

EXHIBITING IN A PUBLIC GALLERY

OVERVIEW

This document sets out recommended standards for professional artists. The guidelines serve as a model for practical and ethical practices facilitating fair and equitable dealings between creators and partners when exhibiting in a public gallery. This is a living document and will be revised and updated based upon ongoing input from stakeholders.

Public galleries are not-for-profit galleries that receive some of their funding from local, provincial, and/or federal government sources and are normally committed to one or more of the following activities: exhibiting, collecting, conserving, and/or promoting art in the public interest.

Public galleries include national, provincial, regional, and municipal galleries as well as artist-run centres. A small number of privately-funded galleries may operate like public galleries, with their primary purpose being exhibition, rather than sales. Best practices should be followed by all public galleries and venues operating like public galleries, and the artists who exhibit therein.

Artists' fees (Exhibition Royalty Fees) should be paid to all artists whose works are exhibited by public galleries. In addition, Professional Fees and Copyright/Reproduction Royalties should also be paid. Current and advance fee rates and categories are found in the CARFAC – RAAV Minimum Recommended Fee Schedule.

A wide diversity of practices exists in the relationship between artists and public galleries. Practice related to the structure and timing of exhibitions also varies. Some public galleries purchase and/or sell artwork and some do not.

The relationship between the artist and the public gallery is a professional one and a business contract. It should be conducted as such. The standards outlined in this Best Practice document should facilitate the maintenance of the professional relationship between the artist and the gallery.

The process of developing an exhibition will involve formal or informal conversations. Either party may initiate the discussion. A studio visit may be involved. When agreement on exhibition is reached in principle, the process continues with both parties negotiating exhibition dates, spaces, equipment, etc. It is important for the artist and the gallery to know the roles, responsibilities and limitations of each party.

Written contracts and agreements should be the end result of negotiations and are necessary to a successful relationship between artist and public gallery. However, use of contracts varies in the province, as does their form. Contracts should be clear and should address all aspects of exhibition and fees, as described in this document.

The Copyright Act of Canada requires protection of the artist's copyright.

Moral rights is also part of The Copyright Act.

The Exhibition Right in Canada is part of The Copyright Act. It recognizes the artist's right to be financially compensated for use of their work. The payment of exhibition royalties (artist's fees) to artists for public exhibition of the artist's work is a legal requirement of public exhibition of artists' works produced after 1988.

Protection of artists' intellectual property, including copyright, exhibition right, and moral rights is the responsibility of both artist and public gallery.

Additional professional fees may be payable to the artist, including presentation, consultation, installation, preparation and other compensation for an artist's time and labour. These fees are not associated with copyright use, which is calculated separately. Minimum artist's professional fees are outlined in the CARFAC – RAAV Minimum Recommended Fee Schedule.

Duty of care as well as maintenance of institutional policies in the case of loss, damage, or theft is part of a public gallery's required due diligence.

Acquisition of artwork (addition into the gallery's collection) should be handled professionally. There should be no expectation that the artist will provide a donation or discount, unreasonably shoulder the risk of the failure of a proposed purchase to proceed, and/or provide the gallery with automatic right to any purchase of artwork.

Deaccessioning of artwork (removal from the gallery's collection) should be avoided. If necessary, it should be carried out in accordance with the institution's written policies, which should be provided to the artist at the time of acquisition. These should include right of first refusal by the artist.

1 BASIS OF RELATIONSHIP

- 1.1 Ordinarily, the primary purposes of the public gallery are exhibiting, collecting, public programming, education, and conservation of works of art. Though the gallery may also be involved in sales through related retail outlets, and sales to the public of works on temporary exhibition, its primary purpose is not-for-profit.
- 1.2 The temporary nature of most public gallery exhibitions influences the relationship between

gallery and artist, which is likely to be temporary also. As such, it should be governed by negotiated and written agreements.

- 1.3 All public gallery protocols should be subject to best practices.
- 1.4 The public gallery is responsible to respect the artist's legal rights including copyright and moral rights (see section 9).
- 1.5 The payment of exhibition royalties (artist's fee) is established by Canadian copyright law and should not be circumvented (see section 4).

