



CARFAC/RAAV 2018 Pre-budget Submission Brief to the Standing Committee on Finance

Submitted by April Britski, CARFAC National Executive Director, August 4, 2017

Canadian Artists' Representation/ Le Front des artistes canadiens (CARFAC) is pleased to submit its brief to the Standing Committee on Finance for the 2018 pre-budget consultation, and welcomes an opportunity to present our brief to the committee in any community across Canada.

CARFAC is the national association of Canada's professional visual and media artists. Together with our partner RAAV (le Regroupement des artistes en arts visuels du Québec), we represent Canada's 15,945 visual and media artists, including nearly 5,000 members from coast to coast to coast. As a non-profit membership association, our mandate is to promote the visual arts in Canada, to promote a socio-economic climate that is conducive to the production of visual arts in Canada, and to conduct research and engage in public education for these purposes. As the national voice of Canada's professional visual artists, CARFAC defends artists' economic and legal rights and educates the public on fair dealing with artists, promoting a socio-economic climate conducive to the production of visual arts.

Executive Summary

Canada's productivity and competitiveness have been defined as a priority by the Finance Committee, and CARFAC and RAAV affirm that investing in the arts stimulates economic activity, provides significant return on investment, revitalizes neighborhoods, and contributes to a sense of community for all Canadians. Visual artists are grateful to the Federal government for recent investments made in the Canada Council for the Arts and the Canada Cultural Spaces fund, and supports all current recommendations put forward by the Canadian Arts Coalition.

Most specifically, we ask that the Artist's Resale Right (ARR) be legislated in Canada, so that visual artists may benefit from the ongoing profits being made on their work at home and abroad. The ARR is a copyright royalty that would come at no cost to the Canadian government, but rather creates revenue in the form of taxable income for artists, many of whom fall below the poverty line. It provides an income stream for visual artists whose work has ongoing commercial success, with particular potential economic benefit to Indigenous and senior artists.

CARFAC has developed a complete proposal for how the ARR might work best in Canada, based on the best practices established elsewhere, and in consultation with the Canadian visual arts community. Our full Artist's Resale Right proposal is available on our website www.carfac.ca.

What is the ARR?

The Artist's Resale Right entitles visual artists to receive payment each time their work is resold publicly through an auction house or a commercial gallery. We recommend that 5% of all eligible secondary sales of artwork sold for at least \$1,000 be paid back to the artist, and that that it be managed and paid through a copyright collecting society, for administrative simplicity.

The ARR allows artists to share in the ongoing profits made from their work. The full value of an artwork is rarely realized on the first sale of an artwork. It is common for art to gain economic value over time, as the reputation of the artist grows, yet Canadian artists do not currently share in those profits.

The ARR exists in at least 93 other countries, including all members of the European Union, and it is currently being considered in the US and China. 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 ARR is based entirely on commercial sales of an artist's work and will cost the government nothing: it is a copyright royalty, not a tax, and requires no ongoing public funding once it is legislated. In fact, royalties are counted as income and are therefore taxable.

Improving the productivity and competitiveness of self-employed artists

The addition of the ARR will mean a new revenue source for Canadian visual artists. This is important because the income potential of visual artists is significantly lower than the overall Canadian workforce, with average earnings at \$17,176, and half of visual artists in Canada earning just over \$10,000 per year, according to 2011 Census data. Visual artists earn \$10,500 less than the average artist, and 62% less than the average Canadian worker. This may be partly because 74% of visual artists are self-employed, and struggle to earn a living from their work alone.

The income of a self-employed visual artist can fluctuate significantly from year-to-year. Exhibition and sale opportunities often occur in clusters as artists complete a project or series of works, and it generates interest. A good sales year can be followed by several years of little-to-no income. Artists are entrepreneurs that are rarely in the position to achieve a sustainable and predictable income. The ARR would assist in relieving the financial pressure that creators face.

In other countries where the ARR exists, artists typically reinvest royalties by producing new work through a well-supported and resilient artistic practice. In 2014, a study in the UK reported that 81% of British artists that have been paid ARR have used the payments to cover living expenses, 73% use it to pay for art supplies, and 63% use it to pay for studio space. Thousands of Canadian artists could similarly have a competitive advantage when it comes to generating income for themselves, with less reliance on other forms of income.

An issue of fairness

With copyright, ownership and duration of rights are more complex than they are for most other objects that are commonly resold, like houses or cars. Artists typically retain copyright even when their work is sold. When it comes to visual art, the intellectual property is related to a physical object. That is what sets visual artists apart from other artists. Writers and performing artists can disseminate mass quantities of their copyright-protected work through books, CDs, DVDs, etc., and are able to share in the long-term financial success of their work through payment of royalties. The ARR enables visual artists to earn a living from their work as its success grows, and allows artists to share in its ongoing value.

