

2000 July 20

TO: CITY MANAGER
FROM: DIRECTOR PARKS, RECREATION & CULTURAL SERVICES
SUBJECT: CITY OF BURNABY ART COLLECTION POLICY
PURPOSE: To request Council's approval for the City of Burnaby Art Collection Policy.

RECOMMENDATION:

1. THAT approval be granted for the City of Burnaby Art Collection Policy.

REPORT

At its meeting of 2000 July 19, the Parks, Recreation and Culture Commission received the attached report and adopted the three recommendations contained therein.



Kate Friars
PARKS, RECREATION
AND CULTURAL SERVICES

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Attachment

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SUBJECT: CITY OF BURNABY ART COLLECTION POLICY

RECOMMENDATIONS:

1. THAT approval be granted for the City of Burnaby Art Collection Policy.
2. THAT City Council be requested to approve the City of Burnaby Art Collection Policy.
3. THAT the Visual Arts Advisory Board receive a copy of this report.

REPORT

BACKGROUND

For more than 30 years a collection of works of art was assembled by the Burnaby Art Gallery Association (BAGA) during the time it occupied Ceperley Mansion in Deer Lake Park and operated the Burnaby Art Gallery under a license agreement with the City of Burnaby. Core financial assistance to the Burnaby Art Gallery Association was provided in the past through an annual grant from the City of Burnaby.

In 1997 July, Council resolved to redirect City funding in support of the visual arts to Visual Arts Burnaby (VAB), a section of the Cultural Services Division of the Burnaby Parks, Recreation and Cultural Services Department. The Burnaby Art Gallery Association relocated to another facility where it operates the Burnaby Art Gallery. Visual Arts Burnaby established the Gallery at Ceperley House in Deer Lake Park, and a nine member volunteer citizen advisory board was established known as the Visual Arts Advisory Board (VAAB).

In 1999 May, a formal agreement was entered into between the Burnaby Art Gallery Association and the City of Burnaby wherein the ownership of the permanent art collection was affirmed as follows:

“1. The City and BAGA acknowledge that as of the date of this Agreement, the Art Collection is solely the property of the City.”

- *“Exhibiting Agreement” 1999 May 20*

The permanent art collection is currently stored at the environmentally-controlled storage facilities at the Burnaby Village Museum, and it is made available for exhibition occasionally at various City locations. The Burnaby Art Gallery Association also exhibits works from the collection according to the terms of the 1999 “Exhibiting Agreement”.

The agreement also outlines that no works from the collection will be de-accessioned up to 2001 May 20, and thereafter the City will consult with BAGA in good faith about future de-accessions, and that the "Exhibiting Agreement" covers only the existing collection. Future acquisitions by the City or BAGA are exempt from the agreement. Through this agreement, the spirit in which the permanent collection was acquired is respected, such that the citizens of Burnaby sustain the benefits of access to and enjoyment of excellent works of art in a public collection here in Burnaby.

NEW RESPONSIBILITIES

All public galleries and museums have collections policies which provide for the responsible management of cultural property. These policies clearly prescribe what types of objects can be acquired, the procedure for acquisition and accessioning and the method for removing items from the collection.

Works of art will always have special meaning to the artists and to those who experience the art, but public institutions act on behalf of the community, as authorized by elected and appointed officials, to acquire and make accessible those works of special aesthetic, cultural and educational significance to the community. The criteria for collecting clarify what types of objects are to be acquired for that specific collection. In other words, not all works of art of any medium, dimension, imagery or source should be acquired by a public collection. It is important that the collection have a focus and that the institution is capable of responsibly storing and extending the works.

Works of art are collected permanently. This requires a commitment for adequate resources to always be available for facilities, materials, staffing and programming related to the collection. A permanent art collection must be properly stored, documented, interpreted, framed, transported, exhibited, insured, repaired or restored, researched and promoted. If works of art have been acquired by the City in the past without the benefit of a policy, they should be assessed and included in the scope of a collections policy when it is created. The policy would not normally apply to objects acquired by Mayors or Councillors as gifts from other politicians or citizens, office decorations, and art objects purchased for giving as gifts to visiting dignitaries.