2 CONTRACTS AND AGREEMENTS

- 2.1 Written contracts or agreements must be used.
- 2.2 Public galleries should offer exhibition contracts or written agreements to artists whose work they plan to exhibit, purchase, or sell. These contracts should include all terms of the exhibition/purchase/sale, and be negotiated, signed and a copy provided to the artist before the exhibition takes place.
- 2.3 The above notwithstanding, not all galleries and exhibition venues use standard contracts or agreements. Even where a standard exhibition contract exists, the gallery may not have a standard practice of offering it to the artist.
- 2.4 The lack of a standard agreement should not prevent the negotiation and recording of contract terms. As well, the artist must be free to negotiate terms that are omitted or onerous even if a standard form contract is presented. The artist should also raise any issues that they think necessary.
- 2.5 Where no contract is available from, or offered by, the gallery, either party may record the terms agreed to in writing and provide the other party with a signed and dated copy.
- 2.6 By accepting the artist's written terms of agreement, the gallery may be considered to have acknowledged that the terms have been negotiated and agreed to by both parties.
- 2.7 In addition to best practices described in all sections following, considerations for contracts and agreements include:
 - a) location of exhibition
 - b) selection and installation of artwork
 - c) transportation of artwork
 - d) touring of exhibition, including transportation, storage, installation, etc.

- e) presentation requirements e.g. framing, construction, display units, technical equipment, personnel, etc.

2.8 Other considerations for inclusion in contracts are described in the following sections.

3 EXHIBITION COSTS

3.1 The gallery should cover all costs of the exhibition including promotional costs, opening and other receptions, some transportation of work (a minimum of one way transportation is standard), insurance, and exhibition installation. How these costs are arrived at should be negotiated.

3.2 Any costs to the artist should be negotiated by the artist and the gallery in advance and be recorded as part of the contract or written agreement. Notwithstanding 3.1, artists may be asked to cover some costs e.g.

- a) late changes requested by the artist to a catalogue or other publication
- b) printed invitations which differ from the gallery standard
- c) artists' materials including equipment and technology
- d) one-way transportation of artwork

4 ARTISTS' FEES/EXHIBITION ROYALTIES & PROFESSIONAL FEES

4.1 According to Canadian copyright legislation, artists in Canada are entitled to be paid exhibition royalties (an artist's fee) for use of their work by public exhibition spaces, when the exhibition is not for purposes of sale or hire and when the work was produced after June 8, 1988. Many public galleries also pay exhibition fees to artists for work produced before that date (see section 9).

4.2 The CARFAC – RAAV Minimum Recommended Fee Schedule provides recommended *minimum* payment schedules for exhibition, reproduction, advertising, commercial and professional fees. Schedules cover all types of public exhibition, audio-visual and print reproduction, exhibition royalties and reproduction fees for commercial and advertising purposes, and fees for artists' professional presentation and consultation, installation, and preparation. These schedules should guide artists and galleries regarding minimum fee expectations. Fees for other uses of the artist's works, including art rentals, should be negotiated.

Multi-year minimum fee schedules for exhibition royalties and other fees have been negotiated between CARFAC, RAAV (le Regroupement des artistes en arts visuels du Quebec), CAMDO (Canadian Art Museum Directors' Organization), ARCA (Artist Run Centres and Collectives), and CMA (Canadian Museums Association). These fee schedule apply to all public galleries.

- 4.3 Additional professional fees may be payable to the artist, including presentation (lectures, workshops, etc.), consultation, installation, preparation and other compensation for an artist's time and labour. These fees are not associated with copyright use, and would be assessed separately.

5 TIMELINES

- 5.1 Artist and gallery should negotiate and agree to timelines for exhibitions, including:
- a) due date for final list of works to be included in the exhibition
 - b) due date for promotional and catalogue materials
 - c) dates for payments
 - d) exhibition opening and promotion and any other related events
 - e) time available for installation
 - f) length of exhibition
 - g) for time-based works, duration of the work, frequency, timing, and public notification of timing

6 ARTIST OBLIGATIONS

- 6.1 The artist should deliver the agreed upon work in good condition to the gallery at the agreed time, with due consideration for condition reports, packaging and presentation.
- 6.2 The artist should make sure the gallery has all information necessary to correctly install the work. It is common for an artist to provide an instruction manual for anything not straightforward, if they are not present themselves.
- 6.3 The artist should provide the gallery with a full descriptive list of works in the exhibition including titles, date, dimensions, insurance value(s) based on fair market value, condition, and other information as necessary. This list should be checked by the gallery against the works, signed, and a copy returned to the artist.
- 6.4 The artist should provide accurate biographical information to the gallery.
- 6.5 Artist and gallery should consult on health and safety implications of the work, if any, both for those working or installing in the gallery, and those viewing the work.

7 PROMOTION

- 7.1 Prior to the exhibition, the artist and gallery should agree on the extent and nature of promotional activity to be undertaken by the gallery, and the extent of the artist's input and participation in such promotion. This should include topics such as images for promotional purposes, and whether the artist will receive copies of the gallery's promotion and documentation materials.
- 7.2 All forms of reproduction or use of the artist's work, in any form or in any media or format, must clearly identify the artist and must respect the artist's moral rights under the Copyright Act.

