

ART DEALERS ASSOCIATION OF CANADA
ASSOCIATION DES MARCHANDS D'ART DU CANADA

**ADAC Position Paper on Artists' Resale Rights
(Droit de Suite) in Canada**

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Background and Purpose

ADAC

- Art Dealers Association of Canada (ADAC) is a national not-for-profit organization founded in 1966
- Provides a professional platform for the determination of ethical standards as they relate to commercial Canadian galleries
- Undertakes vital programming and professional development initiatives aimed at building national and international profile for Canadian commercial galleries specifically, and around the Canadian art market in general.

CARFAC

- Canadian Artists' Representation/Le Front des Artistes Canadiens (CARFAC) is incorporated federally as the national association of Canada's professional visual artists
- Defends artists' economic and legal rights, and educates the public on fair dealings with artists.

The Issue

- CARFAC has recently suggested that Canada instate the Artist Resale Right (ARR). Artist Resale Rights, also known as Droit de Suite, are mandated rights that would permit visual artists to continue to receive a percentage of the revenue from the resale of their works throughout the duration of the copyright period. ARR is effectively a tax on works sold on the secondary market. Depending on implementation, it could apply to both living and/or deceased artists.
- ADAC is of the opinion that the implementation of ARR would force much of the resale art market to go outside the country, or underground at a time when the art market in Canada remains extremely fragile. Dependent on this fragile market is a group whom it supports: art dealers and gallery staff, framers, shippers, art magazines etc.
- The issue has been joined. CARFAC has undertaken intensive lobbying on both provincial and federal levels in support of ARR, without consultation with the two major stakeholders in the Canadian secondary art market - ADAC and the national auction houses.
- Against this background, ARR has been instated in 57 countries around the world. Some of these countries are members of the European Union (EU). The balance, countries with no art market of consequence - Algeria, Guinea, Iceland, Mali... Few of these countries are active markets for the sale of works of art by

Canadian artists. Neither the United States nor China, our largest and fastest growing foreign markets for Canadian art, has implemented ARR.

- The mechanism proposed by CARFAC would require the seller of a work of art which had been previously sold to pay a 5% tax on the amount received in payment, whether the work was sold at a loss or not. This revenue would be forwarded to a collection agency (i.e. CARCC) who would charge an administrative fee. The residue of the tax would be forwarded to the artist. If the rightful recipient could not be found, the revenue would remain with the collection agency.
- According to the “Impact of Artist Resale Rights ...” study (Toby Froschauer, 2008):
 - i. Distribution of royalty payments confirms that ARR mainly benefits a small number of well-established artists; it is not the redistributive force in favour of poorer artists that it's champions claim.
 - ii. The top 20 artists received 40% of the total collected, and the top 10% of artists shared out 80%. Clearly, ARR will not benefit those who need the most assistance as most of the money will go to artists who are already enjoying successful careers.
 - iii. Far from providing benefits to younger, emerging artists there are signs from the study that ARR is working against their interests. Many younger artists depend on galleries to nurture their reputations and to promote their work by supporting it in the resale market. To do this gallery owners take on the commercial risk and considerable expense associated with promoting an unknown artist. This and other studies by the British Art Market Federation and the Society of London Art Dealers confirm that many galleries are now less willing to do this as a result of the complications of processing ARR payments and the impact of royalty payments on low margin sales. Instead they are opting for selling the work of the less risky, well-established artists. Clearly, extension of ARR to the work of deceased artists will greatly increase associated administrative complications and costs and likely act as a further disincentive to the galleries. Furthermore, collectors may avoid the purchase of work by emerging artists if they may be faced with paying tax on a piece sold at a loss.

Conclusion

- There are complex issues involved and “resolution in haste” may well lead to unintended consequences.
- Accordingly, ADAC’s position is that the government needs to further consult all stakeholders to assess ARR impact on, as described by Industry Canada itself, “buyers, sellers and intermediaries”.
- We must emphasize that the issue of ARR has nothing to do with copyright.