



HOUSE OF COMMONS  
CHAMBRE DES COMMUNES  
CANADA

# **Standing Committee on Industry, Science and Technology**

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INDU • NUMBER 132 • 1st SESSION • 42nd PARLIAMENT

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**EVIDENCE**

**Wednesday, October 17, 2018**

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**Chair**

**Mr. Dan Ruimy**



## Standing Committee on Industry, Science and Technology

Wednesday, October 17, 2018

• (1530)

[English]

**The Chair (Mr. Dan Ruimy (Pitt Meadows—Maple Ridge, Lib.)):** Good afternoon, everybody. Welcome to meeting 132 as we continue our statutory five-year review of the Copyright Act.

Today we have with us Mark London, Director at the Art Dealers Association of Canada; April Britski, Executive Director, and Joshua Vettivelu, Director, from the Canadian Artists' Representation; and Debra McLaughlin, General Manager at Radio Markham York Inc.

[Translation]

We're also joined by Moridja Kitenge Banza and Bernard Guérin, the President and Executive Director, respectively, of the Regroupement des artistes en arts visuels du Québec.

Hello, Mr. Kitenge Banza and Mr. Guérin.

[English]

Welcome, everybody. You will each have up to seven minutes for your presentation. If you go over, I might have to cut you off, but that's okay.

We're going to get started with the Art Dealers Association of Canada. Mark London, you have seven minutes.

**Mr. Mark London (Director, Art Dealers Association of Canada):** Good afternoon, ladies and gentlemen.

With your permission, I'll present in English,

[Translation]

but I'll be happy to answer you in the official language of your choice.

[English]

My name is Mark London, and I'm the owner of Galerie Elca London in Montreal, which was founded by my late parents in 1960. My gallery specializes in the sale of Inuit art from the 1950s to the present.

I am here today speaking as a member of the board of directors of the Art Dealers Association of Canada. At present, the association is comprised of 76 commercial art galleries, and collectively we represent several hundred artists from coast to coast.

While many try to paint the relationship between artist and dealer as an adversarial one, the truth is that we're partners. I like to say that

when the sun shines, it shines for everyone. However, I'm here to tell you that there are storm clouds on the horizon. Many ministers from across our great country have received pro forma letters from constituents demanding that Canada enact an artist resale royalty.

While this noble concept is indeed law in many countries, it exists more to level the playing field between trading partners than to benefit artists. What is seldom mentioned is that the ARR simply does not benefit those whom it was designed to help. In most cases, the sole beneficiaries of significant ARR monies are the estates of a handful of wealthy artists.

For commercial galleries, the administrative costs of the ARR represent a significant financial burden. Indeed, the greatest beneficiary of the ARR, regardless of country, is the organization tasked with collecting and distributing the funds. One could easily argue that any organization arguing to become the administrator of the ARR is doing so because this represents a lucrative revenue stream.

In 2013, the Honourable Scott Simms introduced private member's Bill C-516, an act to amend the Copyright Act. While Mr. Simms might have put some thought into drafting the bill, it is obvious that he did not consult with anyone who sells art for a living, or for that matter anyone who buys it. Ladies and gentlemen, it would be impossible in the allotted time to detail exactly why this bill, particularly as written, would be a nightmare, but I can give you some highlights.

The first bombshell is advocating an ARR of 5% on any resale greater than \$500. Can you imagine the administrative costs to both art gallery and collective agencies to catalogue, research, and disburse a cheque for \$25? In the United Kingdom, for example, the threshold for an ARR is any sale over a more reasonable 1,000 euros, which is currently approximately \$1,500 Canadian. I should also point out that most countries with an ARR impose a maximum payout, which Bill C-516 does not.

Another bombshell is proposing an ARR on any sale of a work for \$500 or more that is subsequent to the first transfer of ownership by the author. This presupposes that all works find their way onto the market in an identical manner. In most cases, an artist brings his or her works to a retail gallery on a consignment basis, and they are paid when and if the work is sold. In theory, the ARR would apply only when, years down the road, a collector decides to sell.

I'm here to inform you that the art world isn't that simple. There are numerous ways in which art works find their way onto the primary market that are in direct conflict with the ARR's proposed. For example, printmakers often work with print publishers, who sell the prints to retail galleries outright. In this scenario, the first sale to an art collector effectively becomes the second resale. When a collector sells what is intended to be the first resale, it's actually the third.

As mentioned, I deal exclusively in Inuit art. When an artist in Cape Dorset brings his or her work into the local co-operative, it is purchased outright. I then purchase the piece from the co-operative. When a collector purchases a piece from my gallery, that would be the first retail sale, but technically the third resale. When the collector decides to part with the piece, that would be the fourth resale, not what would ordinarily be the first.

Lest any of you think this would actually be beneficial to artists, it is important to point out that all of these additional costs would have to be passed along to the consumer in the same manner as freight, insurance, framing or any of the other myriad expenses required to bring art works to market. Repeated ARR expenses calculated on goods that have yet to reach the retail market would have a compound effect that would only be detrimental to the artist's ability to sell in a competitive market.

When the Mulroney conservatives enacted the GST in 1991, they assured Canadians that replacing the 13.5% manufacturers' sales tax would lower prices for the consumer. While this might have been the case for microwaves or toaster ovens, it had a devastating effect on the art market. Overnight, prices went up by 9%. Our sales for 1991 were slightly less than one third of our sales for 1990. While artists' groups take great pains to assert that the ARR is not a tax, I can assure you that semantics will matter little to those who will come up against it.

Since we are arguing semantics, I would suggest that the beneficiary of any tax should be the public purse. In other words, all Canadians benefit when taxes are paid. You would know better than I do that the higher the tax rate, the greater the likelihood that people will try to avoid or evade taxation.

Indeed, should an ARR come into effect, there would be an immediate reaction on the part of art collectors. At the very least, in the immediate aftermath of an ARR, sales would tumble, putting at risk the thousands of Canadians whose livelihood depends on the art business. We might conceivably see a future in which most of the major sales of Canadian art would be transacted in a jurisdiction that does not have an ARR. Since most of us live but a short drive from our American neighbours, it's not too hard to guess where these sales would happen.

Additionally, since private sales are generally not subject to ARR, traditional galleries and auction houses will surely be circumvented by sellers and buyers working directly to avoid the ARR.

• (1535)

One also wonders what the detrimental effect to the public purse would be when neither GST nor PST is collected. This is particularly worrisome since, historically, when a government needs to sharpen its pencil and cut some budgets, the axe falls first on arts and culture.

Our position is that the ARR is a utopian concept. The research is clear that ARR does not work as intended and that its benefits are greatly offset by its detrimental effects on the marketplace. The Canadian art market is simply in too precarious a situation to risk something that has proven to be so ineffective.

In case I haven't been clear, we think the ARR is a terrible idea. Given that the Copyright Act is subject to review only every five years, we urge you to treat the ARR as a stand-alone issue rather than a component of a larger copyright act.

In that seemingly no art world professionals were consulted in the drafting of Bill C-516, we look forward to the opportunity to sit down with you and other stakeholders in order to give this matter the serious consideration it deserves.

Thank you very much.

**The Chair:** Thank you.

We're going to move to the Canadian Artists' Representation.

Ms. April Britski, you have up to seven minutes.

**Ms. April Britski (Executive Director, Canadian Artists' Representation):** Good afternoon.

Thank you for the opportunity to speak to you today about copyright.

As mentioned, I'm April Britski, Executive Director of CARFAC, the national association for visual artists, many of whom are watching this presentation today in homes and studios across the country with great interest.

Our brief includes three recommendations. Our colleagues at RAAV will speak to two of them more specifically, and I will focus on one of them, the artist's resale right, which you just heard about.

The artist's resale right entitles visual artists to receive a royalty payment each time their work is resold publicly through an auction house or a commercial gallery. The resale right allows artists to share in the ongoing profits made from their work. We've all heard headlines about an artist's work breaking sales records at an auction, but what most people don't realize is that artists don't get paid anything from those sales, at least not in Canada.

Once this is established in Canada, artists would be paid on sales at home as well as when their work is sold in countries that have the artist resale right. France first legislated this in 1920, and it now exists in at least 93 countries worldwide, including the entire European Union. It has been discussed in trade negotiations with the EU, as well as at the World Intellectual Property Organization, which is advocating for mandatory international implementation.

We have only five minutes to speak today, and our brief is limited to 2,000 words, but CARFAC has a detailed proposal for how we recommend that it could work for Canada. We keep up to date on developments and legislative reviews in other countries and have studied this issue extensively. I'm sure you have many questions, and I hope that I have answers.

First, you may ask yourself, why do we need a law? Can't the market just regulate itself? Why do we need a new tax?

Let me be clear. A copyright royalty is not a tax. It is not collected by government or spent by government. It is not administered by governments, and we wouldn't ask you to intervene in the administration of it. It also doesn't require any government funding. It is, in fact, a taxable copyright royalty, something that artists would have to report on their taxes.

We need a legal mechanism, because if people aren't required to pay, they won't—the previous presenter won't, as you can see.

We just need a legal framework. After that, there are ways to allow the market to administer it efficiently, and we have good models. We have 93 models to look at, actually, for ways to administer it, and many of the questions you may have about the mechanics have been considered by these other countries, and certainly by us.

With respect, what we're asking for is 5% on ongoing profits of eligible works of art. It wouldn't apply to all sales—for sure it won't—and I don't think that's unreasonable. Artists are the primary producers of culture in this country, and yet they are paid less than anyone else in our sector. None of us at this table would have a job without them, quite frankly, and they deserve better.

I'll let my colleague Josh speak a little more.

● (1540)

**Mr. Joshua Vettivelu (Director, Canadian Artists' Representation):** Hi, everyone. Thank you so much for your time today. My name is Joshua Vettivelu. I'm an artist and an educator.

When I was going through art school, there was a saying that I heard often. It was that if you choose to be an artist, you'll only see money from your work when you're dead. Even though that's a bit of a jokey saying, I believe there's some truth to it, and today I'm here to extrapolate some of the gravity of that joke, especially as it applies to senior and Inuit artists.

First nations, Métis, and Inuit artists, specifically those from the north, have the most to lose from the absence of the artist's resale right. It is important to note that indigenous and Inuit artists make up a large portion of our art market. The population of Nunavut alone is made up of 33% artists. In 2015, the Inuit visual arts and crafts economy of Canada contributed over \$64 million to the Canadian GDP, and it accounts for more than 2,100 full-time-equivalent jobs.

Why are indigenous and Inuit artists poised to lose the most? The first point is that indigenous artists, specifically those in the north, suffer from a lack of access to the primary market, and if they do have access, it is often exploitative. What does that mean? The structural conditions of colonialism, which are very real, often force indigenous artists to sell their work for lower price points to make ends meet and to provide for their families and communities.

An example of this is Kenojuak Ashevak's *The Enchanted Owl*. It originally sold for \$24. It was later resold at a public auction for \$58,000. With the artist's resale right of 5%, she would have made approximately \$3,000. This summer, the Art Gallery of Ontario had a giant retrospective of Kenojuak's work, and the city was plastered in reproductions of *The Enchanted Owl*. The question I have for all of you is, what does it mean for Canada to compensate an indigenous artist who is a Governor General's award-winning artist only \$24 for her most well-known creation? It is just a straight fact that this is what she received for that work.

Point number two is that an indigenous artist is more than a singular person. I have a quote here from Goo Pootoogook, who is Annie Pootoogook's brother:

"She had a lot of cousins and friends who didn't have much money, and she would sell her artwork and take care of them," he said. People began following her on her weekly trips to the co-op, he said, because they knew she was about to be paid. "She would say, 'It's only money,'" he said.

What this shows us is that artists in the north are also economic pillars of their community. When you are an artist whose community and family are not doing well, you put that money back into your community.