8 DOCUMENTATION

- 8.1 The gallery should develop written policy guidelines to produce and keep a visual record of the installed exhibition. The artist may contribute to this process (see section 9).

9 COPYRIGHT

- 9.1 In Canada, copyright in the artist's work belongs to the artist, unless the artist has agreed in writing to sell, license, or waive copyright. This includes reproduction by the gallery, even for the purpose of selling the artist's work. The gallery should obtain written licenses from the artist for all uses of the artist's copyrights.
- 9.2 According to Canadian copyright legislation, artists in Canada are entitled to be paid exhibition royalties (artist's fees) for use of their work by public exhibition spaces, when the exhibition is not for purposes of sale or hire and when the work was produced after June 8, 1988. Practice dictates that artists are also paid exhibition royalties (artist's fee) for work produced before that date. (See also section 4)
- 9.3 The gallery should protect the artist's intellectual property rights, including copyrights, in activities relating to art work consigned to, sold through, or promoted by the gallery, and should take reasonable steps to ensure that others do also.
- 9.4 The artist's copyright may be managed by the artist or the artist's agent, or by a copyright collective to which the artist has assigned copyright for that purpose. If an agency other than the artist manages the artist's copyright, the gallery may need to obtain a license to exhibit the work. Where another agency manages the artist's copyright, it is the artist's responsibility to inform the gallery in a timely manner of the requirement for obtaining appropriate licences for exhibition and reproduction.
- 9.5 The gallery is required to obtain an appropriate licence from the copyright holder in order to reproduce images. If the gallery decides to reproduce images once the licence has been obtained, the artist should be informed.

- 9.6 The artist's moral rights are inherent in their copyright and must be respected by the gallery. Moral rights may not be sold or licensed, though the artist may choose not to exercise them.
- 9.7 The gallery should not influence the artist to sell or waive their copyright.

10 DUTY OF CARE

- 10.1 The gallery has responsibility to maintain and care for the artist's work while it is in the gallery's possession.
- 10.2 The gallery should exercise all reasonable diligence when handling, storing, displaying, and packing the work.
- 10.3 The gallery is responsible for maintaining suitable insurance. Types of coverage and levels of insurance provided should be described to the artist or owner of the work in writing, as should the process that will be followed if work is damaged, destroyed, or stolen while in the gallery's care. The gallery is responsible for any insurance deductible which is applied, and this should be agreed to in writing.
- 10.4 The gallery is responsible for incoming and outgoing condition reports.
- 10.5 If the gallery fails to provide insurance, the artist or owner of the work should be informed in writing.
- 10.6 The gallery is also responsible for security, fire prevention, and environmental conditions including display and lighting.
- 10.7 If access to the work as described in section 2 requires technical equipment, personnel, or any special conditions, it is the gallery's responsibility to make sure that these are available. If problems occur, the gallery is responsible to notify the artist and deal with these promptly.
- 10.8 Where the work is ephemeral (e.g. temporary in nature or self-destructing), responsibility for retention or disposal of the elements of the work should be agreed by the artist and the gallery prior to the exhibition.

11 ACQUISITION OF ARTISTS' WORK

- 11.1 Where a public gallery collects artists' work as part of its mandate, the gallery must have formal acquisitions policies in place. These should include mandate, process, authority, and conditions of purchase, as well as the items following below.
- 11.2 Acquisitions policies should not include pro forma acquisition of the artist's copyright.
- 11.3 Acquisitions policies should also consider the process for deaccessioning of artists' work (see section 12).

- 11.4 Acquisitions should proceed in a timely fashion, in minimum time, so that the artist does not run undue risk of an eventual non-sale.
- 11.5 It is the gallery's responsibility to keep the artist and their commercial gallery/representative (as applicable) informed regarding progress during the process of acquisition.
- 11.6 Artists should be informed when their works are lent, or exhibitions are organized or presented from the gallery's permanent collection.

12 DEACCESSIONING

- 12.1 Deaccessioning of work in a public collection by a living artist should be avoided.
- 12.2 Where deaccessioning is deemed to be unavoidable, the artist should be informed of the decision and the gallery's policy.
- 12.3 The artist should be offered right of first refusal in the event of deaccessioning of the artist's work by a public institution.

13 SALES OF ARTWORK BY PUBLIC GALLERIES

- 13.1 Selling art for revenue should incorporate best practices for Commercial Galleries and Artists. Any existing relationship between the artist and a commercial gallery should be respected by both the public gallery and the artist. Written contracts should always be used.
- 13.2 Where a public gallery operates a retail sales outlet in addition to its exhibition and collecting functions, see best practices for Commercial Galleries and Artists.

14 DISPUTE

- 14.1 In case of any dispute over breaches of contracts or agreements, mediation should be sought before legal action is commenced.

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