



Legal Considerations for Indigenous Artists & Designers: An Introductory Guide



Introduction

Legal Considerations for Indigenous Artists & Designers: An introductory guide is the result of a collaboration between:

- [The Women Entrepreneurship Knowledge Hub \(WEKH\)](#),
- [OCAD University's RBC Centre for Emerging Artists & Designers \(CEAD\)](#),
- [Canadian Artists' Representation/le front des artistes canadiens \(CARFAC\) Ontario](#),
- [Artists' Legal Advice Services \(ALAS\)](#).

This collaboration was formed to provide free summary legal information, non-legal peer support, and other resources for Indigenous artists spanning a variety of industries and disciplines.

As part of this ongoing collaboration, we have hosted two roundtables and a webinar on legal considerations for Indigenous Artists in Film and Media Arts. We have developed this resource in response to themes that emerged from these prior events and conversations.

Indigenous women* are becoming increasingly visible in the arts, with a rising number of actors, comedians, musicians, authors, visual artists, craftspeople, and dancers being represented across major artistic platforms. Although a substantial proportion of artists can be considered entrepreneurs, freelance artists and creatives are often overlooked in discussions of entrepreneurs and entrepreneurship. The aim of this resource is to support creative women entrepreneurs by providing information and tools that can assist them in their creative endeavors and businesses.

**Note: Our use of the term women is inclusive, including cis women, trans women, Two Spirit, genderqueer, gender fluid, and non-binary folks.*

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Purpose & How to Use This Guide

One of the recurring themes we heard throughout our conversations with Indigenous creatives was that, when encountering a legal question or issue, they often feel very alone and overwhelmed in trying to determine their rights and options for action.

This is further complicated by the fact that Indigenous women entrepreneurs often must also “navigate a legal landscape that is exclusive to Indigenous peoples in Canada, living both on or off reserve.”¹ For example, Indigenous peoples in Canada face unique barriers posed by the Indian Act, which can significantly hinder entrepreneurship and business development for Indigenous peoples living on reserve. Specifically, Section 87 and Section 89 of The Act create barriers to business development on reserve, whereby incorporated businesses operating on reserve are ineligible for various tax exemptions (Section 87), and the use of property on reserve as collateral is restricted (Section 89).

Barriers such as these make navigating the Indian Act and the bureaucracy of band politics three times more complex to start a business on reserve than elsewhere.² It is also important to note that, although Inuit and Métis peoples are not part of the Indian Act, they are affected similarly by other federal legislation and court rulings in Canada.

While many legal resources exist, few focus on addressing questions, topics, and barriers specifically relevant to Indigenous creatives.

Despite existing limitations and gaps in how Canadian laws support the rights of Indigenous creatives, this resource aims to provide concepts and tools that can help creatives better understand their rights, voice their expectations, and advocate for themselves and their work.

Focusing on considerations related to intellectual property and contracts, we have broken this resource down into sections providing key definitions and concepts, and contextualizing these in relation to additional Indigenous-specific concerns. Each section contains links to additional information and resources that may support creatives further with these topics of concern.



Please note that this document is provided for informational purposes only. It is not a legal or professional advice, and is not a substitute for consulting a legal professional.

You should speak to a lawyer about your particular situation before relying on any information in this document.

Refer to the [“Where to Look for Help”](#) section to get started on finding someone to speak to. Moreover, this document is focused on Canadian law. Though we occasionally share examples and resources from other countries, these are for information purposes and may not be directly applicable to Canadian laws.

Though this resource does not constitute legal advice, and is by no means exhaustive, we hope that it will give you a better understanding of some legal terms and concepts, and help prepare you to more confidently navigate potentially challenging situations that may arise.

Intellectual Property Including Copyright

INTELLECTUAL PROPERTY INCLUDING COPYRIGHT

Intellectual Property

Intellectual property (IP) is important for artists as it helps to protect creative works and ensures creators can benefit from their endeavours. It refers to a set of legal rights and protections that can be owned in certain types of creative works.

IP rights cover a broad range of subjects, including:

- **Copyright rights** in works such as photographs and other artistic works, literary works, musical compositions and sound recordings, videos, motion pictures and choreographic works;
- **Trademark or tradename rights** in names and logos such as business names, product or service names or logos, or internet domain names;
- **Industrial design rights** in such things as the shape or other design features of a product;
- **Trade secret rights** in certain kinds of confidential information;
- **Patent rights** in such things as inventions or certain novel work processes.

Generally speaking, the owners of IP rights may be exclusively entitled to use, make, distribute, share, or modify the creations in which they own IP rights

While there are different types of IP (e.g. copyrights, trademarks, patents, and trade secrets), we will focus here on copyright and how concepts related to copyright can protect your creative works and help you advocate for yourself in contracts and negotiations with other parties.



LEARN MORE

For additional information on other forms of intellectual property, check out:

[The 'Intellectual Property Primer'](#)

(published by ALAS)

["What is intellectual property?"](#)

[published by WIPO]

INTELLECTUAL PROPERTY INCLUDING COPYRIGHT

An Introduction to Copyright

Copyright is a form of intellectual property that protects certain types of works from, among other things, being produced, reproduced, performed, displayed, published, distributed, translated, adapted, or broadcast unless by the owner of the work or with the owner's consent.

Copyright applies to certain types of creative expressions (known as 'works'). The types of works that may be eligible for copyright protection include artistic works, literary works, dramatic works, musical works, and compilation and collective works (e.g. literary anthologies and newspapers). In Canada, copyright arises automatically upon the creation of a work, and there is no requirement to register for copyright protection, although registration of a copyright does make it easier to protect these rights should a dispute arise.

For a work to be protected, it must generally be **an original expression "fixed" in "material form"** (e.g. a painting, book, sound recording, etc.). Copyright does not protect facts, ideas, or unexpressed concepts. Copyright protection, when it does apply, also lasts only for a specific period of time called the "term" of copyright.

Copyright in Canada usually lasts for the full life of the creator (or "author") of the work to the end of the year of the author's death plus 70 years.

Works for which copyright has ended or works that are not subject to copyright are referred to as works in the **"public domain"**.

Thus, copyright may not apply to certain forms of long-standing Indigenous cultural identity or expression. Nevertheless, copyright may well apply to new expressions of a public domain traditional expression. For example, although a character or storyline in a traditional Indigenous story may be in the public domain, if you create and write a new storyline using a traditional character, the new storyline and new elements which you add to the character in the public domain could be enough to create a copyright for you if the new storyline or adaptation of the traditional character includes a significant new characteristics you have created and written, drawn or recorded.

TIP

Note that there are numerous exceptions to copyright protection, including "fair dealing" by users of limited portions of copyright-protected works for certain limited purposes, including research, private study, education and parody or satire. What should be considered "fair" is controversial, particularly with respect to use in education!

Generally, the author of a work that is protected by copyright is the first owner of that copyright. This is not the case, however, if the author is employed to create the work for an employer.

For works created by an employee for an employer within a standard legal employer and employee relationship (as opposed to, for example, a work created by a freelance contractor for a client), the first owner of copyright will be the employer, unless the employment agreement states otherwise. For this reason, for works created by an author as an employee, it is always best to agree in writing with the employer in advance, if the author is agreed to be the owner of the copyright, otherwise the employer can claim ownership.

The laws of copyright determine who controls and has the rights to use, or allow others to use, rights protected by copyright. These rights include the exclusive rights of the copyright owner to produce, reproduce, perform, display, publish, distribute, translate, adapt, and broadcast a work protected by copyright. A copyright owner thus has the exclusive right to charge others for the right to make use of the owner's copyrights, which are sometimes described as the **"economic rights"** of copyright.

Copyright ownership is transferable and can, for example, be either sold (**"assigned"**) by the owner to a buyer, given to the owner's heirs under a will effective on the owner's death (**"devised"**), given by the owner as collateral for a loan to the owner (**"mortgaged"**), or lost by the owner in the event of the owner's bankruptcy (**"devolved"**).

Copyright ownership can also be shared. One way this happens is when a single work, such as a book for example, is created by two or more authors who each write separate and distinct parts of the same book. All the authors in this example are considered the first owners of the copyright of the book together, while also being the sole author of their own part of the book. These kinds of works are called **"collective works"** because they have multiple copyrights: that is, one copyright in the entire book, which is owned by all the authors, and then a separate copyright for each part of the book, each of which is owned by the author of the part.

Another way copyright ownership is shared is by joint authorship, which is a single work which is created by more than one author and the contribution of each author is inextricable from that of the others. In these cases, none of the authors have a separate copyright in any part of the work but, instead, they are all considered joint authors of the work and, therefore, joint first owners of the copyright to the work. This copyright ownership is sometimes described as "indivisible", because the joint owner's share of copyright ownership is ownership in a portion of the whole, and not the complete ownership of any part that can be separated from the whole.

When copyright ownership is then sold or transferred to others in any number of ways by its first owner or owners, it can, of course, also be assigned, devised, or devolved to multiple joint owners, such as multiple joint buyers, in the case of a sale, or multiple joint heirs, in the case of copyright ownership passing to heirs under a will.

INTELLECTUAL PROPERTY INCLUDING COPYRIGHT

Licensing Your Copyright Works

A copyright owner can allow others to use the owner's copyright in a work without selling that copyright. This is done by licensing, which refers to giving another party (e.g. an individual, organization or company) permission (a "license") to do or use something in connection with a copyright-protected work.

You can give an **exclusive license** (i.e. only the other party can use the work for the licensed purpose, not even you can then use it that way) or **non-exclusive license** (i.e. you can license the same rights to use works to multiple other parties). You can also specify other conditions for how the work may be used. According to Canada's Copyright Act, any agreement to assign or exclusively license a copyright interest in your work needs to be in writing, and must be signed by yourself or an individual authorized to sign on your behalf. Neither an assignment of copyright ownership nor any license of copyright includes any transfer of the "moral rights" of the author of the work, since these are retained by the author and can only be waived. You should always consider whether any license offered to you includes any waiver of your moral rights and whether you agree to do so ([see Moral Rights below](#)).

For example, a reproduction license agreement for a work of visual art would include details of the reproduction right that is being licensed including the duration of the permission to make reproductions, restrictions on types of reproductions which may be made or the maximum number of reproductions, whether or not these licensed rights can be sub-licensed (i.e. whether the buyer can allow others to exercise these same rights), the license fee to be paid to you and how and when you will be paid, royalties which may be earned by you based

on the buyer's (and any sub-licensee's) sales of the reproductions ([see the Royalties topic below](#)), any rights of the buyer to renew the license, and any other obligations of the buyer.

Licensing the work does not mean you sell your copyright ownership – you retain the ownership rights to your work unless you explicitly assign copyright. An assignment of the copyright in a work means that you, as the copyright owner, transfer all your copyright rights in the work to another party, such that you no longer hold any ownership interest in it.

For the purposes of licensing, copyright is divisible in an infinite number of ways, which are left to the copyright owner to describe as best suits the intended uses. For example, a book can be licensed for use by licensees broken down in the following ways:

- **By geographical territory** (e.g. a separate license for each country)
- **By media** (e.g. a separate license for print publication and another for audio book uses)
- **By language** (e.g. a separate license for each language)
- **By duration** (e.g. a license for a fixed one year period only), or
- **In of all these ways** (e.g. a separate license for each medium, each language, within each country, and for a fixed duration of any length).

Although division of copyright rights in licensing is up to the copyright owner to determine, in practice each segment of the cultural industries has evolved some conventions regarding what rights are usually licensed and to whom. These are usually determined by how each kind of work is typically marketed. For example, a foreign-language book publisher in a particular country will generally want to purchase a license not only for print publication in that country, but also ebook and sometimes audio book rights for that language throughout the world.

These “conventions” are not set in stone, however, and constantly change with new technology and new business models. For example, a new worldwide online English-language publisher of ebooks may enter the market to acquire worldwide ebook rights that in the past might have been licensed to different print publishers territory-by-territory.

If you now license that single ebook publishing right in a particular language exclusively to a single international publisher, it will be more difficult to find national print publishers because you can no longer include a license of ebook rights to them in their own language and territory, making the rights you are able to license to them less lucrative.

TIP 

Be careful with exclusive licenses since they can start to be like an assignment of copyright in their practical effect if the uses you license are so broad and the license is granted for such a long term that it effectively allows all uses of copyright rights for the entire term of copyright. This may not legally amount to assignment of copyright, but in effect this can be very close to a complete assignment of the copyright in your work.

While different creative industries may have different standards or expectations regarding licensing versus assigning copyright, generally the recommendation would be to license specified rights in the work instead of assigning specified copyrights in it – and not to give up all ownership in the work by assigning all copyright in it except in very special circumstances.

More information on copyright licensing pricing is included later in this document.



LEARN MORE

For more information on licensing versus assignment of copyright, see:

[“Assignment vs. Licensing Copyright”](#)

(Published by ALAS)

INTELLECTUAL PROPERTY INCLUDING COPYRIGHT

Moral Rights

Moral Rights (sometimes called “non-economic rights”) are an important component of copyright and refer to the rights of the creator of a work to:

- 1. Be identified as the ‘author’ of their work** (i.e. the right to accreditation) or, at their choice, to be anonymous; and
- 2. Protect the integrity of their work** (e.g. to restrict unwanted modifications or distortions to the work, or uses of the work in certain unwanted associations).

These rights remain for the full duration of the copyright in the author’s work.

Why moral rights are important:

Moral rights allow you to advocate for how your work appears because it is tied to your reputation as a creative.

You cannot give away your moral rights, although you can waive them. Generally, this is done only in favour of a designated person or business entity and in a particular context.

It is not uncommon for artists to be presented with a contract which may include a clause waiving their moral rights. In some disciplines, e.g. film and video games, such clauses can even be fairly “standard”, while in other disciplines, e.g. visual arts or book publishing, such waivers are rare, more often unreasonably requested, and much less advisable.

However, a request in a draft contract for a moral rights waiver alone should not necessarily be considered a red flag.

Every situation will vary, and it is important to consider what this means – whether you are comfortable waiving these rights in any particular case and whether waiving such rights in their entirety or only in part.



LEARN MORE

For additional information on copyright, see:

[“A Guide to Copyright”](#)

(published by the Canadian Intellectual Property Office)

[“Know Your Copyrights”](#)

(published by CARFAC)

Examples of when moral rights may be enforced:

1. Say that you are commissioned by a property owner

to create a mural on the side of a building. Following the completion of the work, the property owner decides, without your consent, to alter the mural and, consequently, to affect the integrity of the work in a way that you reasonably consider offensive or damaging to your reputation as an artist.

In such an instance, you may choose to enforce your moral rights and take legal action to protect the integrity of your work. If harm has already been caused to your reputation because of the alterations made to the work, you could potentially seek compensation relating to this.

If the change has not yet been made or can be undone, copyright also allows you to make a claim to prevent a proposed change from taking place or to return the work to its original state.

2. The case of Michael Snow and his work *Flight Stop*.

One well-known and frequently referenced example is the case of Michael Snow and his work *Flight Stop*, commissioned by and permanently installed in the Toronto Eaton Centre (Snow v Eaton Centre Ltd). Snow's sculpture comprises 60 hanging fiberglass-sculpted geese. Following the original installation of the work, the Eaton Centre adorned the sculpture with red ribbons to celebrate the holiday season.

Snow, who was neither aware of nor consented to his work being altered in this way, demanded that the ribbons be removed, and won in court. The court decided that the Eaton Centre had altered the original work without the artist's consent and to the prejudice of the artist's honour or reputation, thus infringing on the artist's moral right to integrity. The Eaton Centre was ordered by the court to remove the decorative ribbons from the sculpture.

TIP

If you are waiving your moral rights, be even more careful to make sure that your agreement does include and still give you:

1. **The kind of credit** you expect (if any)
2. **When** the credit will be given,
3. **The kinds of approval rights** you will have (if any) to approve any changes to your work.

INTELLECTUAL PROPERTY INCLUDING COPYRIGHT

Intellectual Property as it Relates to Indigenous Artists, Traditional Knowledge, and Traditional Cultural Expression



“Indigenous Intellectual Property is deeply integrated with your protocols to protect your identity or collective property, your language, your stories, your songs, your images, your spiritual concepts.”⁴

–Christopher Horsethief

Existing Canadian IP laws can be limited in their ability to support and protect Indigenous artists and artworks, particularly when it comes to the relationship between Indigenous knowledge, cultural expressions, and intellectual property rights. The existing legal parameters for intellectual property are too narrow to adequately cover situations where ownership can't be assigned to a specific individual or legal entity.³ These laws fail to account for community-based and collectively/culturally formed works and shared practices, along with works and traditions that do not always take an explicitly physical form.

With Indigenous knowledge and cultural expressions often being deeply rooted in traditional practices, spiritual beliefs, and community values, concerns often arise around the misuse, appropriation, and commodification of this cultural heritage and traditional knowledge. There are many lawyers, policy advisors, and governments that recognize the importance of protecting Indigenous rights in this context; however, existing laws are not currently sufficient to cover all the nuances in play. While the rights of individual artists are more easily protected, shared knowledge and traditions and community-led practices pose challenges for the current legal framework.



LEARN MORE

For more information on the nuances at play between Indigenous IP and Canadian IP laws, read [“Squaring the Circle – Indigenous Intellectual Property and the Canadian Trademark System”](#) by lawyers, Merle C. Alexander and Leah George Wilson

INTELLECTUAL PROPERTY INCLUDING COPYRIGHT

Case Studies

“People are shocked when I tell them we lost our stories for a generation simply by telling them to someone else, but that is how Canadian copyright law operates.”⁸

- Andrea Bear Nicholas
Maliseet - Tobique First Nation Reserve.
Recently retired chair of the native studies program at St.
Thomas University in Fredericton, New Brunswick.

