



CANADIAN ARTS
COALITION
CANADIENNE DES ARTS

Study on the impact and utilization of Canadian culture and arts in Canadian foreign policy and diplomacy, and other related matters

Brief to the Senate Standing Committee on Foreign Affairs and International Trade

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Executive Summary

Recent investments in trade and cultural diplomacy by the federal government were extremely well received by the arts sector. However, success in these areas is dependent on there being true reciprocal relationships with our foreign partners. This in turn requires that we look inward at our own legislative and regulatory frameworks that can enable or impede reciprocity, and that we seek harmonization with our international partners.

This brief examines three such frameworks.

- **Artist mobility:** Canada's foreign workers regulations are particularly progressive and should be emulated by our foreign partners.
- **International taxation:** Canada's fiscal regime is particularly cumbersome. Cultural diplomacy presents an opportunity to reduce fiscal barriers within our tax treaties.
- **Artist's Resale Right:** Canada lags behind in the adoption of the Artist's Resale Right, a market-based mechanism endorsed by many of our trade partners.

Reciprocity: the Cornerstone of Cultural Diplomacy

Artists and arts organizations are effective cultural ambassadors for Canada on the world stage, embodying Canada's diversity, values, creativity and innovation. The Canadian Arts Coalition has long advocated for federal investments to support arts organizations' efforts to build relationships in international markets. The Canadian Arts Coalition welcomed the initial 2016 investment in Showcasing Canada on the world stage, as well as last fall's additional Creative Export Strategy announcement. Our members are already benefiting from the access to cultural attachés and trade commissioners, and are poised to take part in significant trade missions to establish reciprocal relationships with key foreign countries. There is much work to do in building relationships and sharing expertise, but many of our leading artists, arts managers, and agents are embracing this enterprise because the Canadian market is small. The arts sector is eager to work with cultural attachés to ensure understanding of the complex Canadian artistic landscape. Everything appears to be in place for success: financial resources, diplomatic and trade on-the-ground expertise, as well as a coherent cross-departmental trade agenda. What could possibly get in the way?

This brief will focus on regulatory and fiscal frameworks that could positively or negatively impact the success of Canada's cultural diplomacy and trade efforts, as identified by members of the Canadian Arts Coalition from various artistic disciplines.

Ultimately, the notion of reciprocity is a prerequisite to successful cultural diplomacy. Anything that prevents or impedes reciprocity will impact cultural diplomacy.

Artist Mobility

Whenever an artist is set to travel to another country to develop markets, to co-produce or to present or exhibit their work, several domestic and bilateral regulatory frameworks come into play. These include immigration rules and restrictions, work regulations, and fiscal conventions.

Taking the lead with work regulations

Since 2014, Canada made several changes to its work regulations. Work permit exemptions for live performances were harmonized [R186(g)(ii)], the Temporary Foreign Workers Program was overhauled, and the International Mobility Program was amended to facilitate the entry of foreign performing artists when there is a reciprocal benefit for Canadian artists [R205(b)]. The outcome is a very progressive and flexible regulatory framework that makes it particularly easy for Canadian performing arts companies to invite foreign artists to Canada with the intent of being invited back.

Unfortunately, other countries' work regulations aren't always as progressive as ours. For example, laws and regulations south of the border make it extremely difficult and expensive for Canadian artists to enter the U.S., even for short-term engagements. This is why the CAPACOA-Canadian Arts Coalition joint [brief on the renegotiation of NAFTA](#) recommended harmonizing NAFTA with Canada's progressive foreign work regulations.

The Canadian Arts Coalition believes that Canada has a leadership role to assume in this regard. As we undertake new trade negotiations and cultural exchanges internationally, a special consideration should be given to work regulations and Canada should actively encourage other countries to emulate our progressive work regulatory framework.

Reducing fiscal barriers

If Canada is a leader with regards to work regulations, the same can't be said of our international taxation regime.

Every time a Canadian performing arts organization contracts a non-resident artist, intricate international taxation laws (Part XIII of the *Income Tax Act*) and regulations (R105, R102) are triggered. This regime is very complex and was decried in 2008 by the *Advisory Panel on Canada's System of International Taxation*.ⁱ Since then, no improvement has been made. Efforts to streamline non-resident taxation have in fact resulted in an increase of the standards for compliance and excessive administrative measures: a large number of withholding tax waivers are being denied for failing to meet the increased standards, waiver processing times have increased, and a growing number of non-resident artists are assessed penalties for not filing information or tax returns (even in instances where no tax is owed). Non-resident taxation for the performing arts is now so complex and cumbersome that Canadian arts organizations must either provide thorough guidance to non-resident artists throughout the process or else refer them to private consultancies, whose fees are ultimately passed on to the Canadian engagers by the non-residents artists. This severely limits opportunities for reciprocal cultural exchanges, and it tarnishes Canada's brand, as the following correspondence with foreign arts companies illustrate:

"it is not OK for us foreign citizens and organizations to go through all this ordeal nor to wait so long."

