b>Total tax/ CPP liability</b>					<b>\$ 17,437</b>
<b>ARTIST B - Steady Income</b>					
	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
<b>Gross</b>	40,000	40,000	40,000	40,000	40,000
<b>Expenses</b>	20,000	20,000	20,000	20,000	20,000
<b>Net</b>	20,000	20,000	20,000	20,000	20,000
<b>Tax</b>	3,069	3,069	3,069	3,069	3,069
<b>Total tax/ CPP liability</b>					<b>\$ 15,345</b>
<b>Extra tax resulting from fluctuating income</b>					<b>\$ 2,092</b>



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The bottom line, then, is that artists (and other taxpayers) with high fluctuations in income pay more tax than others with the same overall income spread evenly over the same period of years.

Fluctuating income also has implications for RRSPs, discussed in the next chapter, and for GST, in the following chapter.

viii) Donations from Inventory --

Artists, particularly visual artists, are often asked to donate works to charity. When such a donation is made from inventory to a registered charity, the law now allows for the donation to be valued at any amount between the cost of the materials and the fair market value. Since the donation is a disposition of property (from inventory), the elected value of the donation must also be declared as income -- as if the work had in fact been sold.

Thus, an artist donating a work with an elected value of \$1,500 would have to add that amount to actual income for the year when completing their income tax return; \$1,500 would also be claimed as a tax credit (17% on the first \$250 and 29% on the balance, for a total credit of \$405). Of course, the maximum amount for which a donation credit may be claimed by any taxpayer is 20% of net income for the year of the donation (although any unused credit may be carried forward).

There have been two developments affecting artists, almost exclusively visual artists and craftpersons, donating work from their own inventory to charity or the Crown.

The first was in the mid-1980s when artists were allowed to value the donation, and the concomitant amount to be included as income, at any amount between the cost of supplies and the fair market value of the work(s). While the flexibility in assigning the value of the donated work is an improvement over the previous situation, it is far from ideal. In effect, visual artists now receive much the same tax treatment as large corporations, such as IBM donating computers. This change simply removed a disincentive to donate; it provided no incentive.

As the result of a more recent legal amendment, visual artists may now make a donation of art from their own inventory to a designated Canadian institution or to the Crown (federal or provincial governments) and may claim a tax credit for the full fair market value of the work -- without having to

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include a comparable amount in income. 100% of the value of the donation may be claimed in the year of the donation without regard to the usual 20% ceiling. This provision applies only if the work is certified as Canadian cultural property by the Canadian Cultural Property Export Review Board and if the recipient is an institution designated by the COPERB or the Crown.

This is definitely a positive development for both artists and for galleries with limited budgets for acquisitions. However, the visual arts community is concerned that the 'national' significance required for certification as cultural property by the Canadian Cultural Property Export Review Board limits donations by regionally important artists to local institutions.

Artists are also concerned by the recent tendency of the COPERB to lower the fair market value appraisals done by outside experts. They fear that lower appraisals, especially for contemporary works, will have a negative effect on the resale market in Canada which is neither large nor strong to begin with.

And, of course, this measure for donations to certified institutions does not address the question of donations to non-designated institutions and other charities discussed above. There is still no incentive for artists to donate to these more numerous and demanding bodies.

It is worth noting that while some progress has been made for visual artists donating their own work from inventory, there has been no effort to compensate performing artists for the donation of their time when performing for charitable benefits. In fact, there is no tax credit given for any voluntary donation of time to charity by any taxpayer.

**ix) Information For and About Artists --**

The need for both Revenue and Finance to develop more internal expertise with regard to the arts sector and for Revenue to prepare and circulate more and better information for artists has also been cited repeatedly.

Revenue has long had interpretation bulletins for performing artists. And, as noted earlier, since the publication of IT-504 in 1986 a number of circulars and guides have been published. The most recent is Tax Information for Professional Artists (1992), a good overview reference for

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income tax. It would, however, be very helpful if IT bulletins and other official information could be updated more promptly and written in more accessible language.

Revenue Canada, Taxation has gone some way towards preparing more information specifically for artists but their sole source of expert advice remains the CCA Tax Sub-committee. Without internal expertise in the two critical departments of Finance and Revenue, the arts community will undoubtedly continue to find itself reacting after the fact -- since the bulk of fiscal changes are not discussed with the public until after decisions have been taken and legislation introduced.

**x) Registered Tax Status & National Service Organizations --**

Those arts associations which have become known as National Arts Service Organizations (NASOs) take many forms and have varied histories. Many have been registered charities for decades, others regard themselves as unions and consider such status inappropriate. And many who have applied for charitable status since the late 1970s have been deemed ineligible because their objects focus on service to members (rather than standard charitable purposes such as education or the public good).

In September 1988, the ministers of Finance and Communications announced they would address the inequity for those ineligible for charitable tax status by legislating 'registered status' allowing organizations to issue receipts for income tax purposes in much the same way as charities. The motivation was to help these organizations raise funds, other than membership fees from poorly compensated member artists, by providing some incentive to donors.

Following passage of the relevant legislative amendments, administrative regulations and operating guidelines were developed in lengthy consultation with Revenue Canada, Charities Division. Notification that applications would be received was distributed by Communications in 1991.

To date there have been fewer applications for certification than expected (and another information campaign will be undertaken by Communications in the near future). There are a couple of factors which might help to explain the relatively limited number of applications. The first is the number of national organizations interested and the second is the limitation to national bodies.

