



National Gallery of Canada **Musée des beaux-arts du Canada**

DISPOSITION POLICY

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1. INTRODUCTION

Under the *Museums Act* (1990), the National Gallery of Canada (NGC or the Gallery) is mandated to:

Develop, maintain and make known, throughout Canada and internationally, a collection of works of art, both historic and contemporary, with special but not exclusive reference to Canada, and to further knowledge, understanding and enjoyment of art in general among all Canadians.

The development of the NGC collection is guided by the Gallery's Acquisitions Policy. The Acquisitions Policy allows disposition of works of art in accordance with section 6(1)(c) of the *Museums Act*, which states that the NGC may:

Sell, exchange, give away, destroy or otherwise dispose of works of art and other museum material in its collection and use any revenue obtained therefrom to further its collection.

Disposition is the permanent alienation of a work of art from the Gallery's collection, and is undertaken only under exceptional circumstances. It consists of two elements:

- i. de-accessioning, which is the decision to withdraw a work of art from the collection; and
- ii. disposal, which may be achieved by transfer (that is to say, gift or restitution), sale, exchange for another work of art, or destruction.

Disposition is a legitimate part of the intellectual and physical care of the collection. It is undertaken to refine and improve the quality and appropriateness of the collection, and to meet the Gallery's legal and ethical obligations.

2. PURPOSE

The purpose of this Policy is to provide direction for the management and conduct of disposition activities for works of art in the Gallery's collection.

This Policy complements the Gallery's Acquisition Policy and is intended to provide the framework for the de-accessioning and disposal of works of art in the Gallery's collection.

3. APPLICATION

This Policy applies to the Board of Trustees and all NGC staff involved in activities that impact the Gallery's collection, either directly or indirectly.

Primary accountability for implementation of this Policy rests with the Chief Curator and Deputy Director, Collections and Research, under the direction of the Gallery's Director and Chief Executive Officer (CEO).

4. POLICY STATEMENT

The Gallery resolves that:

- A. The Gallery will not de-accession works of art by living artists.
- B. Subject to applicable laws and the Gallery's ethical obligations, no work of art may be disposed of contrary to the terms on which it was given, bequeathed or otherwise made available to the collection, as accepted by the Board of Trustees or by the Director and CEO, following the procedures set out in the Acquisitions Policy.
- C. The Gallery notes that certain works of art in the collection have been certified by the Canadian Cultural Property Export Review Board.

Part XI.2 of the *Income Tax Act*, as amended by the *Cultural Property Export and Import Act*, levies a special tax on any institution designated under the latter Act – including the Gallery – that disposes, within ten years of its certification, of a work for which a Cultural Property Income Tax Certificate was issued, unless the disposition is made to another institution or public authority that is designated under the latter Act. This tax is 30% of the fair market value of the work at the time of its disposition.

Should the Gallery dispose of such a work in a manner whereby this tax is applicable, the tax will be paid from the *Appropriations for the acquisition of objects for the Collection*. The Director and CEO has the responsibility of ensuring that the return required under the *Income Tax Act* is filed and that the tax is paid in full.

- D. Any funds received from the disposal of a de-accessioned work of art will not be used for operations or capital expenses. Proceeds from disposal are credited to the Director's Acquisition Trust Fund for future purchases of works of art for the collection. The Gallery will give strong consideration to using funds received from the disposal of a work for the purchase of works from the same, or closely related collecting area, should this still fall within the Gallery's mission as stated in the Acquisitions Policy.
- E. Recognizing the ethical obligations that arise from accepting gifts, the Gallery will exercise great care in disposing of all works of art given or bequeathed to it. In cases where disposition is not precluded by the terms of the gift or bequest, the Gallery will not dispose of gifts or bequests for a minimum of 35 years, except in cases of restitution. If, after this time, the Gallery decides to dispose of such a work, it will contact the donor prior to undertaking disposition; should the donor be deceased, the Gallery will make all reasonable effort to identify and contact his or her family (namely, spouse, common-law spouse, children and grand-children; or others may be contacted at the Gallery's discretion) or legal representative, where practicable. The Gallery will discuss the issue with the donor or his or her representative[s] and seek to come to a mutual understanding; once a decision is made, the Gallery will inform them in advance of disposal.

The Gallery recognizes that, in the past, the donor's intent and donor's restrictions may not always have been well documented. The responsible curator must rigorously assess all available evidence and make a clear case to proceed.

5. CRITERIA

Criteria for disposition include:

- A. The work of art lacks value for the purpose of study or exhibition.
- B. The authenticity or attribution of the work of art is determined to be false or fraudulent and the object lacks sufficient aesthetic merit or art historical importance to warrant retention.

