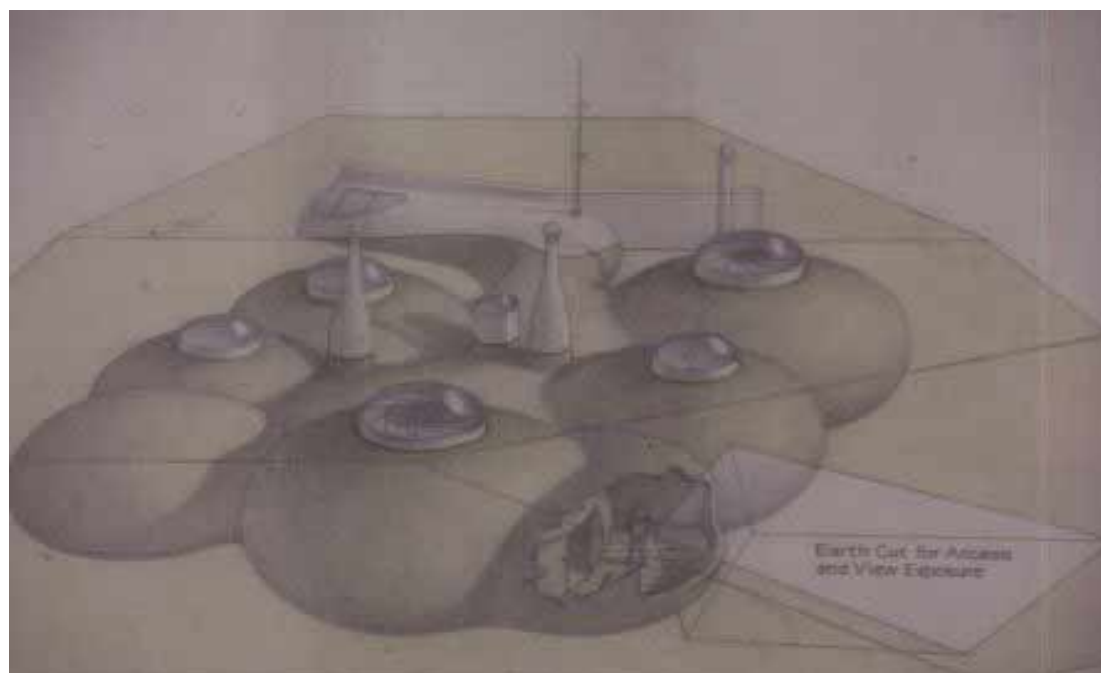


# ARTS BUSINESS EXCHANGE



AUGUST 2002

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# AUGUST 2002

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# AUGUST 2002

# E D I T O R I A L

whenever there's a big auction, a new record price

set, or a famous picture changes hands, one or more of the media stories will make some reference to today's billionaire collectors as the new Medicis. Sure enough, when 'Massacre of the Innocents' by Rubens overtook Van Gogh's 'Portrait of Dr. Gachet' as the world's most expensive painting last month, Lord Thomson of the Thomson Media group was duly compared to the infamous patrons of the Italian Renaissance. (e.g. [www.independent.co.uk/story.jsp?story=317212](http://www.independent.co.uk/story.jsp?story=317212))

Around the same time, Lyons & Hannover, a 'provider of financial services to the art market,' issued a bulletin - "Art Market Intelligence" - noting the continued growth in the price of fine art at auction in contrast to the continued depression of stock markets around the world. This 'negative correlation' is arguably due to the shortage of high quality work available for sale, and the attraction of 'asset-backed' investment opportunities, for those with a few unproductive millions kicking around, who don't fancy taking a punt on shares.

So perilous is the state of traditional investment opportunities that institutions are apparently joining private individuals in buying art as a financial vehicle: at least one art fund is now open to both. (Quite whose drawing room the financial vehicles get to adorn in the former scenario is an open question.) People aren't jumping right out of equities and into aesthetics - it's just that when the chips are down they can afford to diversify their portfolios, and right now old masters seem to be returning more than the new economy.

The fact that impressionists and post-impressionists have been knocked-off the top slot by one of the old guard does give this cycle of the story something of an interesting twist, though after a revival of the baroque in other contemporary fields - such as film and fashion - a number of years ago, it's perhaps unsurprising that conservative collectors would go back to the real thing once the influence trickled-down.

Even so, Bill Gates might be the youngest and richest of today's collectors, a uniquely powerful figure in business, respected and despised in equal amounts, but does the Medici comparison hold up?

One of Bill's most famous purchases is Leonardo's Codex Leicester (US \$31m in case you're wondering) - what could be more Medici-like than that?

But the Florentine princes patronised their contemporaries, not 'old masters.' They commissioned works directly from the best artists of their day, works that still had a practical function in everyday life, rather than a purely investment function in a portfolio. Such patronage, albeit funded by military strength as much as commercial savvy, created the history we now study, rather than seek kudos from a previous golden age.

COVER: Canadian artist and entrepreneur Bill Lishman's first design for *Earth Integrated Architecture*, c. 1980.