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The original intent was to deal with a small number of national associations ineligible for charitable status but virtually identical to others having such status. As noted above, many arts service organizations became registered charities before the eligibility guidelines were tightened in the late 1970s.

The Income Tax Act does not allow for charities to directly benefit members, whether individuals or organizations. As a result, money raised through a 'registered' national organization cannot be redistributed to member provincial or local bodies.

The first and preferred option was to develop legislation similar to that for the Registered Canadian Amateur Athletic Associations (RCAAA). This would allow monies at all levels to be deemed as collected in the name of the national body and to be redistributed (back) to local and provincial member organizations. Revenue balked at this suggestion because the approach was deemed to have fallen victim to considerable abuse at the local level.

Consideration was then given to simply dropping 'national' altogether to eliminate the redistribution difficulty. Another option was to define national in a manner conducive to achieving the purpose of the amendment. The CCA Taxation Subcommittee developed a workable definition of national which went beyond the-only-one or representing-all-ten-provinces-and-both-territories (since neither of these would allow for an English and French language organization in the same discipline).

In the end, however, 'national' appeared in the legislation without a definition and the flexibility available under the RCAAA model was lacking as well. It now appears that Revenue prefers a rather narrow interpretation, as reflected in the operating guidelines. The number of eligible applicants is therefore severely limited.

There are different opinions on what might be done. There are those who feel that Revenue's tight interpretation does not reflect the letter (and certainly not the spirit) of the law and is, therefore, open to legal challenge. And others who think that since, by law, organizations are first to be designated by the Minister of Communications (and only later certified by Revenue), the minister responsible could simply exercise the mandate. Alternatively, the precedent of the churches, whereby parishes which uphold the objects of the

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national church are deemed to be part of that nationally registered body, might be used to address the problem. But Revenue maintains that this option is open only to registered charities.

What seems clear is that, in an officially bilingual country, failure to recognize at least two 'national' associations, especially in the language-based arts, is inviting a challenge to the interpretation.

**xi) Incentives for the Private Sector --**

Another long-standing issue with less direct but very real impact on artists is the inadequacy of incentives for the private sector to donate to or otherwise invest in the arts. The days of private patrons for creative artists are long past and public sector patronage of the arts is on the wane.

There has been considerable discussion about the private sector becoming a more active partner in support of artistic activity. Yet there has been little done to encourage the growth of private participation -- either through (tax) incentives or moral suasion. Furthermore, despite years of talk and numerous recommendations, there has been virtually no move to improve public awareness of the arts and/or increase audiences.

Disney, explaining why his report would not deal with tax incentives, seems to have summed up the basic impediment rather well, "the issue of tax incentive stimulation of charitable donations ... requires consideration of broad questions of government financial policy concerning not only the arts but also such other fields as religion, medical research and education, and therefore warrants separate study".

Such separate study has been recommended, and promised, in the years since. The Bovey task force undertook considerable research and made many very worthwhile recommendations. But the only action of benefit to the arts, beyond what is discussed here for artists' own donations from inventory, is a minor 1977 amendment to the Cultural Property Export and Import Tax Act regarding gifts of cultural property by will. Nothing has been done to encourage increased private sector support.

Furthermore, recent developments on the valuation of donations under the Cultural Property Act have had a direct negative

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impact on collectors donating works of national significance to Canadian institutions. Any number of works have been lost to the nation and have instead gone to international collectors via the auction block. Canada's loss.

**In Summary**

It is clear that there have indeed been many positive developments for artists on the income tax front. It is also evident that much remains to be done.

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## THE SOCIAL SECURITY NET

In some respects Canada has a cradle-to-grave system of social security programs from maternity benefits available through UI to a death benefit through CPP. There are tax measures for those with children (child tax credit), assistance programs for workers on the job (workers' compensation) and for retirement and old age (C/QPP and old age security). Unfortunately, many programs are unavailable or difficult of access for artists because they work as self-employed individuals.

### Unemployment Insurance

Fifteen years ago the Disney Report recommended "that appropriate unemployment insurance coverage be provided to performing artists, with instructions to the several departments concerned to resolve the technical problems ... and provide detailed rules for implementation for the coverage. Consideration should similarly be given at the same time to acceptance of the principle that coverage should also be provided for creative artists."

Part of the rationale for the recommendation was that "Individuals performing essentially similar artistic services should receive essentially similar treatment, but this is not the case at the present time. Those who are considered to be employees are restricted in the deduction of expenses; those who are held to be self-employed are permitted to deduct expenses on a reasonable basis, but are denied the potential benefits of unemployment insurance coverage".

Finance will argue that there is an inherent fairness in the current arrangement since it would hardly be fair to other taxpayers if self-employed artists could deduct business expenses and also claim UI benefits: one or the other but not both. This argument ignores the fact that for years UI payments have been available to self-employed fishermen during the off-season.

Unemployment insurance, however, provides more than a financial cushion for periods of no work; it also covers 15 weeks of maternity and 10 weeks of parental leave as well as 15 weeks of sickness or short-term disability coverage. Ineligibility for UI, therefore, deprives artists of far more than supplementary income in the event of 'unemployment'.

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**i) Administrative Changes**

For many years self-employed artists complained that when they contracted for part-time or short term employment (as when teaching a university course), they often had to make UI contributions. They were subsequently unable to claim any UI since they were deemed to be primarily self-employed and therefore ineligible. In 1989 the unemployment insurance regulations were changed to allow for mixed (or 'dual') employment status; someone who is employed on a part-time basis is able to collect UI on that part of income earned from employment. This change has resulted in fairer treatment for artists and others engaged in mixed employment.