An art collection policy relates to a permanent collection managed by an institution and it respects the spirit of how and why the works were acquired. For example, a donor may give all or some of a significant private collection to the City, if the works fit into the collection policy. This donor may request a receipt for tax purposes for the gift. The donor may have some requests or conditions they want honored. Copyright protection may apply. The review of these matters are required at the time the acquisition is being considered to ensure the transaction is legal, that there are no unreasonable binding conditions that restrict the institution in the future and that the rights of artists and standards in the gallery and museum community are respected.

While adding works to a collection is important, so too is the removing of works of art from a collection. It would be inappropriate to acquire an art work as a gift from a donor and then turn around and sell it or auction it later and have the gallery simply gain financially. The policy, therefore, speaks to the procedure for de-accessioning works of art and includes checks and balances that guarantee all transactions are appropriately managed.

The City of Burnaby has professional staff with the required skills and experience to lead the process of collection management. The Advisory Board and the art community have a role to play in the application of the art collection policy and the Burnaby Village Museum and Gallery at Ceperley House are adequate facilities to house and extend the permanent collection. In order to assess the specific requirements for the management of the permanent art collection, the consulting firm of RHB Consulting has been engaged and a report entitled "Storage and Accessibility for the City of Burnaby Permanent Art Collection" has been received. This will be reviewed and the results assessed for a future report to Commission detailing the renovations and equipment required to house the permanent art collection at the Burnaby Village Museum, and the information management protocol recommended by the consultant. A review of appraisals and insurance will be included.

As the City of Burnaby officially owns a permanent art collection now, the art collection policy is a required document for the responsible management of the existing and any future valuable works of art for the public collection. In the near future an additional policy will be presented on Public Art in Burnaby that will relate to major works of art on or near public buildings, parks or related spaces.

OUTLINE OF THE CITY OF BURNABY ART COLLECTIONS POLICY

The Visual Arts Coordinator, in consultation with the Assistant Director Cultural Services, conducted research with a wide variety of institutions and created a draft art collection policy for the consideration of the Visual Art Advisory Board. The VAAB completed their final review of the proposed policy in 2000 April. As well, the Risk Manager, City Solicitor and Director Finance have reviewed and commented on the policy and their recommended revisions have been accommodated in the final draft ([Attachment #1](#)).

The policy document includes an introduction and definitions and sections on acquisitions, the acquisitions committee with terms of reference, loans and deaccessioning. There is also an appendix titled "UNESCO- Convention on the Means of Prohibiting and Preventing Illicit Import and Transfer of Ownership of Cultural Property". This section is added to make direct reference to the Canadian Cultural Property Export and Import Act, which is an act designed to deter the illegal import or export of cultural property and to provide for means of recovery and compensation if it does occur and is detected. It should be noted that in addition to this protocol, the Gallery at Ceperley House may elect to apply for special status through the Cultural Property Review Board in order to be eligible to entertain offers of gift of cultural property that may be deemed to be nationally significant.

With the status granted by the Review Board, this gallery could pass on enhanced tax benefits to donors designed to encourage owners of significant Canadian cultural property to keep the works in Canada rather than to trade internationally.

CONCLUSION

It is recommended that the City of Burnaby Art Collection Policy be adopted and that Commission request that Council approve the policy as well. It is also recommended that the Visual Arts Advisory Board receive a copy of this report.

In the near future another report will be brought forward regarding the consultant's finding related to art collection storage and accessibility. This will include resource requirements for collection management.

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Attach.

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City of Burnaby Art Collection Policy

**FINAL DRAFT
JULY 10, 2000**

City of Burnaby Art Collection Policy

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City of Burnaby Art Collection Policy

INTRODUCTION:

The objects in the City of Burnaby's Art Collection are owned by the City of Burnaby. As such, they are for the enjoyment of the public. The care and protection of the Collection are the responsibility of Visual Arts Burnaby (VAB).