That also tells me that we cannot dismiss the importance of a \$50 royalty to a community's mental and physical health. It is confusing to me that we would dispute these amounts, which ADAC has deemed negligible for artists but debilitating for its own businesses.

Point number three is that there's an argument that the artist is constantly participating in the market throughout their career, but an increase in an artist's profile doesn't equal more sales. Increasing the cost of the artist's next body of work isn't always a real solution, as most people want to purchase the work that made the artist famous in the first place. We know this in the case of Mary Pratt, who was one of Canada and the east coast's most well-known painters.

To conclude, I guess what I'm really advocating for is some harm reduction in the ways that we view artists' labour. I do not think it is a utopian fix. I think it is a Band-Aid, but as we know, Band-Aids are in every first aid kit.

North America has a long history of devaluing the humanity and labour of indigenous people. I thank you for your help in ensuring that artists, specifically artists who have been abused by our country, are compensated for all the wealth that is made in their name.

Thank you.

**The Chair:** Thank you very much.

We're going to move to Radio Markham York Inc.

Debra McLaughlin, you have up to seven minutes.

**Ms. Debra McLaughlin (General Manager, Radio Markham York Inc.):** My name is Debra McLaughlin. I'm the co-owner and general manager of CFMS, a radio station operating in York region, Ontario. My business partner and I are independent broadcasters—a disappearing entity in Canada. More than that, we come from two of the most under-represented groups in media ownership: women and immigrants. As such, we have a slightly different take on many issues.

I'm here today to address three key points: Collection of copyright should not cost more than the payments themselves; all radio stations are not equal, and even a scale based on commercial revenue does not reflect the economic disparities in the system; music plays a diminishing role in generating revenues for many radio stations.

CFMS broadcasts in markets that live in the shadow of the largest city in Canada, Toronto. Serving the cities of Markham and Vaughan and the towns of Richmond Hill and Whitchurch-Stouffville, the station delivers important local information to close to 700,000 residents. Despite being inundated with radio stations from surrounding markets, these areas had no voices until we launched in 2013. Research from Ekos showed that a remarkable 52% of residents who lived in these municipalities could not name their mayor, but they could name the city of Toronto's mayor. These same respondents scored available radio as “poor” on providing relevant surveillance information, such as traffic, weather and local news headlines.

The areas for which we are licensed come together with five other distinct communities to form the regional municipality of York, the seventh-largest market in Canada, with a population of 1.1 million. Although they are clearly unique in terms of government, demographic composition and economic infrastructure, the industry's audience rating service, Numeris, absorbs these markets into the larger Toronto CMA definition for the purposes of reporting ratings. This obliterates their distinctiveness and any possibility that media planners and buyers might analyze York region as a market on its own.

As the provider of the currency valuation for broadcast advertising revenues in Canada, the decision by Numeris not to distinguish or measure smaller markets reduces or eliminates access to significant revenues. Stations licensed to areas such as Scarborough, Mississauga, Milton, Orangeville and many other small places in the GTA are treated similarly, reducing their ability to compete for advertising dollars.

Like every other radio station, we are competing with new technologies and new platforms, adjusting to a changing environment. Our focus is local reflection. It is the only way we can distinguish our brand. We tell the stories of the characters and life in markets where residents do not define themselves as being part of Toronto.

In restricting our focus to these markets and providing a narrative of the experience of their residents, we are fulfilling the requirements of the Broadcast Act. We also broadcast in third languages on our single frequency. We deliver programming in English 18 hours a day Monday through Friday, and 16 hours on Saturday and Sunday. The remainder of our schedule is third-language Canadian programming, giving a voice to residents with a non-English, non-French mother tongue.

Our particular licence is unique in this system. It might even be perceived by the CRTC as an experiment. However, with growing multicultural communities, especially in tight spectrum markets, it may also be a model of stations and service requirements to come.

In order to report on the nine third languages and the English programming to which we have committed, we work with six different producers and a full-time music director. To meet SOCAN reporting requirements, it takes on average the equivalent of 24 hours per month, or close to \$9,000 per year, to research and translate the information provided. This investment of resources results in a payment to the collectives of less than half that amount on a yearly basis. If we look at it over four full years of operation, we have paid over \$32,000 to deliver just \$13,000 in copyright payments.

Given our challenges in generating revenues, this seems particularly onerous, and the rationale for doing this is weakening. With the multiple platforms on which music can be enjoyed—streaming, audio services and satellite radio—and the proliferation of broadcast signals both within and outside market borders, the value of music as a driver to the listenership of many radio stations has diminished.

With the deregulation of formats by the CRTC, listeners have not only experienced duplication of music and artists across stations, but also the collapse of traditional formats across eras and genres. It is not unusual to have high duplication of music across stations that are targeting different populations and even distinct demographics.

● (1545)

A case in point is an artist like Taylor Swift. As an example, her current hit song can be heard on 10 of 26 stations licensed in the GTA. The audiences of these stations range in age. They could be from 18 to 34 or 35 to 64. They're heavily skewed female in some cases, and balanced male-female in others.

To put this in context, when rights are negotiated in television, there is an exclusivity for a period of time, and a tiering of costs. Rights for first runs are more expensive than syndicated, and rights for cable distribution are less than for broadly received networks. This is not the case for music.

Studies done over the years in multiple markets by different reputable research companies indicate that the number one reason listeners turn to radio is local news and information. The finding is almost uniform across age groups and genders. Music is second or third.

To be clear, I am not suggesting that the contribution music creators make to the radio landscape is insignificant. It is, however, diminishing. By opening up distribution platforms and promotional streams, musicians and their representatives have unintentionally, perhaps unwittingly, but nonetheless certainly diminished the significance of their contribution to the hours tuned to radio.

Any changes to the Copyright Act should therefore consider the impact of new delivery means, the revenue they generate based on their use of copyrighted material for the companies that operate them, and the absence of their contribution to inciting the creation of new material. I believe the Copyright Act must anticipate new ways of recovering value from these benefactors of Canadian music, and recognize that radio no longer benefits in the way it once did.

Not all radio is equal, either. Vertically integrated companies may lose revenue to radio, but they more than make up for it through increased sale of bandwidth that consumers use to stream music. Judging by their annual reports, these companies actually come out ahead in the exchange of services. The value of music creation is therefore much more valuable for these companies than it is for smaller stations doing just as important a job in bringing news, information and entertainment to Canadians located outside of major centres.

When the cost of reporting on the use of music outweighs the revenues it generates for artists by almost three to one, it is clear that something has been lost in the application.

As you heard from CAB earlier in this process, radio provides more than just royalty. It is reported by more than 70% of the Canadian population as their primary source for new music. This is a role we value. But in the ecosystem of music, we plant the seeds and increasingly other entities harvest the crops. We pay considerably for them to do so.

Thank you for your time. As one of Canada's smallest broadcasters, we appreciate the opportunity to have a voice in this process.

• (1550)

**The Chair:** Thank you very much.

[*Translation*]

Mr. Guérin from the Regroupement des artistes en arts visuels du Québec, you have seven minutes.

**Mr. Bernard Guérin (Executive Director, Regroupement des artistes en arts visuels du Québec):** Thank you, Mr. Chair.

I'm the Executive Director of the Regroupement des artistes en arts visuels du Québec, or the RAAV. I'm joined by Moridja Kitenge Banza, the President of the RAAV and a visual artist.

Our presentation will focus on three topics. These topics are the discriminatory nature of paragraph 3(1)(g) concerning exhibition rights; the abuses of fair dealing and of the exception for the purpose of education; and the action that must be taken regarding resale rights. I'll speak very briefly about resale rights, since this issue has already been thoroughly covered by my colleague from CARFAC.

Since the recognition of exhibition rights in the Copyright Act, in 1988, many visual artists have benefited from a significant increase

in income. It has gradually become standard practice to pay the artists royalties to exhibit their works in contexts other than sales or rentals. The amounts paid are increasing each year, even though they're still insufficient. Unfortunately, the June 8, 1988, deadline indicated in the act ensures that all works produced before that date aren't covered by the exhibition right. In our view, this is absurd.

As a result, older artists and the heirs of deceased artists don't receive royalties. The deadline establishes what we call indirect discrimination on the ground of age. As you know, the works produced before June 8, 1988, are the works of older artists. The section doesn't say that artists of a certain age are excluded. However, in practice, older artists are the ones who face unfair discrimination. The discrimination is unintentional.

In a way, there's also a second type of discrimination based on the category of works, since the restriction doesn't apply to other categories of works. In our view, this limitation based on the date of creation may violate section 15 of the Canadian Charter of Rights and Freedoms.

As I just said, this limitation isn't intentionally or directly discriminatory on the ground of age. However, in our view, it constitutes indirect discrimination. The provision, which appears to be neutral, has a disproportionate adverse effect on a specific group of visual artists as a result of their age, a ground of discrimination prohibited under the law. Over time, the date has become increasingly arbitrary and has further isolated older artists.

We understand that, at the time, the application of the right for works created before the date minimized the financial impact on museums and galleries. However, 30 years later, this argument is no longer valid. It must become standard practice to pay exhibition royalties, regardless of the date of creation of the works and, indirectly, the age of the artists who created them.

Here are some facts. Visual artists are fairly old in comparison with the general public. We conducted a brief study of our members. We established that the average age of our members is 59, and that over one third of them were born before 1965 and likely created works before June 1988. As a result, a significant percentage of visual artists are deprived of royalties for their older works, whereas younger artists who created their works before this date can claim exhibition royalties.

Older artists can still try to negotiate exhibition royalties for their works. However, more often than not, they won't be successful, given the lack of a legal basis. It should be noted that some promoters pay the royalties voluntarily.

You can easily imagine the inherently unfair situation where, in the same exhibition, some artists would receive exhibition royalties and others wouldn't receive them. In reality, only the older artists would be part of the unpaid group. It's nonsense and simply unacceptable.

Recently, Karl Beveridge a well-known artist based in Toronto, told me that one of his exhibitions, *Photography in Canada: 1960-2000*, was displayed in various museums. Some museums paid him exhibition royalties and others did not, since his works were created before 1988. It's nonsense.

• (1555)

The second topic is the issue of fair dealing. The Copyright Act, as written before 2012, already gave access to all artistic, literary and musical works in schools and universities, often through collective licences established with collective societies representing artistic creators.

Educational organizations and institutions were therefore already able to provide simple and affordable access to copyrighted works. The concept is very vague, but its scope is extremely broad. The exception for education under section 29 of the Copyright Act has led to serious consequences since 2012. Various users have applied a very liberal interpretation of the exception to avoid paying copyright royalties.

In short, this exception has had two main effects. First, certain users haven't renewed their licences with collective societies. In addition, the payment of royalties under the agreements has dropped significantly, since the balance of power is now altered and strongly favours users.

A number of educational institutions responded quite radically to the exception by quickly implementing their own guidelines on fair dealing following the adoption of the 2012 amendments.

For example, Université Laval has not renewed its collective licences with collective societies and has drafted its own policy on the use of the works of others. The university defined the concept of fair dealing by allowing up to 10% of a protected work to be reproduced without the need to seek permission from the owner. This has altered the balance of power and upset the balance between other educational institutions and copyright collective societies, which have been forced to negotiate lower copyright royalties.

As you know, it wasn't until Copibec filed a class action that Université Laval agreed to suspend its policy and sign a licence retroactive to the date of the class action's institution. In our view, this situation and the various cases involving Access Copyright and different users such as York University and the departments of education in several Canadian provinces clearly show the need to review and better frame the concept of fair dealing, particularly in an educational context.

Here are some facts. During the previous review of the act in 2012, some people, including the representative of the Council of Ministers of Education of Canada, stated that adding the education component to the exception would not affect the income of copyright holders. On the contrary, what we feared has come true. The copyright royalties received by creators are plummeting and the commercial uses adopted by users are worrying, to say the least.