Rubens and the Medicis: *The Arrival of Marie de' Medici at Marseilles*, 1622-26.

By contrast, none of the 36 billionaires in the Art Newspaper's survey of the richest collectors buys much from even the last century. Charles Saatchi is probably the only major buyer to build his reputation through contemporary art, famously building the reputations of the Freeze/Sensation generation of British artists in the process. It might not have been on a Medicean scale, but if someone deserves the epithet these days, he's as good a candidate as any. He's also one of the few figures, contrary to some opinions, who almost certainly hasn't used art as an investment - an idea that would have been equally curious in Renaissance Florence.

As Lyons & Hannover acknowledge, it was the British Rail pension fund that first brought art investment into the institutional sphere in the 1970s, buying at good value prices and shrewdly selling at the right time in the late 1980s and early 90s. Smart move, just as it would have been in any other market. But it begs the question as to whether art's current vogue as an 'asset-backed' investment is really to do with its unique qualities, or something more generic and cyclical?

One thing "Art Market Intelligence" didn't mention is that traditionally the art market lags the stock market by at least a year or two. So while derivatives are a more debatable commodity at any time, the idea that painting's tangibility somehow makes it a more stable investment than equities (aren't they backed by the assets of Ford, IBM, Shell ... ?) might be convincing now, but the current 'negative correlation' could be sloping a different way in the not too distant future.

Should that happen, investors will no doubt be up in arms. Collectors and patrons, on the other hand, like the Medicis, will have a different perspective.

### Blue Chip Quotes

Lyons & Hannover, Art Market Intelligence Newsletter (July, 2002). Quoted with permission.

*This new-found interest in art as an investment is not confined to private investors. Institutional investors too are beginning to pay attention to the merits of art as an asset-backed investment, and at least one art fund has recently been offered to both private and institutional investors.*

*It is generally acknowledged that the future prospects for the worlds' stock markets remain decidedly bleak. By contrast, the limited supply of good quality art should ensure continuing strong prices for the foreseeable future. The merits of art as an alternative asset class have never seemed stronger.*

# ART ENTREPRENEUR

Bill Lishman lives and works outside the box

**the story** of Canadian artist Bill Lishman has been

documented, published and made into a Hollywood feature film. Lishman, an artist, entrepreneur, inventor, designer and pilot, is perhaps best known for having raised and imprinted geese and now the endangered whooping crane on his ultra-light plane. However, this restless creator has developed a significant body of artwork that is impossible to categorize.



Aerial view of Canadian artist Bill Lishman's *Earth Integrated Architecture*, c. 1988. The seven domes were buried beneath sand and soil. He and his family have lived in this home near Port Perry, Ont. for 12 years.

Lishman's *earth integrated* home is arguably his most innovative sculptural work. He and his family have lived in this organic underground series of seven domed modules for the last 12 years. "We shouldn't be living in boxes," Lishman commented from his Wisconsin Operation Migration offices. "The earth integrated architecture is better for the environment and is not a blot on the landscape."

From in-floor heating to concrete and marble powder interior walls, the domes buried on top of Purple Hill near Port Perry, Ont., were meticulously designed. The waterproofed exterior of the house was buried in dry sand. A membrane of rubber sheeting placed over the area keeps the sand dry. And the sand itself is criss-crossed with air ducts circulating warm air. Buried conduits carry power, phone and cable to each room. Grass and plants grow on top of the house.

Neither Lishman nor his work fit into the exhibition and sales tradition. "I like to sell the idea before I make it. Having a contract gets it done."

One of Lishman's best known works *Autohenge*, north of Oshawa, Ont. was paid for by Chrysler and used in TV commercials. The 1986 sculpture of upended crushed cars replicated Stonehenge. It was dismantled after 5 years. "Too many druids were having parties there," says Lishman.

For Expo '86 in Vancouver he created *Transcending the Traffic*. Fifty five steel figures ascended an 86 foot high steel tower. Dozens of other commissioned sculptures including animals for Imax movie producer Steve Low, have been lucrative for Lishman. He created the sunken model of the Titanic for the movie *Titanica*.

But it is the artist's work with birds which has endeared him to the world. In 1993, he successfully hatched and imprinted a flock of geese on his ultralight plane. He then taught the flock to migrate from Purple Hill to Virginia. After *20/20's* coverage of the experiment, Columbia Pictures purchased the rights to his story. Lishman and colleague Joe Duff have since created Operation Migration. They are close to getting the whooping crane off the endangered list.

In 2000 Canadian Governor General Adrienne Clarkson bestowed the Meritorious Service Medal on the artist for his work with birds and bringing Honour to Canada.

# CULTURAL DIVERSITY

pushing for a treaty on global cultural diversity

**a growing** group of artists and producers concerned

that cultural diversity is in conflict with commerce and international trade will meet this October to adopt a draft treaty on global culture. The International Network for Cultural Diversity (INCD) will present their draft treaty to global agencies including the International Network for Cultural Policy (INCP), an international group of ministers of culture. The US does not have a minister of culture and is not represented at the INCP.

The INCD is a non governmental organisation based in Ottawa at the offices of arts lobby organisation the Canadian Conference of the Arts.