Public art collections are cultural sites and centers for research, not only in terms of individual objects or grouping of objects, but also as a record of the dominant values and regional aspirations of a society at a particular point in history. These values and priorities may evolve as a result of demographic changes due to political, social and economic influences. As a result, it is important that a public art collection and its acquisition policy be periodically evaluated and the Visual Arts Advisory Board (VAAB) may at times request a reevaluation and consider changes in the policy upon completion of a review.

Collecting implies not only the acquisition, preservation and disposition of the objects, but also the loan of objects to other institutions.

This policy shall apply to all acquisitions subsequent to the date of enactment (20 May 1999) of the Exhibition Agreement between the Burnaby Art Gallery Association (BAGA) and to all objects collected prior to that date by BAGA on behalf of the City of Burnaby. This policy is inclusive of all art donated to or acquired by the City and to the Shadbolt Centre for the Arts. This policy does not refer to any work of Public Art within the City of Burnaby.

1. THE COLLECTION:

- 1.1 The Collection of Visual Arts Burnaby shall consist of visual art objects of special historical, cultural and aesthetic significance and important contemporary art, in any media, by local, national and international artists. Special consideration shall be given to the acquisition of multiples (e.g. original prints); or of works distinctly relevant to the citizens of Burnaby.
- 1.2 The Collection is owned by the City of Burnaby and administered and cared for by Visual Arts Burnaby.
- 1.3 The City of Burnaby as governing body is ultimately responsible for all acquisitions. The Visual Arts Coordinator/Curator is charged with the acquisition decisions, with the guidance from the Visual Arts Advisory Board (VAAB) and the Assistant Director of Cultural Services when appropriate.

2. ACQUISITIONS:

2.1 Definition:

Acquisitions include materials obtained by Visual Arts Burnaby (VAB) through transfer of ownership.

2.2 Mode of Acquisition:

Appropriate materials may be added to the Collections through purchase, gift, bequest, or exchange.

Visual Arts Burnaby shall normally collect those materials which are:

- 2.2.1 directly relevant to current research, exhibitions, or interpretation programs and existing collections
- 2.2.2 well documented
- 2.2.3 in good physical condition
- 2.2.4 accompanied by a deed of gift, bill of sale, or transfer agreement; and
- 2.2.5 accompanied by written permission for limited use of copyright for noncommercial purposes, wherever possible
- 2.2.6 offered, or acquired unconditionally

2.3 Acquisition Plan:

Additions to the Collection, whether by gift, purchase, exchange or bequest, shall conform to an Acquisition Plan developed by the Visual Arts Coordinator/Curator and the Visual Arts Advisory Board in accordance with the Collections Policy.

2.4 Standards for Collecting:

VAB shall acquire only items which are consistent with its mandate.

- 2.4.1 VAB shall not normally accept objects which it does not intend to keep permanently, and that it is unable to properly record and/or care for.

2.5 Restricting Conditions:

- 2.5.1 Acquisition shall not be accepted with special conditions binding the City of Burnaby to specific long term future action if these are incompatible with the long term interests of the Collection.
- 2.5.2 If there seems to be any doubt about the legality of ownership of any object being considered for acquisition, the Curator shall investigate as far as reasonably possible the provenance, and if possible acquire further documentation which will confirm this. If such documentation is not available, VAB shall only accept the object if it is of importance to the public interest, and with the awareness that there may be future necessity to either resist unfounded claims or transfer it to someone with a better claim.
- 2.5.3 No object may be purchased from VAB employees, volunteers, members of the Visual Arts Advisory Board or the families of the above unless authorized by the Visual Arts Advisory Board. Similarly, no object may be

disposed of to such persons unless their connection with Visual Arts Burnaby and or Visual Arts Advisory Board has been severed for one year or more.

2.6 Compliance with Laws:

All collecting activities of VAB shall be governed by existing binding international conventions, federal, provincial and municipal laws, as well as by City's own Collections Policy.