Comox First Nation

One example which illustrates the challenges involved in applying Canadian IP laws is the case of the Comox First Nation taking an Indigenous artist to court over the artist’s use of ‘Queneesh’ to describe his professional arts practice. ‘Queneesh,’ within the context of Comox First Nation culture, refers to an important legend that has been passed through generations.⁵

The Comox First Nation was seeking for this ‘Queneesh’ to be protected as a trademark under Canadian trademark law, arguing that they should have the exclusive right to use this name; however, it was ultimately determined by the judge that the term ‘Queneesh’ was not protectable under existing trademark law and the trademark was therefore not granted, given that “Aboriginal rights are outside the scope of trademark law.”⁶

Maliseet First Nation

Another example relates to the Maliseet First Nation, whose legal rights to their own oral traditions were taken from them under copyright law after they agreed to have these recorded in the 1970s.⁷

Through the process of recording the stories (i.e., fixing them in material form), copyright ownership was automatically granted to the individual making the recordings. The Maliseet First Nation then required permission from the copyright holder in order to use these stories, which were their own, for their own use.

This illustrates the discrepancies between cultural ownership, as practiced and understood within many Indigenous cultures, and ownership as understood by existing laws in Canada, which seek to assign this to a single individual or entity.

[Read more about the case.](#)

INTELLECTUAL PROPERTY INCLUDING COPYRIGHT

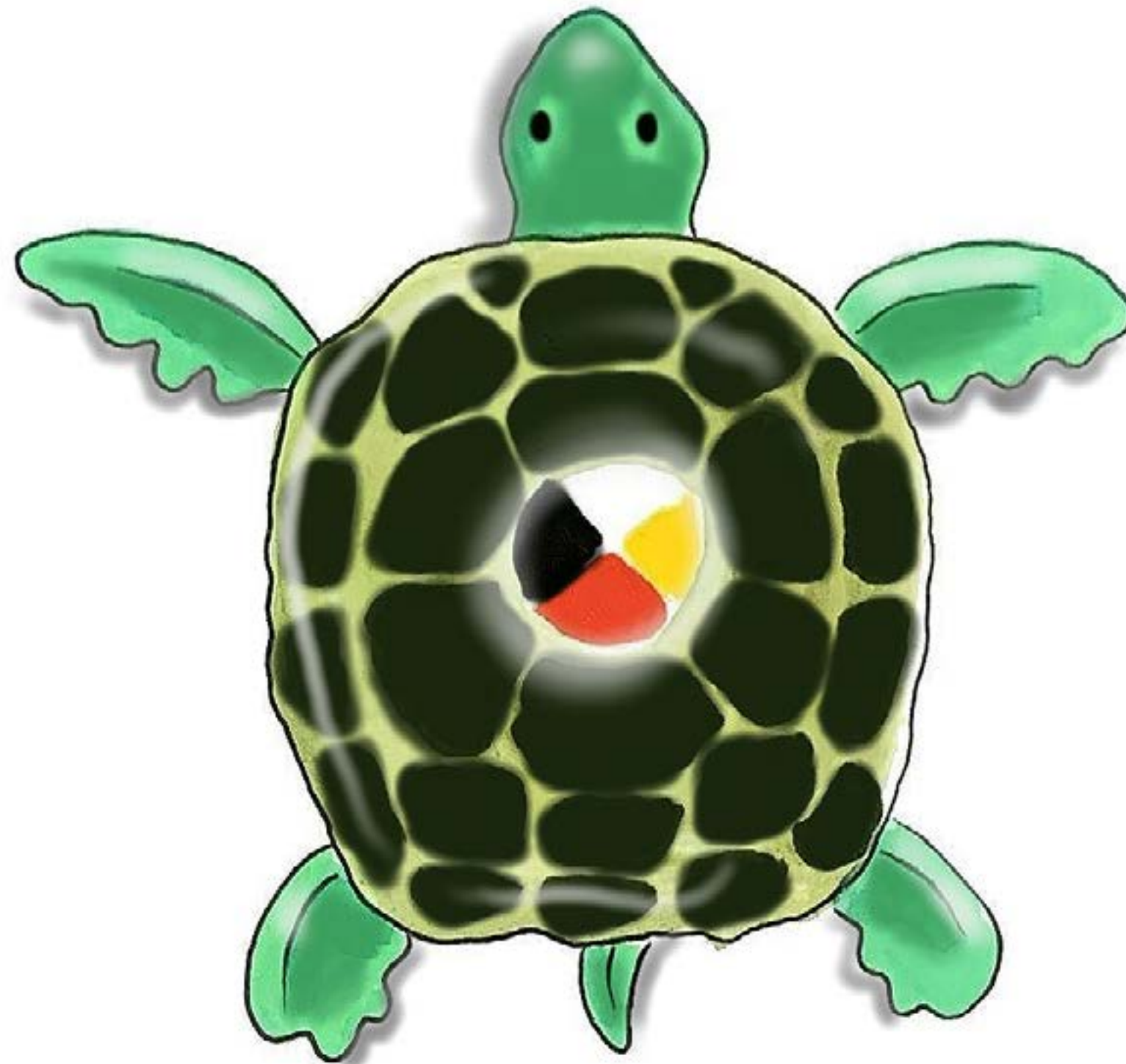
Indigenous IP and Existing Copyright Law

Copyright law can apply to certain expressions of Indigenous culture, such as visual artworks, literature, and music, provided that these expressions meet the requirements for copyright protection.

Additionally, there are related concepts such as Traditional Knowledge (TK) and Traditional Cultural Expressions (TCEs) that fall within the realm of Intellectual Property, and we will elaborate on this below.

TIP

If you are unsure if your work meets the requirements for copyright protection in Canada, it is recommended that you speak to a lawyer about your situation before relying on any information from this document.



LEARN MORE

Listen to
[“Indigenous Protocols for the Visual Arts, Episode 5 - Merle C. Alexander”](#)

Lawyer Merle C. Alexander shares his knowledge about intellectual property and [Traditional Knowledge](#), and legal protections currently available to Indigenous artists.

INTELLECTUAL PROPERTY INCLUDING COPYRIGHT

Traditional Knowledge (TK)

Indigenous Traditional Knowledge, including ecological knowledge, medicinal knowledge, and cultural practices is, as defined by the World Intellectual Property Office, “knowledge, know-how, skills and practices that are developed, sustained and passed on from generation to generation within a community, often forming part of its cultural or spiritual identity.”⁹ As such, it does not always fit neatly into the traditional framework of intellectual property law. Despite efforts being made to find ways to protect and respect this knowledge, it remains challenging to determine IP ownership and control over knowledge developed over time, shared communally, and passed through generations.

Traditional Cultural Expressions (TCEs)

Canada has recognized the importance of protecting Traditional Cultural Expressions (TCEs) of Indigenous communities. TCEs, which are also referred to as “expressions of folklore,” include things like traditional designs, songs, dances, and other cultural practices that help form the history and identity of a community. The concept of protecting TCEs goes beyond standard copyright law and often involves a mix of legal, cultural, and community-specific mechanisms.



Differences between traditional knowledge and traditional cultural expressions

Traditional Knowledge

- Skills, teachings, systems, innovations and practices developed and employed by Indigenous peoples.
- TK may relate to areas such as biodiversity, agriculture, health and craftsmanship.

Traditional Cultural Expressions

- The expression of TK and culture in both tangible and intangible forms.
- TCEs are generally expressed in the form of oral stories, artwork, handicrafts, dances, fabric, songs or ceremonies.

It is important to note and recognize that TK and TCEs can occur and/or be held concurrently. For example, a song, dance or oral story, although it exists as a cultural expression, can also contain knowledge, teachings and legal principles. As they pass down from generation to generation TK and TCEs may evolve and transform over time. It is also important to understand that Indigenous peoples are not a homogenous group. Therefore, it is vital that when defining and thinking about TK and TCEs we consider cultural context, as origins, cultural understandings and attachments can vary between Indigenous groups.

Every community has its own stories, dances, songs, languages, names, etc., some of which are allowed to be shared with outsiders, while others are only allowed to be shared with those who have permission to receive them. **“Intellectual property” is therefore not new to Indigenous people and knowledge protection has always existed**, albeit often in ways not reducible to IP as defined by current Canadian Intellectual Property Law.

Ultimately, TK and TCE are colonial terms which limit and reduce the cultural elements they seek to categorize. While they are used here to help contextualize some of the general issues in question, they are insufficient for capturing the rich and varied Indigenous knowledge and practices of diverse Indigenous groups.

FURTHER READING

- [Indigenous Protocols for the Visual Arts, CARFAC](#)
- [Intellectual Property and Aboriginal People: a Working Paper, World Intellectual Property Organization \(pdf\)](#)
- [Protect and Promote Your Culture: A Practical Guide to Intellectual Property for Indigenous Peoples and Local Communities, World Intellectual Property Organization](#)
- [Respecting the Cultural Diversity of Indigenous Peoples, Indigenous Corporate Training Inc.](#)

INTELLECTUAL PROPERTY INCLUDING COPYRIGHT

Cultural Appropriation

Canadian law does not have a specific legal framework for addressing cultural appropriation, but this is a persistent issue. Many Indigenous artists and communities continue to see appropriation and unauthorized use of their cultural heritage and creative expressions, often for monetary gain. This is prevalent across disciplines– in the visual arts, music, fashion, film, etc.–and, because ownership of the creative expressions being appropriated is generally difficult to determine, the existing legal framework can be insufficient to address this. It is therefore important for Indigenous communities to continue advocating for better protections against the unauthorized use of their cultural heritage, as increased awareness around these issues can result in positive change.

FURTHER READING

- [Intellectual Property Issues in Cultural Heritage Project, 2015. Think Before You appropriate. Things to know and questions to ask in order to avoid misappropriating Indigenous cultural heritage \(pdf\).](#)
- [What is cultural appropriation? A Brief Introduction to Indigenous Cultural Appropriation of Craft in Canada. Canadian Crafts Federation - National Arts Service Organization.](#)
- [The Appropriation of Aboriginal Cultural Heritage: Examining the Uses and Pitfalls of the Canadian Intellectual Property Regime. Intellectual Property Issues in Cultural Heritage - Simon Fraser University.](#)



LEARN MORE

The Government of Canada has published a brief overview addressing the challenges relating to intellectual property rights and protection of Indigenous Knowledge and Cultural Expression. [Check it out in this website.](#)

[Listen to Indigenous Protocols for the Visual Arts: Episode 11, Conversation with Heather Steinhagen](#)

Heather Steinhagen discusses the implications of cultural appropriation of Indigenous art and craft in Canada, and her work on “What is Cultural Appropriation”, produced by the Canadian Crafts Federation.

INTELLECTUAL PROPERTY INCLUDING COPYRIGHT

Tips on Protecting Yourself and Your Community

When creating a project or artwork that relies on TK or TCEs, you can be proactive around protecting yourself and your community.

TIP #1

It's important to have transparent and clear conversations with all parties on these topics. Outcomes of the conversation can be incorporated into the contract or agreement. [See the *Indigenous Artists Protocols Clause*](#) further in this document for an example of what you can include when working with a non-Indigenous organization or individual.

TIP #2

There is a great resource within the "[Indigenous Protocols for the Visual Arts](#)", which provides guiding questions around the topics of respect, control, communications and consent, and integrity and authenticity that you can ask yourself, or share with non-Indigenous organizations.¹⁰

TIP #3

The World Intellectual Property Organization (WIPO) also provides relevant information and tips on protecting your goods and services with IP in "[Indigenous and Local Community Entrepreneurs and Intellectual Property](#)".

TIP #4

Recognize that although you've done your best in protecting yourself and your community, the gap in Canadian IP law means that you may still run into issues. Acknowledging these specific gaps in the Canadian legal system, MLT Aikins provides further insight into [Protecting Traditional Knowledge Using Trademark Law](#).

If you are unsure about how your creative work is protected, or if you believe your rights have been infringed upon, it is recommended to consult with an intellectual property lawyer. There are numerous free legal clinics available to artists, and these are a great starting point for artists facing legal issues.

INTELLECTUAL PROPERTY INCLUDING COPYRIGHT

Organizations Advocating for Protection:



CANADA COUNCIL FOR THE ARTS



CARFAC



CARFAC ONTARIO



CULTURAL PLURALISM IN THE ARTS MOVEMENT ONTARIO (CPAMO)



INDIGENOUS CURATORIAL COLLECTIVE



INUIT ART FOUNDATION



THE FIRST NATIONS PRINCIPLES OF OWNERSHIP, CONTROL, ACCESS AND POSSESSION (OCAP)



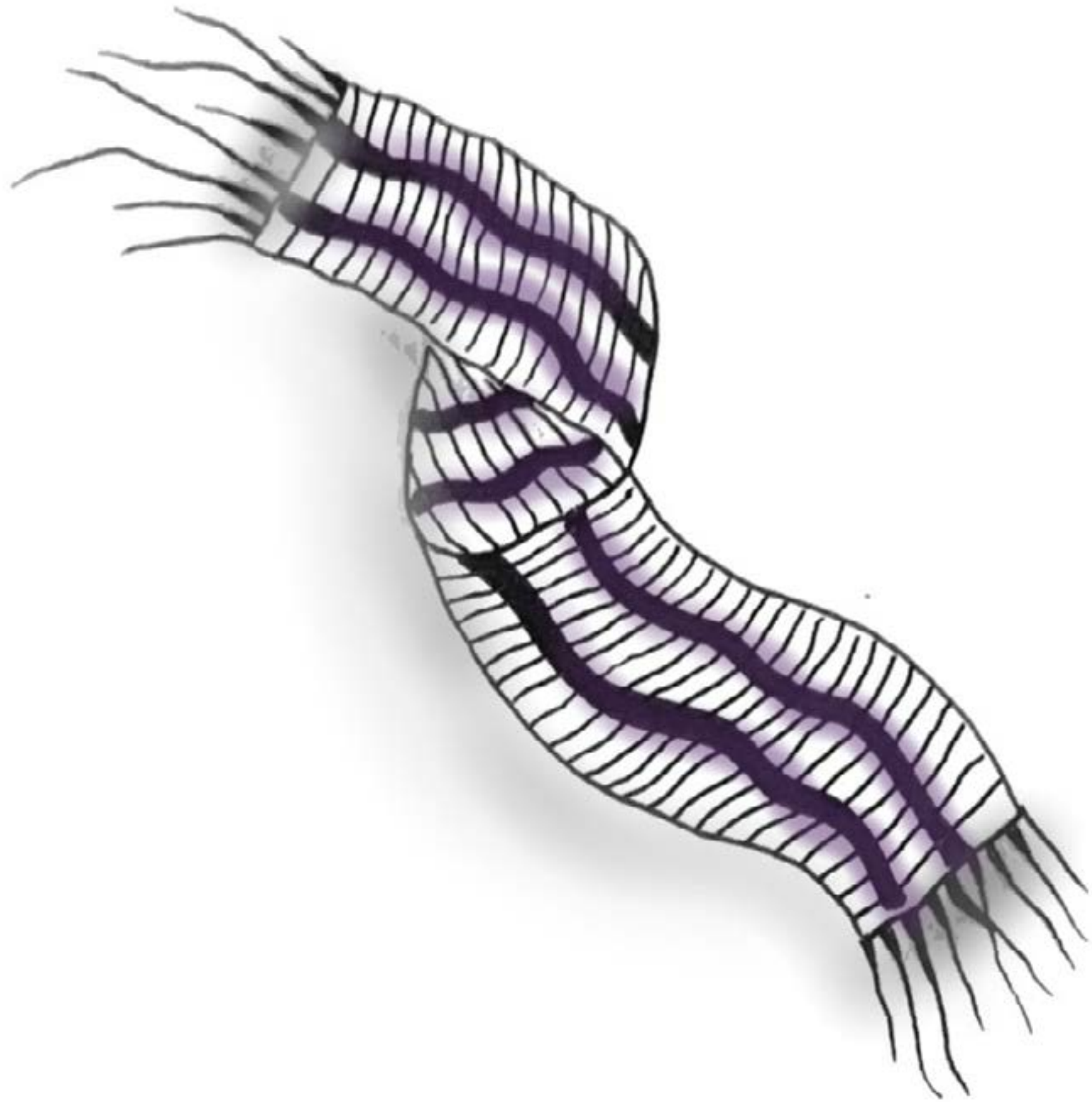
SIMON FRASER UNIVERSITY IPINCH PROJECT



CRAFT COUNCIL OF BC

Indigenous Alternatives:
Legal Agreements that
Incorporate Indigenous
Ways of Knowing & Being

Indigenous Alternatives: Legal Agreements that Incorporate Indigenous Ways of Knowing & Being



Alternative contracts such as oral traditions¹¹ and verbal agreements have historically been used by Indigenous peoples to constitute a contract.

For example, the Two Row Wampum, used by the Oneida and the Iroquois confederacy, were historically used as a way to record verbal agreements during certain ceremonies and as documentation in treaty negotiations.¹² The method of the Two Row Wampum emphasized storytelling in a contract and as a symbol of agreement between the two parties.

Traditional or Indigenous knowledge recognizes the importance of traditions through ceremony between two parties. More recently, the Canadian Human Rights Museum (CHRM) and Kwakwaka'wakw artist Carey Newman (Hayalthkin'geme) viewed the art installation *The Witness Blanket* as a contract between the CHRM and Newman for displaying artwork honouring residential school survivors.¹³ The parties also have a written stewardship agreement regarding the care of the artwork.