The INCD, which is funded by the Canadian federal Dept. of Heritage, has about 400 members from 52 countries including the US. Members include Canadian actor R.H. Thomson who is currently gathering prominent artists for a "leadership council". James Early, Director of Cultural Heritage Policy at Smithsonian is on the INCD steering committee.

According to their web site, the group believes that "the voices of local artists are being drowned out by imported entertainment." The site further reads:

*Multinational entertainment industries, ever larger and more concentrated, spread a homogenized global culture. Trade bodies such as the World Trade Organization (WTO) worsen the situation by limiting the ability of nations to support their own artists and cultural institutions. Likewise international financial institutions such as the International Monetary Fund (IMF) limit funding for cultural and other programs as a condition of much-needed loans.*

Their draft treaty prepared by Canadian trade lawyer Steven Shrybman sets out 20 provisions with key elements including rules concerning trade in cultural goods and investment in providing cultural services. The INCD hopes that this proposed treaty will become "a stable legal framework for the protection and enhancement of the full diversity of cultural expression currently under threat from the homogenizing effects of globalisation."

The INCD conference "Fostering Cultural Diversity and Development, Local, National and Global Strategies" will take place in Cape Town, SA Oct. 11-13 preceding the meeting of the INCP. Topics at the conference include: arts education as a tool for development; ways to assess cultural impact; north-south dialogue; copyright; dispute resolution.

In addition to the INCP, the network will present their treaty to the UN, UNESCO, the WTO, World Intellectual Property Organisation among others.



<http://www.incd.net>  
incd@ccarts.ca

# CULTURAL PROPERTY

foundation struggles to keep Bill Reid Collection in Canada

## the deadline

has been extended for the Bill Reid Foundation to come up with \$1 million to secure a \$3.4 million collection of art by Canadian artist Bill Reid.

Reid passed away in March 1998 and his wife Dr. Martine Reid has given the Foundation bearing his name an opportunity to acquire 107 works from the artist's personal collection for \$700,000. Additional costs such as insurance and storage bring the first phase of needed funding to \$1 million. Offers to buy the collection and reproduction rights have been made to Dr. Reid from outside the country including the US.

The Foundation has a five year plan which includes touring the collection for three years to 12 centres around the world and to create a permanent home for the art in downtown Vancouver. The group has approached the federal and provincial governments to split half of the \$14 million plan for the total project (ie. \$3.5 million each over five years, with the balance to come from the private sector).

The Foundation made its first proposal to the governments over two years ago, but pressed hard 3 months ago when facing a June 30/02 deadline and insufficient funds to complete the agreement between the Foundation and Dr. Reid. She has extended the deadline until Oct. 31/02 but cannot do it again. This date marks the expiration of Revenue Canada's prior ruling on tax issues. This ruling took two years to obtain. Time and costs to revisit the tax issues may mean the loss of the collection to an out of country buyer and a blow to the Bill Reid Foundation itself.

Herb Auerbach, executive director of the Foundation says some progress is being made in what they call "a difficult fundraising environment" in a recent press release. Private funding sources have also been explored. Reid, a goldsmith turned sculptor, was enormously inspired by his Haida cultural heritage rooted in the northwest coast of Canada. He fused modern and traditional forms of expression in his well known sculptures, jewelry and other works.

The Bill Reid Foundation also holds Invitational Concerts at the Haida House at the Museum of Anthropology in Vancouver. The Bill Reid Teaching Centre is being developed at Qay'llnagaay Heritage Centre at Skidegate, Haida Gwaii, his mother's village. The Centre will provide the highest quality teaching of Haida art and culture and mentoring of First Nations artists. Reid himself established a Scholarship & Education Fund in 1994 at the University of Northern British Columbia in Prince George to support the verbal, visual and performing arts of the First Nations of the Northwest Coast.

Reid's art has been chosen to grace a new Canadian \$20 bank note set to appear in early 2004.



Bill Reid  
*Frog Brooch*  
22k gold and  
abalone shell inlay



# A R T B U S I N E S S

## news briefs

### HEFFEL FINE ART AUCTION HOUSE TO OPEN TORONTO GALLERY

VANCOUVER - Vancouver's Heffel Fine Art Auction House has purchased a venue in Toronto's historic Yorkville district to display significant art to be auctioned. Heffel's is the first fine art auction house to span the country with offices in both Toronto and Vancouver. Their new gallery opens Sept. 1, 2002.

By expanding their business, the Heffels are bucking the current industry trend of consolidation, as was the case with the recent Waddington/Joyner merger.

"We are delighted to acquire an office/gallery space in such a historic and artistic community," says David Heffel, President, Heffel Group. "Along with our landmark brick gallery in Vancouver's prestigious South Granville district, we now have an appropriate Toronto address to properly display and preview art for our upcoming on-line and live auctions."



The Heffels will also use the Toronto office, at 13 Hazelton Avenue, to conduct free verbal auction estimates of Canadian, American and European art and to take in consignments.