- 2.6.1 All collecting activities shall be in accordance with the UNESCO Convention of the Means of Prohibiting and Preventing Illicit Import & Transfer of Ownership of Cultural Property, 1970 to which Canada is a signatory; the Cultural Property Export & Import Act, 1977; and the Convention on International trade in Endangered Species, 1978.
- 2.6.2 Copyright & Exhibitions Rights are specific acts of legislation which affect collecting practices. VAB will only acquire works for the Collection that are accompanied by written permission for the use of limited copyright for noncommercial purposes, including education programs, exhibition documentation, advertising, accessioning and cataloguing purposes. Copyright agreements would also include exhibition rights for exhibitions organized and/or generated by VAB.
- 2.6.3 Where copyright is separate from ownership (as with an original print or a photograph), its status should be documented when the object is received at the gallery.
- 2.6.4 For all acquisitions, VAB must adhere to federal laws governing the issue of official receipts for tax purposes.
- 2.6.5 VAB must be sensitive to the ethical, environmental and cultural issues associated with acquisition. The same sensitivity should apply to objects accepted on loan.

2.7 Conflict of Interest - Standards of Conduct:

A member of the professional staff shall not:

- take advantage of his/her professional status by engaging directly or indirectly in purchasing and/or selling of works of art;
- accept any commission from a vendor;
- give any certificate or written statement for a fee with respect to authenticity or monetary value of works of art either in the Collection or outside of the programs;
- recommend for purchase any works of art in which he/she has an undisclosed financial interest.

2.8 Provenance and Legal Documentation:

VAB will only accept those works into the Collection which have a legal and ethical provenance. Proof of title should be obtained if available for a donor or seller before an object is acquired.

- 2.8.1 Section 2.9 shall be retroactive so that every effort is made to secure Deed of Gift or other transfer of ownership documents from past donors or their heirs.
- 2.8.2 Visual Arts Burnaby may also wish to apply to the Canadian Cultural Property Export & Import Review Board to provide Cultural Property Income Tax certificates for donations of cultural significance to assist donors in receiving full tax benefits.

2.9 Insurance:

The City of Burnaby shall maintain adequate insurance for the fair market value of the Collection as well as ensuring proper care and storage facilities. The Risk Manager will review insurance valuations.

2.10 Receipt by Visual Arts Burnaby:

All objects left temporarily with Visual Arts Burnaby by members of the public, whether as potential donations or on loan, shall be documented with provenance, owners' intentions and other pertinent data. This information shall be clearly linked to a unique number attached to the object/collection while in the care of Visual Arts Burnaby. The subsequent disposition (acquisition or return to its owner) should be documented.

2.11 Donations:

Approval for proposed donations, including unconditional bequests of objects to the Collection is delegated to:

- a) the Visual Arts Coordinator/Curator for any donation where estimated value and associated costs does not exceed \$1,000.
- b) the Visual Arts Advisory Board for any donation where estimated value and associated costs exceeds \$1,000.
- c) the Visual Arts Advisory Board for any donation for which application for certification under the Cultural Property Export & Import Act is requested by the donor.

2.12 Documentation:

2.12.1 Registration:

- a) A unique permanent number will be assigned to all items acquired by Visual Arts Burnaby
- b) All available significant data not derivable from the object itself should be recorded in a standard and permanent fashion, in a way that it can always be associated with the object.

2.12.2 Cataloging:

- a) A detailed description (with photographs and/or drawings as necessary) and a condition report must be made of the object. This should be supported by the study of its historical and artistic context, which is required to properly

- understand its significance. Supporting files may be generated as necessary. (E.g., by artist, kind of object, media, period, region.)
- b) Items must be described by the consistent use of standard terms, which should be compatible as far as possible with those used in other galleries and international standards.

3. ACQUISITIONS COMMITTEE - TERMS OF REFERENCE

3.1 Definition:

The Acquisitions Committee is a sub-committee of the Visual Arts Advisory Board.

- 3.1.1 All members of the Acquisitions Committee shall be governed by the foregoing.
- 3.1.2. The Visual Arts Coordinator/Curator of Visual Arts Burnaby shall make recommendations to the Members of the Acquisitions Committee.