The Witness Blanket ceremony involves witnesses such as memory keepers and knowledge holders with important ties to the artwork engaged in storytelling, song and dance as an alternative to the colonial traditions of a legally binding contract. The ceremony was part of the agreement and served to solidify the parties' mutual obligations to each other, but did not replace it.¹⁴

INDIGENOUS ALTERNATIVES: LEGAL AGREEMENTS THAT INCORPORATE INDIGENOUS WAYS OF KNOWING & BEING

Indigenous Artists Working with Indigenous Organizations, Collectives, and Individuals

- **Traditional processes such as verbal agreements** may be appropriate and/or chosen here by Indigenous creatives engaging with other Indigenous creatives, organizations and collectives, for example, honouring tobacco versus honouring written agreement.
- **Understanding and built-in respect** of customs and culture go both ways in these types of engagements which is not the same for non-Indigenous agreements

Although it is always advisable to have a written contract, as they clearly set out the terms of the agreement and help to reduce the possibility of future disagreements, if you cannot, or do not wish to obtain a contract in writing, a verbal contract is often enforceable under law in Canada as long as all essential elements of a contract are present and understood by both parties, and there is supporting documentation such as letters, texts, emails, messages, canceled cheques or bank statements and recordings to support your claim.¹⁵

Written agreements should not, however, be viewed as optional if the parties wish to properly protect themselves, regardless of whether they are entering into an agreement with another Indigenous party or not.



LEARN MORE

Listen!

[Podcast, Episode 4 –
Conversation with Theresie
Tungilik](#)

Theresie Tungilik speaks about the role of Oral Traditions for teaching Customs and Protocols in Inuit families and communities, and the importance of obtaining consent for the use of intellectual property.



INDIGENOUS ALTERNATIVES: LEGAL AGREEMENTS THAT INCORPORATE INDIGENOUS WAYS OF KNOWING & BEING

Indigenous Artists working with Non-Indigenous Organizations, Collectives, and Individuals

When Indigenous artists engage, collaborate, and/or are being presented by non-Indigenous organizations, collectives, and individuals, we recommend always having a written contract.

Traditional Knowledge and language, as well as oral ceremonies and agreements, can be incorporated into written agreements. It doesn't have to be either/or.

While a contract is not technically required to be written in order for it to be binding, verbal contracts can present a variety of risks and concerns, some of which are listed below:

- **With no physical evidence of a contract**, it's up to the parties to demonstrate that a contract has indeed been formed.
- **Since the agreement has not been written down**, there is no agreed-upon contractual language, which opens up the possibility of misinterpretations and disagreements around the terms.
- **It makes it very difficult to enforce the agreement** as courts are generally hesitant to apply legal consequences without written evidence of agreement between parties.
- **It can result in unnecessary conflicts** and compromise otherwise positive professional relationships.

What is a Contract?

Contracts can seem intimidating, whether you are presented one to sign or are creating one. It is important to remember that a contract is simply an agreement between people engaging in an activity together. Ideally, a contract exists to provide clarity, structure, and stability for all involved. Often artists are hesitant to create an agreement with a friend, peer, or someone they've worked with before, citing fears for awkward situations or potentially scaring their collaborator.

It is important to note that agreements help prevent misunderstandings, loss of information, and general misinterpretations that can result in conflicts. In fact, a good way to look at it is to consider creating an agreement as an act of care. All parties are represented along with the expectations for how you will work together.

With this consideration, the following section will help guide you through creating and understanding contracts.

WHAT IS A CONTRACT?

Defining a Contract

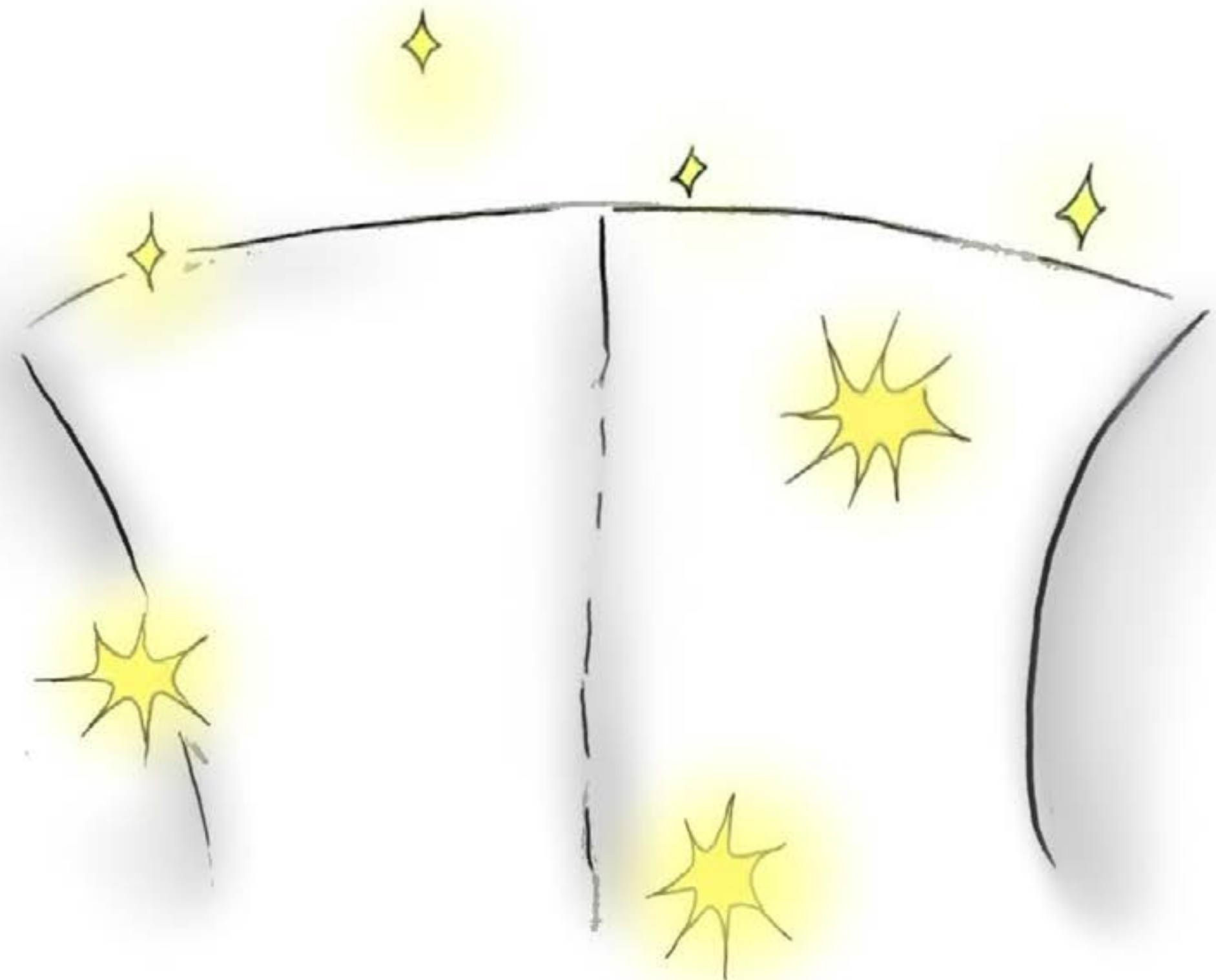
A contract is an agreement between two or more parties (e.g. individuals, organizations or companies), often in relation to an exchange of goods and services.

While a contract can exist without it being in writing in some circumstances, a written contract is always recommended!

Contracts concerning an exclusive license or transfer of copyright ownership must be in writing. A contract doesn't have to be complex but should outline the key elements of what you and any other party agree to.

In this section we highlight specific considerations related to negotiations of a draft agreement. These considerations allow you to protect yourself and advocate for yourself and your work. Take the time to consider and then set out your expectations for your creative process and your artwork as an Indigenous creative, but also consider how you can encourage timely payments and increase the range and type of payments you might be able to negotiate for your work.

Note that there is no difference in meaning between "a contract" and "an agreement" as used in the information provided here to assist your negotiations.



WHAT IS A CONTRACT?

Elements of an Effective Contract

1. The Parties

Who will I be working with? Who is the agreement between?

2. Subject of Agreement

The offer – what are you and the other party or parties agreeing to? (e.g. an exchange of goods or services, certain rights of copyright or other intellectual property, and the price to be paid or other compensation).

3. How, Where, When

Include details on how, where, when the agreement will be carried out: (e.g. when the product or service will be delivered, on what terms and conditions, when there will be payment and how much).

4. What if

What happens if/when a conflict arises (e.g. on what terms and conditions can the contract be changed or terminated, which could include further compensation to the creator or partial repayment by the creator of a deposit or advance or could provide an arbitration mechanism).

TIP

A legally enforceable agreement requires a bargain, which means that each party must get something of value from the agreement (in legalese this is called “consideration”).

It is not essential that the value each party gets from a contract necessarily be fair or balanced, but there should be something of value, even if that value to a party is nominal. That is why you will see that in some agreements, especially where it is unclear what one of the parties is getting from the contract, that party is sometimes paid a nominal one dollar for entering into the agreement.



LEARN MORE

Check out this DIY exercise sheet on putting together a basic contract, available in 2 versions:

- [Print \(pdf\)](#)
- [Digital/editable](#)

WHAT IS A CONTRACT?

Additional Considerations

These are some examples of additional clauses to consider.

Intellectual Property such as Copyright, Trademarks, Industrial Designs:

- **Detail who owns the rights** to what is created (e.g. the copyright in a work) and who controls creation and use of the work, especially in collaborative projects. How can the work be used?

Artistic Control/Licensing

- **Detail what rights are allowed (“licensed”)** by the owner to the non-owner and for how long, including whether the rights can be sub-licensed (i.e., permissions granted can be passed on to someone else). Who can use, reproduce or distribute what was created?
- **How/where** can the work, or parts of it, be used?
- **Are there additional fees** or royalties to be paid to the artist(s) related to licensing? If so, by who and what amounts?
- **Who decides** whether the work can be changed or who can change it?

Moral Rights

- **Are you being asked to waive your moral rights** to a work created by you?

Additional Logistics

- **Set-up, clean-up**, preparations, installation, materials, etc.?
- **If you or the work in physical form are needed in a foreign country**, what are the legal requirements to transport a work to the foreign country and then return it to Canada (i.e. foreign and Canadian customs), what are the legal requirements for your entry into the foreign country and to work there, if required (i.e. visit or immigration), and will you have any foreign tax obligation?

Insurance/Damage or Loss

- **Where physical artworks are involved** (e.g. visual art in an exhibition), who is providing and paying insurance if the work is damaged, lost or stolen and are you covered by that policy? Who covers the costs of damage, loss or theft of the work both during an exhibition or while in transit to or from the exhibition?
- **Are you agreeing to be liable** for any other kind of claims (e.g. defamation, invasion of privacy, copyright infringement, or property damage claims) and is there insurance that covers you or that you can obtain to cover your losses if such claims arise? Note that there are insurance brokers who are familiar with the arts and entertainment and can review terms of a contract and let you know if there is insurance you can buy to cover some of these risks and what such coverage can cost.

Tax

- **What are the consequences** of the contract on your income tax or other tax obligations, and do you need to charge and collect Goods and Services Tax or Harmonized Sales Tax?

WHAT IS A CONTRACT?

Contracts are Not Standard!

While there are key, basic elements that should be part of a contract, contracts by nature are not standard!

You should always understand the exact terms in a draft agreement, whether you are creating one or asked to sign one created by the other party. Also consider what is not in the written draft agreement that should be added to it. If you are making an assumption about the contract that you think the other party shares, or if you have discussed certain things and think you have come to a common understanding with the other party, then these must be added to the written agreement before you sign it or they may never be considered part of the formal final contract.

It is best to put everything in writing into a contract that is important to you or important to provide anyone else reading the contract to completely understand the intention and context of the contract.

In a contract negotiation, you'll sometimes get a response that certain wording of the draft agreement is just "boilerplate" and not worth changing. This just means that they consider it common template language that they're using across different contracts, but it does not mean that you should not give it just as much careful thought as any other contract wording and request changes if you do not agree with it.

Legalese (a.k.a. formal legal language) is not necessary for a contract. Indeed, it is always best if an agreement uses clear and precise language that both parties understand and agree upon since this is far more likely to also be clear to a judge or anyone else who might need to read or understand what parties to the contract agreed.

Sometimes there are important rights and interests to you that might not be reflected in "standard" documents.

Don't be afraid of exploring new clauses and new ideas to include in your agreement that reasonably protect you, even if you eventually can't always get agreement on all of it from the other party. If you do not ask for something, then you will almost certainly not receive it!

In addition, insist on taking the time you need to review a draft contract properly. Do not let yourself get rushed to sign.

TIP

It is often helpful to have someone else (e.g. ideally a lawyer, but if this is not possible try a knowledgeable friend, family member, or colleague) look at the draft contract to help ensure that the terms are fair for you before you sign!

Some business arrangements may expressly prohibit you from sharing the contract and its terms with anyone else – so make sure you are not breaching the proposed contract by sharing it. If you are unsure, you may wish to consider consulting a lawyer, since you always have the right to consult a lawyer.

Here are examples of non-standard clauses:

Documentation Clause

Adding a documentation clause allows you to specify and give permission to how the other party can document or use the documentation of you or your artwork. The clause can include the format and medium of the documentation, the how and where the documentation can be used (i.e. for archival, commercial, educational purposes, etc.), and a time frame for how long the other party has usage rights to the documentation.

Adding a documentation clause can help you manage and control how documented assets of your work are used in the future. For example, you might be performing a sacred ceremony or traditional song in which you want to limit if the other party can document, or how they can use the documentation.

13. Documentation
- 13.1 Any Documentation of the Work whether made by the Artist, the Exhibitor, or any person acting under the control or on behalf of the Exhibitor shall be the property of the Artist.
- 13.2 The Exhibitor shall not document the Work without the prior written approval of the Artist. Such approval shall specify the format(s) to be used, any uses to which the Documentation may be put, and the fee for such uses, if any.
- 13.3 The Artist shall own the copyright in any Documentation of the Work.
- 13.4 If the Work is documented, the Artist will provide the Exhibitor, without charge, with the number of copies of the Documentation in the formats specified below, such copies to be used for archival purposes only.
- No. of copies _____ Format _____
- 13.5 If the Exhibitor wishes to make use of the Documentation for a purpose other than as permitted under articles 13.2 or 13.4, the Exhibitor shall obtain a licence from the Artist permitting such use at a fee to be negotiated. If the right the Exhibitor seeks to exercise is administered by a copyright collective of which the Artist is a member, the Exhibitor shall obtain any licence required to exercise the right from the collective administering the right at the licence fee then in force.
- 13.6 For the purpose of article 13.4 "use of the Documentation" means the exercise of any of the rights granted to a copyright owner under the *Copyright Act*.

Example from CARFAC's contract template for performance art¹⁶ that includes a "Documentation" clause:

Care Clause

[Tangled Art + Disability's](#) Care Clause is an example of how you can customize components of a contract in ways that reflect your values and advocate for how you want the partnership to occur.

Tangled describes their Care Clause as a tool that allows them to clearly state their values as prioritizing the health and well-being of the individuals they work with over the product/services they provide. For this organization, they wanted to utilize a contract as a way to demonstrate reciprocity and respect towards collaborators who sign the contract. Interestingly, Executive Director Cyn Rozeboom describes the intention, implementation and lessons learned from the care clause, stating *"The Care Clause is an official declaration of values. However, in itself it only expresses intention. Without implementation and follow-through it is meaningless."*¹⁷

The clause currently reads as follows:

In agreeing to work together, Tangled Art + Disability and the Employee recognize that the well-being of any individual associated with the duties detailed in this agreement is more important than any associated deliverable, and thus, all parties agree to take care of themselves and each other to the best of their ability.

While this is one way to articulate intention and values, it comes with the challenge of embodying this idea in practice.

Indigenous Artist Protocols Clause

Including a clause outlining a protocol for working with Indigenous artists will allow you to specify expectations you have related to protecting Traditional Knowledge or Traditional Cultural Expressions. This is specifically important for Indigenous artists engaging or being presented by non-Indigenous individuals / collectives / organizations / corporations.

For example, a clause could state:

[Insert party/parties] must respect the rights of the Artist(s) and use their best endeavours to identify and adhere to applicable Indigenous cultural practices.”¹⁸

The specified protocols should then be included as part of the agreement. These could address issues such as:

- Stakeholders involved in decision making (in addition to yourself, who needs to approve usage of your artwork or related materials?)
- In what ways do you approve or do not approve usage of your work?
- Preferred manner of acknowledging relevant individuals or groups.
- How Indigenous leadership or control is embedded as part of the project - i.e. is there a confirmed Indigenous lead?¹⁹

TIP

The Indigenous Art Code (Australia) is a great example of clauses and language that can be utilized in contracts to advocate for ethical practices and fair treatments of Indigenous artists and their work.

Note that this is an Australian resource, so aspects of the document may not be directly applicable in a Canadian context. You may need to consult with a lawyer.



WHAT IS A CONTRACT?

General Advice Related to Contracts

Draft agreements are not set in stone. Take the opportunity to negotiate and make changes before you sign a contract.

Getting out of a contract legally is not easy for any party to a contract.

Unless the contract itself specifically allows a party to do so, no party can just decide that the contract no longer applies and decide to just not follow it.

