

Report on the Fourth National Mural Symposium

*May 26 – 28, 2000
Welland, Ontario*

FRIDAY MAY 26

Exhibit and Networking Reception

Kim Reep, chair of the Welland Festival of Arts, welcomed everyone to the symposium and introduced Councillor Jack MacLellan, who extended a warm welcome from the city of Welland. Kim also introduced Karin Eaton, president of Mural Routes, Sue Morin, vice-chair of the Welland Festival of Arts, Kim Dykstra and Jean-Luc Klin of the Welland Festival of Arts, and Don Johnstone, a representative from the Trillium Foundation. Everyone was invited to tour the exhibits and enjoy a wine tasting session presented by Creekside Estate Winery.

Delegates had the opportunity to get acquainted with other participants over dinner, which was hosted by the Welland Festival of Arts. Later, artist Mary Faubert recounted some of the stories behind the Rose City Seniors Centre mural, entitled "I Remember". The mural, which was designed by Mary and painted with help from fourteen of her students, is a visual record of aspects of Welland's history.

Some of the exhibiting artists, such as Zarko Milijasevic and Yanar Mohammed, were first time participants in a Mural Routes symposium.

Zarko Milijasevic – Zarko's company, DINA Fine Art, provides a wide range of artistic services including mural art, decorative wall finishes, sculptural work and gilding. His versatility as an artist was evident in the photographic display of his work.

Yanar Mohammed – Yanar, a ceramist and a sculptor of relief murals, is interested in promoting multi-culturalism through art. Her company, Yanar's Ceramic Murals, creates sculptural murals, often with a Mesopotamian or Arabian style although designs can be customized to suit the client's needs.

SATURDAY MAY 27

Welcome Address

In her welcome address, Karin Eaton reminded delegates that the philosophy of Mural Routes is to teach, learn and share. It was noted that some of this year's sessions were a result of feedback from last year's symposium. Karin reported that artist David Yeatman is recovering from recent surgery, and although unable to attend this year's event, has sent his regards. Karin then introduced Kim Reep, who in turn, introduced the first speaker, entertainment lawyer Paul Sanderson.

SESSION ONE: CONTRACTS AND COPYRIGHT

Speaker: Paul Sanderson, LL.B.

Paul addressed the following areas of law with respect to visual art: copyright, moral rights, basic contract issues and specific contract issues. He concluded his remarks by clarifying the legal perspective regarding some key issues and common problems.

1. Copyright

Definition

Copyright can be understood as not simply the right to copy, but as a bundle of rights set out in Section 3 of the Copyright Act. It is essentially an economic right which gives the copyright owner, among other things, the right to reproduce and broadcast the artistic image or product. The Copyright Act protects forms of expression, such as artistic or literary works, not ideas.

Main Characteristics of Copyrights

Copyrights are:

1. Statutory rights
2. Separate and divisible
3. Intangible, and intellectual property
4. Exclusive, subject to certain exceptions, and therefore a limited monopoly

What is Considered an Artistic Work?

Artistic works take many forms and include paintings, drawings, maps, photographs, plans, engravings, sculptures, works of artistic craftsmanship and architectural works.

Exhibition Rights

Exhibition rights, set out in Section 3 (1) (f) of the Copyright Act, give the copyright owner the right to publicly exhibit an artistic work (other than a map, chart, plan, or cinematography production that is protected as a photograph) for a purpose other than a sale or hire.

Acquiring Copyright

Subject to certain exceptions such as those set out below, Section 3 (1) of the Copyright Act states that the author is the first owner of the copyright and that copyright can be acquired if these three requirements are met:

1. One is a qualified person - The person acquiring the copyright must be either a Canadian citizen, a landed immigrant, or a citizen subject to the Berne Convention.
2. The work in question must be original and not copied from another.
3. The work must exist in a material form of more or less permanent endurance.

Commissions, Employment, and Crown Works

Section 13 (2) of the Copyright Act states that in the case of an engraving, photograph or portrait commissioned for valuable consideration, the person who commissioned such work owns the copyright. This section does not apply to the commission of other works.

If the artwork was created in an employment situation, Section 13 (3) of the Copyright Act states that the employer, not the employee owns the copyright. Artists however, are often not employees but independent contractors, and in these cases, the employer would not own the copyright. Determining if a person is an employee or independent contractor is a complex legal test, and one must, among other things, consider who controls the work hours.