As mentioned earlier, this exception for educational use has been a source of legal dispute between collective societies on one side and governments and universities on the other side. For example, in 2016, the Federal Court heard the case involving Access Copyright and York University. The university had filed a counterclaim seeking

a declaration stating that its use of reproductions of works was fair under section 29 of the act.

However, according to the Federal Court decision written by Justice Phelan, York University's own guidelines on fair dealing were unfair, whether it—

• (1600)

**The Chair:** It's a bit too long.

**Mr. Bernard Guérin:** At this time, I'll simply refer you to the various criteria indicated in the Australian legislation, in the CCH Canadian Ltd. case, for a better definition of the concept of fair dealing.

Thank you.

**The Chair:** Thank you.

[English]

We're going to start our questions.

Mr. Longfield, you have seven minutes.

**Mr. Lloyd Longfield (Guelph, Lib.):** Thanks, Mr. Chair.

We've gotten some conflicting testimony that I want to dive into a bit because we're trying to inform ourselves on the best route forward.

I want to start with Mr. London.

When we were talking about the artist's resale right, you were saying that it's really a utopian thing, yet it is used in France, the U. K. and Australia. I'm not sure how long it's been in place there. Do you have a history, or do you know how it works in some countries? Why wouldn't it work in Canada? What's the difference between Canada and the other countries?

**Mr. Mark London:** It's interesting. Canada is often compared to Australia because of our population size and also the large number of indigenous artists, etc. In Australia, I think the ARR was enacted in 2010. This is just off the top of my head, but in 2007, the national figures for indigenous art at auction were \$28 million Australian. It was enacted in 2010, and in 2010, the figures for indigenous art at auction fell to \$10 million. A year or so later, they were down to \$8 million. That's the effect that it had on the market. I think there were something like 6,801 ARR payments, 6,500 of which were under \$500.

In other words, the lion's share of the money went to a very small group—200 to 300 payments. Everything else—6,500 payments—averaged \$500 or less.

Coming back to the costs of administration versus the net benefit to individual artists, it seems to be very heavily skewed towards administration and not that much to actual benefit.

**Mr. Lloyd Longfield:** It seems to me that this is a business challenge, how to reduce that—and I'll get to the radio in a minute. There are ways of reducing administration through automation or through processing or the way things are handled, such as by electronic payments. It seems like a business challenge to reduce administration in order to shift the revenue to the artists, where it should be sitting.

**Mr. Mark London:** That's right, although in most of the countries with an ARR, the people who are actually in charge.... In other words, if someone brings a piece into my gallery to sell on a consignment basis, such as someone who has a copy of Kenojuak's *The Enchanted Owl*, I would get a relatively small commission, because they have something very important, so they're going to be in a position to negotiate a very small selling commission, but I would get nothing to administer the ARR on my end.

In other words, the gallery gets nothing to administer the costs of giving an ARR payment over to a collective. The collective gets to charge a fee, not the gallery.

•(1605)

**Mr. Lloyd Longfield:** That's another piece, then: the lack of power that an artist has in negotiation. Unless they're very successful, they're in a very weak position. I'm thinking of *The Enchanted Owl*. I'm thinking how unfair that is.

**Mr. Mark London:** The problem with *The Enchanted Owl* is that it's a great sound bite. The fact is.... Well, actually, because—

**Mr. Lloyd Longfield:** I'm sorry I'm interrupting, but I want to flip over, because I'm more than halfway through my time. I'm watching the chair.

On *The Enchanted Owl*, if I could pivot over to Joshua, I have it on a postage stamp. It's a very famous work of art in Canada. How could the negotiating of commissions or royalties have been done differently?

**Mr. Joshua Vettivelu:** Just to be super clear about what we're specifically talking about as the artist's resale right, it is something that applies to artwork that is publicly sold on the secondary market, and it would only be applied for a minimum sale price of \$1,000.

Your question is how that could happen. When I was talking about the city being plastered and seeing images of *The Enchanted Owl*, that was dealing with a different issue involving artist reproductions. What we're essentially dealing with is a system that will knowingly charge \$24 for an artist's work with the understanding that they have the system to magically make that into more money. But there's no system for that to come back to the artist, and this has an intense effect for communities that don't have money.

**Mr. Lloyd Longfield:** If we're not getting all the testimony out, you can always submit it to us, but I want to get back to radio. I've been in the Guelph radio station. They have upgraded their soundboards now, or their play boards, so that they have the digital tracing of anything that's played on the radio.

Is that something you're also using? Is it widely used in administering payments to musicians?

**Ms. Debra McLaughlin:** Yes, it is for English. The challenge becomes having local, relevant, third-language programming. We can easily buy it from overseas and we can get a sense of the artists

who are being played, but we actually have people creating music in Canada in third languages, and they're not registered with anyone. We get a list from our Chinese producers that is in Chinese script. We get the same from our Arabic producers. We then have to translate. English is not their strength.

**Mr. Lloyd Longfield:** It's a high cost. I can see that.

**Ms. Debra McLaughlin:** It's a high cost.

**Mr. Lloyd Longfield:** What about the radio royalty exemption we talked about in previous testimony? Small radio stations get protection on the first \$1.25 million. Do you fall within that category? Do you get protections, or is that not applicable?

**Ms. Debra McLaughlin:** We get a reduced rate, but we don't get protections. What is particularly onerous is that, because of the market we sit in, we're actually in a census level, so we are reporting to SOCAN 24-7, 52 weeks a year, on what is well below that level. It's simply where we reside.

**Mr. Lloyd Longfield:** You have the combination of a large market and a small station, which isn't working for you.

**Ms. Debra McLaughlin:** That's correct.

**The Chair:** Thank you very much.

We're going to move to Mr. Albas. You have seven minutes.

**Mr. Dan Albas (Central Okanagan—Similkameen—Nicola, CPC):** Thank you, Mr. Chair.

I want to thank all of our witnesses for their testimony today and for their expertise in helping us do a proper job of reviewing the Copyright Act.

I'm going to start with CARFAC. I know you had some very firm views on the artist's resale end of things. We have data from analysts showing that over the past number of years, the money generated by the visual and applied arts has increased, while the median income of painters, sculptors and other visual artists has decreased.

How would you explain that data? Is it simply that there are so many more artists that the increase in money being generated is just being split by more people?

**Ms. April Britski:** There are any number of reasons why that could happen. I missed the beginning of what you had to say. Did you say that there are more people making money, but it's not coming back to artists?

**Mr. Dan Albas:** There is more money being generated, but the median income of the artists themselves—particularly painters, sculptors and other visual artists—has decreased. What do you put that down to?

•(1610)

**Mr. Joshua Vettivelu:** It's from not valuing artists' labour, very simply. There are a lot of expectations for me, as a young artist, to produce, self-advocate and participate in markets. There is a lot of exploitation, because the attitude is, "If you love what you do, we don't have to pay you as much because you're going to do it anyway, right?"

**Mr. Dan Albas:** To be fair, there are new venues for people that enable them to get their works out. I appreciate that it may be one element. I'm sure many others could be pointed out.

I'd like to go over to the Art Dealers Association. In your briefing note, you point out specifically that visual artists "are already well protected for matters of copyright under the existing Act". I'm not going to read the whole thing. You also say, "For example, while a musician is paid a royalty for each performance or broadcast, an architect is not remunerated on the resale of a home. The resale of a unique artwork is not a transfer of copyright, but a transfer of ownership."

What are you saying here? Are you saying this is not a copyright issue?

**Mr. Mark London:** It's not inherently, no. In other words, part of the value in a work of art is its perceived rarity and also the fact that someone owns it free of any and all encumbrances. The second you attach all sorts of other things to it, it becomes a less attractive thing. Again, the analogy would be why used books and CDs aren't subject to kickbacks every time they're sold.

It's going to be very hard for me to explain, but as I said, for matters of intellectual property and copyright, there are protections in place. In my opinion, the ARR is a lovely concept, but it's very dangerous in real life with respect to the effect it has on the marketplace.

**Mr. Dan Albas:** I'll go back to CARFAC. Last Monday, we had a witness here talking about the ARR. I can agree that some might question the idea, and I asked some questions about practicalities. Being able to authenticate that someone's artwork is their own—that it hasn't been purchased by another person and hasn't been stolen—is very important. Could you explain how authentication would be dealt with under a regime like this?

**Ms. April Britski:** That's an interesting question. I watched the presentation at home. I thought, oh, that hasn't actually come up in any of the research we have done before. It hasn't shown up as an issue in any of the legislative studies of resale in other countries or other governments. Of course, that doesn't mean it isn't a problem.

I looked into it a bit further. I contacted the collective that managed the resale right in the U.K. They say their approach is to treat a fake the same way they would treat a cancelled sale. If it were determined that an artwork was in fact forged, they would return it to the seller or the art market professional. If the money had already been paid to the artist, they would either inform the artist and their estate that they should take it back or, if they regularly received payments, they would just deduct it from a future payment. That's how they would deal with it.

I thought, well, how big of a problem is this potentially for Canada? We obviously don't have as big a market or likely as many forgeries as they do in other countries.

I came across an article in the National Post. One of the artists who crossed my mind was Norval Morrisseau. It is known that there are quite a number of forgeries of his work out there. As such, while he was alive he set up the Norval Morrisseau Heritage Society. They maintain a database that has works that are known to be his, and in fact in many cases works that are known not to be his.

There are things like that you can check it against. Aside from that, it doesn't mean that things can't come up. The article said that in 2003, \$15,500 worth of fake Morrisseau paintings were purchased. This was described as one of Canada's largest art frauds, and it was just \$15,500.

**Mr. Dan Albas:** I appreciate that intervention. We should be looking to see what the practice of others is.

In the Canadian context, you spoke earlier of exploitation of artists. We know that in certain industries, such as diamonds internationally, there are a lot of concerns about exploitation, in that case so-called blood diamonds, etc. The Canadian experience is that when we take diamonds, we actually authenticate them and enshrine in them that they are authentic. That's to make sure that people are not being exploited, that people know that when they're buying something it's a valid part. It's important to have.

Going back to the art dealers, first of all, if I were to purchase a piece of art and sell it for quite a large amount, there would be a capital gain on that. I'd already be looking at it with tax planning in mind. However, I also know that some people will try to exploit that.

They've said their proposal would be done through public galleries or auction houses. Would that not push people to try other means, such as selling privately, taking something out of the country altogether or even posting it on international forums where they may make a sale?

● (1615)

**Mr. Mark London:** Of course. That's our greatest fear. All they have to do is post it on Kijiji. In other words, they would easily be able to circumvent the traditional dealer or auction house network. In a private sale, no HST, GST or PST is collected. Capital gains may or may not be reported, etc.

In other words, there are many ways to circumvent this without having to go across the border. It's our contention that everyone benefits from a healthy, public.... When auction records are established—in other words, once you raise the ceiling—everyone else is able to stretch out a little more. However, if everything goes under the table, there's a lack of transparency that hurts everyone.

**The Chair:** Thank you very much.

We're going to move to Mr. Masse. You have seven minutes.

**Mr. Brian Masse (Windsor West, NDP):** Thank you, Mr. Chair.

Thank you for being here today.

I'm going to continue with exploring the exploitation element a bit. We can measure other exploitation, like the Canada pension board, for example, investing in what I would say are questionable ethical practices to gain returns. There are also campaigns I've led before, for example when our census was outsourced to Lockheed Martin, an arms manufacturing firm that was basically doing our census for a couple of years. It required intervention to stop that.

How do you go about finding the exploitation? Is it basically through media reports? Second of all, if it's not, have there been any international agreements, perhaps even with organizations? I'm not familiar with any of our trade policies that even broach the subject, let alone have enforcement policies.