The change in eligibility for UI seems to have muted the demands within the performing arts community for the across-the-board presumption of self-employed status for all performers. It now appears that arts community opinion on preferred employment status is mixed, with some preferring to be employees and others self-employed.

Nevertheless, the fact that employment status is not always clear causes some concern for performers and for performing arts companies. Self-employed performers could have their work-related expenses disallowed and companies could find themselves liable for social security payments, UI and CPP/QPP at a minimum. Yet, by virtue of providing for two statuses, some feel the current situation may be preferable to a single status with no option.

For example, some performing companies which cannot afford a full season engage artists as employees so that they will have at least some income beyond the limited season. Companies with longer seasons are less likely to operate as employers.

However, if the financial situation of the sector does not improve and performing companies increasingly present shorter seasons, there may be more interest in employment, especially among orchestral musicians and dancers.

**Canada & Québec Pension Plans**

Both the Canada and Québec Pension Plans include coverage beyond simple retirement income: long term disability, a death benefit, a survivor's benefit to the spouse with adjustments for children, and provision for orphaned children.

Unlike registered pension plans and deferred profit sharing



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plans, all workers may contribute to the Canada or Québec Pension Plans. Premiums are calculated as a percentage of pensionable earnings to a fixed maximum, \$1,392 for 1992. In order to contribute the 1992 maximum, one would need \$32,000 in pensionable earnings (net self-employment income).

For employees, C/QPP the premiums are paid by equal employer and employee contributions. On the other hand, the self-employed must cover 100% of the premium, usually once a year in conjunction with their annual income tax return. Not only do self-employed artists cover the entire premium but they often have to do so in one lump sum. (A tax credit at 17% is given for all C/QPP contributions.)

It should also be noted that CPP contributions as a percentage of pensionable earnings have been rising in recent years (4.2% in 1989, 4.8% in 1992) and they are scheduled to continue increasing. The level of pensionable earnings is also going up each year. The maximum annual self-employed contribution of \$1,050 in 1989 (4.2% of \$25,000) rose to \$1,392 for 1992 (4.8% of \$29,000).

For 1992 the maximum monthly retirement payment was \$636 and the maximum disability payment was \$784; these translate to \$7,632 and \$9,408 per year, amounts on which it would be very difficult to make ends meet. For this reason, Registered Retirement Savings Plans (RRSPs) are potentially very important to self-employed artists without any pension beyond the C/QPP.

**Registered Retirement Savings Plans**

RRSPs have two obvious benefits -- they lower tax payable at the time the investment is made and they offer an opportunity to save some income for retirement. In fact, given current C/QPP monthly payments and the anticipated draw on the plan when the baby boomers reach retirement age, RRSPs and other personal savings may well have to provide the bulk of retirement income. This is especially true for those who have no registered pension plan, and that includes all self-employed individuals (except some members of the AF of M).

RRSP contributions are limited to the lesser of \$12,500 (for 1992 and 1993) or 18% of the previous year's earned income. Earned income includes net income from employment and self-employment, rental income, royalties, grants and a couple of other sources. To contribute the maximum of \$12,500, one

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would need earned income of roughly \$70,000. The contribution limit is reduced by any amount contributed to a registered pension plan. Any unused portion of the allowable contribution is now carried forward for up to seven years.

For artists there are two obvious problems with the RRSP regime. First of all, low gross income limits their ability to contribute to RRSPs at all. And most artists do not have high levels of net income because of their relatively high expenses.

Second, an artist finally reaping the financial benefits of two low-income years spent 'creating' cannot make a substantial RRSP contribution in the high income year because maximum allowable RRSP contributions are based on the previous year's earned income. Furthermore, in that good year, the artist will be paying tax at a higher rate, leaving less disposable income to be invested in an RRSP in the subsequent, lower income, year when the maximum allowable contribution will be higher. There appears to be a very basic inequity and unfairness in this scenario.

Tables 3 and 4 follow from Tables 1 and 2 respectively. Both Artists A and B earn the same net income over the period, one with fluctuations and one evenly.

Table 3 is illustrative of a number of effects flowing from fluctuating income. Artist A has \$1,700 more RRSP room over the 4 years, \$23,300 vs \$21,600 for Artist B. As a result Artist A also appears to enjoy a greater tax "saving" (\$5,120 vs \$3,992) from making full RRSP contributions (even when this is impossible, as in year 5). But Artist A still has a greater tax liability, almost \$4,000 more than if the income were earned steadily.

Table 4 demonstrates that even with lower net income, the tax reform measures together with RRSP contributions do not eliminate the need for income averaging. Artist A with fluctuating income does indeed have more RRSP room (\$16,200 vs \$14,400), assuming the artist has funds available for an RRSP contribution of \$1,800 when net income is only \$10,000! But fluctuating income still means less disposable income for contributions because Artist A still pays more tax than Artist B by almost \$2,000, despite the fact that the potential tax saving for Artist A is higher.