The Heffels hold the record for Western Canadian art auctions with 12 consecutive auctions grossing over \$1 million. The Heffels' spring auction at the Sheraton Wall Centre Hotel was the company's fifth consecutive auction at which more than \$2 million worth of fine art was sold; their first over \$3 million.

The Heffel's auctions are national and international in scope, with up to a third of the purchases by dollar value going to foreign buyers, as well as a large percentage going all across Canada. "Having a Toronto office/gallery better serves our Eastern consignors and collectors," says David Heffel. "We receive calls from buyers and sellers in all parts of Canada, the U.S., the U.K. and Asia every week."

Heffel's monthly on line auctions, now in their third year at [www.heffel.com](http://www.heffel.com) continue to draw strong international activity. Heffel's new Toronto facility will, in addition to the Vancouver gallery, display works featured in the company's monthly online auctions. "We anticipate continued Internet auction growth with the additional preview and consignment facility in Eastern Canada," David Heffel says.

While previewing their spring auction in Toronto in mid-April 2002, the Heffel brothers secured over a million dollars worth of masterworks from

an Ontario collector for their next semi-annual auction of fine Canadian art. The feature piece among the acquisitions is a 32 x 38 inch oil on canvas by Lawren Harris, signed and dated 1920, entitled *Grocery Store, In the Ward*. The estimate on the painting is conservatively set at \$600,000 to \$800,000.

The Heffel's next live auction is set for November 2002 at Vancouver's Wall Centre Hotel.

### **SCANDAL AVERTED - Sotheby's issues statement regarding £49 million sale of Rubens painting**

LONDON - An article published in the New Scotsman has prompted the release of a statement from Sotheby's to the Museum Security Network.

The Scotsman article alleges that Sotheby's is to face an investigation by Austrian public prosecutors over the recent sale of Rubens' *Massacre of the Innocents*. The painting was purchased by Canadian billionaire David Thomson for £49.5 million in July. When the painting was granted export permit from the Austrian Cultural Heritage it was believed to be by a minor Rubens contemporary Jan van den Hoecke. Only when the painting was examined by Sotheby's experts in England did its true author and value become known. The Scotsman article alleges that there was a "cover-up" regarding the artist of the painting from the start. The article also alleges that the consignor was a woman who had allowed the painting to hang in an Austrian monastery for many years. The response to these allegations from Sotheby's was swift:



Peter Paul Rubens, *Massacre of the Innocents* (1609-1611) depicts King Herod's order to slaughter all new born boys to prevent any child becoming the Messiah.

*Sotheby's wishes to refute the completely false and unfounded stories currently circulating about the Rubens painting, 'Massacre of the Innocents'. It was absolutely false that Mrs Anna K was the seller of the Rubens. Sotheby's has never had any contact with her, and she is completely unknown to our consignor and to the monastery in which the painting was hanging for almost thirty years. Similarly, it is absolutely false that Sotheby's knew the painting was by Rubens when it was exported from Austria. It was only at the completion of extensive research, undertaken after the painting arrived in England, that there was a change to the prior attribution that had stood unchallenged for more than 200 years.*

*The accusations against Sotheby's were raised in an anonymous letter distributed simultaneously to the prosecution office in Vienna and to several media. Finally, it is absolutely false that a criminal investigation is pending against Sotheby's or any of its representatives, or anybody else. In fact, there are no investigations at all.*

*Helen Griffith  
Sotheby's Press Office  
[www.sothebys.com](http://www.sothebys.com)*

## PLAYING MARBLES - restitution of Parthenon marbles heats up

LONDON - A British lobby group for the restitution of the Parthenon Marbles has issued a stinging rebuttle to 'alarmist stories' in the media. Published news items allege that in their rush to complete the Acropolis Museum for the 2004 Olympics, the Greek government has destroyed ancient remains in the earth beneath the museum. Excavation of the site at the foot of the Acropolis citadel has uncovered Roman, Byzantine and Stone Age ruins. The museum, being built specifically for the exhibition of the Parthenon sculptures, was intended to allay concerns that the government is unable to care for ancient works.

Prof. Anthony Snodgrass, Professor Emeritus of Classical Archaeology, University of Cambridge and Chair of the British Committee for the Restitution of the Parthenon Marbles (BCRPM), refutes the allegation that 'cultural vandalism' has occurred at the site of the \$100 million Acropolis museum.



In a press release from the BCRPM, Prof. Snodgrass states that he was impressed by the "rare degree of sensitivity and respect for the ancient structures". In fact, Greek officials deliberated for years over the location and design of the museum which will be built on stilts to disturb the ground as little as possible.

The negative claims in the media were taken from 'video clips', claims Prof. Snodgrass, and not from having visited the site.

"This is like sneaking into a hospital, catching a glimpse of a delicate surgical operation through the window of the operating theatre, and then accusing the surgeons of murder."

The purpose of the BCRPM is the restitution of the Parthenon marbles to Greece in accordance with the resolution of the UNESCO Conference of Ministers of Culture 1982. According to the group's web site, they intend "to present the case as fully as possible to the British public and to bring the most effective pressure on the Trustees of the British Museum and the British government".