Generally, the only way to end or change a contract is either by the terms of the contract itself (i.e. when the contract itself states that it ends), by mutual agreement of the parties to the contract, or by an order of a court resolving a dispute concerning the contract.

Since a signed contract can still be changed or ended if the parties mutually agree to make the change or end the contract, this remains one of the best ways to deal with a contract that may no longer be working for the parties as it had been intended or expected. This kind of change or **termination of the contract** must, however, come from agreement by all the parties related to the contract. If you do not have this kind of agreement and you think you may, nevertheless, have legal grounds to stop performing or carrying out a contract, it is strongly advised that you first get legal advice from a lawyer before doing so.

Take the time to read up on other business and legal guides for artists for different perspectives and other tips.

For example, [“Creating in the Greyscale: Navigating Intellectual Property for Emerging Artists & Designers \(pdf\)”](#) (published by OCAD University).

You can use the below “Creating in the Greyscale: Navigating Intellectual Property for Emerging Artists & Designers” Mindful Inquiry Canvas to help you reflect on the situation and come up with an action plan:

The image shows a 'Mindful Inquiry Canvas' titled 'CREATING IN THE GREYSCALE'. It is a structured worksheet divided into five main sections: Recognize, Acknowledge, Investigate, Accept, and Action. Each section contains specific prompts and questions to guide reflection and decision-making.

| Recognize | Acknowledge | Investigate | Accept | Action |
|--|--|--|---|---|
| <p>Notice what is going on in this moment. Step back and observe what is happening in this situation.</p> <ul style="list-style-type: none">• What is my understanding of the current situation? What are the facts?• Who else is involved in this situation? Who are they and what is their relationship and/or interest in the project? | <p>Acknowledge the complexity of your current situation, even if it is stressful, infuriating, frustrating, or unpleasant. Let the thoughts, feelings and body sensations that you have be present. Take a moment to see the situation from all sides. Be compassionate to yourself and the other parties involved.</p> <ul style="list-style-type: none">• How am I feeling about this situation?• How are the others involved feeling about this situation? | <p>Investigate or inquire on what is present using curiosity and openness.</p> <p>Interest</p> <ul style="list-style-type: none">• What do I care about?• What might the others involved care about?• What are my goals for this conversation? <p>Understanding</p> <ul style="list-style-type: none">• What do I want to find out, clarify, or verify?• How would that information impact my interests and decisions in this situation?• What do I want the other parties to know? <p>Relationship</p> <ul style="list-style-type: none">• What is my relationship to the different parties involved and what do I hope it could be like?• How could this conversation affect our relationship? | <p>Accept that this is a tough situation. Your sense of who you are is not fused with or defined by this situation. Allow yourself to have the experience, but not be dictated by it. You can start disentangling from it, develop insight, and always return to your values.</p> <ul style="list-style-type: none">• What is frustrating or uncomfortable about this situation?• Why do I feel the way I do?• What do I need right now? How can I get what I need? | <p>Impact vs. Interest</p> <ul style="list-style-type: none">• Are there instances where my actions may have had an impact I didn't intend, and vice versa?• How does this situation impact my larger goals as an artist / designer or for my creative practice? <p>Communication</p> <ul style="list-style-type: none">• What can I do to make this conversation go as smoothly as possible?• What should I watch out for? What can be avoided? <p>Options</p> <ul style="list-style-type: none">• What are some resolutions that would satisfy everyone's interests?• Best case scenario?• Worst case scenario? <p>Action</p> <ul style="list-style-type: none">• What are different directions I can take?• What are the implications of my decision or action?• From a legal standpoint, who do I need to consult with? <p>• What are 3 steps that I can take right now:</p> <ol style="list-style-type: none">1.2.3. |

WHAT IS A CONTRACT?

Signs of a Bad Contract and Signs of Bad Intentions!

Negotiating a contract is not just about getting the right words down on paper. It is an opportunity to see how the other party does business. A draft contract will tell you what the other party considers important, not only by what they include in the contract, but also by what they will not agree to in the draft.

The process of negotiating a contract to get to a mutually acceptable agreement will also be an opportunity to see how the other party resolves disagreements in that common goal. Do they insist on doing things only their way or do they consider your concerns and try to resolve issues? Always consider: is this a person, organization, or company you want to do business with?

In answering this question, be especially aware of the signs of bad

contracts and bad intentions, which should be a red flag to stay out of an agreement:

- **Bad contracts are often poorly written.** Utilizing phony legal jargon that often doesn't make sense and is designed to confuse and hide bad intentions.
- **Bad contracts promise you very little and ask a lot from you.** Whether it is paying less money for work that takes a long time to create or asking you to commit yourself for a long time with no assurance of earning a living.
- **Bad intentions can result in a contract presented with urgency.** You are told that there is not enough time to carefully consider it, spend time changing anything in it, or even to take it to a lawyer.
- **Bad contracts usually ask you to do a lot (most or all of the work) before you are paid anything.**
- **Bad contracts can contain terms that are too broad and vague.** Good contracts are detailed and clear.

WHAT IS A CONTRACT?

Copyright License Pricing

Copyright and other types of intellectual property can be bought, sold, inherited, or otherwise transferred, but this is separate from **licensing**, which specifies the terms and duration of an authorized use of IP.

Before you can settle on the price of a copyright license, you must first understand the different ways which a copyright owner can charge for licensing rights to a copyright-protected work.

Licensing Fees

A licensing fee is a single payment or a set series of payments to be made to the copyright owner by the licensee in payment for the licensed right to use the owner's intellectual property in a copyright-protected work in a certain, agreed-upon, way.

This is generally a fixed total amount that is agreed upon and the amount and terms of payment are written in the licensing agreement. Licensing fees may or may not be tied to, or dependent upon, ongoing sales or ongoing usage of the intellectual property (e.g. in the case of music, a license fee to permit music streaming may change depending on the number of times a song is streamed).

Royalties

Royalties are ongoing payments to be made to the copyright owner by the licensee that are generally in addition to any license fee in a license agreement and will depend on the extent of the licensee's actual use or sales of the licensed work.

Broadly, there are two kinds of royalties:

- **First, there are royalties which apply only if the parties to a license agreement agree to include a royalty obligation in their contract.**

If parties to a license agreement agree that royalties apply, then the agreement must also specify how the royalty is calculated (e.g. as a percentage of the licensee's gross sales, as a fixed amount per unit sold by the licensee, etc.) and for how long the royalty will be calculated and paid (usually for the entire duration of the license agreement).

- **The second kind of royalty is known as copyright collective royalties.**

Copyright collectives are organizations which are authorized under Canada's Copyright Act to represent a group with certain common copyright rights in the mass licensing of that right.

For example, in Canada, [SOCAN](#) is authorized to mass license on behalf of SOCAN's members a specific type of right in musical compositions, namely, the right to public performance. The members of SOCAN are both music composers and music publishers.

Upon joining SOCAN, whatever public performance rights these composers and publishers own in musical compositions are turned over to the exclusive administration of SOCAN, with the result that the SOCAN member generally can no longer license that particular right but may only do so through SOCAN. SOCAN then mass licenses the entire catalogue of the musical compositions of its membership to the numerous end-users of this music, who generally pay SOCAN a royalty upon terms including the royalty base, royalty rate, payment frequency, and other terms and conditions set out in a document called a “tariff” which is approved by the Copyright Board. These tariff charges are dependent upon the extent of each end user’s performance of the SOCAN music catalogue over a period of time. The copyright users who purchase these SOCAN licenses include television and radio broadcasters, concert halls, and bars and restaurants.

Not only does SOCAN receive these collective royalties from these licenses in Canada, SOCAN also collects similar collective royalties from many similar copyright collectives that represent the same kinds of music public performing rights in their own countries around the world. SOCAN then pays its composer and music publisher members a pro rata share of these collective royalties based on formulas that determine what proportion of all mass licensed music can be attributed to each musical composition.

In Canada, there are numerous copyright collectives (or “collective societies”) that, much as SOCAN does for composer and music publishers, help administer and manage some copyright rights and associated mass licensing royalties (“tariffs”) for others who hold interests in the copyright to various works. These include collective societies for performers and producers of music recordings, visual artists, and book and periodical authors and publishers.

Profit Participations

Profit participations are ongoing payments to be made to the copyright owner by the licensee that are an agreed percentage share of the licensee’s revenues from sales after deducting all the licensee’s cost of business related to the licensed work.

Although these are far less common than fees and royalties, where they are agreed to apply, they should be in addition to any license fee and royalties in a license agreement.

Profit participations differ very much from a royalty because they depend on whether the licensee’s revenues exceed costs of the business (i.e., the licensee is making a “profit”), whereas royalties should be a simple calculation of either a fixed payment for each unit sold or a percentage of gross sales revenue. Therefore, royalties often apply even though the business of the licensee may not be making a profit.

TIP

You can learn more about the different kinds of collective societies and what rights they represent at **by visiting this resource** (published by the Copyright Board of Canada).

It is important to research what kind of collective society you might benefit from for the kind of works you create. The royalties (or tariffs) collected by some of these societies can be a significant source of ongoing income to an artist or copyright owner.

General Tips

TIP #1

Watch out for draft agreements which may actually describe a “profit participation” but call it a “royalty”. Ideally, every contract should correctly describe its own jargon, but what matters most is understanding what is described in the contract, which is not always what it is called. Some agreements mislead by using terminology incorrectly – sometimes from inexperience, but sometimes deliberately!

TIP #2

Whenever your compensation in an agreement is a royalty or a profit participation it will need to be based on accurate reports of the licensee’s unit sales, revenue, or specific deductions or expenses. Therefore, the contract should also specify the intervals at which the royalty or profit participation will be calculated, paid and reported to the copyright owner (e.g., monthly, semi-annually, annually, etc.), the accounting statement to be delivered to the copyright owner together with each royalty or profit share payment, and the right of the copyright owner to examine the licensee’s accounting records to verify its accounting statement and the royalty or profit share calculations.

Take time to research and understand the kinds of license fees, royalties, copyright collective royalties, and (in some cases) profit participations that are specific to your work and in what context, as they can all vary between types of works and various segments of the arts and entertainment industries.

There are some public resources to help you understand the range of fair and reasonable fees and royalties. For example, in the visual arts see [the CARFAC-RAAV Minimum Recommended Fee Schedule](#) which provides guidelines for fees and royalties paid to visual and media artists for their copyright and other professional services including exhibitions, screenings, presentations, consultations, and artist talks.

For example, if an art gallery wants to exhibit your artwork, but also use some of your images to promote the exhibition on social media, and to include some of the works in an exhibition catalogue, all of these uses should be outlined in an agreement, and additional fees to you for each kind of use may be negotiated.

Questions and Prompts to Help Navigate Licensing and Royalties:

- **How will your work be used?** For example: You would like to see your painting being shared via digital, online reproduction to highlight your practice and/or your community.
- **Who can / cannot** use your work?
- **What kinds of reproduction or other uses for your work will you allow / not allow?**
- **How will you review and approve** of any reproductions, including providing edits and/or feedback?
- **For how long** are you comfortable giving the rights to reproduce your work in this agreement?
- **Is there a limit** to how many reproductions?
- **How do you want** to be credited per work?
- **What licensing fee is required?** Are there standard copyright collectives you can refer to for recommended fees?
- **Are there sales of the reproduced work**, and if so what royalties do you want to collect? Would it be a percentage or fixed amount per sale?
- **How do you want to collect royalties**—advanced payment or after sales?



LEARN MORE

Case Study

[Indigenous Ring, Toronto Metropolitan University commissioned public art sculpture, designed by Two Row Architect](#)

WHAT IS A CONTRACT?

Pricing and Payment of Contracts

Navigating pricing and payment and related issues can be challenging and stressful, but there are strategies you can utilize to help reduce the likelihood of issues arising.

Determining Fair Pay

While there is no one right way to determining fair pay, you can talk to your industry association, union, alliances, and/or artist-peers to understand industry standard fees and how they determine fees. Here are some resources to get you started:

- **[Top 12 Tips For Price Setting by Heather Young](#)**

(courtesy of the Cultural Careers Council of Ontario, now WorkInCulture)

- **Fee Schedules**

- [CARFAC-RAAV Minimum Recommended Fee Schedule](#)

Provides guidelines on what visual and media artists should be paid for their copyright and other professional services

- [Independent Media Artists Alliance \(IMAA\) Fee Schedule 2023 \(pdf\)](#)

Please note that this schedule is updated on an annual basis. For more information please visit the [IMAA website](#).

- Ref: [Precarity, Updated letter template for offers of unpaid work](#), [Nicole Burish](#) for a template on how to respond to request for unpaid work.

- **Example Stock Phrases:**

"I am happy to engage in this project for the following professional fee, as determined by [insert association / union or industry standards]. Please let me know the contact information for where to send the invoice".

- **When negotiating:**

- Don't be afraid to communicate your needs!
- Advocating for yourself creates a ripple effect, subsequently advocating for your peers.
- Figure out what is non-negotiable for you, what is open for compromise, and what is fair for all.
- Be mindful of feelings during negotiations, don't repress them, they are there for a reason—listen to yourself!
- Be transparent about capacity up front and ask others to do the same.
- You are not alone, talk to someone! Your friends, peers, family, another artist / cultural worker. Ask for feedback and suggestions.
- Take your time to review and fully understand the agreement.
- Don't feel pressured to sign an offered contract. Don't sign anything you do not fully understand or are not fully in agreement with. Don't be afraid to return a client contract unsigned with suggested amendments.

WHAT IS A CONTRACT?

Pricing and Payment of Contracts

Always Have a Written Contract

Although a contract can exist without it being in writing in some circumstances, a written contract is always recommended. In cases concerning an exclusive license or transfer of copyright ownership, a contract must be in writing. Having a written agreement, outlining the terms of your work and the compensation you will receive and when, along with related deadlines and other terms, provides a clear point of reference for each of the parties involved and ensures everyone is on the same page. A written contract is also very important to help either resolve a dispute or enforce the terms of the contract if a dispute arises.

Maintain Clear Communication with the Other Party

Whether working for a client (e.g., a buyer or licensee) or with another creative collaborator, it is always important to be open, honest and direct with the other parties involved. Even if there's a written contract between the parties, unforeseen delays or other situations may arise which potentially impact payment or the ability to deliver work-in-progress or a completed work on the schedule which had been agreed.

Addressing issues promptly and professionally as they arise will help reduce the likelihood of a dispute. Most disputes about any term of the contract which are not resolved quickly by the parties themselves usually turn into a dispute over payment.

TIPS

If the other party proposes something in negotiation of a contract that is very different than you understood would be discussed or, after a contract is signed, does something completely outside of what you both agreed to in the contract, stick to the facts when you initiate a conversation with them. You can reference what the draft contract or final contract states and explain why you this is not how you understood it.

Always keep documentation and a record of what you have discussed during negotiations and afterwards (e.g. emails exchanged, various revisions of the draft agreement, notes on drafts, notes of your phone conversations, etc.). These can all be used during negotiations and later, during the life of a signed contract, to help support how you came to your understanding of any dispute that might arise over the interpretation of any contract term that may become unclear or ambiguous.

Avoid Making Payments Tied to Approval of the Delivered Work

Sometimes a draft agreement will be worded to require you to deliver some completed work or work-in-progress and then the payment on delivery is “subject to the buyer’s approval” of the work or work-in-progress. Ideally, **any installment or final payment should only require delivery of the work or work-in-progress by you** and a buyer should not have a right to approve any work or work-in-progress before a payment on delivery is due to you.

A buyer who needs to influence or participate in the kind of work the buyer expects from you can use alternatives other than approval, such as adding the expectations for the work as part of the written contract at the start (e.g., describing what a commissioned painting must include in the painting’s subject) or allowing the buyer to provide you with their comments for your good faith consideration between delivery of a first draft and your production of a final version of a work. This makes the expectations of the parties more objective and reduces the potential for disagreements.

Tie Any License or Assignment of Copyright to Your Receipt of Payment in Full

Many draft contracts provide that you license or assign all your copyright to the licensee or buyer immediately and the licensee or buyer promises to pay you in part on starting the contract and the rest of the purchase price later. Ideally, **try to retain copyright ownership for yourself and, instead, only license the specific rights to the licensee or buyer that the buyer really needs and only for so long as those rights are really needed** ([see the Licensing Your Copyright Works section](#)).

In addition, ideally use clear language in the contract so that the rights licensed or assigned to the licensee or buyer only take effect when you have received payment of the entire purchase price in full.

Avoid any contract which does not pay you a reasonable amount to start.

This is a reasonable expectation since you will have immediate costs (e.g. studio space and supplies) and working on any project for someone means you cannot be working on another project for someone else (which is usually called an “opportunity cost”).

Do not be swayed by common arguments made to artists that even a contract for no payment is an “opportunity” for you to get known.

If you are willing to work for free, you are better served creating your own work for yourself and then you can decide later to sell or donate it to anyone you please. If you contractually commit to working for someone for an unfair price, that may be the same moment you may not be available to take another opportunity which may come along to work for someone else at a fair price.

Try to Include Interest on Overdue Payments

One example of a reasonable clause you might ask to include in every contract is an interest charge on any late payments. **Unfortunately, many artists are promised payments on a schedule and then find long delays in getting paid after a payment is due. Adding an interest charge for late payment discourages this.** You cannot simply just choose to add interest to your invoices or charge interest on a late payment unless it was agreed in the final contract that interest applies, and the interest rate was agreed upon.

Prior to chasing overdue pay, remind clients that if payment is late, interest fees apply.

TIP

In Canada an interest rate must generally be stated as a rate “per annum” to be effective.