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**TABLE 3 - RRSPs**

<b>ARTIST A - Fluctuating Income</b>					
	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
<b>Net income</b>	<b>\$15,000</b>	<b>15,000</b>	<b>30,000</b>	<b>75,000</b>	<b>15,000</b>
<b>RRSP room</b>	<b>—</b>	<b>2,700</b>	<b>2,700</b>	<b>5,400</b>	<b>12,500</b>
<b>Tax, no RRSP</b>	<b>2,723</b>	<b>2,723</b>	<b>5,279</b>	<b>18,263</b>	<b>2,723</b>
<b>Tax saving with RRSP</b>	<b>—</b>	<b>730</b>	<b>518</b>	<b>1,715</b>	<b>2,157</b>
<b>Net tax</b>	<b>2,723</b>	<b>1,993</b>	<b>4,761</b>	<b>16,548</b>	<b>566</b>
<b>Total RRSP room over 4 years</b>					<b>\$ 23,300</b>
<b>Total tax saving with full RRSP for 4 years</b>					<b>\$ 5,120</b>
<b>Total net tax liability with full RRSP</b>					<b>\$ 26,591</b>
<b>ARTIST B - Steady Income</b>					
	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
<b>Net income</b>	<b>\$30,000</b>	<b>30,000</b>	<b>30,000</b>	<b>30,000</b>	<b>30,000</b>
<b>RRSP room</b>	<b>—</b>	<b>5,400</b>	<b>5,400</b>	<b>5,400</b>	<b>5,400</b>
<b>Tax, no RRSP</b>	<b>5,279</b>	<b>5,279</b>	<b>5,279</b>	<b>5,279</b>	<b>5,279</b>
<b>Tax saving with RRSP</b>	<b>—</b>	<b>998</b>	<b>998</b>	<b>998</b>	<b>998</b>
<b>Net tax</b>	<b>5,279</b>	<b>4,281</b>	<b>4,281</b>	<b>4,281</b>	<b>4,281</b>
<b>Total RRSP room over 4 years</b>					<b>\$ 21,600</b>
<b>Total tax saving with full RRSP for 4 years</b>					<b>\$ 3,992</b>
<b>Total net tax liability with full RRSP</b>					<b>\$ 22,403</b>

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**TABLE 4 - RRSPs**

<b>ARTIST A - Fluctuating Income</b>					
	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
<b>Net income</b>	<b>\$10,000</b>	<b>10,000</b>	<b>20,000</b>	<b>50,000</b>	<b>10,000</b>
<b>RRSP room</b>	<b>—</b>	<b>1,800</b>	<b>1,800</b>	<b>3,600</b>	<b>9,000</b>
<b>Tax, no RRSP</b>	<b>1,196</b>	<b>1,196</b>	<b>3,070</b>	<b>10,800</b>	<b>1,196</b>
<b>Tax saving with RRSP</b>	<b>—</b>	<b>618</b>	<b>321</b>	<b>979</b>	<b>870</b>
<b>Net tax</b>	<b>1,196</b>	<b>578</b>	<b>2,749</b>	<b>9,821</b>	<b>326</b>
<b>Total RRSP room</b>					<b>\$ 16,200</b>
<b>Total tax saving with full RRSP for 4 years</b>					<b>\$ 2,788</b>
<b>Total net tax liability with full RRSP</b>					<b>\$ 14,643</b>
<b>ARTIST B - Steady Income</b>					
	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
<b>Net income</b>	<b>\$20,000</b>	<b>20,000</b>	<b>20,000</b>	<b>20,000</b>	<b>20,000</b>
<b>RRSP room</b>	<b>—</b>	<b>3,600</b>	<b>3,600</b>	<b>3,600</b>	<b>3,600</b>
<b>Tax, no RRSP</b>	<b>3,070</b>	<b>3,070</b>	<b>3,070</b>	<b>3,070</b>	<b>3,070</b>
<b>Tax saving with RRSP</b>	<b>—</b>	<b>640</b>	<b>640</b>	<b>640</b>	<b>640</b>
<b>Net tax</b>	<b>3,070</b>	<b>2,430</b>	<b>2,430</b>	<b>2,430</b>	<b>2,430</b>
<b>Total RRSP room</b>					<b>\$ 14,400</b>
<b>Total tax saving with full RRSP for 4 years</b>					<b>\$ 2,560</b>
<b>Total net tax liability with full RRSP</b>					<b>\$ 12,790</b>

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Furthermore, it appears that artists who do have money in RRSPs often use this money as a form of income averaging, withdrawing funds in years of low income. The RRSP mechanism was never intended as an income supplement during working years and such withdrawals leave artists without adequate savings for retirement. This could be particularly problematic for women who tend to earn less and live longer.

It should also be mentioned that, while a tax credit at 17% is given for C/QPP contributions, RRSP contributions are a deduction from income. The 'value' of RRSP contributions, therefore, varies according to one's tax rate (17, 26 or 29%). Strictly from a tax saving perspective, it is more beneficial for those in the higher tax brackets to invest in RRSPs than in the CPP.

**Other Social Security Plans**

The major performing artist unions have negotiated with engagers for some social security coverage and benefits, such as vacation pay and RRSP contributions, for their members. Visual artists and writers, however, have no engagers who might substitute for employers and they therefore have no social security coverage beyond what they provide for themselves (or what is available through a spouse's plan).

The Writers' Union and Periodical Writers Association have group insurance plans available to members on an individual basis; each member deals directly with the insurance company. The AF of M offers low cost instrument insurance to all members and has a pension plan; other social security plans vary greatly from local to local.

In 1992 the ACTRA Fraternal Benefits Society agreed to open its plans to other sectors of the artistic community. A survey of interest and preferred coverage was conducted for the CCA but the response rates and interest were disappointing. This should really not be too surprising. Composers, visual and literary artists have particularly high expenses.