Crown works are also an exception to the above, and are covered in Section 12 of the Copyright Act. Section 12 states that any work prepared for or under Her Majesty shall belong to the Crown, i.e. the government owns the copyright. The artist however, may contract out of any of these arrangements.

General Comments

- Copyright protection varies from country to country.
- Canadian copyright laws are based on the Berne Convention.
- Copyright licences can be for either a fixed term, or a term of life of the copyright. In Canada, under such licence, a life term means that a person retains the copyright for a term equal to the life of the creator plus 50 years.
- Copyright can be shared, and the specific division of rights is often negotiated by the parties involved.

2. Moral Rights

Moral rights are set out under the Copyright Act and exist side by side with copyright. Moral rights consist of two main rights: the integrity right and the paternity right.

Integrity

Section 28.2 (1) of the Copyright Act gives the artist the right to the integrity of the work, that is, the right to prevent distortion, mutilation or other modification of the work which may be prejudicial to the artist's honour or reputation.

Paternity

Section 14.1 (1) of the Copyright Act gives the artist the right to claim authorship and also, where possible, to associate the artist with the work as author, either by name or pseudonym, or the right to remain anonymous.

General Comments

- Moral rights are acquired by the artist/author/creator, and not the work.
- Moral rights can not be assigned, but they can be waived.
- Moral rights can be invoked by an agent of the owner of such rights.
- The term of moral rights is the same as the term of copyright (life of the creator plus 50 years).
- It is a potential infringement of moral rights not only to distort, mutilate or modify a work but also to associate a work with a product, service or institution without the owner's consent. However, with respect to certain artworks, namely paintings, sculptures and engravings, there is a deemed infringement of moral rights, subject to two exceptions which are outlined in Section 28.2 (3) of the Copyright Act:
 1. A change in location of work would not, by that act alone, be considered an infringement of moral rights
 2. Steps taken in good faith to restore or preserve a work does not equal infringement per se

Moral rights are not economic rights but they can have economic implications as was demonstrated in the lawsuit brought against the Toronto Eaton Centre by artist Michael Snow in regards to his sculptural work "Flight Stop", the three-dimensional flock of geese which hang in

the galleria of the mall. A few years ago, during the Christmas season, the owners of the Eaton Centre had decorative red ribbons tied around the necks of the geese. Michael Snow sued the owners claiming that they had infringed on his moral rights, and won, and the ribbons had to be removed.

3. Basic Contract Issues

A contract is a legally binding agreement by 2 or more parties to do an act or refrain from acting. Contracts are important because they define working relationships in our society, and legally bind the parties involved in those relationships.

Components

A contract has the following components:

1. An offer – to do, or refrain from doing a lawful act
2. An acceptance of the offer – based on the same terms and conditions as the offer
3. Consideration – which makes the offer binding, and usually involves the exchange of money

Form

Contracts generally do not have to be in any particular form. They can be verbal, written or an exchange of letters (exception: land and copyright contracts must be in writing to be binding). However, a clear concise written agreement is preferable in order to avoid disputes.

Contents

In general, a contract should contain:

1. Headings and sub-headings
2. Dates, signatures, and, in the case of a corporation, a corporate seal.
3. The specific provisions of the agreement
4. General provisions – these clarify the rights of the parties and involve items such as amendments, artistic control, copyright, moral rights, incapacity, termination etc.

4. Specific Contract Issues

The following is a list of some specific questions to consider when drafting a contract to commission a work of art:

- Does the artist have the right to exploit the copyright to the work?
- Does the artist have access to the work in order to exploit the copyright?
- Who owns the merchandizing rights, and to what extent can that party promote or exploit the work for commercial purposes (i.e. T-shirts, posters, mugs, books etc.)
- Has the issue of royalties been addressed?
- Does the client require the artist's warranty that copyright ownership is unencumbered?
- Will the copyright be registered?
- Have the artist's moral rights been addressed?
- Will the artist's name be posted by the work as credit for its creation?
- Who maintains artistic control?
- What is required with regard to the preliminary and the final design of the work?
- What happens if the work is rejected? Is the artist entitled to any remuneration?
- Are the materials, dimensions, schedule, fees, price, completion date, and travel costs