Many established Canadian artists regularly see their work offered for sale at auction, but unlike the seller and auction house, they currently receive no compensation for those sales. Between 1994 and 2012, at least 65 artworks by Joe Fafard were sold at auction. If Canada had an ARR, Mr. Fafard would have been paid \$42,986. The lowest royalty he would have received would be \$80, and the highest royalty would be \$4,000, with average payments amounting to \$661. In 2012 alone, eight of his artworks were sold at auction. Had the ARR been in place, he would have earned \$6,610 in royalties that year. Mr. Fafard employs ten people at his sculpture foundry, and has said that any money he would receive from his art benefits not only himself but his employees and their families as well. Regular royalty payments offer important economic benefits to creators and allow them to share in the ongoing popularity of their work.

Who will benefit?

The ARR will benefit all Canadian artists whose work sells in the secondary art market, provided that the works meet several eligibility criteria, which have been proven effective in other countries. It is expected that many artists would receive several payments annually, as their work continues to enjoy ongoing commercial success.

While all Canadian visual artists have the potential to benefit from an ARR, Indigenous artists may have the most to gain, as First Nations, Metis, and Inuit artists are among the most exploited by commercial resale markets. Indigenous art is highly valued in Canada and internationally, and it is common for dealers and wholesalers to purchase work directly from an artist at bargain prices, only to immediately resell it for substantially more. Meanwhile, the artists see none of that profit. The ARR has had a tremendous impact on Indigenous artists in Australia, where they have had an ARR since 2010. In the first six years, more than \$4.5 million has been paid to 1,275 artists, over 65% of whom were Indigenous.

The visual art market is a particularly significant economic driver in Nunavut, where 33% of the Inuit population are visual artists. As such, the Government of Nunavut is supportive of the ARR. In 2010, an economic impact study of Nunavut arts and crafts estimated that \$52 million is spent each year on Inuit art from the territory, not including wholesale sales. Statistics Canada has also found that secondary sales of all Inuit art from just two Canadian auction houses alone amounted to \$1.4 million in 2012. The price of Inuit art can increase dramatically between primary and secondary sales. For example, award-winning Inuit artist, Kenojuak Ashevak, sold her famous piece, *Enchanted Owl* in 1960 for \$24. In 2001, it was resold at auction for \$58,650, and Ashevak received nothing from the resale of her work. Before her death in 2013, Ashevak supported the ARR, claiming that when her husband died, she had to provide for her children through sales of her drawings and carvings, and the ARR would have helped supplement her ability to support her family.

The implementation of an ARR in Canada would also provide greater financial independence for senior artists, many of whom are in need. Visual artists over the age of 65 have median arts earnings of about \$5,000, which is the lowest of any artistic discipline, and 32% of elder artists are at a high financial risk. Because of variable incomes achieved by self-employed creators throughout their careers, it is difficult for artists to save for retirement, or collect CPP or other forms of pensions. It is often taken for granted that artists thrive once they become established, but even Governor General Award-winning artists find it difficult, if not impossible, to make a living from their art. The implementation of an ARR in Canada would provide greater financial independence for our senior artists

Canada has an aging population. For the first time ever, there are now more people in Canada aged 65 and over than there are under age 15. Research from countries where ARR has been adopted shows that most royalties are paid to senior artists, which makes sense when one considers that it can take a lifetime for artists to achieve notoriety. Internationally recognized artist Daphne Odjig stated that she did not achieve fame until later in life. Recently deceased, she claimed that in her 90's, her work was being resold rapidly and yet she did not benefit from those sales. In 2012 alone, 12 of her artworks were sold at auction. Had the ARR been in place, she would have earned \$7,218 in royalties that year.

No Federal funding required to implement ARR

The ARR is a royalty based entirely on commercial sales of an artist's work in the secondary market, and will cost the government nothing. We are only asking the federal government to legislate the ARR, so that the royalties can be collected by the artist, both in Canada and abroad.

Once legislated, Canadian visual artists will benefit from royalty payments on sales of eligible artworks sold in Canada. Additionally, the legislation of the ARR would allow Canadian artists to benefit from reciprocal international arrangements with other countries who have already implemented an ARR. Artists would be paid from eligible international sales, and the Canadian government will collect taxes on domestic and foreign royalty collection.

Recommendation: That the Finance Committee urge the federal government of Canada to amend the Canadian Copyright Act to include an Artist's Resale Right.