In disposing of or retaining a presumed forgery, the Gallery shall consider all relevant ethical issues including the consequences of returning the work to the market.

- C. The physical condition of the work of art is so poor that restoration is not practicable or would be unethical, as defined in the Gallery's Conservation Policy.

Works damaged beyond reasonable repair that are not useful for study or teaching purposes may be destroyed.

- D. The work of art's deterioration is producing risk for other works in storage or for staff, or that the resources necessary for ongoing maintenance of its condition are significantly out of proportion to the work's importance and value.
- E. The work of art is a duplicate that lacks value for the purpose of study or exhibition.
- F. The work of art is being sold as part of the Gallery's effort to refine and improve its collections, in keeping with the collecting criteria approved by the Board of Trustees.
- G. The work of art no longer falls within the collecting areas of the Gallery, as approved by the Board of Trustees.
- H. The Gallery's possession of the work of art may be inconsistent with applicable laws; for example, the work may have been stolen or illegally imported.
- I. The Gallery's possession of the work of art runs counter to the 1998 *Washington Conference Principles* on works spoliated during the Nazi era.

6. AUTHORITY

The final authority for the de-accessioning and disposal of works of art rests with the Board of Trustees, on the recommendation of the Board's Acquisitions Committee and with the advice of the Director and CEO. Approval requires a two-thirds majority of Trustees present.

7. PROCESS

A. PROPOSAL

The process of de-accessioning and disposal must be guided by scholarship and will draw upon the combined expertise of curatorial and conservation staff. The process will be

overseen by the curator responsible for the relevant collecting area, subject to the direction of the senior curator of that department. Proposals will, in general, follow those used for acquisitions in terms of information and structure as determined by the Board's Acquisitions Committee. In particular, the responsible curator will undertake a thorough review of all records to determine provenance, clear title, the estimated current market value, and, in the case of gifts or bequests, the donor's intent and donor's restrictions. Technical examination and treatment may be undertaken to clarify the status of a work. The curator will also recommend the best method of disposal. All of the above issues will be addressed in the written proposal.

B. APPRAISAL

If the estimated current market value is over \$50,000, the Gallery will seek expert advice from an art dealer, auction house or a professional appraiser to confirm this value. At the Director and CEO's discretion, and subject to the approval of the Board's Acquisitions Committee, this requirement can be waived if the work is proposed for transfer to an institution or public authority.

C. APPROVAL

Once a proposal is drafted, approval to proceed will be sought from the relevant department's senior curator, the Director of Conservation and Technical Research, the Chief Curator, and the Director and CEO. The proposal will then be submitted to the Curatorial Acquisitions Committee for discussion, then passed to the Board's Acquisition Committee, which will make a recommendation to the Board of Trustees.

D. ETHICS AND STANDARDS

Attention will be given to transparency throughout the process. Participants of the disposition process at all levels – including conservators, curators, directors, advisors and trustees – will be guided by the NGC Code of Conduct when making decisions.

No member of the Gallery's Board of Trustees, advisors, staff, or anyone whose association with the Gallery might give him or her an advantage in acquiring the work of art, will be permitted to acquire directly or indirectly a work de-accessioned by the Gallery, or otherwise benefit from its sale or trade.

8. DISPOSAL

Should a work of art be approved for de-accessioning, the method of disposal will be determined by the Board of Trustees, acting upon the recommendation of the Board's Acquisitions Committee with the advice of the Director and CEO.

The acceptable methods of disposal are: transfer (in other words, gift), restitution, sale, exchange and destruction. Every reasonable effort will be made to identify and evaluate the various advantages of each means of disposal. The responsible curator will assess the evidence and make a recommendation as part of the de-accession proposal.

In the event that conservation or restoration would be beneficial to the work, to the proposed recipient, or to the financial value of the work in the event of its sale or exchange, consideration may be given to its treatment by the Gallery.

While it is understood that the Board of Trustees must fulfil its fiduciary responsibilities and act in the Gallery's best interests, the Board may give consideration to transferring a work to an institution or authority with the ability to make it accessible to the public.

The Gallery will give special consideration to the following:

- a) In choosing the means of disposal, the Gallery will carefully consider: i) the work's relationship to Canadian history and culture, inclusively defined; ii) whether comparable works are held by Canadian institutions or public authorities; and iii) whether the transfer of the artwork to a Canadian institution or public authority is in the interest of the Gallery or the public.
- b) The Gallery is a Crown corporation of the Government of Canada, and as such has a special relationship with other federal institutions. Whether the work falls under the collecting mandate of another federal institution and, if so, would transfer to this federal institution be in the interest of the Gallery or the public, will be considered.
- c) If the Gallery wishes to ship a work abroad for transfer, restitution, sale or exchange, a Cultural Property Export Permit may be necessary. The permit system is designed to balance the interests of property owners with the interest of the public in retaining heritage objects of outstanding significance and national importance.