3.2 Purpose:

The purpose of the Acquisition Committee is to receive, consider and approve artworks proposed for acquisition and to review the Acquisition Plan annually.

3.3 Structure:

The Acquisition Committee will be chaired by an elected member of the Visual Arts Advisory Board with the Visual Arts Coordinator/Curator acting as Secretary to the Committee. The Committee will consist of five members of the Visual Arts Advisory Board, one of which shall be the Parks and Recreation Commissioner.

3.4 Appointment of Members:

Members are appointed to this Committee by the Visual Arts Advisory Board on an annual basis, with the possibility of reappointment. No person shall serve as a voting member for more than three consecutive years, although a person may be reappointed after not less than one year's absence from the Committee. Furthermore, no commercial art dealer may be appointed to this Committee.

3.5 Schedule of Business:

- 3.5.1 The Acquisition Committee will convene at least once a year just prior to the end of the fiscal year, and/or more often as required.
- 3.5.2 Artworks to be purchased, gifted, donated, bequeathed or lent on a long-term basis shall be presented to the Acquisitions Committee by the Visual Arts Coordinator/Curator. Items brought forward for consideration will be accepted into the Collection by a majority vote.
- 3.5.3 A quorum exists when three or more voting members are in attendance at a meeting of the Committee. If a quorum is not met then the meeting shall be rescheduled.

- 3.5.4 Meetings shall be called by the Chair of the Visual Arts Advisory Board in consultation with the Visual Arts Coordinator/Curator.
- 3.5.5 Minutes of the Acquisition Committee meetings shall be distributed to the Visual Arts Advisory Board upon request and to Committee Members. Minutes shall be viewed as confidential information and shall NOT be shared outside of the Committee and Advisory Board.
- 3.5.6 A report of recent acquisitions shall be made annually to Commission.

3.6 Accountability:

The Acquisitions Committee shall be responsible to the Visual Arts Advisory Board and to the Burnaby Parks, Recreation and Cultural Services through the Cultural Services Division.

4. LOANS:

4.1 Definition:

Museum collections, generally are both owned and borrowed. Since the responsibility for the material placed under the custody of an art museum on a temporary basis (i.e., transfer of responsibility for a short or long term) must be regarded in the same light as the responsibility for permanent collections, the policy for loans follows that set out for acquisitions. Extraordinary circumstances will be assessed by the Risk Manager.

4.2 Incoming and Temporary Loans:

VAB will provide the same care and insurance for art work during the term of its loan to the City of Burnaby, as for that which is given to those works accessioned into its permanent collections.

5. DEACCESSIONING/DISPOSITION:

- 5.1. The Collection is established with an assumption of permanence, and objects have normally been offered and acquired upon that assumption. Deaccessioning (removal of a previously accepted item from the collection) should therefore only be undertaken with the specific authority of the responsible body (Visual Arts Burnaby). Full documentation should be kept of all deaccessioned material.
- 5.2 Deaccessioned material retaining some museum value should first be offered to other public institutions by gift, exchange or (where permitted) sale before returned to the open market. Sales should be made in ways which minimize association of the objects with the gallery and its staff following an "arms-length" principle..
- 5.3 Any income derived from deaccessioning of material should only be applied to the purposes of Visual Arts Burnaby to acquire new work for the Collection, and the maintenance of the Collection.

Appendix

UNESCO Convention of the Means of Prohibiting and Preventing Illicit Import & Transfer of Ownership of Cultural Property

Pursuant to Section 31 of the Cultural Property Export and Import Act, the importation into Canada of any “foreign cultural property” illegally exported from any foreign state that is, along with Canada, a party to a “cultural property agreement” is illegal. A “cultural property agreement” is any bilateral or multilateral agreement relating to the prevention of illicit international traffic in cultural property. “Foreign cultural property” means any object that is specifically designated by the state from which the export would otherwise take place as being of importance for archeology, prehistory, history, literature, art or science. Thus, in the case of any acquisition being imported from a state party with Canada to such an agreement, the Director of the Gallery has the responsibility to assure himself or herself of the legality of the export/import.