An example of this kind of clause is:

“If Purchaser fails to pay any amount on the due date specified in this agreement, then Purchaser shall in addition to the outstanding amount also pay the Seller interest on the outstanding amount at a rate of 15% per annum, calculated daily and compounded monthly, from the due date until the date of receipt by the Seller of the outstanding payment and all accrued interest, all payable upon demand by the Seller.”

Invoice Professionally

Free professional invoicing tools and templates are readily available.

These often make payment easier for clients and for you!

A proper invoice provides clear payment methods, sets out:

- The payment deadlines
- Outlines exactly what contract term or condition accounts for the amounts invoiced (e.g. service completed, work delivered, any applicable Goods and Services Tax or Harmonized Sales Tax, etc.).

It also shows your professionalism and sets the expectation that you will receive prompt payment. An invoice alone, however, is not a substitute for a properly written contract.

TIP

Using invoicing or accounting software, whether free ones like Wave Accounting or Zoho Invoicing or paid ones like Quickbooks Online or Freshbooks, can help you track and manage outstanding payments. Often there is an option to send an automated payment reminder or late reminder email through these systems as an informal reminder.

Escalate Professionally

In situations where, despite your best efforts, the other party is refusing to issue payment or payment is unreasonably delayed, it is important to remain professional. You can send an informal early email or letter outlining the issue, the monies owed, the contract terms that apply and that require the payment, and your expectations for payment (including any applicable deadlines for payment in the contract).

If an initial informal email or letter like this fails to resolve the non-payment, then consider either yourself sending or engaging a lawyer to send a more formal letter that is firmer in your expectation and deadline for receipt of payment and is clear that if you are not paid you will have the right and may choose to pursue legal recourse which could add court costs and lawyer's fees and expenses to the costs you will be entitled to claim and collect.

Take care to send formal letters (called **"demand letters"**) according to any formalities in the terms in the agreement for sending notices (e.g. send copies to anyone the contract may specify must be copied, and send it by the means the contract may specify) and always keep a copy of the letter and proof it was delivered (e.g. registered mail receipt, courier receipt, etc.).

The importance of a formal demand letter is that if you do choose to go through the formal court process to enforce the contract (including small claims court), courts generally want to see evidence that you have demanded payment in a letter and proof that the demand letter was delivered and payment was still not received by you before you turned to the court process.

How to Follow Up on Outstanding Pay

In following up regarding outstanding pay, you can reference your contract, written agreements or email correspondences outlining the agreed payment and payment schedule.

Example Stock Phrases

- *"I've been reviewing my records and it seems like I have yet to receive the paperwork / payment. Please let me know when I will receive this."*
- *"As per our contract, payment was due on [insert date], and I have yet to receive the fees. Please ensure this payment is made by [insert deadline]."*

If you are having a difficult time chasing outstanding pay you may consider submitting a claim in small claims court.

There are different rules and regulations depending on your location:

- [An Ontario-based resource](#) that outlines the steps to small claims court in Ontario.
- The Government of Ontario has also published a useful guide for navigating this process which you can [check on their website](#).

WHAT IS A CONTRACT?

Collaborations

In collaborations copyright ownership is shared - either as a collective work, or as a work of joint authorship, it's important to discuss the following before the collaboration begins:

Expectations and/or Commitments:

- Roles
- Time per person / role
- Resources
- Copyright—who owns what copyrights to the work(s)
- Credit / attribution
- What happens upon completion of the creative works
- Share of revenues and costs to each collaborator

Detail Processes:

- Addressing changes in expectations and commitments
- Resolving possible conflicts

Document your agreement with your collaborators.

Examples of collaborative agreements:

- [Artist Collaboration Agreement For Visual Artists \(pdf\)](#)
- A split sheet for musicians outlines the ownership of a song. A songwriter split sheet outlines the split of ownership of the writing/composition stage of a song; a master split sheet refers to the ownership of the recorded song aka “master”. Having a clear split can help when you are registering the song to collect royalties.²⁰ An example of a template [can be found here](#).

Regardless of who you are working with, it is always important to maintain clear communication and a respectful, professional relationship. If problems do arise, having a clearly defined agreement and documented process can help resolve disputes.



Protecting Yourself & Your IP Online

In today's rapidly developing and changing digital landscape, the need to protect yourself and your work online has never been more important. Indigenous artists can find themselves in situations of copyright infringement of their works posted online, defamation of their reputations, or invasions of their privacy (including doxxing or other public revelation of private facts which may be intended to damage an artist's good public standing).

Although there are difficulties and challenges with protecting yourself online and not all unethical online practices amount to a breach of your legal rights or a violation of any specific law, there are some good practices you can adopt when you are online that can help protect your reputation or your privacy and keep your work safer from unauthorized copying.

PROTECTING YOURSELF AND YOUR IP ONLINE

General Tips

TIP #1

Be cautious of what you post online or use from online social media or other platforms with which you are not thoroughly familiar and have not kept up to date with their legal terms and conditions. These terms and conditions may dictate what your rights and obligations are in surprising ways.

These terms may be in fine print that you “accept” when you post on the site or use any materials from the site in your own work but would be entirely unacceptable to you if you were to look more closely at them.

For example, some sites invite you to use what they have posted in your own work, but the fine print may state that you have “agreed” that others can post your work for free and without your permission.

TIP #2

Ideally, use your own website to share images of your work online. Whether in your own website or in your own posts of digital images of your own work elsewhere, ideally post only work-in-progress, post only small sections of the work, use low resolution images, disable right-click, watermark every image of an artistic work, and/or use metadata to embed copyright information into digital files. We recommend using multiple tools for an effective deterrent.

If you are a visual artist, you could also consider using new computer apps in development which promise to digitally cloak your images if used by generative artificial intelligence (AI) software used to train AI systems to imitate your style.

For example, [visit The Glaze Project.](#)



TIP #3

Ensure your website has copyright notice text that explicitly states that you own all the rights to all the displayed works and that use of your works is only permitted with your prior written consent for each use.

Provide contact information where someone can contact you to request a license to use a work.

TIP #4

Never post or share high-resolution images or audio of your work without first completing an agreement with the recipient which sets out all their rights and obligations concerning the work and the materials you may deliver to them. Ideally, for prospective buyers or other would-be users, use only low resolution and/or watermarked images (ideally both) in a .pdf format catalogue to attach to emails or to mail or courier in print.


Include a complete copyright notice in your catalogue. Keep a record of everyone to whom your catalogue is sent. This can help track access by specific persons to your work, which you may need if you later want to prove any copyright infringement by such a person.

This is an example of such a notice:

This catalogue and all works in this catalogue © [insert year of creation], [insert your name]. All rights reserved. No part of this catalogue or of any work included here may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior written permission of the copyright owner. For sales or permissions, contact: [insert contact name] [insert contact email or other method of contact].

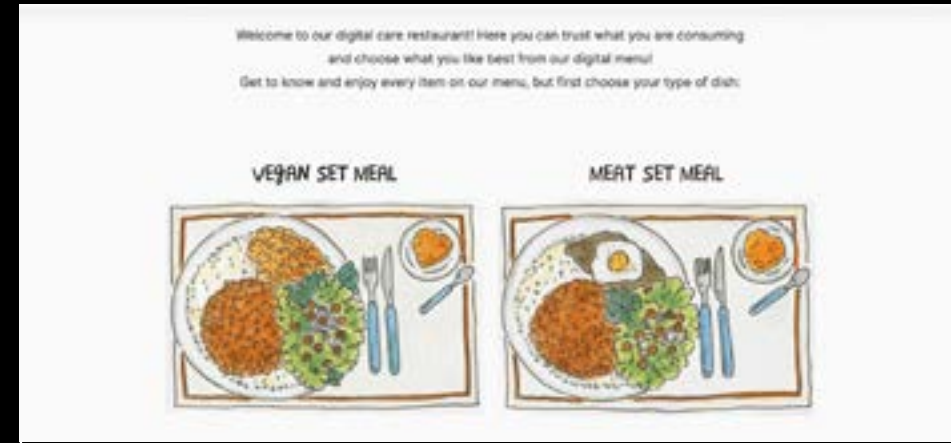
PROTECTING YOURSELF AND YOUR IP ONLINE

Further Information on Digital Privacy and Security



UNKWEUSULTINEG PROTECTING SELF & COMMUNITY: INDIGENOUS ACTIVISM & SAFETY IN THE DIGITAL WORLD

READ MORE



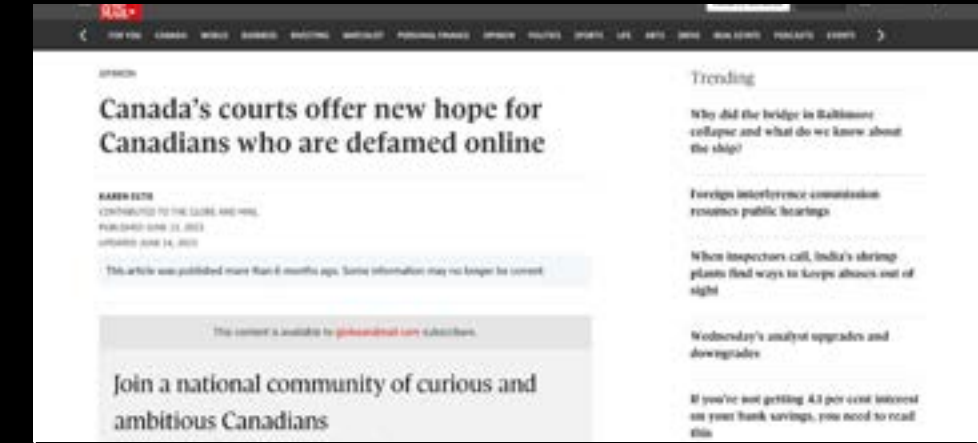
PRATO DO DIA ("THE DISH OF THE DAY")

READ MORE



OVERVIEW OF DEFAMATION LAW IN CANADA

READ MORE




GLOBE AND MAIL: CANADA'S COURTS OFFER NEW HOPE FOR CANADIANS WHO ARE DEFAMED ONLINE

READ MORE



CAN YOU SUE FOR DEFAMATION IN CANADA?

READ MORE




INDIGENOUS PROTOCOL AND ARTIFICIAL INTELLIGENCE WORKING GROUP

READ MORE ON POSITION PAPER
READ MORE ON ABUNDANT INTELLIGENCES



THE RISE OF GENERATIVE AI IN THE ARTS: DEMOCRACY AT RISK
BY VALENTINE GODARD

READ MORE



JOIN THE ART IMPACT AI COALITION & SUPPORT ARTISTS VOICES ON THE FUTURE OF AI
BY VALENTINE GODARD

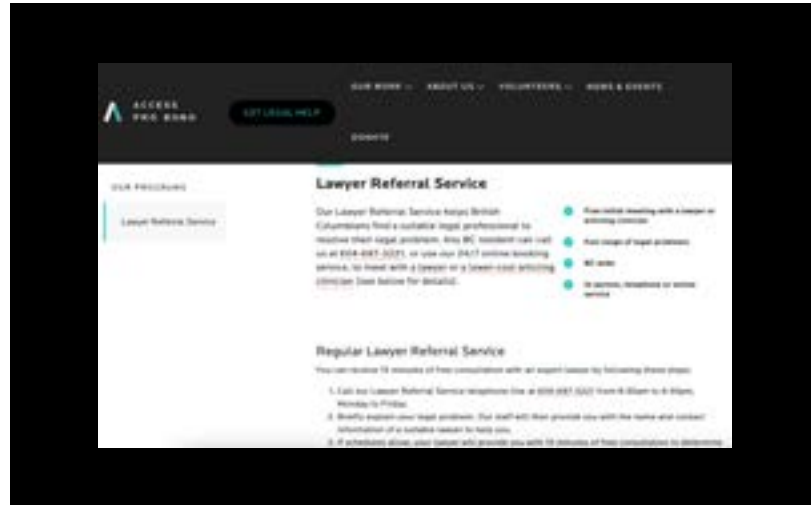
READ MORE

Where to Look for Help

If you find yourself in a situation where you are overwhelmed, don't be afraid to ask your peers or mentors in your network for their advice and experience. Even if someone does not have all the answers, you can draw from those experiences or find leads that may help you further. You may also be able to find organizations that offer summary legal advice or free consultations.

WHERE TO LOOK FOR HELP

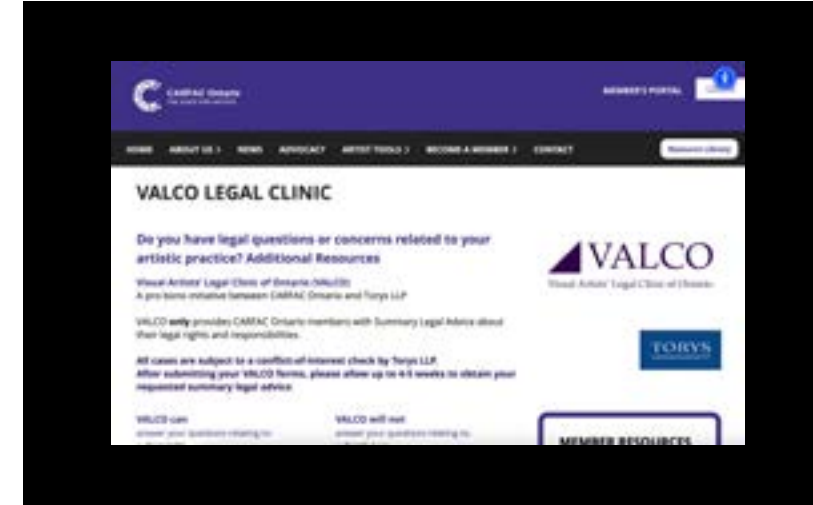
Organizations Offering Legal Advice/Consultations



[Access Pro Bono: Lawyer Referral Service](#)

(British Columbia)

Helps British Columbians find a suitable legal professional to resolve their legal problem.



[CARFAC/VALCO – Visual Artists Legal Clinic Ontario](#)

(Ontario)

Exclusively available to CARFAC members. [Join CARFAC today for a fee!](#)



[Artists' Legal Advice Services \(ALAS\) Ontario \(Ontario\)](#)

Provide free, virtual summary legal advice and information to creatives living in Ontario, Canada.



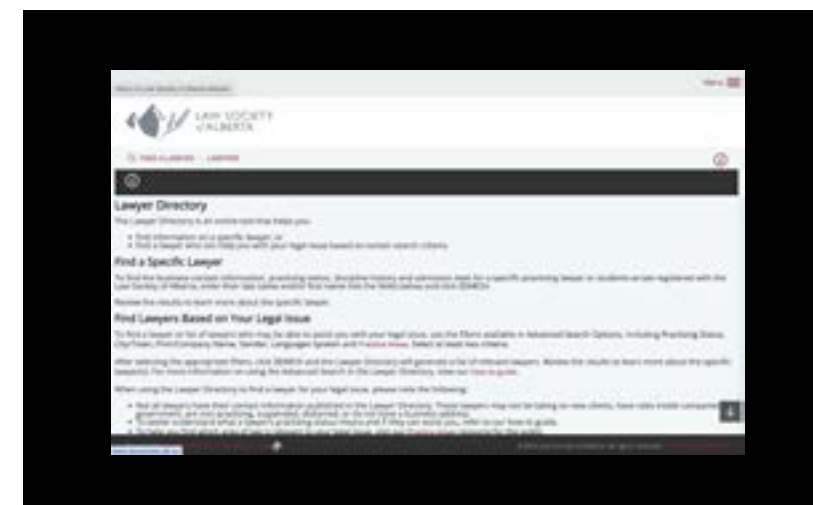
[IntegralOrg](#)

(Alberta)

Exclusively serves non-profits and charitable organizations.



[Artists Legal Outreach Clinic \(ALO\)](#) (British Columbia)



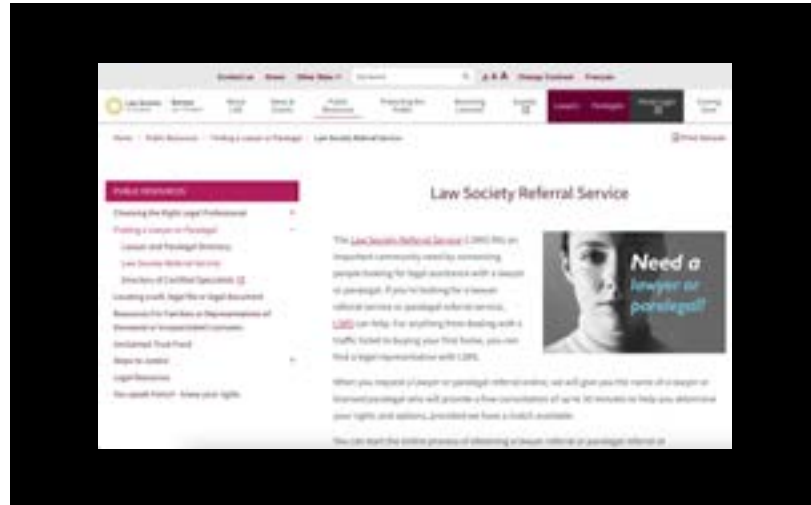
[Law Society of Alberta: Lawyer Directory](#)

(Alberta)

An online tool that helps you find information on a specific lawyer; or find a lawyer who can help you with your legal issue based on certain search criteria.