The Parthenon marbles were removed from Greece in 1801 by British diplomat Lord Elgin and are on display at the British Museum. Many people including the BCRPM regard the removal of the sculptures as looting. The British government so far has shown little interest in returning the marbles.

The BCRPM has been joined by well known British scholars and celebrities including Judi Dench, Vanessa Redgrave, Ian McKellen, Fiona Shaw.

The British Committee for the Restitution of the Parthenon Marbles (BCRPM) [info@parthenonuk.com](mailto:info@parthenonuk.com) [www.parthenonuk.com](http://www.parthenonuk.com)

## DNA BEING USED TO 'TAG' ART - a new technology protects markets for art and memorabilia from counterfeits

SYDNEY, AUSTRALIA - Earlier this year popular Australian bush artist Pro Hart began tagging his art with DNA markers called Smart Mark by DNA Technologies (<http://www.dnatecaus.com>) in NSW Australia.

The DNA technology has already been used by wine makers to protect premium wines across the globe. The technique used by BRL Hard Wine Co. took DNA from 100 year old grapevines grown in South Australia. The DNA was then mixed with a special ink and applied to a tamperproof neck label that seals the bottle. The spectral signature of light from the ink is measured by a small scanner to ensure authenticity of the wine. A 1998 vintage from the company was the first to carry the DNA label.



Australian painter Pro Hart is one of the first artists to use DNA tags to protect his work from fraud.

Similarly, 73-year old Pro Hart uses a DNA signature that is extracted from a swab from inside his mouth. Forgery has been a significant problem for this self-taught artist. Hart was awarded the distinction of Member of the British Empire by the Queen in 1976 to recognise his service to art in Australia.

Owners of Hart works have attended DNA clinics in Sydney. For £50 they have their painting DNA encrypted and authenticated. Hart's DNA was mixed with an invisible paint and applied at a spot on the canvas.

Art fraud is a world wide phenomenon costing the art industry hundreds of millions of dollars each year.

## "PROMOTING DIGITALISM" - National Gallery of Canada Receives \$25,000 from Corel Corporation for the Digitisation of its Art Collection

OTTAWA - The National Gallery of Canada announced in July that Corel Corporation has contributed \$25,000 towards a project to digitise its Permanent Collection.

Part of the mandate of the National Gallery of Canada is to assist Canadians gain a better understanding and appreciation of art. Through the digital reproduction of the Gallery's Permanent Collection all works of art will eventually be permanently captured.

The National Gallery's collection includes approximately 36,000 works of art. To date, around 3,800 images have been digitised, with the objective to create digital photographic files for 20,000 works in the collection over the next four years.

"The Gallery thanks Corel Corporation for their support to help make this very important project possible. The digital reproduction of the Gallery's Permanent Collection will allow people in Canada and around the world to discover Canada's most important collection of cultural treasures," said Mr. Pierre Théberge, Director of the National Gallery of Canada.

" We are very pleased to support the National Gallery of Canada on this important initiative," said Annette McCleave, executive vice-president of

marketing at Corel Corporation. "By digitising its collection, the Gallery is providing even greater access to some of the world's most powerful images. Over the next several months, we will be visiting communities across North America, promoting digitalism as an art movement and introducing people everywhere to the powerful creative tools that make this movement a reality. "

With Corel's assistance, the Gallery will be able to digitise thousands of images over the next twelve months.

## CANADA AT THE VENICE BIENNALE

OTTAWA - A project which brings together the work of architect and curator Michael Awad, multimedia artist David Rokeby and pianist and sound artist Eve Egoyan will represent Canada at the 2002 Venice Biennale in Architecture. The Biennale, which is the world's most prestigious architectural exhibition, will take place in Venice, Italy from September 8 to November 3.



The 29th Biennale in 1958 saw the inauguration of the Canadian Pavilion, designed by the BBPR Group (the architects Banfi, Barbiano di Belgiojoso, Peressutti and Rogers). It is maintained by the National Gallery of Canada.

The project, entitled *Next Memory City*, will reflect contemporary urban life through the use of large-scale photography, video images and a newly-commissioned sound work. It will be made up of three components and located at the Canadian Pavilion: Michael Awad's *Chinatown*, a long horizontal photograph depicting life in Toronto's Chinatown, which will be mounted on wall panels and wrap the interior perimeter of the Canadian Pavilion; David Rokeby's *Watch*, a video-based installation in which images of pedestrians in Venice are projected onto large video screens in the centre of the pavilion; and a sound work by Eve Egoyan, which is being created in collaboration with David Rokeby. Eve is the sister of filmmaker Atom Egoyan.

The work at the national pavilions in the Giardini is only half of the Biennale. The other half, an exhibition of models and material prototypes of over 100 projects currently being built, will be shown at the Arsenale. Canada is not represented in this area.

The Canada Council for the Arts and the Department of Foreign Affairs and International Trade (DFAIT) are working in partnership in the administration and support of Canada's architectural representation in Venice. The National Gallery of Canada maintains the permanent Canadian pavilion in Venice, and the Canadian Centre for Architecture in Montreal plays a consulting role. Financial support is provided by the Canada Council and DFAIT.