I'll throw that open in terms of how you actually measure the damage that's being caused.

**Mr. Mark London:** It's funny. I personally take umbrage when I hear about exploitation of Inuit art. First, when I buy, I buy outright, so there's no consignment. I buy everything from the Inuit-owned co-operative. In other words, when an artist sells his or her work to the co-op, the co-op of which they are a shareholder sells it to me. They make money off the primary sale to the co-op, and as shareholders, they have a return as well.

Just to come back to Kenojuak's *The Enchanted Owl*, forgetting the fact that these figures are from the West Baffin Eskimo Co-operative, of which Kenojuak was a member, her earnings in 2016 from royalties for *The Enchanted Owl* were \$28,050. The previous year they were only \$13,000. What is also not mentioned is that about 10 years ago the co-op found a proof copy of *The Enchanted Owl*, which was sold in Toronto at Waddington's for \$60,000, and the entire proceeds of the sale were given to Kenojuak.

This is perhaps the worst example of an artist being taken advantage of that I've ever seen. She didn't get \$24 for *The Enchanted Owl*. Over the years it provided a lifetime of revenue, and \$60,000 for a resale.

All this is to say that the artists are members of the co-operative. I buy from the co-op. When I'm buying it and reselling it at the gallery, it's at a percentage no different from that for an artist who brings in his or her work off the street and consigns it to me. There isn't any great exploitation that I can see.

• (1620)

**Mr. Brian Masse:** Does anybody else have any comments with regard to this?

**Ms. April Britski:** That's not what we're hearing. You hear things in the news all the time, but additionally we have members who tell us that... I can't tell you how many times I've been to Nunavut and seen artists go from table to table at restaurants saying, "Will you buy my sculpture for cash for \$100?" Then they see it in a gallery later on for \$5,000—and more and more and more.

Some things don't always get such big prices, for sure. Actually, looking at Kenojuak's auction records, you see that more than half of her works are selling at auction for between \$1,000 and \$2,000, but there are many of them.

Maybe that isn't the only example, but there are so many more that we hear about on a constant basis—people who are having their

work purchased for very little, and then the markup at each level is substantial. It upsets them.

**Mr. Brian Masse:** There's no doubt that if you're part of a co-operative, an organization that also has rules, regulations, and so forth, it's like employment. If you're a person who is relying on an employment agency or a temporary agency, you're far more diminished in your capabilities to exercise your rights as an employee, rather than to walk out the door and not follow what's being requested, as compared with the case of regular workplace safety standards, which we know in Ontario and other parts of Canada still are significant problems. People die on the job every single year in this country and in this province because many of them feel that they don't even have the right to say no, because they have no choice or limited choices in that matter. It's a power relationship issue that we really need to come forward with.

We're running out of time at this committee with regard to the parliamentary process, in my opinion. There has been really good work done, but by the time we get a report tabled to the House of Commons on this and the minister responds to the report—and then, if there are going to be some changes suggested to the legislation, it would require tabling of that legislation—then a process that would lead to the Senate and then royal assent, all before another election, the window is constricting itself at the moment.

What things would you see as recommendations for perhaps even regulatory change that could be done rather quickly, or other alternatives in terms of individual legislation that might advance the interests of what you're here today about?

**Ms. April Britski:** It was mentioned earlier that the resale right was discussed the last time the act was reviewed and that the committee was generally supportive of it—including Minister Rodriguez, actually. In the end, it didn't make it into the act, but they recommended to us that we should pursue a private member's bill. We did. Then we had a bill, and it didn't pass before the election. Ever since then, they've been telling us to wait until the review of the act, to wait until then. Well, now we're here.

In the meantime, we've presented to the finance committee, and they recommended that the Copyright Act include the resale rights. It has also been discussed in the Senate. I guess we're just waiting for the moment when this is actually going to be tabled.

**Mr. Brian Masse:** Does anybody else have a comment?

**Mr. Bernard Guérin:** Yes, let me add to that, if I may.

If we're talking about very simple modifications that could be done to the law, one is to cancel the limit date for exhibition rights of June 8, 1988, to open up the exhibition rights. It's very simple; it's just to strike out that date limit in paragraph 3(1)(g) of the Copyright Act. That's very simple and straightforward.

The other thing that could be done is to better define the fair dealing provision. It's very simple and straightforward to have those criteria included in the law and to have a mechanism that an obligatory licence should be obtained. When there is education, it's the education exception that is involved. That will give access to the works, but the obligatory licence could be obtained. That is very simple and straightforward legislation, like what is in place in Australia, for example.

**Mr. Brian Masse:** Mr. Chair, this is to our researchers, really quickly.

When we compile this report, it would be helpful for us to perhaps have a table of those items that are being suggested to go into the regulatory box, and then a second one that would go into the legislative box for us.

**The Chair:** We'll have boxes.

**Mr. Brian Masse:** We'll have boxes; there we go. Thank you, Mr. Chair.

•(1625)

**The Chair:** Thank you.

We're going to move to Mrs. Caesar-Chavannes.

You have seven minutes.

**Mrs. Celina Caesar-Chavannes (Whitby, Lib.):** Thank you, Mr. Chair. I'll split my time, if I have any remaining, with David.

Mr. London, I'll go to you, and I'm going to stick to the conversation about ARR, because there is some tension here. If we're going to resolve it, I think we should butt heads and try to figure out as much as possible while there are two opposing views here.

You said in your testimony, "In case I haven't been clear, we think the ARR is a terrible idea." Mr. Vettivelu mentioned Annie Pootoogook. I think many of us remember her tragic death here in Ottawa in September 2016. We also know the story of her living on the streets, selling her art for a few dollars, and meanwhile having it in other galleries for thousands of dollars.

If the ARR is so terrible, what other mechanism would you suggest that would help create a fair balance for artists to be compensated for their work, particularly when you think of the limited access that indigenous artists especially may have in terms of geographical location and other barriers? What other mechanism would you put in place to create a balance between what they're getting paid and what is being paid in secondary markets?

**Mr. Mark London:** It's a very good question, but again, that is not necessarily the best example. I was friendly with Annie. I knew her very well when she lived in Montreal. Unfortunately, she sold on the street for a fraction of what she was selling for to the cooperative. In order to maximize money to the artist...

As I said, it's perhaps a bad example, because had she.... There was a movement afoot to try to get her to go back up to Cape Dorset because of her problems living in Montreal, with alcohol and drug abuse. Finally, they got her to go back up to Cape Dorset on a sort of medical mission. She was accompanying her sister—Pia, I think it is—but Annie chose to come down about two or three days later.

Unfortunately, she was a victim of her demons, but not of any art system that was trying to take advantage.

**Mrs. Celina Caesar-Chavannes:** Okay, more broadly then, because we've seen that their revenues are decreasing, how, without ARR, do we balance this?

**Mr. Mark London:** It's a very good question. The Inuit market is in decline, whether we're talking about the primary market or the secondary market. It's just not as popular as it was in the 1950s and 1960s. Production is very high, but the demand has decreased significantly. How do you increase the amount of money that an artist gets, if no one wants his or her work?

**Mrs. Celina Caesar-Chavannes:** Are you saying that this is more of a market or business state of affairs than a matter of government intervention and solution?

**Mr. Mark London:** I don't know what the answer is.

**Mrs. Celina Caesar-Chavannes:** Could I pose the same question to your colleagues here?

**Ms. April Britski:** All three of our recommendations are things that we're asking the government to do: change the exhibition rights so that senior artists can get paid; add the artist's resale right so artists can continue to get paid for the work they're doing; and limit fair dealing so that people can continue to get payments that they were used to getting.

These all need to go in law, because if they aren't, people will not pay. That's the sad reality.

**Mrs. Celina Caesar-Chavannes:** How complex or difficult is this to put in place in Canada?

**Ms. April Britski:** We've had the benefit of looking at people who are doing it best in other countries—with resale, anyway.

We're not a copyright collective, so CARFAC and RAAV are not the organizations that would administer the resale right. We know the collectives that would, and we can give them best practices examples of how it's done. It can be fairly simple.

We know that in the U.K., which is a much bigger market, they have a pretty small staff. They've been willing to share with me how they invoice. They've shown me the forms they use. They've shown us everything.

**Mrs. Celina Caesar-Chavannes:** So the administrative cost that was referred to can be mitigated by looking at other jurisdictions and following in line and making it better for the Canadian market.

•(1630)

**Ms. April Britski:** Yes. In the U.K., they've said that it takes less than five minutes, and costs less than five pounds per quarter to administer it, on average.

**Mrs. Celina Caesar-Chavannes:** Did you want to add to that?

**Mr. Bernard Guérin:** What I can add is that for our collective—RAAV is 50% owner of the collective and CARFAC is 50%—we're already working on this system to make it very simple for art to be registered and to get the relevant information to make the ARR work. It is simple.

I was at the international conference in Geneva in April 2017. We had some very good testimony on how it worked and how it is going well. There are tweaks and things to be worked out, which is normal, but it works.

To also answer the question on why it should be a copyright issue, it's basically because the length of the rights of the ARR would be the same as copyright. That's why it should be linked to copyright. The easiest way to make it work is to link it to the duration of copyright. If you compare the laws, you will see that in some jurisdictions it's copyright, in others it's stand-alone, and in others it's another type of law. The easiest way to make it work in the Anglo-Saxon world is to link it to copyright.

**Mrs. Celina Caesar-Chavannes:** I have 30 seconds.

I have one more question.

**The Chair:** Go ahead.

**Mrs. Celina Caesar-Chavannes:** I'm not sure if the analysts or the researchers know this, or if you have the answers, but is there an impact on the Canadian GDP of not having ARR? Have we looked at the economy in other jurisdictions?

Feel free to respond if you have an answer, Mr. London. Go ahead and jump in.

**Mr. Mark London:** My answer would be those examples that I gave on the Australian auction market. The sales are going from \$28 million down to \$10 million, then down to \$8 million.

When you think about art galleries and the people employed by art galleries—the art movers, handlers, etc.—there is a huge ancillary business in the art world that's affected if the market tumbles.

**Mrs. Celina Caesar-Chavannes:** Please jump in, because otherwise this is not going to get on record.

**Ms. April Britski:** In other countries, it's increased. In most countries, the market has increased since this was introduced. There are numerous neutral studies that say so.

**Mrs. Celina Caesar-Chavannes:** Okay.

Mr. Banza, go ahead.

[*Translation*]

**Mr. Moridja Kitenge Banza (President, Regroupement des artistes en arts visuels du Québec):** I wanted to say that I'm a visual artist. My colleagues and I produce the works. If we weren't producing any works, this discussion wouldn't be taking place. We're discussing what's rightfully ours. We're asking for only 5%. Earlier, someone said that it was a nice project. It's not a nice project. It's something we need in order to improve our living conditions as artists, and it's important. It's not just a nice project that will look good on paper. No, it will improve our nice projects.

Earlier, we were talking about the black market. The black market exists in every area. The fact that a black market exists doesn't mean that laws aren't there to protect us, and the fact that something doesn't work at first doesn't mean that it will never work. In France, it has been in place since 1920. It's now 2018. If it didn't work, 93 countries wouldn't have implemented it. It's something simple. Each member of Parliament here will find artists in their

constituency. The living conditions of these people must be improved, outside of art.

Earlier, someone mentioned figures indicating that visual artists are the lowest paid artists. It's always the same issue. We always need to fight for our rights, to obtain a small portion. We're not asking for much, only a small portion. It will certainly be difficult at first. For all the legislation already implemented in Canada, it hasn't been easy. No legislation in the world has suddenly turned out to be simple.

