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## Canada's "Tour Tax": Will New Foreign Worker Fees Cripple Music Venues?

By Warren Creates and Jacqueline Bonisteel

*As a result of changes to Canada's Temporary Foreign Worker Program, certain venues will need to pay \$275 for each individual foreign musician and crew member when they book musical acts from abroad. However, music venues will be exempt from paying any fees in certain situations. It is important to understand where exemptions apply and why. Where a venue is in the grey area, a strong application package can make all the difference.*

Ever since the federal government announced new regulations to the Temporary Foreign Worker Program in July 2013, the impact on Canada's live music scene has been a topic of controversy and confusion. A [change.org petition](#) denouncing the new fees payable by certain venues booking foreign talent is approaching 150,000 signatures. Others dismiss the outcry, saying that the new fees will have no impact whatsoever, or that they are a welcome measure that will encourage more focus on homegrown artists. In this discussion, we seek to provide a balanced and informative perspective on the issue.

- ***Many musicians are exempt from paying the fees***

In many cases, a foreign performing artist touring Canada will not need a work permit. In these "work permit-exempt" cases, no government fees are payable by either the musicians or the venues booking them.

Work permit exemptions exist where foreign artists are booked to perform at venues such as festival grounds, stadiums, concert halls, casinos, or theatres. In general, so long as the engagement is a short-term 'gig' and the venue is not primarily a "bar, restaurant or similar establishment", no work permit is needed, and no fees are payable. However, a longer-term engagement involving regular performances at the same venue likely would not be exempt. More detail on performances in "bars, restaurants or similar establishments" is found below.

Also exempt are those participating in a Cultural Exchange Program through the American Federation of Musicians (A F of M). A F of M members who are U.S. citizens and possess proof that they are part of the program will not need a work permit to play shows in Canada, regardless of venue.

- ***The fees apply for performances in bars or restaurants***

A work permit is required where an artist is entering Canada to perform at a "bar, restaurant or similar establishment". Of course, there are many establishments in Canada that both showcase music and also operate as a bar, nightclub, restaurant or café. In these cases, is the venue considered a "bar, restaurant, or similar establishment" for immigration purposes? This is where much of the confusion lies.



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- ***What ‘counts’ as a bar or restaurant?***

For immigration purposes, if the main purpose of an establishment is to sell food and beverages, it is considered a ‘bar, restaurant or similar establishment’. To take advantage of the work permit exemption and avoid the new fees, a venue that falls in this grey area must convince Citizenship and Immigration Canada that its primary purpose is to showcase music rather than to sell food and beverages.

The government’s rationale for this distinction is that “bars, restaurants and similar establishments” bring in musicians mainly to entice their patrons to stay and purchase food and alcohol. From this light the government reasons that Canadian musicians should be available to fill this role, and that a venue should not need to hire talent from abroad in most cases.

- ***Check the liquor license!***

Where there is confusion as to whether a venue qualifies, immigration officers are directed to look to the liquor license. If the venue is identified as a “concert venue” on the liquor license, the work permit exemption can apply even if the venue also operates as a bar or pub.

It is also possible for a bar to act as a “concert venue” for a limited period. For instance, if a cultural association were to rent out a restaurant for a night to bring in a foreign musical act, the work permit exemption may apply. The cultural association would need to present evidence that a ticket to the concert was required for entry, and that the bar was otherwise closed to the general public on that particular night.

However, venues in the grey area still need to be cautious. Recently published guidelines for officers indicate that the government may apply stricter standards going forward when evaluating whether an establishment is primarily a music venue. Officers are directed to treat venues whose names include words such as “bar”, “cafe” or “tavern” as non-exempt unless additional evidence indicates otherwise. Therefore, any music venue with one of these words in its name will need to carefully make its case for an exemption.

- ***How to apply to enter Canada as a work-permit exempt musician***

The case for an exemption is made at the time a performing artist seeks to cross the border into Canada without a work permit. The artist(s) and crew should come equipped with a package of information and evidence that makes the case for the exemption. Artists and venues are well-advised to seek the assistance of experienced immigration counsel in preparing such submissions.

- ***What to do if you do need a work permit***

In cases where the exemption does not apply, foreign musicians need a work permit to perform in Canada. The fee to obtain a work permit has not changed: it is \$150 per person, to a maximum of \$450 if a group of performers and crew all apply at the same time.

However, before a musician or group of musicians can apply for a work permit, a non-exempt venue must be approved for a Labour Market Opinion (LMO). An LMO is required for most work permits in Canada to establish that there is no Canadian available to fill a particular position. Obtaining an LMO was already an onerous process, and the new regulations introduced a fee of \$275 per applicant. There is no special fee for groups: in the case of a band, the venue would need to pay \$275 per person for each individual member of the band and their crew. If the application is refused, the venue will not have the fee reimbursed.

Clearly, the new fee requirement can be prohibitive, and it may well prevent smaller establishments from bringing in talent from abroad. However, many venues will continue to be eligible for the exemption. So long as they can prove that eligibility, they can continue to book foreign talent without paying the government to do so.

The Immigration Law Group at Perley-Robertson, Hill & McDougall LLP/s.r.l. has the expertise to assist both venues and foreign artists with assessing work permit requirements, preparing comprehensive application packages, and addressing any potential complications.

*Warren Creates is Head of our Immigration Law Group. He can be reached at [wcreates@perlaw.ca](mailto:wcreates@perlaw.ca) or 613.566.2839. To view his bio, please [click here](#).*

*Jacqueline Bonisteel is a lawyer in our Immigration Law Group. She can be reached at [jbbonisteel@perlaw.ca](mailto:jbbonisteel@perlaw.ca) or 613.566.2845. To view her bio, please [click here](#).*