

Entertainment Law

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“Reinstating” Canadian Film Tax Credits - Why Marky Mark Was Off The Mark

During a recent charity event in Toronto in early December, 2012, well known Hollywood actor and producer, Mark Wahlberg made a public plea to the Canadian government to “reinststate” film subsidies for U.S. originated film and TV productions filming in Canada. In an interview with the national Globe and Mail newspaper, Mr. Wahlberg made the following comments:

“We are really trying to encourage the government to reinststate these tax incentives to bring film and cinema back to Canada. I’ve made four movies in Toronto and three in Vancouver. It’s the best working experience, some of the best crew, the best people I’ve ever worked with, and there is just not enough film being made here.... it was some of the best work experience that I’ve had. And it’s just a shame that films are going to other places.”

Mr. Wahlberg is a very gifted actor as well as a talented producer who is extremely popular with Canadians. However, his comments were quite perplexing to the Canadian film industry (and the Canadian government was not amused) because federal Canadian film tax credits have actually never been reduced since their introduction in the mid-1990s and film production activity has actually been on the rise in Canada in recent years.

The facts are as follows:

1. The Canadian *Income Tax Act* has two available alternative film tax credits, namely, (a) the Canadian Film or Video Production Tax Credit (the “CPTC”) which is only available to Canadian controlled producers and, (b) the Canadian Film or Video Production Services Tax Credit (the “PSTC”) which is available to both Canadian and non-

Canadian controlled film producers including Hollywood studios;

2. The CPTC was introduced by the Canadian government in 1995 and is equal to 25% of qualified Canadian labour costs “capped” at 48% of the production cost so that the CPTC cannot exceed 12% of the production cost (ie. 25% of 48%). In 2003, the CPTC was made more generous by the Canadian government when it increased the 48% production cost cap to 60%, so that now the maximum CPTC is 15% of the production cost (ie. 25% x 60%);
3. The PSTC was introduced by the Canadian government in 1997 and was originally set at the rate of 11% of qualified Canadian labour costs with no “cap”. However, in 2003, the Canadian government raised the PSTC rate by 5% to its present rate of 16% of qualified Canadian labour costs; and
4. In recent years, total film production activity in Canada has increased, not decreased. For example, in 2011 the total volume of film and TV production in Canada reached an all time high of CDN\$5.5 billion. Similarly, in the Province of Ontario, total production reached a record CDN\$1.262 billion in 2011 and in 2012 it is on track to at least match this record production total.

We Canadians loved Mr. Wahlberg in *The Fighter*. We laughed at him in *Ted* and when he talked to animals on *Saturday Night Live*. We enjoyed watching *Entourage* which he produced. However, as much as we are big fans of Mr. Wahlberg up here in the Great White North, unfortunately neither his undeniable talent as an actor, nor his keen business acumen as a producer, translates into comparable expertise in the (far more mundane) area of Canadian film finance.

Anyway, no hard feelings Mark, thanks for all the compliments and we hope that our generous, stable and bankable Canadian film tax credits will cause you and your Hollywood friends to come and visit us again soon!

If you would like further information about Canadian Film Tax Credits, please contact any member of our Entertainment Law Group.