**Mrs. Celina Caesar-Chavannes:** Thank you.

**The Chair:** Thank you.

[*English*]

Before we move on to Mr. Lloyd, Ms. Britski, you mentioned some reports, some studies. Could you forward those to us so we could have a look at them? That would be helpful. Thank you.

Mr. Lloyd, you have five minutes.

**Mr. Dane Lloyd (Sturgeon River—Parkland, CPC):** Thank you for attending today.

My first question will be for Mr. London. The droit de suite was agreed upon in the European Union because if some countries didn't agree, it seemed likely that art would move to those countries to be sold, if they didn't have that right.

The first part of my question is, does the United States have that right? If we were to implement this right, what would be the impact on art sales and the art economy in this country, given our being next to the United States?

• (1635)

**Mr. Mark London:** Well, as I said, it's a very real fear that sales at the higher end of the market would move south of the border. Forgetting all the private sales that will circumvent the traditional gallery or auction house market, what's to stop a major Canadian auction house from opening up in Buffalo instead of Toronto so that their million-dollar sales will happen south of the border?

**Mr. Dane Lloyd:** Practically speaking, if somebody goes to the United States and purchases this, and then comes across the border and pays the tax or whatever on the price of the good, does the resale right follow attached to it, or is it that the resale right is labelled—

**Mr. Mark London:** I haven't a clue. I think it's in the venue where the piece is sold. It's like when something is being imported, assuming it's being imported with the correct price attached, as opposed to coming in with a zero that has miraculously dropped off.

**Mr. Dane Lloyd:** My family does art cartage between New York City and Toronto quite frequently, so—

**Mr. Mark London:** Okay. All this is assuming that the GST, HST, PST or whatever would be collected at the border, but I don't know that.... Again, it's not the government's job to collect that.

**Mr. Dane Lloyd:** That seems like a major problem with getting ARR in Canada, if the United States doesn't follow suit.

**Mr. Mark London:** Exactly. That's what I was saying. In all these venues where it's a shared thing, it's almost like 90 countries agreeing to use Times New Roman 12 instead of Arial 14. It's a compliance issue, so it's the same across trading partners.

**Mr. Dane Lloyd:** I'll move on to my next comment, followed by a question. It seems that these stories about an art piece being sold for... There was a fellow in Smiths Falls, Ontario, who has since passed away, Harold Nichol. He used to carve duck decoys for hunting. Years later, to anyone who had these duck decoys—in fact, my family had some—these were worth tens of thousands of dollars, and it was just some fellow who was handcrafting them.

It seems to me that it's a very rare case in which an art piece.... It's like winning the lottery. Would you say it's like that?

**Mr. Mark London:** This is just it. Unfortunately, in the art business, we're selling a fantasy, much like the case with lottery tickets. When the Ontario lottery advertises that Mr. and Mrs. Smith of Leamington, Ontario won the 6/49, they don't say, "and, by the way, there were 20 million other ticket holders who lost their money."

In other words, the reality is that whatever the threshold is—be it a thousand dollars, a thousand euros, whatever—pieces that are bought for, say, \$10,000 at a gallery or auction often resell for significantly less, because when it's time to sell—because of death, divorce or bankruptcy, or because it no longer matches the drapes—then you get what you get. If you paid \$10,000 and it resells for \$2,000, it's adding insult to injury to have to pay....

**Mr. Dane Lloyd:** Let's take the perspective of just your regular artist. It's like those 20 million lottery ticket holders; they're not winning the lottery. If this resale right is implemented, yes, it could help that one person who wins the lottery and sells that piece of art, which is resold and resold; they're making great royalties. Will it, however, negatively impact the average middle- or lower-class artist?

**Mr. Mark London:** It's really hard to say.

In the United States, California enacted an ARR in the 1970s, which was just overturned by the courts. It all came about after an auction where a Robert Rauschenberg painting that was originally sold for something like \$50,000, let's say, was sold for \$500—I'm inventing numbers. Rauschenberg was irate, and they argued the case and got the ARR passed in California.

Just to give you an example, Robert Rauschenberg left an estate of \$600 million U.S. That's lottery-winning odds. In other words, getting an ARR wouldn't help Robert Rauschenberg or his estate, because he was fabulously wealthy, but would the other artists have winning tickets?

**Mr. Dane Lloyd:** We've been talking about supply and demand related to Inuit art. Would you say that if we're adding a tax or a fee or something onto an art piece, we would be lowering the compensation that artists would be receiving up front for the sale of that?

**Mr. Mark London:** If there were some sort of flow-through, so that it was understood that there are certain steps required to bring things to market that would somehow not involve an ARR, then it wouldn't raise the price incrementally.

In other words, if someone has to pay to ship a piece from Cape Dorset down to the co-op in Toronto, that gets factored into the price, as does the shipping into Montreal. An ARR would be no different. You're adding to the cost of the piece.

● (1640)

**Mr. Dane Lloyd:** That lowers the demand for the product, though, doesn't it?

**Mr. Mark London:** It doesn't necessarily lower the demand. The demand is low enough. You're raising the retail price, which makes it less competitive in the marketplace. In other words, if it's hard enough to sell at \$5,000, it's going to be that much harder to sell at \$6,000.

**Mr. Dane Lloyd:** Basically, you're saying an ARR could make our artists less competitive.

**Mr. Mark London:** Indeed. That's our big concern.

**Mr. Dane Lloyd:** If you're not the lottery winner, you could be hurt by this policy.

How much time do I have left?

**The Chair:** You're way over. I let you go.

Now we're going to move to Mr. Jowhari. You have five minutes.

**Mr. Majid Jowhari (Richmond Hill, Lib.):** Thank you, Mr. Chair.

Welcome to all the presenters, especially Ms. McLaughlin, who is coming from York region, with Richmond Hill at the heart of it.

Let me start by taking a different slant on visual art. We talked about ARR a lot, but in this forum I have visual artists, an association and an art dealer. It gives me a great opportunity to ask the question I asked last time, which was actually deferred to this panel.

I wanted to talk about the impact of the digital era and the visual art that's being created through new technologies, such as 3-D printing and AI. As you all know, through various computer systems or computer programs, you can scan many different archives and create a new art type, and you can make it into visual art through 3-D printing.

I'm going to start with the two artists we have here. Whom would you consider the owner of the art when it's created through this method? Either of you could start.

[*Translation*]

**Mr. Moridja Kitenge Banza:** The creator is me, the artist. The computer is only a tool, such as the paintbrush, metal or clay for sculptures, or the glass for blown glass. The computer is only a tool used to create the work. Basically, I'm the person who creates the work. It's not the computer, even though I code the information in the computer to create the work.

[English]

**Mr. Majid Jowhari:** Is this even though the AI and the new technology have taken the combination of many different arts or, let's say, paintings, and created a 3-D version? Part of your creation might have been incorporated into it.

[Translation]

**Mr. Moridja Kitenge Banza:** There's already legislation in place. For example, in Quebec, the Act respecting the professional status of artists in the visual arts, arts and crafts and literature and their contracts with promoters specifies who is considered a professional artist. The act states that professional artists produce works and are recognized by their peers. Obviously, a machine isn't recognized by its peers.

[English]

**Mr. Majid Jowhari:** Basically, you consider it to be a work of art still, with yourself as the art creator.

**Mr. Bernard Guérin:** It's only a tool, though.

[Translation]

**Mr. Moridja Kitenge Banza:** Yes, it's only a tool.

[English]

**Mr. Bernard Guérin:** Yes, it's only a tool, and there's always a person who has written the computer language behind it, so that the copyright law—

**Mr. Majid Jowhari:** Ms. Britski, go ahead.

**Ms. April Britski:** It's a difficult question for us, because we don't really represent new media artists as much as we do visual artists and artists from regular media like film and video. I would agree, but it's not a sector we typically represent, really.

**Mr. Majid Jowhari:** Fair enough.

How about you?

**Mr. Mark London:** It's way outside of my....

**Mr. Majid Jowhari:** Okay.

[Translation]

**Mr. Moridja Kitenge Banza:** I'll refer to an earlier example. I was watching the video when you asked the question about Rembrandt. Today, a computer is repainting a Rembrandt work. It's 2018, but in Rembrandt's time, all these issues didn't exist. We can already find photocopies of Rembrandt's works. It's already in the public domain. However, if someone reproduces a work today that I create using a computer, I'm still the artist. It doesn't matter that the computer was used to produce the work. The person who coded the digital language remains the person who created the work. The computer didn't create the work.

•(1645)

[English]

**Mr. Majid Jowhari:** Thank you.

I have about 45 seconds left, and I really want to go to Ms. McLaughlin.

You explained that it cost \$32,000 to make sure that you had the copyright expenses, which were about \$13,000. If I understood you correctly, the English portion or the French portion is smaller, and

the others are a larger portion of the radio programming, and this is what's making it costly. Tracking is what's making it costly.

As you know, there are many jurisdictions that enjoy great diversity, and therefore it's left to much smaller radio stations to support that diversity. What would you recommend, if we want to find the balance between the cost and the copyright?

**Ms. Debra McLaughlin:** I think we have to create different classes and recognize that within the system there are different classes of stations. There are stations that have the benefit of having multiple outlets and various properties vertically integrated. That's a different class. They can probably afford to do more and to engage in this. As you know—you're from the area—we have no choice. We have to produce that. To make it locally relevant, we have to do that.

**Mr. Majid Jowhari:** How can we help?

**Ms. Debra McLaughlin:** We need a different classification. We need exemptions for stations that are doing that kind of work.

**Mr. Majid Jowhari:** Thank you.

Mr. Chair, thank you.

**The Chair:** Thank you very much.

We're going to Mr. Albas. You have five minutes.

**Mr. Dan Albas:** Thank you, Mr. Chair.

Just on that, Ms. McLaughlin, can you talk a little more about what kinds of exemptions you need? Again, speak from your own personal experience about what your radio station might entertain, but also generally. There might be a gap or a need that can be addressed by such an exemption for other radio stations.

**Ms. Debra McLaughlin:** The census is particularly onerous. That whole aspect of collecting around the clock, 52 weeks a year, is particularly trying. Up until about a year and a half ago, we were doing samples, but because we're caught up in that environment...

It would be more beneficial to the artist if in that environment we simply had a fee that we paid, because the revenues for stations in our class are never going to exceed a certain amount; it's just not possible. We represent less than 0.005% of the total radio market in Toronto, and we're probably near the top.

I think the artists should be compensated, but I think it's far simpler to pay them a fee. I would rather take that \$32,000, add it to the \$13,000, and write a cheque for \$45,000, because then it goes to the artists. Right now, I'm administering all of that, and that fee doesn't even represent the hassle that it causes.

**Mr. Dan Albas:** Many parliamentarians aspire to be a minister, but I think the argument could be made for not wanting to be a minister when you see the variety of a market in which you have big, small, and tiny radio stations and you're supposed to regulate all of them.

Where would you say that the cut-off should be for such an exemption, where the big ones don't need to do this but should follow those systems? Or do you think it should be the same kind of system straight across the board, but maybe at different rates?

**Ms. Debra McLaughlin:** I think there should be degrees of this; I guess that would be the best way to put it. I think smaller stations that are serving multiple languages or multiple cultures fall into one class. The larger stations can afford it.

I think you need to understand the impact of this. I don't come here with solutions, in that sense, because I haven't done the full analysis. I've come here to share my experience and the experience of other stations, just to give you that.

**Mr. Dan Albas:** Sure.

**Ms. Debra McLaughlin:** But I think it's easy to analyze through the CRTC.

**Mr. Dan Albas:** I can appreciate that. It's just that as parliamentarians we also have to wrestle with where that line in the sand is, and then we pass it over to the minister, who then has to make that same deliberation with his or her officials, so I appreciate that.