ACTRA Fraternal has reviewed the numbers and feels that it is not financially viable to broaden coverage with current levels of interest but has left the door open.

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And a hard look at the bottom line for most artists clearly indicates that once art-related expenses have been covered, income tax and C/QPP dealt with, and some basic personal expenditures made (housing, food and clothing), there really is little left for supplementary insurance programs. And furthermore, insurance premiums have to be paid regularly -- something which is not always easy to do when the cheques come very irregularly.

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### THE GOODS AND SERVICES TAX

The GST is the newest federal tax initiative with implications for the entire arts community. Much of the sector, and many Canadians, would be happy to see this tax on consumption repealed. The publishing industry has been particularly vocal in this regard. There is, however, little likelihood of this wish being fulfilled given the revenue needs of the federal treasury.

The GST replaces the old Federal Sales Tax (FST). The old tax was charged at the manufacturing level at varying rates on different products. The same product was often taxed more than once before reaching the market, adding to the price each time. The FST applied only to manufactured items and not to services.

It is just over two years since the GST came into effect. Not surprisingly, there have been some problems of adjustment, especially for those dealing with sales tax for the first time. There has also been some inevitable confusion on the part of Revenue Canada, Excise officials.

#### Factors for Artists & the Sector

For artists, the three basic factors of employment status, high expenses, and fluctuating income all play a rôle in the GST as well. Artists who work exclusively in employment situations have no need to do anything other than pay the tax on things they buy -- as is the case for all consumers. Self-employed artists, on the other hand, may well have to register for the GST and become tax collectors.

Since registration is mandatory if annual GST-taxable revenues are \$30,000 or more, many artists have had to become GST registrants. For many self-employed artists, however, income fluctuates and cannot be predicted in any reliable way, making the decision difficult. Many artists earning less than the threshold amount but with relatively high expenses have also registered although there is no legal obligation to do so.

There is no question that the impact of the GST has been greater within the arts community and the publishing industry than in many other sectors of the economy. These groups were either not subject to the old FST or it was a minor, and largely hidden, cost factor. As a result, they had no tax

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collection system in place and little or no FST 'savings' to help offset the 7% increase in the price of their goods and services resulting from GST.

The GST has had two far-reaching effects within the sector: higher prices to arts consumers, and new collection and reporting responsibilities for registrant artists and companies. It has resulted in a 7% increase in the price of admission to performing arts events, public galleries, and cinemas and in the cost of books and periodicals, and original works of art. The GST even applies to royalties paid to collectives on behalf of member artists.

### Registration

All self-employed individuals earning \$30,000 in GST-taxable sales must register for the tax. Individual artists and non-profit organizations have, therefore, become tax collectors but are not compensated for their collecting services or for the administrative burden which the regime imposes. (Revenue did, however, acknowledge the unique circumstances of artists and the cultural sector by developing a special introductory guide to the GST for the arts and entertainment prior to its implementation.)

The first question for artists is whether they have to, or want to, register for the tax. If so, they must charge 7% on their professional fees or their creative work. And they must keep appropriate books and records to support the information on GST returns, which must be submitted regularly. Of course, the GST collected must also be remitted to the Receiver General regularly. The cost is that of uncompensated time, or accounting fees.

Fluctuating income is also a factor with regard to the GST -- if you make \$30,000 in GST-taxable sales world-wide in the course of a year, you must register immediately. Many artists have incomes which float between \$20,000 and \$40,000 making the decision less than obvious.

On the other hand, those with high expenses, virtually all of which are subject to the GST, would probably want to register even if they are still below the threshold. Only if one is registered is it possible to claim input tax credits (ITCs) for the tax paid on business-related expenses. The cost of not registering is an effective 7% increase in any GST-taxable business expenses.



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**Administration**

From the outset, there have been two optional methods of keeping records and calculating GST remittances: the regular long method and the Quick Method. The former requires very detailed records since the amount of GST paid on each business-related purchase must be recorded separately in the accounts. (This requires separating GST from price and any PST; it is particularly time consuming for tax-included receipts.) The GST paid on expenses may be claimed as input tax credits; these are then deducted from GST charged and collected on the sale of goods and services, and the balance is remitted to the Receiver General.

The Quick Method was intended to make record keeping easier for small businesses. Under this method, total GST-included revenue from taxable sales is simply multiplied by a given percentage (5% for services and manufacturers) and this amount is remitted. The 5% is nominal recognition of the GST paid on expenses.

However, there are a couple of situations where the Quick Method is not financially attractive. If GST-taxable expenses are high relative to GST-taxable sales, the applicable percentage does not cover the GST actually paid out. In fact if expenses are more than 25% of revenues, the Quick Method may save time but it actually costs money. Since available figures indicate that artists expend about half of artistic income on art-related expenses, the Quick Method is unattractive.

Similarly, when goods or professional services are sold to a GST-exempt purchaser (such as the provinces and territories), 5% of the GST-taxable fee/price is remitted - without any tax having been collected from the consumer. This reality makes the Quick Method unattractive to any artist engaged by or selling work to a provincial or territorial body.

In December 1992, the department of Finance announced a new accounting option for small businesses (under \$500,000/annum) which should be welcomed by many artists as well. The new option allows for another approach to claiming input tax credits.