WHERE TO LOOK FOR HELP

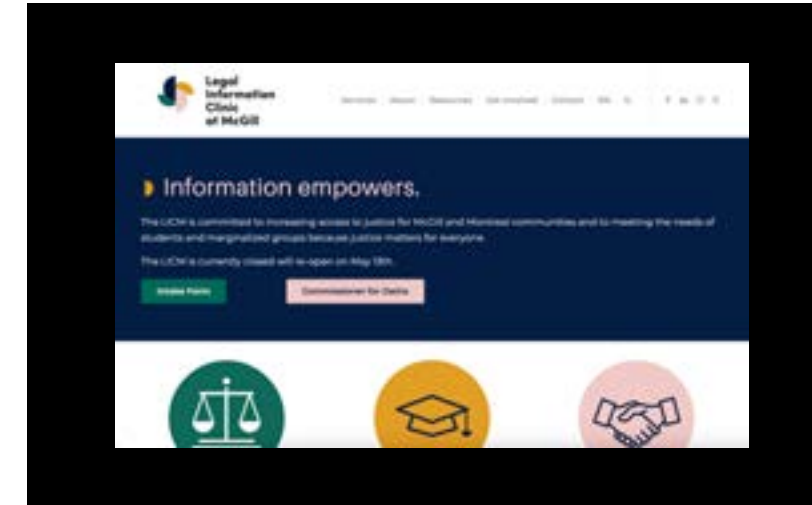
Organizations Offering Legal Advice/Consultations



[Law Society of Ontario: Lawyer Directory](#)

(Ontario)

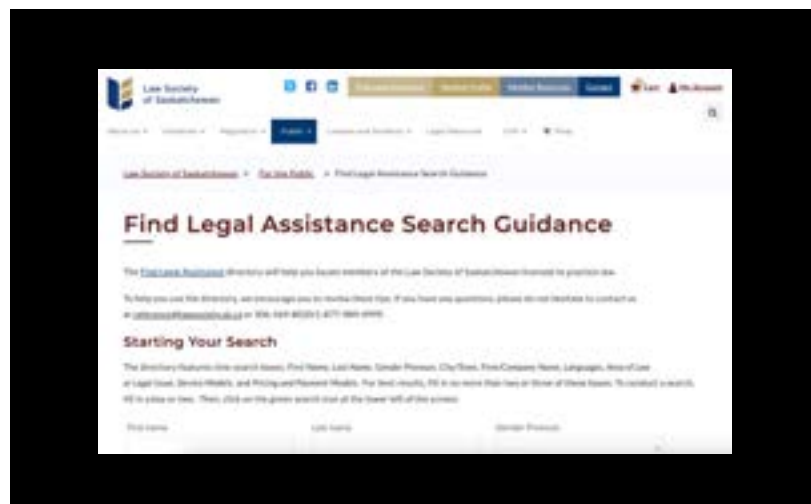
Connecting people looking for legal assistance with a lawyer or paralegal.



[Legal Information Clinic at McGill | LICM](#)

(Québec)

Non-profit, student-run, bilingual and free legal information service for the McGill and Montreal communities.



[Law Society of Saskatchewan: Find Legal Assistance Search Guidance](#)

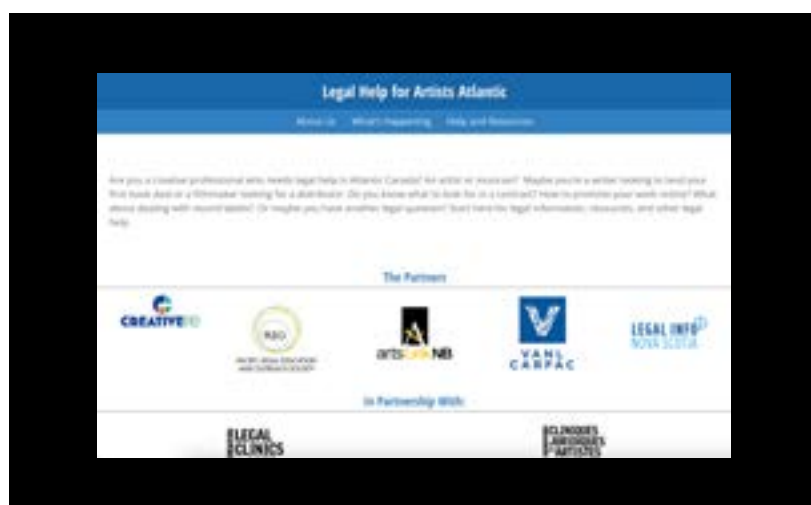
Helping people locate members of the Law Society of Saskatchewan licensed to practice law.



[Legal Line](#)

(National)

Easy-to-understand legal answers written in plain language



[Legal Help for Artists Atlantic](#)

(Atlantic)



[L. Kerry Vickar Business Law Clinic](#)

(Manitoba)

Provide free legal assistance to entrepreneurs, small businesses, start-ups, innovators and family businesses, non-profits, charities, artists, art, culture, and community organizations who do not have a lawyer and cannot afford legal assistance.

WHERE TO LOOK FOR HELP

Organizations Offering Legal Advice/Consultations



Justice Net

(National)

A not-for-profit service helping people in need of legal expertise, whose income is too high to access legal aid and too low to afford standard legal fees.



The National Network of Legal Clinics for the Arts

(National)

A system of connected regional legal hubs for artists and arts organizations that includes existing Canadian legal clinics.



Steps to Justice

(Ontario)

Step-by-step information about legal problems.



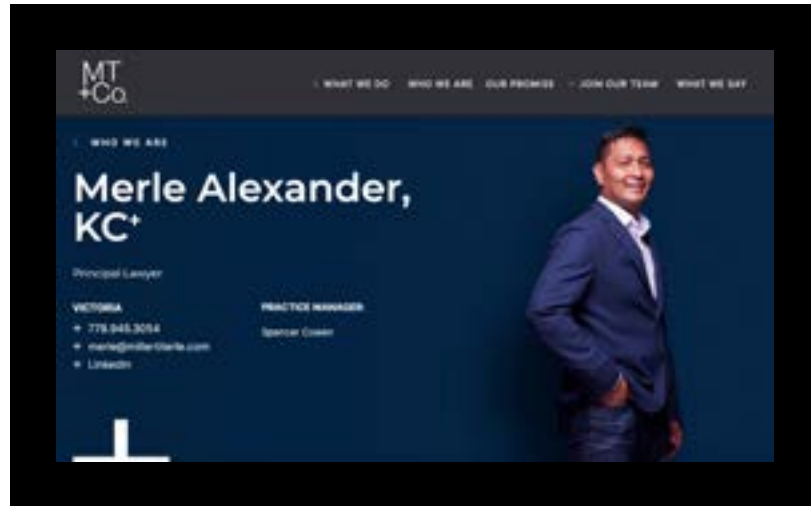
CreatiUM

(Montreal)

Assisting creators of the Montreal community in protecting and value their creations by providing free and bilingual legal information services.

WHERE TO LOOK FOR HELP

Indigenous Entertainment Lawyers



[Merle C. Alexander, Miller Titerle Law Firm](#)



[Indigenous Bar Association](#)

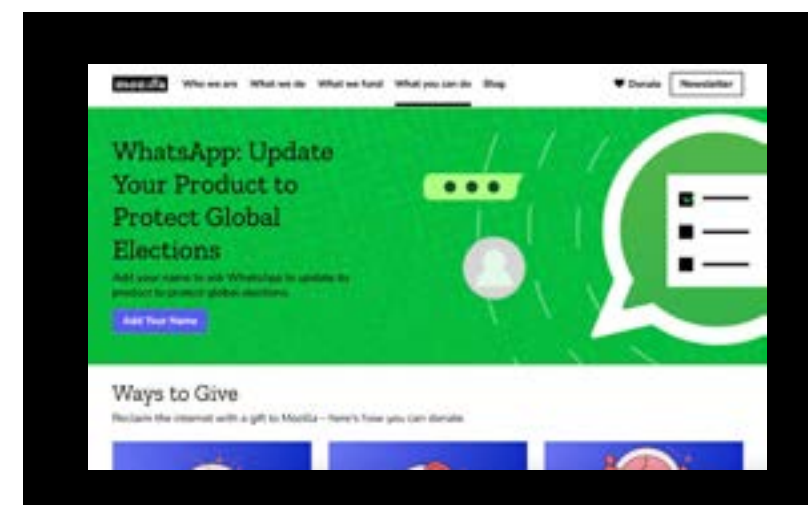
Organization may be able to recommend lawyers based on specific needs.

Digital Privacy



[Electronic Frontier Foundation - Surveillance Self-Defense: Tips, Tools And How-Tos For Safer Online Communications](#)

Non-profit working to protect online privacy.



[Mozilla Foundation - What You Can Do](#)

Broader digital-security / privacy / advocacy.

WHERE TO LOOK FOR HELP

What to Expect

What should you expect if you hire an arts and entertainment lawyer

- While hiring a lawyer can be both intimidating and expensive, depending on your situation and needs it can be valuable and, at times, necessary.
- You should ideally consult a lawyer before agreeing to any contract that contains words or concepts that you do not understand; that is for a long period of time during which you will rely on the contract to earn your livelihood; or that is or may be valuable enough to you in any other way to justify the cost of professional legal advice.

As listed above, there are various non-profit organizations that provide varying degrees of free legal assistance. We have also provided a list of lawyers for low-income creatives, and Indigenous lawyers.

What to expect for free legal aid / pro-bono services

- No fees at all
- Wait times typically 2 to 6 weeks
- Limitations around type of law
- Time limit on appointments, e.g. 30 min appointments
- Limitations on # of appointments
- No representation

Pro-bono legal clinics for the arts generally offer **summary legal advice**. This means a lawyer will help the artist understand the law, and their legal rights. They generally are not able to offer other services like drafting documents, or representing the artist in litigation.

What to expect when working with a paid lawyer

- Fees can vary
- Shorter wait times
- Expertise around a specific type of law
- No limits on appointments
- Familiarity with the same lawyer
- Follow through on legal documents
- Representation

Thank you

Legal Considerations for Indigenous Artists & Designers: An Introductory Guide is the result of a collaboration between the Women Entrepreneurship Knowledge Hub (WEKH), OCAD University's RBC Centre for Emerging Artists & Designers (CEAD), Canadian Artists' Representation/le front des artistes canadiens (CARFAC) Ontario, and Artists' Legal Advice Services (ALAS). We would like to thank all individuals and organizations that were involved and supported the development of this resource, including all the Indigenous artists and creatives that participated in the roundtable discussion and webinar event, and all the reviewers who read this document to ensure accuracy and clarity of the information.

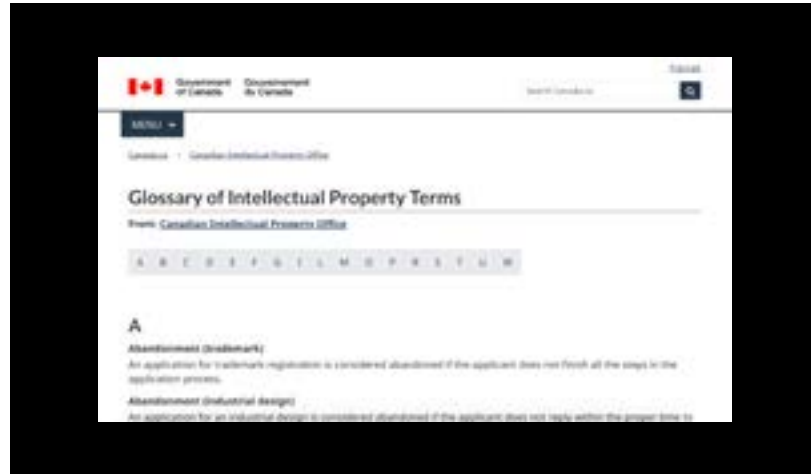
A special thank you and Miigwetch to *Brenda MacIntyre, Medicine Song Woman*, for her consultation and guidance through the development of this resource, as well as for her facilitation of the roundtable discussion; and *Natalie King* for her powerful images that bring this resource to life.

Thank you to our financial sponsor EQ Bank. We acknowledge the support of the Canada Council for the Arts, Ontario Arts Council, Toronto Arts Council, and the Government of Ontario.



Additional Resources

Below are some additional resources directly related to the legal considerations covered in this document. Note that we recommend you [seek summary legal advice](#) if you have questions or concerns about a specific legal issue you are dealing with.

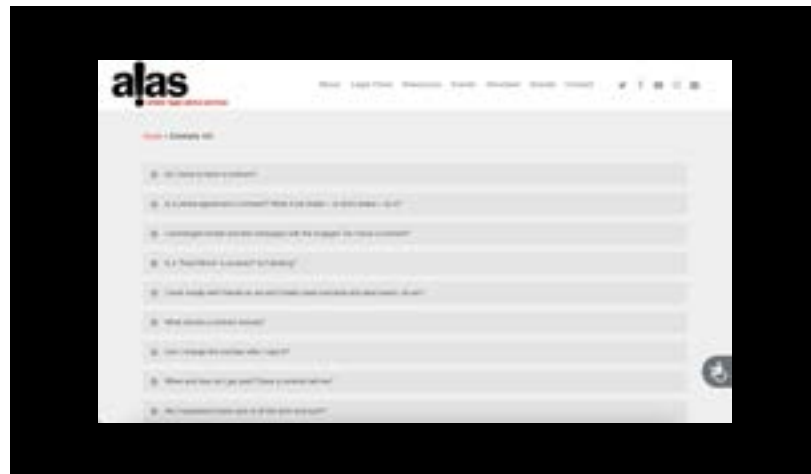


[A Glossary of Intellectual Property Terms](#)



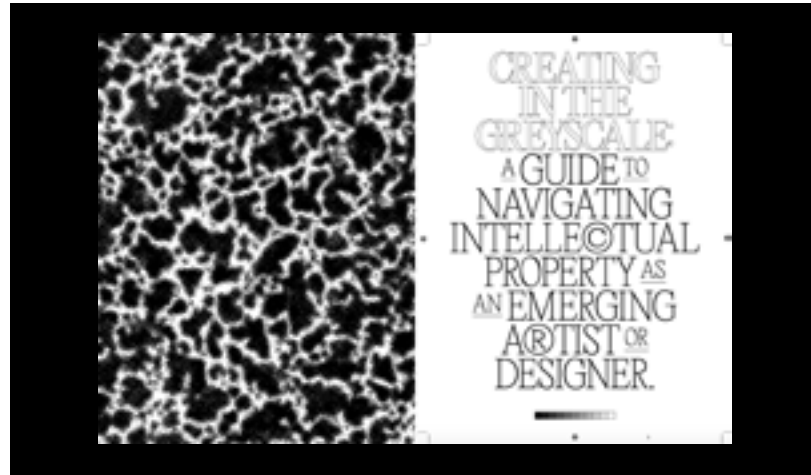
[CARFAC Fee Schedule](#)

The CARFAC-RAAV Minimum Recommended Fee Schedule provides guidelines on what visual and media artists should be paid for their copyright and other professional services. Canadian Copyright laws provide artists with the right to be paid for exhibitions and reproductions, and most public funders require that museums and public galleries pay royalties and fees according to our guidelines.



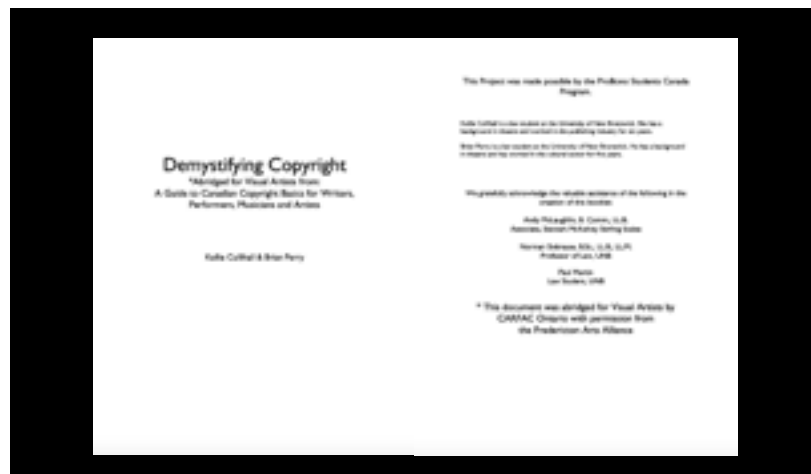
[Contracts 101 for Performing Artists](#)

Provides an FAQ on contracts for the performing arts.



[Creating in the Greyscale \(pdf\)](#)

Intro and overview of IP for creatives focusing on case studies and contracts.



[Demystifying Copyright \(pdf\)](#)

General information about Copyright and specific information for visual artists.



[Generator Artist Producer Resource](#)

Geared towards theater and performing arts - a suite of resources to get started as a producer



[Igloo Tag Trademark, managed by Inuit Art Foundation](#)

The Igloo Tag Trademark is the internationally recognized symbol of authenticity for Inuit visual arts. Introduced in 1958 by the Canadian federal government, it was created to distinguish works handmade by Canadian artists of Inuit origin from mass-produced works made by non-Inuit using Arctic imagery. In doing so, it protects Inuit artists from fraud, cultural appropriation and theft.



Indigenous Knowledges and Canadian Copyright Law

Compilation of resources relevant to Indigenous Knowledges and Copyright Law in Canada

- [Indigenous Knowledges and Canadian Copyright Law by University of Saskatchewan \(pdf\)](#)
- [Indigenous Traditional Knowledge & Cultural Expression by Intellectual Property Institute of Canada \(pdf\)](#)



Indigenous Traditional Knowledge and Intellectual Property Rights (pdf)

Overview of Indigenous TK as it relates to intellectual property laws



Indigenous Protocols for the Visual Arts

Practical guidelines, including information about legal, ethical, and moral considerations, for respectful engagement with Indigenous Peoples and cultural materials. Created by CARFAC National with First Nations, Inuit, and Métis artists and Traditional Knowledge Keepers and Practitioners.