Going back to the resale issue, I am quite concerned about competitiveness, but again, I also see that markets change in response to different things. You mentioned earlier, sir, Kijiji as being one source. Could your market change? Could people start looking to arrange their affairs in a different way?

I'll let you answer those first, but I do have one more question.

• (1650)

**Mr. Mark London:** In the traditional gallery-auction house model, we're the intermediaries between the consumer and either the producer or the seller, in the case of resale. In other words, a gallery has an exhibition of an artist's work and people come in and buy it. If people are going to try to circumvent this because all of a sudden a seller of a work wants to net \$10,000 but not \$9,500 if it's subject to the ARR or whatever, so all of a sudden they want to net \$10,750 or something like that....

All this is to say that if the seller is unwilling to pay that.... It is interesting to note that in Bill C-516 it was proposed that it should be the responsibility jointly and severally of the seller and the dealer. If the seller defaults on paying the ARR, all of a sudden people will come after the dealer to remit it on the seller's behalf. All of a sudden we're shouldering a tremendous burden. Sometimes a commission is as low as 10%. If we have to lose half of that because the seller reneged or whatever, it's hurtful.

My point is that for anyone trying to circumvent the model, it's fairly easy now, with the Internet, to just post it somewhere: here's\_my\_collection\_for\_sale.com. It's no longer at auction or in a retail gallery, but the seller can find the buyer easily enough. The two of them can get together to negotiate the price, which, as I said, will not include the ARR, and it will not include GST, HST or PST.

All these things will negatively impact.... The gallery model might disappear. Some artists will argue that this is great, but they might be forgetting that galleries do a lot to promote the art form and to

promote their artists. We co-exist in a system that has worked pretty well for many years.

**Mr. Dan Albas:** Go ahead, sir.

[*Translation*]

**Mr. Moridja Kitenge Banza:** In my view, a person who owns a collection of works of art will want to sell it at a serious location that has a name and that will promote the collection. A real collector wouldn't simply sell their collection on the Internet. None of the collectors who purchase my works would agree to sell their collection on the Internet simply to avoid the 5% requested by the artists.

We support artists in Canada or we don't support them. That's the real question. We're Canadian or we aren't.

[*English*]

**Mr. Mark London:** Put it this way. Collectors aren't thrilled about paying 15% HST in the Maritimes or 13% in Ontario. If there is a way for them to avoid it and the seller is automatically in a position whereby he or she can save 5%, they will find a way.

**The Chair:** Thank you.

We are way overtime, but do you want to quickly add something to that? You looked as though you were itching to jump in.

**Ms. April Britski:** I just can't imagine ever seeing an Emily Carr painting for sale on Kijiji; it's just not going to happen. You're not going to get those prices.

As far as who pays is concerned, we recommend that it be split between the seller and the auction house or the dealer. We're open to negotiating those terms. If it's fully onto the seller, that's fine, if you think that would make it easier.

**The Chair:** Thank you.

We are going to move on to Mr. Sheehan. You have five minutes.

**Mr. Terry Sheehan (Sault Ste. Marie, Lib.):** Thank you very much. It's a great discussion.

Just very quickly, I taught a bit at our local Sault College in entrepreneurship. Most programs had a requirement to take entrepreneurship, and part of it involved the fine arts students who used to take it.

I am reminded of a story from when I used to section them off, just the fine arts students. A young first nations man asked me how I or anyone else could put a value on his art. I said I could start with how much the paint had cost him, and then the canvas, and then how many hours he had put into it, from idea to development to actually doing it. That's just to begin with. I said that of course the market takes care of things afterwards. People will purchase based on investment, on whether the piece moves them, or on their values, and you learn how to put a value on works.

I was reminded in some of your testimony about scarcity afterwards, about artists saying that's when they make the most money.

Framing that in terms of some of this discussion, I have to ask a couple of questions. How did you come up with 5%? Why 5%? Why the \$1,000? What about passing this on, the ability to collect this, to the estate—to children or others? Do you have an opinion on that?

I'll also be sharing some time with David Lametti.

•(1655)

**Ms. April Britski:** Essentially, 5% is the standard in most countries. In Europe, there is a sliding scale, and it's based on the value of the work. For the most part, most Canadian artworks fall within the 4% to 5% range. It is basically the standard.

Even though the bill that was presented said that the threshold should be \$500 minimum, we're recommending \$1,000, because anything less than that does become more administratively difficult to manage. As Mr. London said, in Australia it's \$1,000; in Europe it's about 1,000 euros. It's roughly the same in most countries.

You had a question about estates.

**Mr. Terry Sheehan:** Yes, it was about passing the ability to collect that to the estate. I call it the estate—

**Ms. April Britski:** Yes. Interestingly enough, that's where the resale rates started. A famous artist's family was living in poverty while his pieces were selling for far more than they did during his lifetime, so it started with estates.

Of course, we are primarily concerned with living artists, but, as Josh mentioned, it is often thought of as a collective thing. The royalties do help the family later on. Every other part of copyright includes estates, so why wouldn't this?

**Mr. Terry Sheehan:** I just wanted to get that on record, too.

I'm going to pass it over to David Lametti. He had a question.

**Mr. Mark London:** Can I just say one thing?

**Mr. Terry Sheehan:** David might ask.

**Mr. David Lametti (LaSalle—Émard—Verdun, Lib.):** I think one of your concerns, Mr. London, is tracking and finding owners, so let me throw this out to all of you in some way, shape or form.

We do have a registration system in Canada, which isn't that onerous, through CIPO. Would that help in terms of identifying the work?

On the other side, Ms. Britski, would you be willing, as an artist, to say that the work has to be registered in order to take care of that

right, because you're outside of the Berne Convention? We could do that, conceivably.

**Mr. Vettivelu,** does that present problems for first nations and indigenous artists?

[*Translation*]

**Mr. Guérin and Mr. Kitenge Banza,** could this also help you in terms of the legislation regarding the works created before 1988?

[*English*]

**Ms. April Britski:** When you're asking if it needs to be registered in order to collect it, I think that would be—

**Mr. David Lametti:** Would you be willing to trade that off in order to make it easier for dealers, and perhaps even extend it to fora like Kijiji down the road in order to get that revenue stream?

**Ms. April Britski:** I think it would make it more difficult just because we haven't had the practice of doing that up until this point. You'd have to go back and archive your whole collection and register each piece. It would certainly help, and I know that there are certain technologies that are being developed through blockchain to track provenance.

In order for this to work, I think collective management is definitely required, but registration is something that we hadn't necessarily looked into.

**Mr. Mark London:** I just thought of something. Everyone talked about estates. Unfortunately, most Inuit artists die intestate, so who are the legitimate heirs between adopted children, biological children, etc.? No one has given us information as to who gets what.

Again, so many of the early pieces that are selling for impressive dollar figures are unsigned. Auctioneers are very hesitant about using the words "attributed to". They just say, "This is by so-and-so." It could be a free-for-all as to who gets what.

**Ms. April Britski:** If you attributed it, it wouldn't apply. If we don't know who made it—

**Mr. Mark London:** I know, but I'm saying that auction houses often forget the words "attributed to" because they want it to sound as if it is definitely by... All of a sudden, we could have a situation where the next-door neighbour says, "No, I made that." Again, the question of who gets what is worrisome.

Also, what provisions are made for monies that are collected but are not distributable? In other words, rather than staying with the collective, do undistributed funds go to the Inuit Art Foundation to benefit Inuit artists directly?

• (1700)

**Ms. April Britski:** No, not necessarily. In some countries, the collective does get it; in some cases it goes toward pension plans for artists, and in some cases it goes toward an art purchase program. In the U.K., it goes back to the auction house and the dealer, actually, if they can't find them after six years. There are any number of options available.

**The Chair:** Thank you.

We're going to move to the final two minutes.

Mr. Masse, go ahead.

**Mr. Brian Masse:** I represent a riding where 38% of Canada's daily trade goes into the United States. There's a place called Sandwich Town. It has one of the highest rates of poverty in Canada. It's where immigrants are. It's where there are a whole series of issues. The Underground Railroad was there, and rum-runners. It's a historic area.

Next to it is the Ambassador Bridge, where a private American billionaire has been granted a new border crossing with no community conditions, which has a negative relationship. To the west of this place is the new Gordie Howe bridge. The government has around \$4 billion, which will give the community about \$10 million over 35 years. In front of it is a port authority that's really rich and doing quite well. Then on the other side is a railway company that's doing okay. The problem in the middle is Sandwich Town. Everybody's getting rich but the people there.

It's almost the same frustration I feel in this committee. It seems what we're hearing is that the artists are not getting there; meanwhile, it's about the process in between, struggling to get at least fair compensation, to get it finally there.

I don't really have any questions. I'm sorry I dragged people through that again with the border, but I am totally frustrated over the fact that there are incredible amounts of wealth. It reminds me.... It's what's on YouTube and this and that and everything. There's an immense amount of wealth that doesn't seem to be getting through the system appropriately.

**The Chair:** Thank you.

It does seem to be a challenge. That's how the system works. You have to go through the process of studying and bringing it into the House and all that kind of stuff.

I did have a question.

On the weekend, in my riding, I went to an art show. There were some indigenous artists and I found a piece that I really liked. The price was pretty good. Now I'm thinking maybe I ripped the guy off or something.

This is the challenge. When you're talking about an art gallery, there's a whole process behind it. When you're talking about an individual like me, maybe I'll keep this forever, or maybe 10 years from now somebody will say, "Hey, I'll give you \$5,000 for it." Where does that fit into this thing? This is why this is complicated. Then I'm the bad guy because there is no registration.

That's where I think Mr. Lametti was going. If there was a registration, then that art would follow along to whichever artist it belongs to. It's complicated, and I'm trying to wrap my head around it. With that experience I had, it's a beautiful piece, but....

**Mr. Dan Albas:** Could I just say something, Mr. Chair?

**The Chair:** Go ahead.

**Mr. Dan Albas:** You're not a bad guy.

**The Chair:** Aw, thanks.

[*Translation*]

**Mr. Moridja Kitenge Banza:** Lastly, I just want to add that our association is also working to ensure that artists become professionals in this area. We're currently working very hard because we hope that this legislation will be implemented. We're preparing our members to become professionals, to keep proper track of their works and to know where their works end up. Our members are also preparing to receive this. It's not 1400 or 1900. It's 2018. People are becoming professionals, and we hope that this will be helpful with regard to the expected legislation.

[*English*]

**The Chair:** I started a whole thing here.

Mr. Badawey is next, very quickly, and then Mr. London.

**Mr. Vance Badawey (Niagara Centre, Lib.):** I'm sort of new at this. This is my first time on this committee discussing this, and I'm listening to this. Having been in the business world for the better part of my life, before I entered this part of my life, I'm listening to it with great interest. I know that in industry you have processes, and you have systems. You have market access, market-valued market shares, traceability, and all that as part of the system.

Has there been no move afoot or any effort by people like you who are in the business to actually put that in place, to put a template or a blueprint in place that looks after the whole process from A to Z, from the time of production to tracing it and valuing it, and then, of course, to sale and beyond that, tracking it so that royalties can be looked after in a consistent and fair market-value manner?

• (1705)

**Ms. April Britski:** Part of the problem is that when the work is sold in the primary market, the artist isn't told whom it goes to, for the most part. They don't tell you that.

**Mr. Vance Badawey:** That's part of the traceability.

**Ms. April Britski:** Yes.

**Mr. Vance Badawey:** That would automatically kick in every time the code on that piece is entered.

That would be the law. When that piece is sold, the bar code would be punched in. If it's not, you're breaking the law. That's the traceability part of it. The process follows the piece right from A to Z, and therefore the market value kicks in, with regard to who made it, where it's from, what geography they're from, what demographic they're from. It just follows it. It happens naturally. No one really has to keep an eye on it but the system itself.