– A representative of a French dance company

"[The tax system] leaves a BAD taste in our mouths after all the good work, energy, performance, and much travel to come to Canada"

– A U.S.-based music artist representative

"An absurd situation I know, but at the moment the company will not go to Canada until the law is changed."

– Bolshoi Ballet

At the root of the problem is a particular suspension of double taxation protections for performing artists in international tax treaties. This exception is known as the *Artists and Sportspersons Article*, generally "Article 17", in the OECD Model Tax Treaty. It was introduced in the 1960s to prevent athletes and artists from avoiding taxation by establishing a residence in a tax haven (which is ironic, considering how prevalent this tax avoidance strategy has become among transnational cultural content providers). As a result of this exception, foreign groups and companies performing in Canada are subject to particularly stringent rules and they must often withhold tax on payments they make to individual performers (this is known as 2nd level taxation). This essentially means that foreign companies are subject to the same reporting and remitting requirements (T4-type returns) with the Canada Revenue Agency as a Canadian company.

The Canadian Arts Coalition believes that Canada's cultural diplomacy efforts provide a unique opportunity to reform Article 17 of our tax treaties, and to considerably reduce the impediment of international taxation on cultural exchanges. Although tax treaties can't easily be reopened, we recommend that the government take advantage of cultural diplomacy initiatives, such as the Canada-China Joint Committee on Culture, to negotiate bilateral suspensions of Article 17, in favour of more flexible administrative policies.

The Performing Arts Tax Working Group issued a [white paper](#) with a series of recommendations, including a detailed recommendation with regards to tax treaties. The Canadian Arts Coalition is supportive of these timely recommendations.

International Cooperation on Intellectual Property

Copyright is also an issue of international reciprocity, as an artist cannot collect royalties in another country unless the two countries have the same copyright regime and a reciprocity agreement is in place between their collective management organizations. Canada is a world leader in most areas of intellectual property, but it lags behind in the visual arts.

The Artist's Resale Right (ARR), also known as *droit de suite*, is a market-based mechanism that entitles visual artists to share in the ongoing commercial success of their work by entitling them to a percentage of the sale price each time their work is resold through an auction house or commercial gallery. It is common for visual art to appreciate in value over time. If an artwork is resold in the secondary market, in Canada or abroad, Canadian artists do not currently benefit financially from further sales of that work, even though its increased value is usually based on the experience and reputation of the artist.

The ARR was first legislated in France in 1920. The right was incorporated into the Berne Convention for the Protection of Literary and Artistic Works in 1948, but on an optional basis, and in 2001 was enshrined in European Union law with the Resale Rights Directive. Today, as many as 93 countries world-wide have endorsed the ARR, including several of Canada's trade partners: the EU countries, Mexico, Chile, Peru, Australia.

Whenever a work by a Canadian artist is sold in any of these countries, the artist misses out royalties that aren't payable here. Whenever a work by an artist from an ARR country is sold in Canada, the artist is deprived of royalties otherwise payable in their jurisdiction.

The fact that Canada does not recognize the ARR is considered a trade barrier for Canada in the international art market. The EU asked Canada to implement an ARR in our trade discussions, and the World Intellectual Property Organization is looking at making international adoption of legislation a requirement. If this were to happen, Canada would be required to adopt the ARR as a signatory of the Berne Convention. It is preferable for Canada to take a leadership role by implementing the ARR voluntarily.

The legislation of the Artist's Resale Right in Canada was recommended in the [joint pre-budget brief](#) of Canadian Artist's Representation/ Le Front des artistes canadiens and Regroupement des artistes en arts visuels du Québec. It was also recommended in the [pre-budget brief of the Canadian Arts Coalition](#).

About the Canadian Arts Coalition

The Canadian Arts Coalition is a collaborative non-partisan movement spearheaded by a group of national arts service and membership organizations, with a volunteer Steering Committee comprised of artists and arts administrators. We are united in the belief that a strong arts and culture sector contributes to economically vibrant, liveable, and innovative communities, and that strong federal cultural policy and investment frameworks leverage arts and culture's contribution to the Canadian economy, Canadian communities, and Canada's standing internationally.

The full list of [Coalition members](#) can be found on our website.

ⁱ “Canada’s rules for international taxation are some of the most complex provisions of the Income Tax Act. Complying with these rules imposes a significant burden not only on Canadian businesses investing abroad and foreign investors doing business in Canada, but also on the CRA, which is responsible for administering the entire Act, including Canada’s international tax rules. Given the nature of cross-border transactions and the sophistication of modern businesses, some complexity is inevitable. Even still, every effort should be made to minimize the compliance burden imposed on taxpayers in the international arena.”

[Enhancing Canada’s International Tax Advantage: A Consultation Paper Issued by the Advisory Panel on Canada’s System of International Taxation, April 2008.](#)