- [Library, Indigenous Protocols & IP Resources](#)
- [Podcast, Episode 2 Conversation with Rosary Spence](#)
Rosary Spence speaks about what it was like to have her images stolen and used on mass-produced products, and how she is now protecting her art through the Canadian Intellectual Property Office.
- [Podcast, Episode 4 - Conversation with Theresie Tungilik](#)
Theresie Tungilik speaks about the role of Oral Traditions for teaching Customs and Protocols in Inuit families and communities, and the importance of obtaining consent for the use of intellectual property.
- [Podcast, Episode 5 - Conversation with Merle C. Alexander](#)
Merle C. Alexander shares his knowledge about intellectual property and Traditional Knowledge, and legal protections currently available to Indigenous artists.



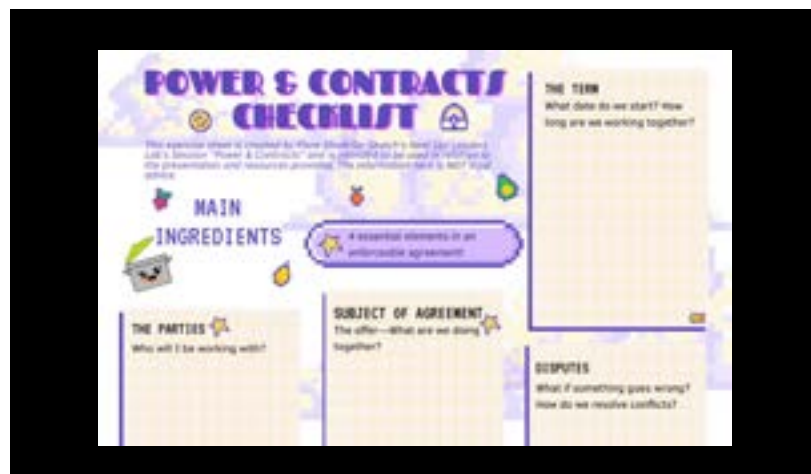
[Mutual Agreements / Policies for Unincorporated Groups and Collectives \(pdf\)](#)

This document was developed to help ad-hoc groups and collectives create their own mutual community agreements and policies through prompts, questions and suggestions.



[On-Screen Protocols and Pathways \(pdf\)](#)

A Media Production Guide to Working with First Nations, Métis and Inuit Communities, Cultures, Concepts and Stories



[Powers & Contracts Checklist exercise sheet, print and Google doc version](#)

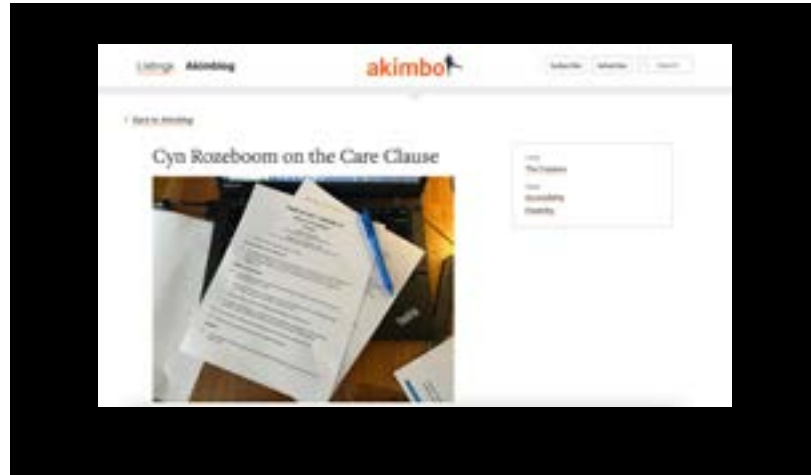
A checklist created by CARFAC Ontario to help individuals go over important components of a contract and outline their personal expectations.

- [Powers & Contracts Checklist](#)
- [Contracts Checklist / Exercise](#)



[Steps to Justice](#)

Step-by-step information on how to deal with legal problems. (Ontario based).



[Tangled Arts + Disability Care Clause article \(by Cyn Rozeboom\)](#)

An article on the incorporation of a “Care Clause” in contracts written by Tangled Arts + Disability and a reflection of what it meant to put the clause into practice.



[Traditional Knowledge Sharing Toolkit \(Work IP Office\) \(pdf\)](#)

International resources outline considerations for documentation traditional Indigenous knowledge and IP considerations



[Indigenous Data Sovereignty and DRIPA: Asserting Data and Intellectual Property](#)

Join Indigenous data specialists Gwen Phillips and Christopher Horsethief for the first of three summer First Nations Data Governance Strategy (FNDGS) Knowledge-Sharing Sessions hosted by First Nations Public Service Secretariat.

This session will provide participants with practical examples of how First Nations Governments can assert ownership over their Nation’s intellectual property (ie. language, stories, songs, practices) and identity.

- [Watch Session 1- Indigenous Data Sovereignty and DRIPA: Asserting Data and Intellectual Property Ownership](#)
- [Read BC First Nations Data Governance Strategy Engagement Sessions](#)

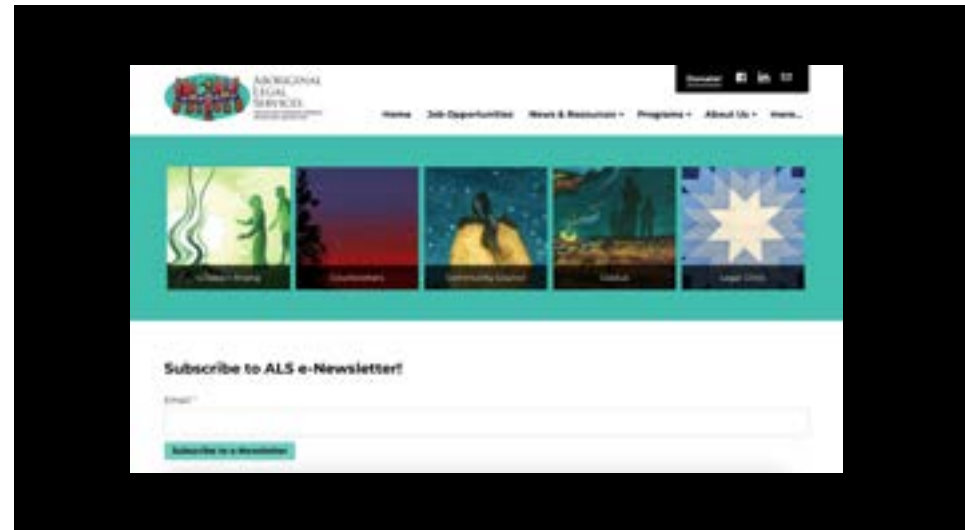


[Best Practices for Craft, Media & Visual Artists in Alberta \(pdf\)](#)

Provides a list of best practices for Craft, Media, and Visual Artists that facilitate fair, ethical interactions and equitable dealings between artists, and individuals or organizations that engage the work or services of artists.

Organizations of Interest

Below are some additional resources directly related to the legal considerations covered in this document. Note that we recommend you [seek summary legal advice](#) if you have questions or concerns about a specific legal issue you are dealing with.



[Aboriginal Legal Services](#)

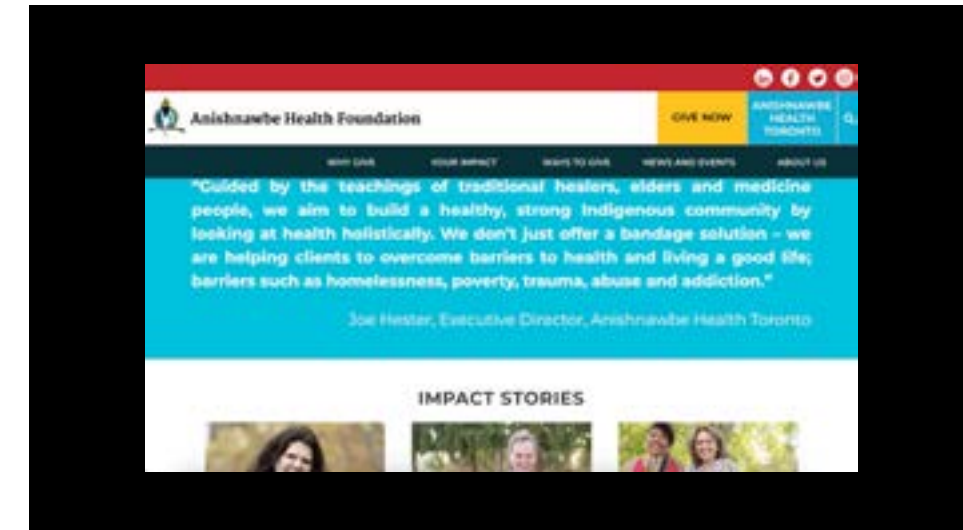
ALS was formed following a need for a legal-related program for Aboriginal people living in the Greater Toronto Area.



[Artists' Legal Advice Services \(ALAS\)](#)

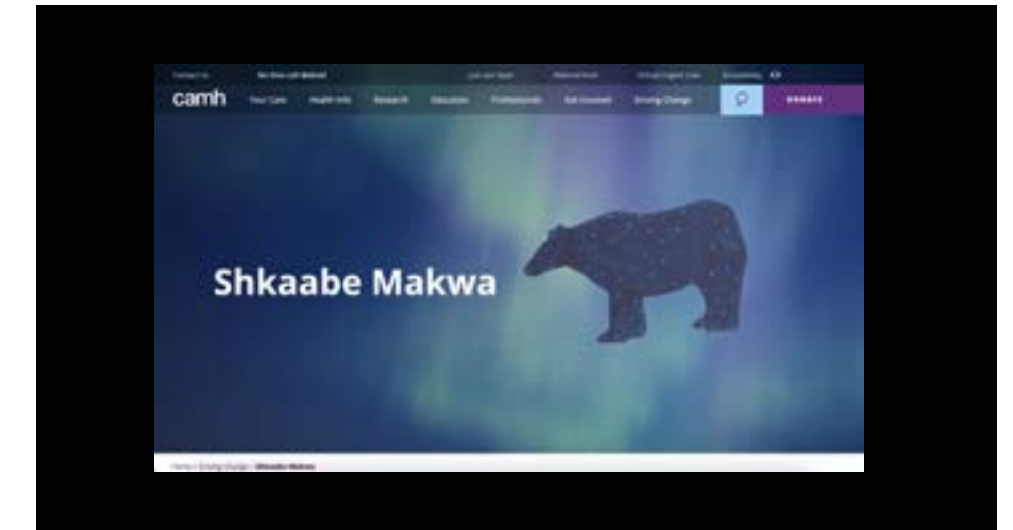
Provides free summary legal advice and information to creators living in Ontario, Canada. Their legal clinic operates virtually and is available to artists across Ontario.

They typically assist with issues relating to contracts, defamation, copyright, trademarks and royalties or other payments. However, they can help you with any legal questions you may have.



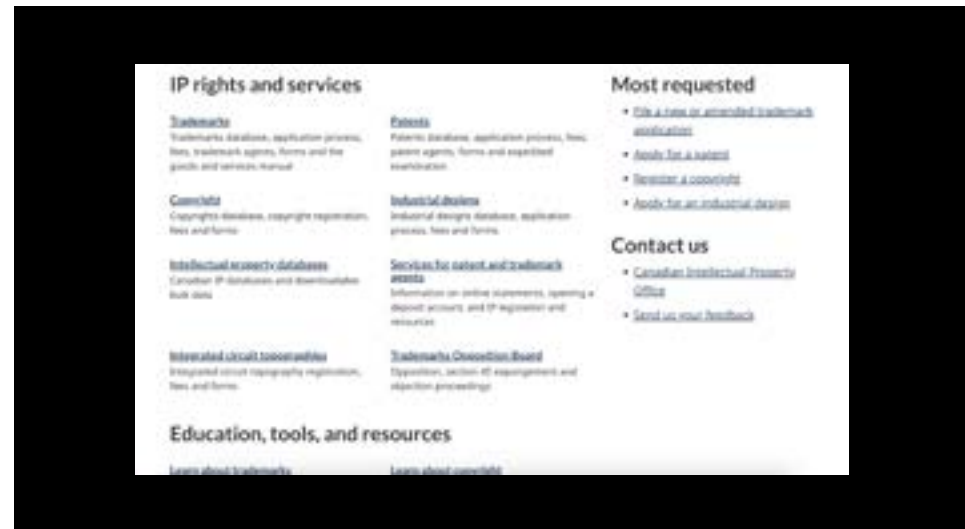
[Anishnawbe Health Foundation](#)

Aims to build a healthy, strong Indigenous community by looking at health holistically. Helps clients to overcome barriers to health and living a good life; barriers such as homelessness, poverty, trauma, abuse and addiction.



[CAMH - Shkaabe Makwa](#)

Provides outpatient groups and individual counseling to Aboriginal people experiencing substance use and other mental health challenges.



[Canadian Intellectual Property Office \(CIPO\) \(Copyright, Industrial Designs, Trade-marks, Patents, Integrated Circuit Topographies\)](#)

The Canadian Intellectual Property Office (CIPO) is a special operating agency of Innovation, Science and Economic Development Canada. We deliver intellectual property (IP) services in Canada and educate Canadians on how to use IP more effectively.

Place du Portage I 50 Victoria Street,
2nd Floor Hull, Quebec K1A 0C9 E-mail:
cipo.contact@ic.gc.ca Enquiries: (819)
997-1936 Fax: (819) 953-7620



[CLEO - Community Legal Education Ontario](#)

CLEO (Community Legal Education Ontario / Éducation juridique communautaire Ontario) has clear, accurate, and practical legal rights education and information to help people understand and exercise their legal rights.

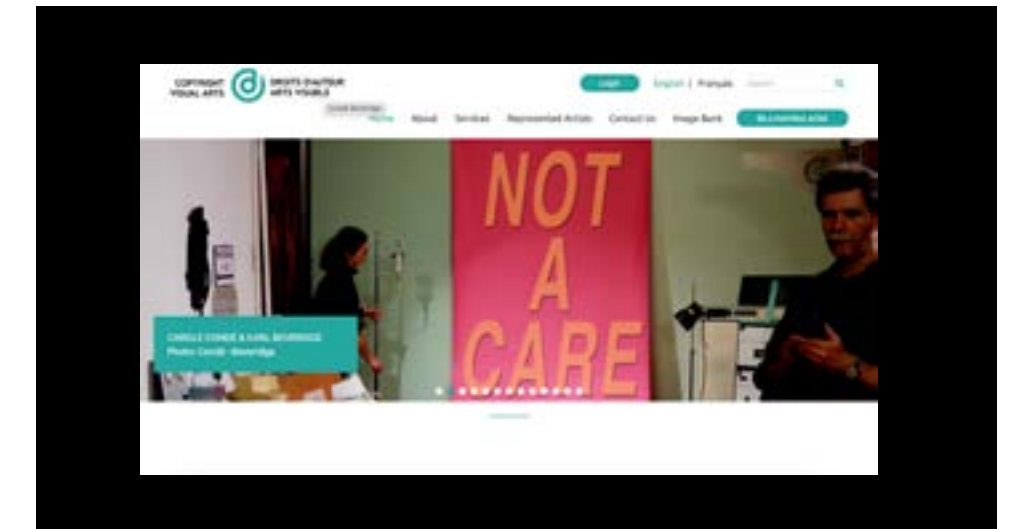
Their work focuses on providing information to people who face barriers to accessing the justice system, including income, disability, literacy, and language. As a community legal clinic and part of Ontario's legal aid system, they work in partnership with other legal clinics and community organizations across the province.



[Canadian Musician Royalty Collection Initiative](#)

CMRCI is a group of independent Canadian musicians, who are dedicated to demystifying the complexities of the royalty collection eco-system for Independent Canadian musicians.

They are developing many FREE training resources, to help you get more of your music royalties.



[COVA-DAAV](#)

Copyright Visual Arts is a not-for-profit copyright management society providing Author's Rights administration for professional Canadian and Québécois visual and media artists. It provides Users with a comprehensive access to the artworks and professional services of its members. FREE membership.



[CARFAC National](#)

Canadian Artists' Representation/Le Front des artistes canadiens (CARFAC) is incorporated federally as a non-profit corporation that is the national voice of Canada's professional visual artists. As a non-profit association and a National Art Service Organization, our mandate is to promote the visual arts in Canada, to promote a socio-economic climate that is conducive to the production of visual arts in Canada, and to conduct research and engage in public education for these purposes.