All business expenses are recorded in the same manner as for income tax (without requiring a time-consuming separate entry for the GST paid on each transaction). Then, at the end of each GST reporting period, the total amount of GST-taxable

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purchases (including any provincial sales tax and gratuities) is multiplied by 7/107ths, this amount is deducted as ITCs from the GST charged on fees for services or on sales of goods, and the balance is remitted to the Receiver General.

There are some restrictions on this method but it is a major administrative improvement over the long method, especially for small businesses and self-employed individuals who are keeping their own books or paying someone else to do so. It also allows those with high expense-to-revenue ratios to claim full input tax credits and eliminates the built-in 'penalty' of the Quick Method for GST registrants contracting with exempt consumers.

While there continues to be a time=money cost involved in collection and administration, the burden of the latter has been eased somewhat by this new option. Unfortunately, however, information on the new approach to claiming input tax credits does not appear to have been widely disseminated.

**Border Crossings**

Among the specific GST issues raised by those consulted, a number had to do with the application of the GST at the border or on imported goods and services.

**i) Canadian vs Foreign Managers --**

Virtually all Canadian agents and managers are registered for GST and must charge tax on their services to artists when such services are provided in Canada. It is immaterial whether the artist's performance or exhibition is elsewhere. For example, if an unregistered artist works through a registered Canadian manager for a performance in the U.S.A., the artist effectively forgoes the 7% of the performance fee by virtue of the GST charged on the agent's commission. As a result, there is some incentive for unregistered Canadian artists to work through non-resident agents.

**ii) Foreign Performers --**

Foreign performers may be engaged for short or longer periods. Those coming for only a short tour or a limited engagement (e.g. symphonic soloists or operatic performers) are unlikely to have reason to register for GST because they do not carry on sufficient business in Canada. For many of the small

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presenters who are not GST registrants these foreign performers have a 7% cost advantage over their registered Canadian counterparts. (See more on small presenters below.)

Longer or more lucrative engagements, such as touring with a commercial musical or starring in a film, would more likely require registration. Certainly the performing artists' associations recommend registration (so that input tax credits may be claimed on expenses). They encounter two difficulties.

The first is that the engager may well have neglected to even mention the GST; as a result some foreign performers simply ignore it. Should the foreign artist decide to register, they then have to go to the local Revenue Canada, Excise office (probably during rehearsal hours) to complete the necessary paperwork. Both situations could be effectively addressed if there were a short and simple GST information sheet and/or registration form which could be distributed and completed prior to arrival.

iii) Canadian visual artists --

There have been two problems identified for Canadian artists returning to Canada with their own art work: 1) unfinished work attracts GST on the value of the materials only, while finished work is taxable at fair market value, and 2) work which has been exported for a show elsewhere often attracts tax on its return despite the fact that it was created in Canada, tax was paid when buying the materials, and the work has not yet been sold.

The second of these problems has been addressed through an agreement between Revenue Canada, Excise and Canadian Artists' Representation (CARFAC). For a nominal fee CARFAC will issue a 'certificate of origin' prior to the work leaving the country so that it may be returned without attracting tax. This mechanism speaks well of Revenue's intent to make administration as easy as possible; its availability needs to be well advertised.

The problem of artists 'importing' work they have created outside the country, finished or unfinished, is not so easily resolved. There is apparently some unwritten understanding that an unsigned work can be considered an unfinished work. But ultimately that decision can be challenged by Customs agents (who are expected to be experts in contemporary art,

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both literary and visual). Furthermore, work created outside the country would be signed if there were any opportunity to exhibit or sell it.

The artist then is faced with two challenges: accepting a fair market value assigned by the omniscient Customs agent and then having to pay the GST on a work of their own creation, which may or may not sell in the near future.

Two problems arise here. The artist is out the money in the short term, whether the work ultimately sells or not. And the government is effectively getting double the tax payable -- once from the artist at the border and again from the collector on the sale. If the artist is registered, the GST paid at the border should be claimable as an input tax credit (deductible from tax collected on other sales). But the supposed logic of the tax regime is seriously challenged.

Furthermore, there is an apparent contradiction between the Income and Excise Tax Acts. For income tax purposes, artists may elect to value their inventory at nil -- but the same work can be assigned a much higher value when being imported, despite its being part of the same inventory.

**iv) Specified Tangible Personal Property --**

The problem for visual artists returning with their art work is part of the larger issue of the application of GST to a category of goods known as specified tangible personal property, goods which are regarded as appreciating rather than depreciating in value over time. This category includes such items as paintings, jewellery, old books and stamps but does not include antiques, old cars or maps.

No evidence has ever been produced to substantiate the premise that the goods listed as specified tangible personal property actually increase in value. While no one would deny that some items in each group do appreciate, it is stretching credulity to conclude that all or even most do. And even if one were to accept the premise, there remains a question of equity since antiques and old maps are not subject to GST on importation.

The distinction among these goods also affects which are eligible for a rebate when purchased in Canada for export, usually by tourists. Some are eligible, others not. Items purchased in Canada but shipped to a foreign purchaser may be sold free of tax but if the tourist opts to carry the purchase, GST must be paid. In some cases the price of the

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carried item determines whether it is eligible for a rebate on departure from Canada. To say the system is confusing is an understatement.

The specified tangible personal property provisions certainly distort the market for used goods. Either there is a misunderstanding of the nature of the market for paintings and jewellery (and antiques) or the legislation is simply inequitable. The regulations are inordinately complex as well.

