

BRIEF TO
STANDING COMMITTEE ON CANADIAN HERITAGE
(STATUTORY REVIEW OF THE CANADIAN COPYRIGHT ACT)

Submitted by Tony Belcourt, O.C., LL.D. (Hon.)

My name is Tony Belcourt. I am known as an Indigenous advocate whose career spans 50 years as an Indigenous leader locally, provincially, nationally and internationally. I am also a writer, producer and director of documentary films. I am semi-retired and now regarded by many as a “Métis Elder” and an Indigenous arts/cultural professional.

In the past year I have been involved with G52, a private consulting company, and an ad hoc collective of Indigenous artists considering the formation of an Indigenous Art Registry using blockchain technology. On December 1-2, 2018, we convened a National Collaborative Roundtable bringing together artists, curators, academics, community workers, arts professionals, technology experts to consider the value, feasibility and potential of developing this initiative. The participants were:

- Alanis Obomsawin, film maker
- Bryan Winters, Inuit tag expert
- Camille Georgeson-Usher, artist, Aboriginal Curatorial Collective
- Carey Newman, master carver
- Charm Logan, fashion designer
- Cheryl L’Hirondelle, multi-disciplinary artist, singer-songwriter
- Darlene Naponse, writer, film director and video artist
- Gerald McMaster, curator, artist, author, professor of Indigenous Visual Culture
- Gerri Trimble, singer-songwriter
- Henry Arthur Green, master carver, linguistic knowledge keeper
- Joanne Guillemette, photographer, curator, photo archivist
- Johnny Blackfield, certified bitcoin and blockchain professional
- Dr. Jutta Treviranus, Director, Inclusive Design Research Centre, OCADU
- Kerry Swanson, Chair of the Board, imaginaNative
- Lou-ann Ika’wega Neel, visual artist, Indigenous arts advocate
- Lucinda Turner, visual artist/carver
- Mark Holmes, consultant, partner G52

- Roanie Levy, President, Access Copyright
- Dr. Robert Luke, Vice-President Research and Innovation, OCADU
- Sapanpreet Narang, technology professional, Access Copyright
- Dr. Sara Diamond, President, OCADU
- Stephen Sawyer, information specialist, Access Copyright
- Suzanne Belcourt, graphic artist
- Tony Belcourt, writer, director, Indigenous advocate
- Winona Stevenson, writer

Background:

Indigenous art in all of its forms is an integral component of First Nations, Métis and Inuit history, our present and our future.

Indigenous painting, drawing, carving, music, dance, craft, literature, film and oral exchange of traditional knowledge are all highly valued. Unfortunately, they are also among the most misappropriated art forms in Canada and in jurisdictions around the world.

The creation of art is an economic and social pillar of Canadian Indigenous communities, and the value to Indigenous people extends far beyond the simple means of generating income for individuals, families and even entire communities. Indigenous culture endures because of their art and artists. Greater understanding of Indigenous cultures, and the often heroic efforts to overcome oppression and prejudice, is communicated through Indigenous art. Even the health and well being of Indigenous communities is improved through the creative processes and expression that is helping to heal past wrongs and present a more optimistic future.

As such, it is deeply troubling that these important cultural and artistic expressions are subject to so much fraud, forgery, misrepresentation and exploitation by unscrupulous art dealers, impersonators and fraudsters. The means to protect Indigenous art, artists and art patrons from these abuses is long overdue.

Scope:

According to 2011 Canadian Census Data, there are 136,600 artists in Canada who spent more time at their art than at any other occupation. Of that number, 3,700 are Indigenous artists representing about 2.7% of all artists. There are 630 acknowledged First Nations communities across Canada, and many of those communities count art as a significant contributor to their local economies.

Across Canada 451,795 people identified as Métis, representing 32.3% of the total Aboriginal population. 59,445 people identified as Inuit equaling 4.2% of the total Aboriginal population.

Almost three-quarters of Inuit in Canada live in remote communities stretching from Labrador to the Northwest Territories and comprising four regions: Nunatsiavut, Nunavik, Nunavut and the Inuvialuit region. Art is particularly important in those remote communities where economic opportunity is limited.

Survival:

Indigenous art and culture has survived generations of misunderstanding, misappropriation and attempts to eradicate Indigenous culture through programs such as the ban on Potlatch ceremony, residential schools and the 60's scoop.

Until a short while ago, Indigenous art was only regarded as "craft" by institutions such as the National Gallery of Canada, but today, Indigenous art can now be found in galleries throughout the world. Indigenous artists are claiming rightful recognition for their work. Art once sold for very little is now often sought at auction houses and commanding prices in the 10's of thousands of dollars.

As government and society come to grips with the tragic actions against Indigenous communities, national and provincial galleries, private collections, auction houses and art vendors have begun recognizing the work of artists who were once ignored or relegated to the fringes. Academic institutions are now researching and teaching courses that reveal Canada's rich Indigenous art heritage, and curators are building their collections of Indigenous Art.

Suffice it to say, the open market for Indigenous art has also grown substantially and, without doubt, there has been very considerable and positive change for Indigenous artists, but recognition and growth of Indigenous art has come at a price.

The issues:

As the Committee heard from Lou-ann Neal in her October 31 presentation, in Vancouver alone up to 80 percent of work sold as Indigenous art is either fake or is created without permission by people copying Indigenous styles, techniques and designs.

This travesty is repeated across Canada to varying degrees and the damage to artists, their reputations and to the unsuspecting buyers is disturbing.