*Next Memory City* was selected for the Biennale in consultation with an independent assessment committee composed of professionals in the field of architecture.

*Next Memory City* is being co-curated by Michael Awad and Alphabet City Editor John Knechtel. The Commissioner for *Next Memory City* is InterAccess Program Director Kathleen Pirrie-Adams. The Biennale di Venezia is titled *Next* is under the directorship of Deyan Sudjic, a London based critic and curator.

# CREATIVE MANAGEMENT

a human resources crisis has the potential to cripple the arts sector

by Anita Grace  
Freelance arts writer

“The under-valuing of ‘administration’ is endemic in mission-driven organizations... this attitude is deeply destructive to current managers, to the possibility of attracting another generation of managers ... and to cultural organizations themselves.”

With these words Jocelyn Harvey describes the challenge facing most arts and culture organizations in Canada - a challenge which has the potential to cripple a sector which has seen exponential growth in the last 50 years.



Arts consultant  
Jocelyn Harvey,  
author of *Creative  
Management in the  
Arts and Heritage:  
sustaining and  
Renewing  
Professional  
Management for the  
21<sup>st</sup> Century*, leads  
the way in  
addressing the  
human resources  
drama now unfolding  
in the arts.

This issue has two main facets: how to retain the current managers - which means addressing the chronic underpaid/overworked dichotomy; and how to attract the next generation, who, with their small population and high education, will have their pick of jobs when the baby-boom managers in every sector retire.


“There is a real sense of urgency,” said Harvey, a consultant hired by the Canadian Conference of the Arts (CCA) to coordinate the project ‘Creative Management in the Arts and Heritage: Sustaining and Renewing Professional Management for the 21st Century’. On July 15, Harvey released her report on the project’s first phase, outlining the challenges facing the sector and making numerous recommendations on how to address them.

“The profession of arts/heritage manager is a relatively young one and it tends not to be understood and valued by trustees, artists and sometimes managers themselves. Its importance to artistic success, organizational stability and the connection with the public is often unrecognized.”

The central theme of Harvey’s report is the need to develop Human Resources strategies which address pay equity, professional training, internships and succession of leadership. Her proposals include many practical recommendations, such as ‘Sanity Circles’ where senior managers meet their peers for networking and support, and ‘Triple-Win’ internships which mentor the next generation and gradually relieve the current one.

Over the last five months, Harvey conducted extensive consultations with arts and heritage personnel across Canada. A preliminary Discussion Paper was presented at the CCA’s Chalmer’s Conference in June, where participants were given the opportunity to discuss and contribute to the proposed recommendations.

One suggestion which had the strongest consensus among participants was that public sector funders should require applicants to submit an HR



strategy as well as financial and artistic plans. Harvey was surprised at the support for this recommendation, but suggested it was the most important one to come out of Phase I. "It would force board and senior staff to talk about this," she said, "and could have the most long range effect."

In the next few months she will be following up on this and other recommendations as she continues her consultations, lobbies the funding bodies and develops an action plan to be presented in October at the end of the project's second phase.

The Creative Management Project, launched last year by the CCA, is an ongoing collaboration with the Cultural Human Resources Council and has financial support of the Bronfman Foundation and Canadian Heritage. Further information about the Chalmers Conference and the Creative Management Project, as well as copies of the Phase I Report, are available on the CCA's web site at [www.ccartrts.ca](http://www.ccartrts.ca).

Anita Grace is an Ontario based freelance arts writer. She can be contacted through [editor@artsbusiness.com](mailto:editor@artsbusiness.com)

# DIGITAL RIGHTS

By Lesley Ellen Harris, Copyright and New Media Lawyer

When licensing your digital content, there are certain things to consider that may not necessarily be true when licensing print and other non-digital rights. Digital licensing is a unique breed. But it is also a breed without much precedent or industry standards. Below are some practical tips on what to do and what not to do.

Lesley Ellen Harris is a Copyright and New Media Lawyer and Consultant who works on copyright and related legal issues in the publishing, entertainment, computers, Internet and information industries. Lesley's clients range from individual creators to governments, associations, unions and corporations. She also works with libraries, archives, museums and educational institutions.

Lesley began her career in copyright in 1984 working with a lobbying group interested in revising Canada's copyright laws. From 1987-1991, as Senior Copyright Officer with the Canadian government, she helped revise the country's copyright laws.

## © NATURE OF TRANSFER

**tip:** never *assign* the digital rights in your work as that means that you are permanently giving them away. Rather *license* those rights, preferably on a non-exclusive basis. That way, you can license them to others, also on a non-exclusive basis. Also, you do not have to license rights for the duration of copyright and in fact some digital licensing agreements are quite short. I recently prepared an agreement for an online publisher in which he only wanted the digital rights for a one month period.

**trap:** probably the worst type of license is where you have licensed your rights on an exclusive basis and the licensee is not exploiting those rights and you are therefore not being paid since payment is dependant upon exploitation. You would be in "licensing limbo." You cannot exploit your own rights and you are not benefiting from someone else doing so. To avoid this, include a reversion of rights clause in which, for instance, the digital rights revert back to you if they are not exploited within a set period of time, e.g., 2 years.