The provisions also create a contradiction between income and excise tax. There are income tax provisions which encourage the purchase of original Canadian works of art by allowing capital cost allowance while under excise tax, original art is regarded as an appreciating good.

The inconsistent treatment of goods under this section of the Act needs to be reviewed since it creates artificial distinctions; many of the provisions should probably be amended or dropped.

### Small Presenters

An extremely high proportion of touring performances in this country are presented by small volunteer-run community groups with little administrative support. Many of these groups, being entirely run by volunteers, are not eligible to register for GST. Others, with annual sales under \$30,000, have chosen not to register for fear that higher ticket prices would reduce the size of their largely subscription-based audiences.

For these presenters, engaging a GST-registered artist costs them 7% more, effectively reducing funds available for artists' fees by that same amount. It would seem that most Canadian performers have chosen to register for the tax but there is little reason for foreign artists, especially on short tours, to do so. The implications are obvious: an inducement to engage non-registrant artists creates an advantage for foreign artists as well as a two-tiered community of Canadian artists, registered and unregistered.

### Collectives

The collective administration of copyright has led apparently to some confusion on the part of local Excise officials. The

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Excise Tax Act allows for GST on royalty payments to be charged by the collective on behalf of member artists and for the royalty to be forwarded to the artist without any further GST consideration. Some local officials have insisted that artists should be collecting GST on royalties payments received through their collectives.

One would hope that this problem can be resolved by Revenue Canada, Excise through explicit direction to all officials. It would also be helpful if there were some official Revenue document available to all members of collectives to be used on an as-needed basis. After all, it is unreasonable to expect all Revenue officials to be expert on all aspects of the legislation.

**Commercial Galleries**

There seem to be two somewhat related problems with commercial galleries, possibly resulting from a desire to simplify administration or from a lack of understanding of the workings of the tax.

The 'agency' relationship is a complicated one where the GST is concerned because the agent is selling in the name of the artist and the legal/theoretical cashflow is not the actual. Here is an outline of the transactions for a registered agent selling a work on behalf of a registered artist. (The commission here is more representative of the performing arts than the visual but the principle is the same.)

Agent collects price of work + GST \$1000 + 70.00	\$1070.00
Agent deducts commission (15% x \$1000) + GST \$150 + 10.50	\$160.50
Artist gets (their \$ + GST) - (agent \$ + GST) \$1070 - 160.50	\$909.50
Artist remits GST on their \$ - GST paid agent \$70 - 10.50	\$59.50
Agent remits GST on commission \$150 x 7%	\$10.50
Total GST remitted 7% of \$1000	\$70.00

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Apparently some larger galleries are charging GST on all sales whether or not the artist is a GST registrant. Unless the gallery owns the work, this contravenes the legislation. A gallery selling works on a consignment basis is acting as 'agent' for the artist and is legally obliged to inform the buyer if the artist is not registered. In which case there would be no GST charged on the sale of the work but the dealer would charge the artist tax on the commission.

Furthermore, some artists have received cheques from dealers which include GST collected on the sale but do not note it as such. This then places the artist in the position of having to explain to Revenue officials why the tax which was collected in the artist's name was not remitted.

It would seem that some smaller galleries, on the other hand, are charging GST on the sale but forgetting that the tax on the sale covers both the artist's price as well as their agency commission. They are then sending the artist's percentage minus the commission and related tax (\$1000 - \$160.50 using the scenario above) -- without accounting for the GST (\$70) collected on the sale on behalf of the artist. In other words, the artist is paying tax on the agent's commission without having received the tax on the sale. (And everyone must have difficulty reconciling their accounts.)

These situations can probably be rectified through preparation and distribution to all concerned of simple explanatory information.

Inconsistent Application

Teachers of dance are critical of the fact that the educational exemption, whereby no GST need be charged for educational courses, is apparently being applied inconsistently and unfairly. Music teachers are regarded as part of the educational exemption since they teach classes which eventually lead to a recognised diploma (from the Royal Conservatory). They therefore do not have to charge their students GST for piano lessons. Dance teachers, on the other hand, do not teach for a recognized diploma or certificate. They, therefore, have not been deemed eligible for the educational exemption and must add the 7% to course fees.

Given the nature of the legislation, it is unlikely that dance teachers can be included under the educational exemption, at least under their current structures.

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**Potential Chaos**

If all the provinces ultimately opt for a form of goods and services tax, the highly mobile arts community could find itself dealing with 11 different systems, the federal and a different one in each province. To date only Québec has implemented a largely harmonized regime; tax has been extended to services and to most of the range of goods covered by the GST. But the Québec system has significant differences. They are not numerous but they are very real -- and indicative of a situation which, compounded by nine more variations, could make accounting very tedious for self-employed individuals.

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#### OTHER FACTORS AFFECTING THE BOTTOM LINE

Not all fiscal matters are tied to tax legislation and social programs. The issues affecting individual artists are in turn affected by circumstances in the broader cultural community.

If artists lived and worked in isolation, the circumstances affecting them would be restricted. But artists do not and, in fact, cannot thrive without being involved with the broader community. Whether agent or publisher, manager or presenter, art dealer or public gallery, producer or director, artists are affected by the well-being of those with and for whom they work. It is therefore necessary to review, however briefly, developments for some of the other players whose well-being affects the working lives of artists.

#### Positive Developments

The Public Lending Right Commission was established in 1987. The Commission has an annual appropriation from Parliament from which to compensate writers for the public use of their work -- free universal access to books held in public libraries.

