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The opening of the Court of Arbitration for Art and what it could mean for Canadian art law disputes

by [Dentons](#)



[co-author: Alexandra Terrell - summer law student]

On June 8, 2018, the Court of Arbitration for Art (CAfA), a new international arbitration institution for resolving art law disputes located in The Hague, opened its doors. It is now accepting applications to hear art-related disputes on issues such as authenticity and copyright. The CAfA will be run by the Netherlands Arbitration Institute and Authentication in Art, a non-profit organization based in The Hague.

The opening of the CAfA presents an interesting development in art-related disputes, which have frequently been resolved through the court systems of various countries. This new institution will provide an option (perhaps an opportunity) to parties involved in art-related disputes to have their disputes resolved by arbitrators and experts familiar with art law issues.

Like most arbitration proceedings, parties seeking to have their dispute resolved by the CAfA must either initially include an arbitration clause in their commercial contracts providing for arbitration by the CAfA, or mutually agree to submit to arbitration at the CAfA once a dispute arises.

The choice to arbitrate at the CAfA will therefore be party-driven. Where arbitrating under the CAfA rules, parties must choose from a pool of arbitrators provided by the CAfA, and the tribunal, not the parties, appoints experts from an expert pool when dealing with forensic and provenance issues ¹.

One of the primary motivations for establishing the CAfA, according to William Charron, one of the CAfA's founders, was "to help both parties and the market accept the results" of their disputes ². Mr. Charron is particularly concerned about our cases where courts attempt to weigh in on the authenticity of a work, but the art market does not accept the decision of the court. Mr. Charron notes that in several art-related judgments, court have qualified their decisions, noting their lack of art industry expertise ³. The goal here is to release the artwork in question, to the greatest extent possible, from any cloud of uncertainty related to its legitimacy with a decision the art market will accept ⁴.

Canada has generally shown support for international arbitration, including through the enactment of various arbitration statutes relating to the recognition and enforcement of international commercial arbitration awards. Given Canada's acceptance of private arbitration, it is possible that Canadians will seek to use the CAfA to resolve art law disputes, particularly where advised by counsel.

However, it remains to be seen whether Canadian art industry participants, such as auction houses, galleries, museums and art institutions, as well as artists and private art collectors, will choose arbitration before the CAfA, either through their commercial agreements or mutual agreement at the time the dispute arises. While Canadians who are involved in art-related disputes may take advantage of the CAfA, it will be up to Canadian collectors, galleries, auction houses and other art market participants to drive this process. The extent to which Canadians avail themselves of the CAfA will likely turn on the type of dispute (whether it is domestic or international), and artwork (whether a Tissot or a Tom Thompson); the availability of Canadian arbitrators and art experts; the associated cost; and the anticipated enforceability and authority (including persuasive authority) of any arbitral decisions.

¹ Netherlands Arbitration Institute and Authentication in Art, [AiA/NAI Court of Arbitration for Art Adjunct Arbitration Rules, ss 4.10 \(in force 30 April 2018\)](#), online: (last accessed 14 August 2018).

² "Bill Charron and Megan Noh on [the Launch of the Court of Arbitration for Art](#)" (5 June 2018), [ArtTactic \(blog\)](#), online: at 19:12 min (last accessed 13 August 2018) [ArtTactic].at 2:49 min.

³ Ibid. We note that the Canadian art market is not immune to these issues.

⁴ Laura Gilbert, "[New tribunal aims to provide expertise and impartiality for art disputes](#)" [The Art Newspaper](#) (7 May 2018), online: (last accessed 12 July 2018).