[CARFAC BC](#)

[CARFAC Alberta](#)

[CARFAC Saskatchewan](#)

[CARFAC Manitoba](#)

[CARFAC Ontario](#)

[CARFAC Maritimes](#)

[VANL-CARFAC](#)

[RAAV \(Le Regroupement des artistes en arts visuels du Québec\)](#)



[Indigenous Art Code](#)

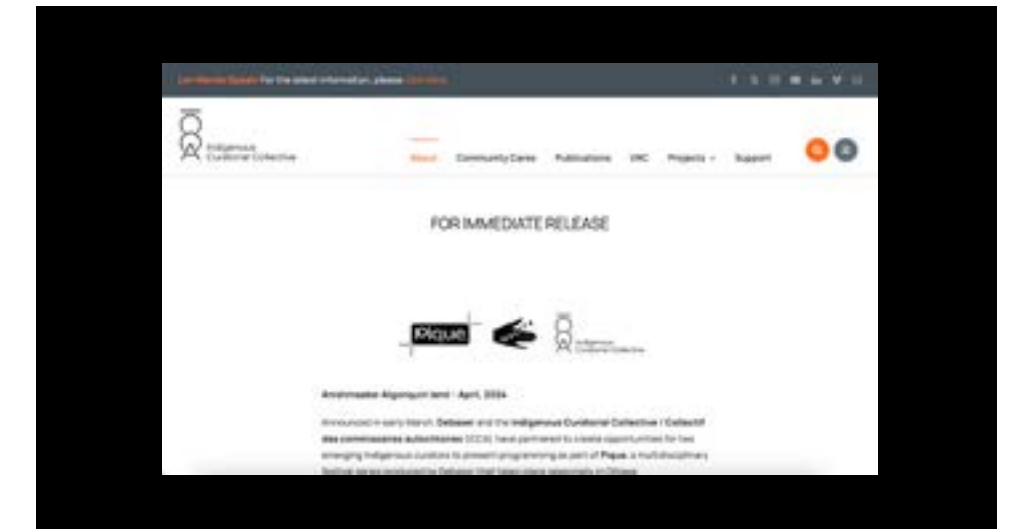
The Indigenous Art Code empowers artists and supports them to achieve fair and transparent commercial opportunities for their art. Indigenous Art Code Ltd (IartC) administers the voluntary industry Code of Conduct, known as the Code, which is a set of rules and guidelines that Dealer Members, both Indigenous and non-Indigenous businesses, commit to follow to ensure ethical practices and fair treatment of Aboriginal and Torres Strait Islander artists.



[Indigenous Culture and Media Innovations](#)

Indigenous Culture and Media Innovations (ICMI) is an artist-run multi-arts organization that provides access to the arts for Indigenous people in Ontario.

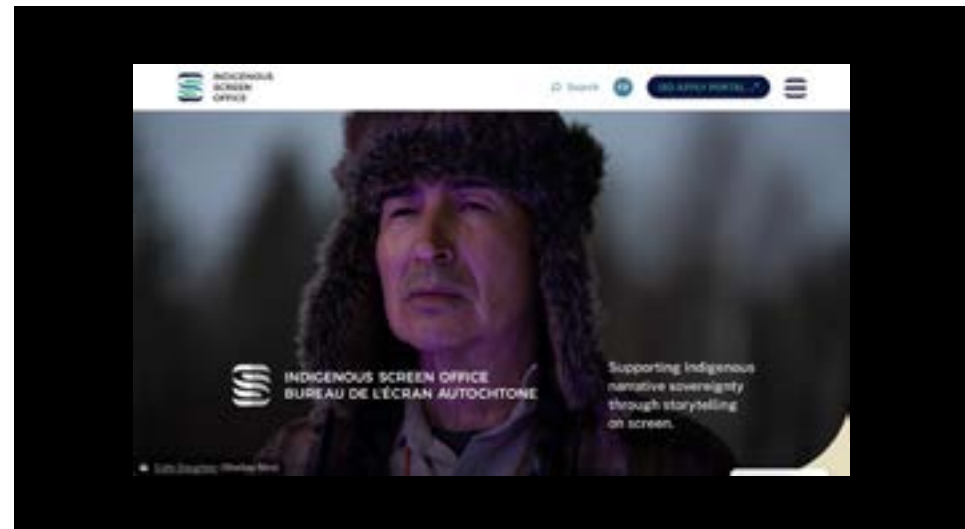
The organization's commitment to enhancing the employability and life skills of Indigenous people, with a focus on developing the capacity of youth and women, is at the heart of its mission. ICMI achieves this by providing professional development opportunities, projects, productions, facilities, and equipment to Indigenous communities.



[Indigenous Curatorial Collective](#)

The Indigenous Curatorial Collective / Collectif des commissaires autochtones (ICCA) is an Indigenous run and led non-profit organization that aims to support and connect fellow Indigenous curators, artists, writers, academics, and professionals through various methods of gathering.

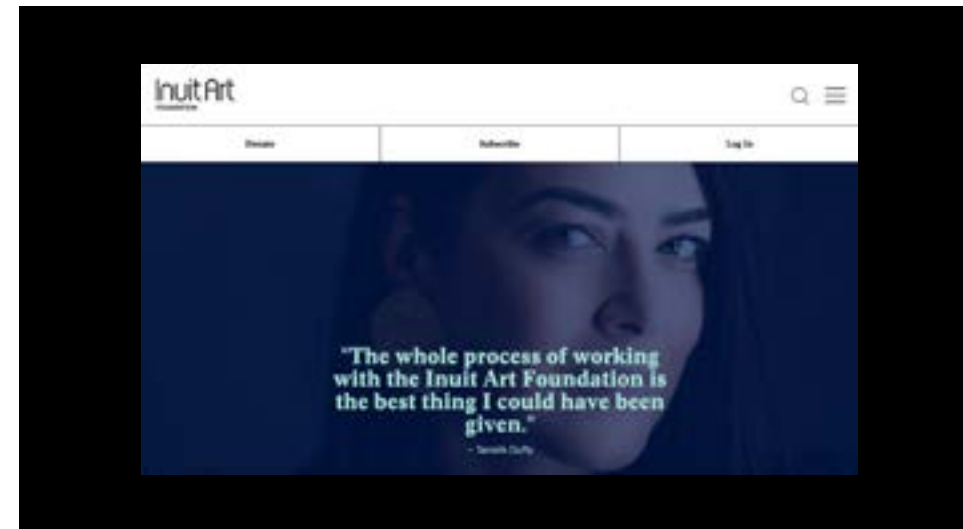
The ICCA engages in critical discourses, increases professional opportunities for our members, develops programming, and most importantly works to build reciprocal relationships with Indigenous curators, artists, communities and the institutions we engage with.



[Indigenous Screen Office](#)

The ISO champions Indigenous screen-based storytellers and narrative sovereignty in Canada through our funding and advocacy work.

They support Indigenous companies, communities and individuals to share their diverse stories and perspectives across all screen platforms.



[Inuit Art Foundation](#)

As the only national organization dedicated to supporting Inuit artists working in all media and geographic areas, the Inuit Art Foundation has sought to empower and support Inuit artists' self-expression and self-determination, while increasing the public's access to and awareness of artists' work for more than 31 years.



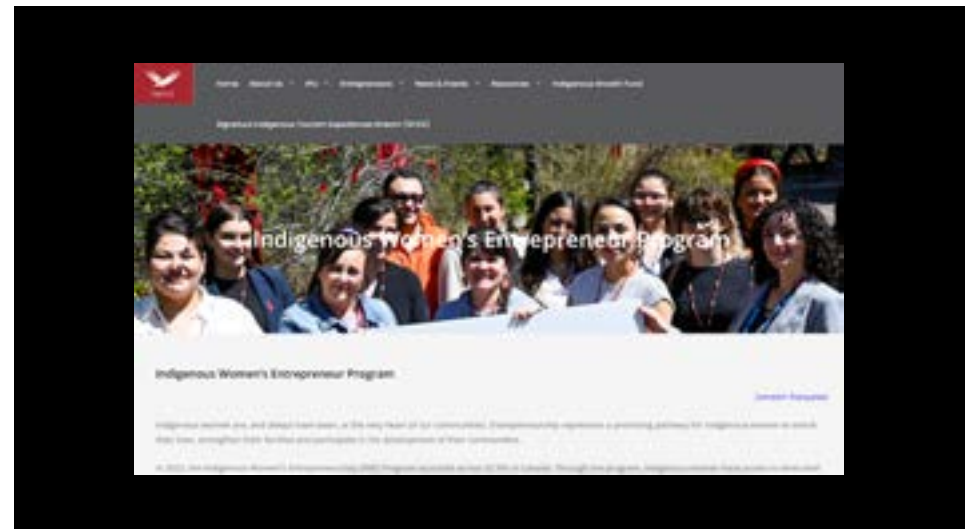
[L. Kerry Vickar Business Law Clinic](#)

Provides free legal assistance to entrepreneurs, small businesses, start-ups, innovators and family businesses, non-profits, charities, artists, art, culture, and community organizations who do not have a lawyer and cannot afford legal assistance.



[The Musicians' Rights Organization Canada \(MROC\)](#)

A Canadian federally incorporated not-for-profit organization whose primary objective is to collect and distribute royalties to musicians and vocalists. As a not-for-profit organization governed by musicians and experts working in the music industry, MROC's main goal is to help you earn as much as you can from the private copying and use of your performances on sound recordings. MROC represents more than 12,000 musicians, from session players to featured artists, recording across the full range of genres.



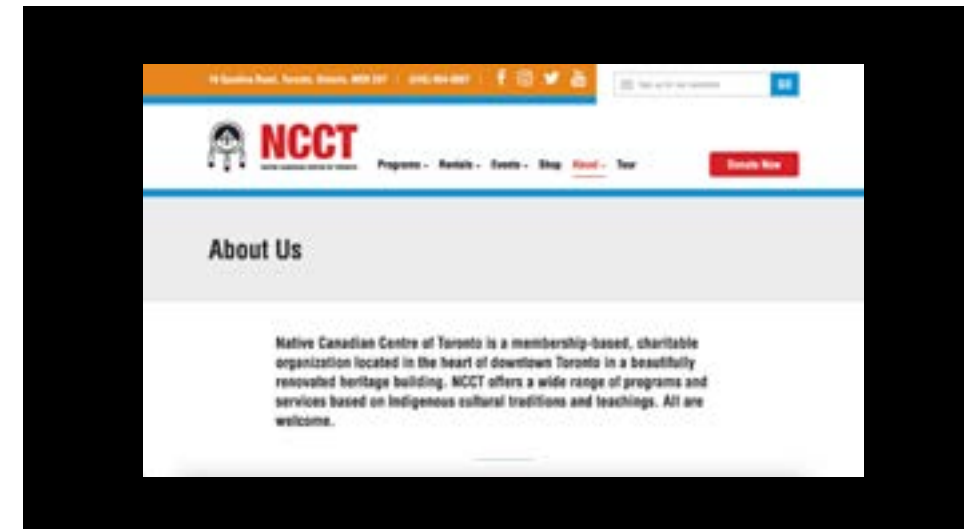
[NACCA Indigenous Women's Entrepreneur Program](#)

Indigenous Women's Entrepreneurship (IWE) Program provides access to dedicated Business Support Officers, routine workshops and training, and micro-loans to help kick start and grow the businesses of Indigenous women entrepreneurs.



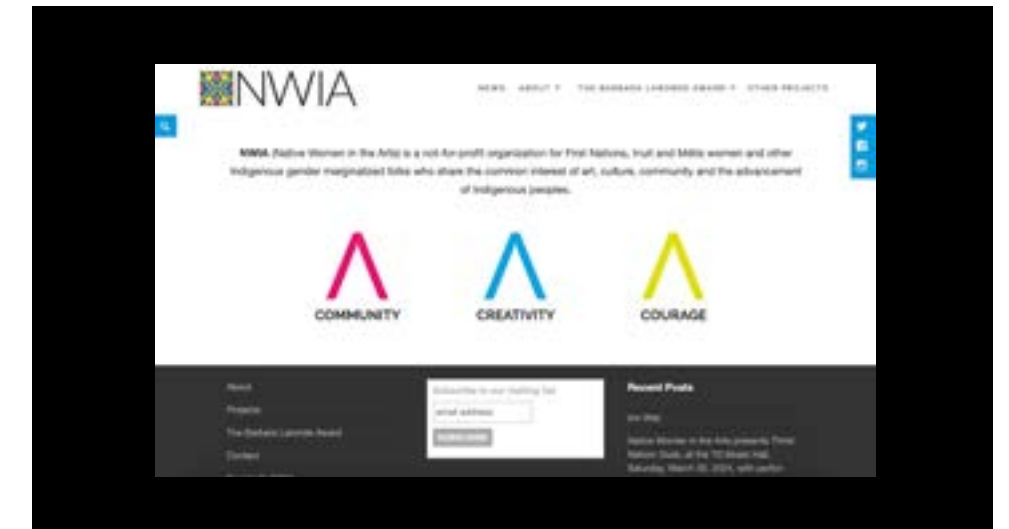
[National Indigenous Media Arts Coalition](#)

The National Indigenous Media Arts Coalition's (NIMAC) priority is to support, promote, and advocate for Indigenous media artists and arts organizations within the context of Canadian media arts practices. We connect Indigenous artists to not-for-profit arts organizations on a national scale.



[Native Canadian Centre of Toronto](#)

Native Canadian Centre of Toronto is a membership-based, charitable organization located in the heart of downtown Toronto in a beautifully renovated heritage building. NCCT offers a wide range of programs and services based on Indigenous cultural traditions and teachings.



[Native Women in the Arts](#)

NWIA (Native Women in the Arts) is a not-for-profit organization for First Nations, Inuit and Métis women and other Indigenous gender marginalized folks who share the common interest of art, culture, community and the advancement of Indigenous peoples.



[Native Women's Resource Centre](#)

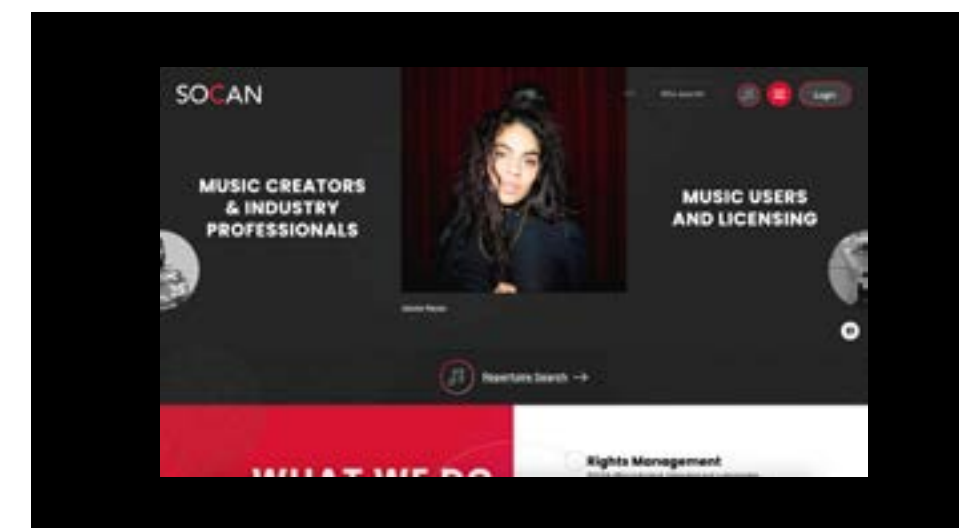
The Native Women's Resource Centre of Toronto provides a safe and welcoming environment for all Indigenous women and their children in the Greater Toronto Area. Our programs offer wrap-around blanket services to address and support Basic Needs, Housing, Families, Advocacy, Employment, Education, Healing from Trauma, and Access to Ceremonies and Traditional Practitioners/Healers.

NWRCT aims to build confidence and capacity within the collective community. We host a variety of Cultural Activities for our clients and the general public, including the Minaake Awards, Sisters In Spirit Vigil, and Winter Solstice.



[The Shine Network](#)

The Shine Network Institute (TSNI) is an Indigenous not-for-profit organization providing professional development programs, advocacy, and mentorship, for Indigenous women in the film, television and media sector.



[SOCAN \(Society of Composers, Authors and Music Publishers of Canada\)](#)

Canada's largest member-based rights management organization. SOCAN connects more than 4 million creators and publishers worldwide, and ensures that they are paid for their work – the music and art we all enjoy.



[The Women Entrepreneurship Knowledge Hub \(WEKH\)](#)

The Women Entrepreneurship Knowledge Hub (WEKH) is a national network and accessible digital platform for sharing research, resources and strategies. With 10 regional hubs and a network of over 250 organizations, WEKH addresses the needs of diverse women entrepreneurs. Since its iteration, WEKH has published over 50 reports, including four annual reports about the State of Women's Entrepreneurship in Canada. It has created online tools to support the ecosystem, including Sharing Platform and See It. Be It database.

With the support of the Government of Canada, WEKH spreads its expertise across Canada, enabling service providers, academics, government and industry to enhance support for women entrepreneurs.

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- 3 Government of Canada. (2020, July 20). *Introduction to intellectual property rights and the protection of indigenous knowledge and cultural expressions in Canada*. Innovation, Science and Economic Development Canada. <https://ised-isde.canada.ca/site/intellectual-property-strategy/en/introduction-intellectual-property-rights-and-protection-indigenous-knowledge-and-cultural>
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- 10 CARFAC, & Neel, L. (2021). *Indigenous protocols for the visual arts: A practical guide for navigating the complex world of Indigenous protocols for cultural expressions in the visual arts sector* (pp. 22–32). https://static1.squarespace.com/static/61e830a9a1fa890cec5c1521/t/6480cf85b0028239277f0887/1686163333897/CARFAC+IIP+DOCUMENT_DIGITAL_APRIL+2023.pdf

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- 12 Jourdan, J. L. (2013). *WAMPUM: OUR HISTORICAL RECORD*. Oneida Cultural Heritage Department. <https://oneida-nsn.gov/wp-content/uploads/2016/04/WAMPUM-OUR-HISTORICAL-RECORD-9.13.pdf>
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- 18 Indigenous Art Code. (2009). *Indigenous art code: A code to promote fair and ethical trade in works of art by Indigenous artists* (p. 2). <https://www.indigenousartcode.org/storage/uploads/9ca09be3-b23e-4e37-9f5c-af37d906a907/Indigenous-Art-Code.pdf>
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