In the same vein, recognition of the value of intellectual property -- the first phase of revisions to the antiquated Copyright Act was proclaimed in 1988.

In June 1992, the Status of the Artist legislation was passed by Parliament and given Royal Assent (although nine months later it has yet to be proclaimed). The Status legislation will remove the long-standing threat to performing artists' organizations which were open to challenge under the Competition Act since only employee unions had the legal right to bargain collectively.

In 1991-92, Communications Canada, together with the provinces and some municipalities, carried out the first-ever detailed study of arts consumers. The findings of this major research project provide an invaluable tool to arts organizations, particularly in the performing arts, to improve the efficacy of their marketing and other audience oriented activities.

At the present time, the entire cultural labour force is being studied in more detail than ever before. EIC has provided funds to StatsCan for a major survey to provide quantitative

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data on those working in the cultural sector. The results are likely to be available in 1995. In the meantime, EIC itself is engaged in research to accumulate qualitative information on the cultural labour force, its work patterns, factors influencing present and future development and the like. If this research yields the results it should, the cultural sector will, for the first time, have data which no-one will be able to challenge.

**Funding**

Virtually nothing has been said about government direct financial investment in the arts because it has become a game of smoke and mirrors in recent years, giving and taking away with apparently equal frequency, especially where the arts and culture sector is concerned.

Direct support of independent film and broadcasting production increased over the last decade but there is little else positive to report.

The Canada Council provides almost the only direct federal investment in individual artists. The Parliamentary appropriation rose from \$39.2 million in 1978-79 to \$108 million in 1992-93. However, once inflation is taken into account, the picture is less positive. In constant 1986 dollars, the 1978 appropriation was \$70.8 million and the 1992-93 was \$87.2 million. The increase of \$16.4 million over 14 years was then reduced by more than half for 1993-94 as a result of the December 1992 financial statement.

Council funds for ongoing programs for artists and arts organizations increased in dollar terms as well. But, with inflation factored in, available program funds actually decreased from \$79.3 million in 1987-88 to \$66.4 million in 1992-93. (Source - Research and Evaluation, Canada Council)

Appropriations to other cultural agencies have different patterns but the net result is much the same -- fewer real dollars today than in 1986 and, for most, fewer than in 1978.

According to Statistics Canada, from 1989-90 to 1990-91 total federal government spending on culture, factoring in inflation, fell by 5% in the cultural industries and by 15% in the performing arts. The latter is perhaps more critical since the arts overall only account for 5% of federal cultural spending.

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And there have been other developments which are definitely not positive for artists or for those who engage them or use their work.

**Less Positive Developments**

The federal capital cost allowance for investment in Canadian film was reduced from 100% in the early 1980s to 30% by the end of the decade -- with the predicted drop in private sector investment.

Investment Canada has recently made decisions which sorely try both the intent and the logic of the Baie Comeau policy in support of Canadian ownership of book publishing and distribution.

The \$220 million of federal tax dollars which was, until the late '80s, transferred to Canada Post to cover (Canada Post's estimate of) costs of second class mail for magazines and newspapers as well as the reduced rate for books has been eliminated.

The structural support offered to Canadian magazine publishers through C-58 (tax deductibility for advertising in Canadian but not foreign periodicals) and Tariff Item 9958 have recently been challenged by Sports Illustrated. Government reaction to the split-run editions being distributed in Canada has been muted. A task force is reviewing the magazine industry; it is scheduled to report by year end.

The Canadian Cultural Property Export Review Board is widely reported to be lowering the market-value appraisals of both contemporary and historical works, appraisals made by independent experts in the field. The results are two-fold: Canadian institutions and the Canadian public are losing donations of historical pieces to the auction block and international collectors, and the potential re-sale value of works by contemporary Canadian artists is being undermined.

The long-awaited Status of the Artist legislation received Royal Assent in June of 1992; nine months later the legislation has yet to be proclaimed. And there are those who expect that the collective bargaining provisions, which are the substance of the Act, are not likely to be proclaimed.

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Work on the development of a federal policy on crafts was announced two years ago but, except for a Communications-sponsored review of previous research, the exercise appears to be stalled.

Greater Canadian control of film distribution was discussed for years but there has been nothing said for some years now. And this despite the substantial sums invested in film production in recent years.

The first phase of revisions to the Copyright Act was proclaimed in June 1988, almost five years ago. Since that time there has been on-and-off-again consultation on and drafting of the second phase. There is a draft document currently under review by the many parties affected by this intellectual property legislation. It is highly unlikely that a bill will be tabled before the end of this session of Parliament.

What is perhaps more troubling than the pace of the copyright exercise (despite some rather rapid work done for the FTA and NAFTA), is the sense that the bill when it eventually appears may not serve the purpose. Copyright legislation is the only legal mechanism to protect and compensate the creators of unique works. The legislation should do just that; it is not the instrument for legislating the rights of users.

Among other matters which have been raised, discussed, and apparently forgotten are: visual arts and design policies, a bankruptcy protection plan, the establishment of endowments for arts organizations, increased funding to the Canada Council, an arts awareness campaign, re-establishment of the 1% for art program in new and renovated federal buildings, and multi-year funding commitments.

Most important of all perhaps is the fact that the obvious need for a federal cultural policy has been ignored. "Unique Among Nations" is, at best, a disappointment.

**In Closing**

Nevertheless, there has been some positive activity over the years. Not all is perfect and not all issues have been addressed.

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