As an example, one of Canada's most renowned Indigenous artists, Norval Morrisseau (1937-2007) sold some of his paintings on the street and in bars for, virtually, pocket change. Today, his auctioned work commands prices of more than \$50,000, but his art and its value has - and continues to be - seriously compromised.

As Norval's work began to be recognized by major galleries, forgers created works that were sold as originals. When art patrons and galleries learned of the deception, legal challenges and

criminal charges were laid, but the all too real collateral effect is that the authenticity of Norval's work has now come into question along with its dollar value. Buyers are now unsure of what is real and what might be fake, and, as uncertainty persists, so too does the reputational harm.

Norval's story is not unique. West Coast art is yet another example wherein carvings unique to coastal Indigenous communities are illegally mass-produced offshore and then shipped into the Canadian marketplace and sold as Indigenous art for a mere fraction of what the original art is worth. The result is that of Aboriginal artists struggling to make a living as resellers, forgers and impostors get rich.

As I mentioned to the Committee in my presentation on October 31, 2018, Aboriginal artists are vulnerable, and those who are not yet established or recognized in their field are among the most vulnerable. They have no means to promote their work or pay for exposure in galleries or other traditional art venues.

Often these unknown artists work for income that is well below the poverty line. They cannot afford security measures to protect against fraud, forgery or plagiarism.

The solution:

We can take a lesson from Australia which has vastly improved artist rights and which recognizes that Aboriginal art contributes more than **\$100 million** to the Australian economy.

Through its Luxembourg office, the giant accounting and business development consulting firm Deloitte has developed a proof of concept artist registry.

In France, Verisart registers artists and offers blockchain-based certificates to prove art origins and pedigree.

Right here in Canada, Access Copyright through a subsidiary, Prescient Innovations Inc., is currently developing an open, transparent and auditable distributed ledger that will attribute a creative work to its rightful creators and rights holders.

Although each of these systems appears to offer some protection for artists, they do not, individually, meet the needs of Indigenous artists. The National Collaborative Roundtable held earlier this month identified the following challenges that need to be addressed:

- The exploitation of Indigenous art and artists has not been eliminated, nor are vulnerable artists and communities earning fair and equitable compensation and respect for their intellectual, traditional and creative property;
- Points of sale need to be held accountable for selling inauthentic works – there are no regulations;
- Public education is needed to expose fake Indigenous art and its related industry;

- There is a major challenge in defining who is Indigenous but there is also a community policing that occurs and self-identification can be effective;
- Traditional concepts of ownership, hereditary artistic rights and value are not always compatible with market-driven and commodity approaches to art;
- Artists need support to develop their own websites, marketing and sales tools;
- An appropriate sales tracking tool is needed to support an artists resale right;
- The reassertion of Indigenous community, culture and creativity to a more rightful place in society needs to be supported;
- Remoteness and isolation of many artists presents barriers to participate in technology - and internet-driven marketing and sales tools;
- Art, culture, traditional artifacts taken from Indigenous communities must be repatriated;
- Advocacy is needed to lobby for appropriate regulations and to change laws;
- Indigenous artists require information on how blockchain and other technologies will protect art through registration and verification processes;
- Information of how to access and utilize technology to protect art through registration and verification must be shared with Indigenous artists.

The Collaborative Roundtable conference concluded that an Indigenous Art Registry (IAR) is a viable means to overcome most of the aforementioned issues and set the stage for a much better future for Indigenous art, artists, art patrons and for the protection and repatriation of Indigenous culture.

Additionally, the Round Table conference agreed to form a steering committee that will have oversight/input leading to an independent, non-profit, Indigenous-owned corporation which will direct the IAR and partner with a for profit corporation for development and operational phases of the registry.

High level desired outcomes and effects:

Creation of an IAR that provides artists and art patrons with an easy-to-use, low or no cost, website based Art Registry that:

- provides an online forum to promote Indigenous art and artists,
- creates a secure online web based ecosystem for the sale, trade and collaboration of art,
- reduces or eliminates the sale of fraudulent art,
- reduces or eliminates misappropriation of Indigenous art forms,
- protects Indigenous cultural objects and repatriates Indigenous art and artefacts to their rightful communities,

- provides a resource for recording/ registering Indigenous art and fomenting resale rights to artists.

Considerations and approach:

It is understood that a Canada-wide Indigenous Art Registry will encompass hundreds of First Nation, Métis and Inuit communities and individuals. It is also understood that Indigenous art and artists may transcend national borders.

The IAR is intended to be inclusive in its design and operation and respectful of the laws and traditions of communities and, as such, thorough research, consultation and stakeholder outreach must be a key element in design and implementation. A collaborative approach must be taken.

Freedom of expression and creativity is a cornerstone of a vibrant, healthy arts community and this fundamental must be upheld and applied in the context of respecting Indigenous culture and traditions.

Recommendations:

1. that the INDU Committee encourage the Federal government to support the consultation and development phases of an independent, non-profit, Indigenous Art Registry;
2. that the Committee recommend amendments to the Copyright Act to provide for an artist resale right that applies to “secondary sales of original artworks for the lifetime of the artist, and their estates for up to 50 years after death, in accordance with the terms of the Copyright Act” (submission by CARFAC);
3. that the collecting, distributing, or monitoring the payment of royalties be open to appropriate agencies including those that are contemplated such as the Indigenous Art Registry;
4. that regulations be enacted to eliminate the on-shore and off-shore production of fake art and the misappropriation or theft of intellectual property of Indigenous peoples and their communities.

Tony Belcourt, O.C. LL.D (Hon.)
December 14, 2018