Section 31 of the Cultural Property Export and Import Act provides for recovery by a state party with Canada to a cultural property agreement of foreign cultural property which has been illegally imported into Canada from the state. It also provides for payment of compensation by such state where the property was purchased, or where otherwise valid title to the property was acquired, in good faith, i.e., without knowledge at the time of purchase or acquisition of title that the property was or would be illegally imported into Canada. If money was paid for such object by the Gallery, any such compensation as a result of its repatriation would be returned to the Acquisitions Fund.

Any action to recover from the state which is party with Canada to a cultural property agreement an object stolen from the Gallery or which upon recovery is to be added to the Collection of the Gallery will be undertaken on the recommendation of the Board of trustees and on the advice of the Director. If any compensation is to be paid by the Gallery for such and object, such compensation to be expended for its repatriation or its return is chargeable to the Acquisitions Fund.

While the Act provides legal remedies to enforce return of foreign cultural property and determine compensation, if any, in any case where the Gallery is or could be involved such matters will be settled, to the extent possible, by negotiation between the contending parties without resort to the courts.

There may be cases of importation to Canada for the Collection of the Gallery of objects illegally exported from a foreign state where the foreign state is not party with Canada to such a cultural

property agreement. Unless the particular circumstances of a case otherwise dictate, as a matter of principle, Visual Arts Burnaby will act if that foreign state and Canada were a party to such an agreement.

The UNESCO Convention

The UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property is a “cultural property agreement” and so far is the only such agreement to which Canada is a party. The Convention came into force in Canada on June 28, 1978. Thus, with respect to any state party to the Convention with effect from the date the Convention came into force in Canada or in that state, whichever is the later, the illicit import into Canada of cultural property from that state and the illicit import into that state of Canadian cultural property became illegal.

Since the convention does not have retroactive effect, it does not cover exports or imports before the various effective dates.

As provided by section 32 of the Cultural Property Export and Import Act, Canadian cultural property for the purposes of the Convention is any object included in the Canadian Cultural Property Export Control List.

The procedures described regarding illegal import and export, recovery and compensation now apply with respect to parties to the Convention listed in Schedule A to this Policy with effect from the dates listed, or June 28, 1978, which is the later.

Procedures

In order to conform with the policy previously stated, the Director has the responsibility to undertake the following in respect of each acquisition, whether by purchase, gift, bequest or exchange:

- (a) Before acquiring an object or recommending that an object be acquired, to take all reasonable measures to ensure that the object in question was not illegally or unethically acquired by the present holder or wrongfully converted, regardless of whether any cultural property agreement applies in respect of that acquisition;
- (b) In cases where the history of a proposed acquisition is in question, to consult widely and contact competent authorities of the probable place of origin in an effort to determine the status of the object;
- (c) Where an object offered to the Gallery for acquisition was illicitly acquired by the present holder or came into Canada from another state illegally after Canada and that state became party to a cultural property agreement governing that object, to take reasonable steps within his or her power to aid in the return of that object to its rightful owner;
- (d) In the case of cultural property acquired for the Gallery which was imported from another

state after the coming into force of a cultural property agreement prohibiting such importation from that state to Canada, to return such cultural property to that state, provided any compensation owing to the Gallery has been paid;

- (e) In the case of cultural property acquired for the gallery after June 27, 1978, which was illegally exported from a state where there is no cultural property agreement in force with respect to Canada and that state, to return such cultural property to its owner in such state if the Gallery is reimbursed any *bona fide* expenses in acquiring such cultural property and if there is a reasonable guarantee that cultural property illegally exported from Canada to that state will be returned to Canada under like circumstances; and
- (f) To counsel staff members of the Gallery to ensure their awareness of the standards of conduct set forth in this Policy, the provisions of the Cultural Property Export and Import Act and any cultural property agreements to which Canada is or may become a party.