A. TRANSFER

Transfers, in other words gifts, may be made to institutions and, in certain circumstances considered appropriate by the Board of Trustees, to public authorities in Canada as defined in the *Cultural Property Export and Import Act*.

This Act defines "institution" as: "publicly owned and ... operated solely for the benefit of the public, that is established for educational or cultural purposes and that conserves works of art and exhibits them or otherwise makes them available to the public."

Public authority is defined as "Her Majesty in right of Canada or a province, an agent of Her Majesty in either such right, a municipality in Canada, a municipal or public body performing a function of government in Canada or a corporation performing a function or duty on behalf of Her Majesty in right of Canada or a province."

The Gallery may also transfer works of art to the equivalent of "institutions" outside Canada.

The Gallery will exercise great care when selecting a recipient. The choice will be made objectively; the appearance of partiality will be avoided. Considerations include the recipient's collecting mandate, as well as its ability to make use of, and to care for the work.

The Gallery will craft a credit line to be used by the recipient to recognize the Gallery and/or the donor of the work, as appropriate.

B. RESTITUTION

The Gallery will seek to fulfil its ethical obligations relevant to works spoliated during the Nazi era, as set out in the 1998 *Washington Conference Principles on Nazi-Confiscated Art*.

The Gallery will also seek to fulfil its legal and ethical obligations set out in the 1970 UNESCO *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, accepted by Canada in 1978.

Disposal by restitution represents a specific type of transfer. A work of art that was spoliated and not subsequently restituted may be transferred to its former owner or his or her heirs as part of a just and fair solution, or if subject to legal claims may be transferred to the claimant.

C. SALE

If the Board of Trustees directs that a work of art be sold, the Gallery will first offer the work for sale by private agreement at fair market value to “category A institutions,” as designated by the Canadian Cultural Property Export Review Board. Should no such institution purchase the work, the Gallery may then proceed to offer it for sale by private agreement or by public auction.

Where the sold work was acquired by gift, transfer, or bequest, future purchases of works of art from the proceeds will be in the name of the original donor or testator/testatrix, unless his or her wish is to remain anonymous. All proceeds from sales are credited to the Director’s Acquisition Trust Fund, and will be tracked separately from other acquisition funds in order to fulfil these obligations.

D. EXCHANGE

The Gallery may choose to exchange a work of art with another institution or public authority, or with or through a reputable, established dealer or auction house.

Should the recipient be an institution or public authority, the Gallery will craft a credit line to be used by the recipient to recognize the Gallery and/or the donor of the work, as appropriate.

E. DESTRUCTION

Based on a detailed report prepared by the Department of Conservation and Technical Research, works damaged beyond reasonable repair that are not useful for study or teaching purposes may be destroyed. It is understood that the decision to destroy a work will be taken rarely, and only under exceptional circumstances.

The means of destruction will be total, documented appropriately, and the act of destruction or documentation witnessed by the Director of Conservation and Technical Research, the Chief Curator, or the Director and CEO.

9. DOCUMENTING, REPORTING AND ARCHIVING

De-accessioned works of art will be adequately documented.

De-accessioned works will be listed in the relevant *Annual Report*, with the method of disposal and outcome noted. In addition, this information will be posted on the Gallery’s public website.

Records of de-accessioned works will be retained in the collection database for reference purposes; closed curatorial files will be retained.

10. INQUIRIES

Questions concerning the interpretation of this Policy should be addressed to the Chief Curator and Deputy Director, Collections and Research.

REFERENCES

- *Museums Act* (S.C. 1990, c. 3)
- *Cultural Property Export and Import Act* (R.S.C., 1985, c. C-51)
- *Income Tax Act* (R.S.C., 1985, c. 1)
- United Nations Educational, Scientific and Cultural Organization's *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* (1970), accepted by Canada in 1978
- *Washington Conference Principles on Nazi-Confiscated Art* (3 December 1998), endorsed by Canada
- *NGC Acquisitions Policy*
- *NGC Conservation Policy*
- *NGC Code of Conduct*

The Gallery adheres to international standards of practice for disposition of works of art, and shall continue to hold itself to the principles and best practices as established by the national and international museum communities, of which the NGC is an active part. The following policies are particularly relevant in this matter:

- The Association of Art Museum Directors' *Policy on Deaccessioning* (9 June 2010)
- The Canadian Art Museum Directors' Organization's *Deaccessioning Guidelines* (May 2007)
- The International Council of Museums' *Code of Ethics for Museums* (8 October 2004)