## © GEOGRAPHICAL BOUNDARY

**tip:** at the current time, digital rights for use on the Internet means global rights. However, this may not always be true. Technology may develop which divides up the Internet into geographical areas. If you agree to worldwide licensing, state so. If you want it limited, for instance, only for works uploaded in, let's say, England, or are creative enough to find some other ways of limiting the rights, add it to your agreement. And keep in mind that you can limit the rights by other means such as language, for example, only license works in the English language and not grant translation rights into every language.

**trap:** the larger the geographical boundary, the more you should ask to be paid for your rights. Worldwide rights will of course get more payment than North American or European rights. In many situations, it is best to license global rights to the same licensee provided you are duly compensated (though this may be more difficult with the unknown revenues currently associated with content on the Internet and may be easier for instance with respect to a product like a CD-ROM). In other words, do not try to limit global licensing of digital rights even though global licensing of non-digital rights is often not the norm (unless, of course, it is beneficial to you.)



## © DIVISION OF RIGHTS

**tip:** digital rights is a broad term that includes Internet rights, Web site rights, CD-ROM rights, database rights, online publishing rights, software rights and many others. You may want to divide your digital rights and not to license them as a bundle under the general term of digital rights. Even if you want to license all of your digital rights, your agreement should set out a specific payment related to each use, for example, x amount of dollars for CD-ROM use, x amount of dollars for Web site use, x amount of dollars for internal digital archive use, etc.

**trap:** avoid licensing any of your digital rights for any media now existing or which may exist in the future. That is too general a term and it is impossible to know what the future may bring and therefore to what you're agreeing.

## © VALUE AND PAYMENT

**tip:** the value of digital content is what the market will pay. The notion of licensing digital rights is relatively new and as yet there are no such things as typical rates or industry standards. And there are not many precedents. My greatest tip here is to set up an informal network amongst your colleagues to exchange information on the value of your digital rights, what rights you are licensing, in what manner and at what costs. Over time, more consistent pricing will arise.

**trap:** although digital rights are new, many think that they have or will have tremendous value. However, the reality is that at the current time, there may not be that much money being made from the exploitation of digital rights. Some people do not enter into licenses because they are not offered enough for their rights. If your licensee is not able or willing to pay what you believe is the value of your digital rights, do not walk away. If the lump sum you're offered is too low, ask for a percentage of profits. If you're still unhappy, limit the duration of the license, or make sure it is non-exclusive, and for one or two digital rights and not all of them.

Lesley's articles and papers are published internationally and she is the author of the books *Canadian Copyright Law* (3rd ed. 2001), *Digital Property: Currency of the 21st Century* (1997) and *Digital Licensing: A Practical Guide for Librarians* (2002). In addition, she is the editor of *The Copyright & New Media Law Newsletter: For Librarians & Information Specialists* (see <http://copyrightlaws.com>). Lesley began this Newsletter in 1997; it now has subscribers from 15 countries.

Lesley has spoken at conferences on copyright law in the U.S., Canada, Mexico and Denmark and continues to be involved in copyright education. She has her own seminar company, Copyrightlaws.com, which organizes seminars and workshops on issues like Digital Licensing, E-Commerce, and Managing Copyright Issues. In addition, Lesley instructs numerous "private" and customized seminars each year, as well as tele- and videoconferences. For further information, [seminars@copyrightlaws.com](mailto:seminars@copyrightlaws.com)

She maintains a web site on copyright and new media law at <http://copyrightlaws.com>

# I N F O R M A T I O N

## Exchange with the Arts Business Community

Send your announcements to [editor@artsbusiness.com](mailto:editor@artsbusiness.com)

### CONFERENCE

International Network for Cultural Diversity - Annual Conference

September 11-14, 2002 Capetown, South Africa

For further information visit [www.incd.net](http://www.incd.net)

### SERVICE TO ARTS BOARDS

BoardMatch is a free, non-profit program that connects registered charitable organizations with qualified board candidates. For more info: [www.boardmatch.org](http://www.boardmatch.org), call 905-696-5139 or [boardmatch@altruvest.org](mailto:boardmatch@altruvest.org)

### RESCHEDULED EVENT

**Toronto Outdoor Art Exhibition Rescheduled Due to Strike**

**New dates: August 30, 31 and September 1, 2002**

The 41st annual Toronto Outdoor Art Exhibition (TOAE) was postponed due to the city workers strike in Toronto during July. The TOAE is Canada's largest outdoor art event and is held annually at Nathan Phillips Square outside Toronto City Hall.

Rescheduling the event significantly affects both the TOAE and the artists from a financial standpoint. The TOAE could spend more than \$50,000 in additional costs. For many of the artists, the sales at the show represent over half of their yearly income.

This popular show attracts more than 100,000 visitors over the course of the weekend. The exhibition is expected to generate over 2.5 million dollars in sales for the 550 exhibiting artists, and award \$35,000 in prize money.