**Mr. Bernard Guérin:** Again, I think we're talking about tools, that the law needs to be technologically neutral. We're talking about ways to apply the right, which would be traceability, blockchain, arts banks. There are tools. There's the copyright filing that you can do. The tools exist, and they need to be refined in this new technology.

First and foremost, you need the right. Then you'll find the tools to apply those rights. The idea is to stake the right so you can follow the life of your artwork. It's not a question of lottery; the fame and recognition come with time and work and exposure. The fact is, you have to create the right, and then the tools will follow. It's technology. The copyright law needs to be technologically neutral. That's a fundamental concept of law.

[Translation]

**Mr. Mوريدja Kitege Banza:** I've exhibited in a gallery. Serious galleries keep track of their artists and register their artists' works because the galleries are interested in knowing how much the artists will cost them. The galleries keep close track of their artists.

Our association provides training to members to help them become professionals. As Mr. Guérin said, once the legislation has been implemented, we'll have everything we need to frame all this. However, first we need legislation in order to frame the rest afterward.

[English]

**The Chair:** While this is great, we do have other business.

I promised you, Mr. London. You have 30 seconds.

**Mr. Mark London:** In another life, we used to deal in contemporary art from southern artists. Every time we made a sale, along with the cheque we said, "We sold this painting to Mr. and Mrs. Smith." We said exactly whom we sold it to. But I would think there are probably also some very serious privacy concerns that are tied up in disclosure like that.

I was going to say that I might not have spent as much time in restaurants and bars in Iqaluit, but any of the things that I saw selling for \$100 were not worth more than \$200 or \$300, not the \$5,000 or whatever. There was a brilliant point I was going to make, but I've since forgotten it.

All this is to say that I'm skeptical.

**The Chair:** Thank you very much for a very lively discussion. It was very interesting.

We're going to break for a very quick minute and then we have a motion to debate. If we can stick around closely, we'll suspend for just a minute.

Thank you to our guests for coming in today.

• \_\_\_\_\_ (Pause) \_\_\_\_\_

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• (1710)

**The Chair:** Dane, you have a motion you want to put forward.

**Mr. Dane Lloyd:** Thank you.

I want to make this brief. I did put in this motion a number of weeks ago, but out of respect for our witnesses and this committee study, I wanted to delay it until a convenient time for the committee.

As many of you know, Ottawa was hit by six tornadoes a number of weeks ago. It's been extensively covered in the news.

Many of my constituents actually brought up this issue to me on Canada Day. After this copyright study is completed, I think it would be very prudent for the Standing Committee on Industry, Science and Technology to allocate no fewer than two meetings to explore the causes of the breakdown in the process related to cellular coverage and telecommunications during natural disasters such as the Ottawa disaster, and what recommendations we can make as a committee to improve the system and to improve the public safety of Canadians.

I'd submit that to the committee for consideration.

**The Chair:** We have Dan, then Brian, and then Celina.

**Mr. Dan Albas:** There is no timetable on this, so I am sure the chair would be able to fit this in, working with the clerk.

There is a significant public interest here. Since the original story ran in the media, I have also had media in my own local area ask about this.

This is a big country. We have a variety of different types of ownership, telecommunications, towers, etc. Canadians are going to want to know, when they give their children or other loved ones a cellphone, what reasonable expectations they should have that it will work, and under what conditions.

That's something people here in Ottawa recently discovered, and there's public interest in our just doing a short study on this to see if we should be concerned about what the capacity of the system is, and what the different parts of the system are. Different parts of this country will operate under very different conditions, so maybe we should just have a good discussion around it.

I encourage members from all sides to support this. It would be a good thing for us to do.

• (1715)

**The Chair:** Brian, go ahead.

**Mr. Brian Masse:** I would propose a friendly amendment. We will determine later whether it is friendly or not. After "technology", I would add "or a subcommittee".

I would leave that open before I speak to the main motion to find out whether the amendment would be acceptable, because I believe under procedure we need to speak to the amendment before the main motion. I don't know if that is—

**The Chair:** You would have to speak to the amendment first.

**Mr. Brian Masse:** Yes, but I am wondering if the amendment is friendly.

**Mr. Dane Lloyd:** Why would we need this amendment?

**Mr. Brian Masse:** Well, if it's going to be used as a condition of time for this committee, then a subcommittee could easily be struck to accommodate the committee's time frame. It's something I would be willing to participate in. An extra day or two is all that's required. That's something I'm open to, because it's an important issue. It's a reasonable request.

Committee business would provide for that, I think, under the main motion. If that is seen as an obstacle in terms of time frames, then all we're asking here is simply that something be done before the end of the calendar year. It's quite reasonable. I would make that a friendly amendment, and perhaps that would get the main motion passed.

**The Chair:** Is there any more debate on the amendment? No.

We have to call the vote first on the amendment.

**Mr. Brian Masse:** I call for a recorded vote.

**The Chair:** Okay.

We're voting right now on whether to send this to subcommittee.

**Mr. Majid Jowhari:** No, we're voting on whether we should add "subcommittee" to this as an amendment, not send it to the subcommittee.

**The Chair:** Yes.

**Mr. Brian Masse:** I propose to add "or a subcommittee". It gives us flexibility if we want it. The argument, then, is that if we do not have time as the main committee, a subcommittee would be the natural progression. That gives us plenty of flexibility.

**The Chair:** The vote is on the amendment adding the words "or a subcommittee".

**The Clerk of the Committee (Mr. Michel Marcotte):** It would read, "That the Standing Committee on Industry, Science and Technology, or a subcommittee, pursuant to Standing Order 108(2) undertake a study...."

**The Chair:** We can't discuss the main motion until we put the amendment away.

(Amendment agreed to: yeas 8; nays 1)

**The Chair:** The amendment has passed. Now we can debate the whole motion.

Celina had something she wanted to throw in.

**Mrs. Celina Caesar-Chavannes:** Yes, thank you, Mr. Chair.

The main motion and the amendment do have merit and are reasonable and important. Of course we know about the flooding in New Brunswick, the wildfires in B.C. and the tornadoes in the national capital region. We've seen on the news, as was explained, that people were impacted, and our hearts certainly go out to those impacted. We've heard stories from our colleagues. We've seen what's happened, both the tragedy and the triumph of the human spirit, neighbours helping each other and Canadians at their best.

I think we should take a bit of caution with this particular motion in this committee, for a couple of reasons. The first is about the assessment of the telecommunications infrastructure and the tools that are available to our first responders. How are they integrated? We need to know that. We know that the climate is getting wetter,

wilder and warmer, and we should proceed with caution in order to be able to build back better.

There are a couple of things that I just want to make sure we clearly understand with this particular motion.

Number one, I think it needs to be strengthened by communication with other departments, but in particular with Public Safety.

Second is the Sendai Framework for Disaster Risk Reduction 2015-2030. Public Safety Canada is the lead federal department for the domestic implementation of the Sendai framework. Number one, it focuses more on local actions than in the past. Number two, it has a clear definition of risk, which is inclusive of all natural, man-made and technological risk but excludes conflict-related emergencies. Number three, it focuses on preventing new risk as much as reducing existing risks. That falls under Public Safety.

In my opinion, this particular motion should be strengthened by communication but also should fall under Public Safety.

As meritorious as this motion is, it is my recommendation that this committee not move forward with this motion.

• (1720)

**The Chair:** Michael, go ahead.

**Hon. Michael Chong (Wellington—Halton Hills, CPC):** Thank you, Mr. Chair.

I recommend that we support the motion. I am going to be voting for it.

The industry committee has always had purview over telecommunications policy, in particular CRTC. This is not just an isolated incident with the recent tornadoes that came through Ottawa when the telecommunications networks, particularly the cellphone networks, went down. It was also an issue last May. Our nationwide emergency public alert system, which is to operate over mobile networks, failed. That was a nationwide test, I think you'll remember, last May. It failed in Quebec, and it partially failed in Ontario. I think this is something the committee should take a look at.

I am concerned about committees not doing their job in looking at these very serious matters. We have a Congress to the south of us that takes a look at these issues. We always seem to play follow-up and catch-up to that oversight function.

There was a major near disaster with Air Canada, as reported by the National Transportation Safety Board in the United States, where they said that an Air Canada jet came within mere feet of crashing at San Francisco International, almost crashing into a number of airliners and almost causing a thousand deaths. I'd like to hope that our parliamentary institutions are robust enough to take a look at that and not just defer to other governmental institutions.

It's the same with this. This is a question of emergency response. It's not a partisan issue. I think we should hear from officials from the CRTC about why the national alert system failed over mobile networks last May, what they're doing to address this, and what gaps there were in our telecommunications networks more recently here in Ottawa. This is our job, as a Parliament. If we can't do it, then it really speaks to a weakening of our parliamentary institution.

I am going to support it. I think it's important that we take a look at it. With the amendment that passed, it's not going to delay the study because we'll have plenty of time to do things in parallel.

**The Chair:** Brian is next, and then Vance.

**Mr. Brian Masse:** Thank you.

I appreciate the motion being brought forth. There are a couple of points I want to make that are important. One is specific to the motion, and the second has to do with how this committee operates in the future.

The first is related to the motion. I think some good points have been made about public safety, but the reality is that at the end of the day, the CRTC is the actual authority for this, for the mechanics behind how we lay out things. In fact, what we need to do is look at the decision-making process in terms of how spectrum auction has been sold off, the terms and conditions, and what's physically available and capable out there in the market that's been created. That's really under the CRTC entirely.

Second, we have another round of auction coming up, and we need to find out what the gaps are in terms of public policy. I think the motion in itself is important because it kind of gives us a road map of what we currently have out there. That's not with fault or blame. It's whatever has been done out there. This is the footprint we have and the strengths and weaknesses of the footprint.

Most importantly, it allows municipalities and first responders to have an idea of what's predictable out there. I would argue as well that some clarity and public information are necessary, because even our first responders rely on other technical devices, but at the same time they have their own personal devices during times of emergency when it's difficult to understand what works and what doesn't work. They often have to work through these crises and have the same frustrations as ordinary consumers do about them.

There are several fronts to that. If we don't do that, in connection with the launching of the new public spectrum, we can't even lay out those terms and conditions, so I think the timing is important for that.

The second part I would speak to is whether this committee wants to continue to operate in the way it traditionally has. I think it's a reasonable request, regarding something that falls within our jurisdictional footprint, to spend a couple of meetings on something like this. I think the motion has been crafted in such a way that it actually wouldn't require an onerous process. It's been done fairly. If we are basically not going to entertain new motions being brought forth—and this isn't my motion—this will be going on, on a regular basis, because it's going to be clear that the government is only interested in shutting down anything that they don't want to even operate on or hear about or be part of.

If that's the road we're going to go down, then that's fine. We're working co-operatively on a science initiative. At the same time, the minister went into my riding and met with the local Liberal riding association on science in my riding. I understand that's happening on the outside of things, but here in our committee, we have a chance to continue the good work we've been doing.

If we're going to resort to this, so that when a reasonable request comes forth.... We had one the other week, and there's another one this time. If that's the road we're going to go down, then that's fine, but don't for a minute think that these are isolated, one-off working relationship issues that we can do. This is really about how our committee is going to function in its entirety.

I support it. I'm glad that members sought it, because if we can strike even a subcommittee, if there's a problem with that, to get at least some public awareness out there, and have some people come in and present some of the things that happened.... There's lots of misinformation about how things didn't work and what did work. I think that has value in itself. To be quite frank, the Conservatives were in power the previous time, and then the Liberals and so forth. It's not even about calling who.... It's what's out there right now. Unfortunately, we don't own a record for it.

The thing is—and Michael is correct—that we are abdicating our responsibility as a committee. You can also see this with our current study in how we are probably not necessarily giving it some of the respect that's necessary for Canadians with regard to calling forth witnesses and testimony here for Canadians. This is a way of elevating that to be more responsible, which other countries are doing.

All we're asking for here is a good accounting of the process for the record so we understand what's happening, what's taking place, and give recognition to what is going on. That's not political. It's nobody's fault for any of that stuff, but we would get an idea of where we're at.

Last, if we do have concerns about public safety, part of our responsibility can be to make those recommendations to the public safety committee and so forth so we can make it a little more wholesome if we want.

• (1725)

We do our little part that's necessary for our first responders.

**The Chair:** Thank you.

Before we move to Mr. Badawey, I just want to remind you that I appreciate the relationship we all have here. We have been open to and actually adopted motions from the NDP and from the Conservatives. I hope we don't go in the direction of trying to get each other's hackles up. We're a committee, so we all have to decide on where we want to go.

I'm looking at the clock. Is there unanimous support to continue the debate?

**Some hon. members:** Agreed.

**The Chair:** Okay, Mr. Badawey, the floor is yours.

• (1730)

**Mr. Vance Badawey:** Thank you, Mr. Chairman.

First of all, Dane, it's a great motion. There's no question that I support the intent of the motion. However, more important is the process to get where you want to go. From my former life, I have a great deal of experience with respect to emergency preparedness, both at the provincial level—which by the way is the delegated authority, not the federal level—as well as the regional and municipal levels. We have dealt on many occasions with more drastic situations, like that which happened here in Ottawa, and less.

One of the biggest frustrations I felt as part of the lead on the emergency preparedness team—along with the chiefs of police, fire and EMS—was the lack of discipline and planning within a process. That is why recent provincial governments, at least in Ontario, have made it a priority to put disciplined emergency preparedness plans in place, with the proper delegated authorities to then lead when these situations happen. I wanted to preface my comments by saying that.

For the most part, it goes to Brian's latter comments with respect to this committee's role. I forget what word he used exactly, but he's right. It is a small role. The bigger role belongs to public safety.

If anything, I would suggest that the motion state that we urge the public safety committee to do this, and that we want to be a part of it. Telecommunications, quite frankly, is a small part of the overall bigger picture when it comes to emergency preparedness. In my experience, in situations like this, telecommunications are completely wiped out; therefore, you have to find a contingency to those telecommunications.

**Mr. Brian Masse:** Is that a friendly amendment?

**Mr. Vance Badawey:** If I could finish my comments, Mr. Masse.... I'll decide whether it's an amendment or not.

**Mr. Brian Masse:** I just asked because you mentioned what it would be, so I was just asking for clarification.

That's for the chair, I suppose.

**Mr. Vance Badawey:** Please allow me to finish. I'm not sure who the chairman is here.

**The Chair:** It's me. Let's not devolve here.

**Mr. Vance Badawey:** Please let me finish my comments, and then I'll determine whether I want to make it a friendly amendment or not. Thank you.

What I would suggest that the committee move forward with is that the delegated authority.... Being a rookie MP, I'm just assuming that the delegated authority for public safety is Public Safety. There are other committees as well; it's not just going to be this committee. I sit on TRAN. It's going to have infrastructure implications. It's going to have transportation implications. It's going to have community implications. It's going to have telecommunications implications, and the list goes on. The steward to all that should be Public Safety. They would then delegate out to you and to infrastructure, transport, health care and everybody else. That's how you get a wholesome blueprint.

By the way, I would even include the provinces and municipalities. That is how you get a blueprint. Let's not bite off more than we can chew. Let's keep it disciplined in terms of who the delegated authority is, and work from there. Therefore, everybody is involved. That way, the committee doesn't have to go back in three or four

weeks, after you've spent some time on the study, and say, you know what, it's now time to get X, Y and Z involved. We should keep the horse before the cart here. Let the delegated authority do that, and of course call upon this committee to give your two cents' worth when it comes to telecommunications.

Mr. Chairman, I'll take your lead on that. If you want that as an amendment, I would make that a friendly amendment to take this great intent and suggest, urge, encourage—whatever word you want to use—Public Safety to take on this role and be the delegated authority to move forward in this direction. It could then call upon the different standing committees to contribute what they would otherwise contribute within their own disciplines.

**The Chair:** Thank you.

If I understand correctly, you want to put that through as an amendment.

In discussion with the clerk, to go down the road that you've just recommended would be a substantial change to the motion, so it really wouldn't be an amendment to the motion. However, what you're saying is on the table, so we would have to change the whole motion, because it would be a substantial change to the motion itself.

● (1735)

**Hon. Michael Chong:** An amendment is not allowed.

**The Chair:** Yes, as per the clerk.

Michael, you're next.

**Hon. Michael Chong:** So, we're on the main motion as amended.

This is really our committee's responsibility. I've been on this committee on and off for years. This is the primary responsibility of the CRTC, and in every news article for the last year, whenever there has been a discussion about telecommunications breakdowns in the event of a natural disaster and emergency, the CRTC has been the primary spokesperson.

On May 7, the countrywide emergency public alert system for mobile devices broke down, failed in Quebec and was a problem in Ontario. Who was the chief spokesperson for the Government of Canada? It was the CRTC. On September 25, 2018, the CBC website said, "Didn't get the tornado emergency alert? It could be your phone". CRTC was the primary spokesperson. On September 30, CBC said, "Residents question lack of communication" during the tornado in Ottawa. The chief government spokesperson was from CRTC.

This is our committee's responsibility, because the CRTC falls under our purview. It's not Public Safety that's responsible for the oversight of the country's telecommunications and mobile systems networks. It's our committee, because we are responsible for the CRTC. Public Safety is not the lead on this issue. It's our committee. It's clear in every single news article about the breakdown last May in the newly introduced emergency public alert system, and with the incidents that happened here in the city of Ottawa several weeks ago, that the CRTC is the primary lead on this within the Government of Canada.

Therefore, our committee is the primary committee of some 24 committees of the House of Commons that is responsible for looking at these sorts of questions.

**The Chair:** Mr. Albas, go ahead.

**Mr. Dan Albas:** I really appreciate that intervention by Mr. Chong, but if things are going to change, it's going to be because we find out what the current capacity is, review what the experiences are, and then decide for ourselves and make recommendations to government. Now, whoever ends up implementing that, whether it be Public Safety, Transportation, Infrastructure or Industry, specifically through Minister Bains' office, that will happen at that point.

I would simply point out that Dane has made it his job because he had constituents ask about it. I make it my job not just because there are constituents asking about it, but because we have an opportunity and a role here to lend two meetings to an important issue. We don't necessarily have to solve every problem, but we might want to take a look under the hood and see what's there. That's what is being asked for here.

To try to spin it that this is someone else's responsibility... We are responsible for this committee. This is our committee. This is our work. We're here to try to do what we can for constituents. Then we can make recommendations to government, and they can look at those recommendations and find out whether or not they are appealing to them.

I would just encourage all members to support this, because we are making it our issue. People are depending on it. There is an expectation that this is what we are paid to do.

**The Chair:** Mr. Masse, go ahead.

**Mr. Brian Masse:** Thank you, Mr. Chair.

If you're not sure, you can actually go to the CRTC website. Under "Emergency alert messages and the national public alerting system", it describes CRTC's responsibility.

It lists the providers that are participating in emergency regulatory systems. It's everything from numbered companies to Access, AEBC Internet, Bell, Bell ExpressVu, Bragg Communications, Cogeco, Nexicom Communications, Northwestel, Rogers, SaskTel, Shaw, Shaw Direct, Telus, Tbaytel, Vianet and Vidéotron. It goes on and on. There's more than just that. It actually provides a map you can look at with regard to how the CRTC works with the different service providers, in terms of providing an actual physical footprint. There is no debate about it.

You can just go to CRTC, if you need it: [crtc.gc.ca](http://crtc.gc.ca). There's a whole section about that and the process for the alerts, and how it actually involves not only these providers but radio and television as well—the other traditional broadcasters.

You're right, Mr. Chair. We have adopted other motions, but if we're going to be basically completely stuck in copyright alone and not have any breathing space for these types of things, it's not really healthy.

We've had a good run here. I don't think this is an unreasonable request. I have called them out in the past when I've seen stuff brought here that I thought might be politically motivated or have some type of bias. This is a sincere approach to dealing with an issue that touched us all. I saw commentary from all political parties about it. I saw some good comments from the minister about it, with regard to what he's going to do. The minister actually validates this through his public commentary, which you can visit on many CBC sites, with video and other types of interviews that were done. He's actually getting involved in this.

It's an incomplete story. This is a helpful process. That's why I proposed the amendment.

The mere fact that the subamendment was agreed to shows an openness. It's not just them digging in on their particular motion. They've adopted the amendment to accommodate a fair concern that might be expressed about timing for everything. I'm really hopeful that we can actually get this passed and go on to some meetings that would be very helpful and do something worthwhile. I just don't understand why we would miss the opportunity that is in front of us. One of the biggest challenges I've seen in this place over the years is the missed opportunities.

Mr. Chair, with your leadership and the way we approach these things, we can actually have a couple of good meetings that will at least provide some public information that is really helpful for people.

We can characterize the Ottawa weather... You've seen smaller and larger disasters, but there was real human tragedy and suffering that took place. I've seen it in Leamington as well, where Dave Van Kesteren represents the Chatham area, and there are other places.

It's important, too, because if we find something in there, it would be a good time for the CRTC to educate the public about what to do. It's a really great, strong opportunity to come and actually be here in front of Canadians to talk about the emergency preparedness situation that the CRTC has, and get it out there.

It's not about casting blame; it's not about pointing fingers. It's about what happens next. If we are unprepared as a country... Maybe there are things being done that we don't know about yet, that are going to happen. That could be in the mix of things. If there aren't, then we need to decide that as parliamentarians.

I would just finally conclude by an appeal to keep the structure of this committee, which I think is its backbone, and when there are reasonable things brought forth, to engage in them without compromising our principles and get stuff done.

• (1740)

**Hon. Michael Chong:** [*Inaudible—Editor*]

**The Chair:** That's not helpful, Mr. Chong, to this.

I'm being neutral, here.

There's no reason for the whip to be involved in this. That's not the way this committee works.

This side has presented its case, and you have presented your case. The question then becomes, where do we move from here?

**Hon. Michael Chong:** Mr. Chair, that was a private comment that I made to my colleague here. I did not expect that other people on the opposite side would overhear it—

**The Chair:** It was loud enough.

**Hon. Michael Chong:** —but I will state it on the record. I think it's a problem that whips' office staff, on both sides, are present to direct members of Parliament. I'll go on the record to say that, and I will defend that publicly.

I do think it's a problem in our parliamentary committees that the whips' offices in all parties direct members of Parliament on these committees to do things all the time. I think it detracts from our ability to provide our oversight function as a committee. That's why I've long believed that the whips' offices should not be directing members of Parliament, regardless of which side of the aisle they sit on.

I also believe that it's long time that the leaders' offices and whips' offices no longer decide who gets appointed to these parliamentary committees. I think it should be a secret ballot vote so that these committees could be more autonomous and can better execute their parliamentary function in holding government departments and agencies to account.

• (1745)

**The Chair:** We're here to debate the motion, and that's what we've been having as a debate. You may not all agree on it, but that's what we've been having. Both sides have presented their case.

At this point, if there are no other people who want to contribute to that debate, we'll move forward with a vote.

Again, there are two sides to this story. I know we don't all agree on things, but I think we've had a debate on this issue.

**Mr. Dan Albas:** Could we have a recorded vote?

**The Chair:** Absolutely.

(Motion as amended negatived: nays 5; yeas 4 [*See Minutes of Proceedings*])

**The Chair:** That's all we have to say for the day.

I thank you all for staying around and actually going through the motion. We'll see you all next week.

The meeting is adjourned.







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