The TOAE is a non-profit project organized by a group of volunteers active in the art and corporate communities. The exhibition is financed through registration fees, and by government, corporate and individual sponsors, enabling the TOAE to charge one of the lowest registration fees in North America. No percentage of the artists' sales is taken by the organizers.

For more information on the Toronto Outdoor Art Exhibition, please contact:

[toae@torontooutdoorart.org](mailto:toae@torontooutdoorart.org)

<http://www.torontooutdoorart.org>

### EVENT LISTING

Toronto International Art Fair - Art Toronto 2002  
Friday, October 18 - Monday, October 21, 2002  
Metro Toronto Convention Centre  
255 Front Street West - North Building

Preview Gala benefiting the Art Gallery of Ontario  
Thursday, October 17, 2002 6:00 - 10:00 p.m.

Preview Gala tickets can be purchased by contacting  
Norah Farrell, Art Gallery of Ontario (416) 979-6660 Ext. 573.

Art Toronto tickets are available from all Ticket King outlets, by  
telephone at 416-872-1212 or 1-800-461-3333, or online at  
<http://www.mirvish.com>

This third edition of the Fair brings together Canadian, American and International art dealers, collectors, curators and art lovers for an exhibition showcasing modern, multi-disciplined art from Impressionist to Contemporary periods, with a focus on the latest developments in the international art scene. Over 70 galleries from 13 countries will participate, including a special installation by the international award winning Italian multimedia sculptor Fabrizio Plessi. The price of admission includes entrance to the Art Fair as well as the Cultural Program featuring notable personalities from the local and international art scene presenting lectures and panel discussions. Participants in the Cultural Program include *London Time Out* Editor Sarah Kent and *New York Times* critic Roberta Smith. The Art Fair opens on October 17 with a gala preview benefiting the Art Gallery of Ontario.

### RESEARCHER IN RESIDENCE

Aug 31, 2002 RESEARCHER IN RESIDENCE Reviewing proposals for program of grants for researcher in residence. Hope to foster critical thinking about how technologies affect people and their natural and cultural environments. Open to historians, curators, critics, independent researchers, artists and scientists. For more information contact: Jacques Perron, Daniel Langlois Foundation, 514-987-7717 OR 514-987-7492(FAX) OR <http://www.fondation-langlois.org>

# F E E D B A C K

## Email

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I really enjoyed reading the July 2002 issue and look forward to more.

**Nancy Cuttle**  
Sculptor, Ontario

This was fun to read- great breadth and depth, from Lynnwood's drive-through project, (that I enjoyed when I visited this month), to the international items - great grazing!

**Arlene Kennedy**  
Director, McIntosh Gallery, University of Western Ontario, London, Ont.

Absolutely wonderful.

**Corrie Scott, Artist**  
Christ Church, Barbados  
<http://mysite.freemove.com/corrieart>

Just back from another trip I received your ABX Newsletter. WOW, your electronic magazine does not only look great but is very informative. What interested me the most was the story about "The Drive Through Gallery in Simcoe, Ont", the story about "Atanarjuat" and "What does it take to be a successful artist".

I would love to read a detailed story about "Barrie, and William Moore's" project. It is success like these which inspire other people to greater heights.

**Karl Schutz,**  
Chemainus, BC  
[www.theartsandculturalhighway.ca](http://www.theartsandculturalhighway.ca)

Thanks for the newsletter, It is a delight to be in touch with current information that is related to the visual arts. I enjoy the format the views and abilities of your writers

**Dianne**

Good work. Keep it up.

**Walter A. Moos**  
Gallery Moos, Toronto

It is really great--well-designed and informative. I look forward to receiving your next issue!

**Kim Burdick**

**Burdick Associates: Building History**

**Historic Research and Consulting**

**Rockland, DE**

I enjoy your e-publication a lot. Keep it up.

**Laurence Acland Photography, Toronto**

[www.acland-photo.com](http://www.acland-photo.com)

Congratulations on your news letter which I received today and find it most enlightening!

**Barbara Elizabeth Mercer**

**Visual Artist**

[www.barbaraemercer.com](http://www.barbaraemercer.com)

Thanks a lot for the very interesting newsletter. Please keep me in your subscribers list. A hug from Cuba

**Abelardo Mena**

**National Museum of Fine Arts**

**Cuba**

# E N D N O T E S

## **The Magazine**

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The ABX newsletter is a digital publication (PDF) covering Canadian and international: art business news; art economics; art history; art law/art policies; art trends in Canada and abroad; art dealer and auction news. It is published 11 times a year by the *Arts Business Exchange*.

Postings are **free** to non-profit institutions.

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## **The team**

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Heather Fraser is creator and Managing Editor of ABX. She holds an MA in Art History from Queen's and a BA in Art History and Criticism and a B.Ed from the University of Western Ontario.

David Whittaker is Chief Editor at ABX. He holds a BSc in Electronic Imaging & Media Communications from Bradford University, London and is completing his thesis in Art History at Birbeck College, University of London, UK.

[www.artsbusiness.com](http://www.artsbusiness.com) [editor@artsbusiness.com](mailto:editor@artsbusiness.com)

## **Disclaimer**

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ABX is not responsible for errors or omissions in the information presented.