

Virtual Seminar on Promoting and Protecting the Arts and Cultural Expressions of Indigenous Peoples: Perspectives on the Canadian Experience

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Regional and International Perspectives

- Purpose of intervention
 - Place the Canadian experience into context internationally
 - Introduce new research ongoing at WIPO
 - Examine cultural heritage professional expectations within this context
 - Stewardship
 - Curation
 - Accession
 - Suggest processes, tips and tools to meet the legal norms of Indigenous Peoples and at the same time develop quality institutional curatorial output and collections management practices

New Work in the Traditional Knowledge Division of WIPO

- Publication Update: Intellectual Property and the Safeguarding of Traditional Cultures (2012) by Torsen and Anderson
- Development of new tools and tips how to carry out cultural heritage institutional mission while respecting the laws and normative values of Indigenous Peoples
- Presentation today is within this context

Stewardship of Collections

- Rooted in law and legal instruments
- Impacts both national, provincial and private cultural heritage institutions
 - E.g. National Gallery of Canada
 - Museums Act, S.C 1990 c-3, s.5, as amended
 - The purposes of the National Gallery of Canada are to **develop, maintain and make known**, throughout Canada and internationally, a collection of works of art, both historic and contemporary, with special but not exclusive reference to Canada, and to **further knowledge, understanding and enjoyment** of art in general among all Canadians

National Gallery of Canada Capacity and Powers

6 (1) In furtherance of its purposes, the National Gallery of Canada has the capacity (to)...

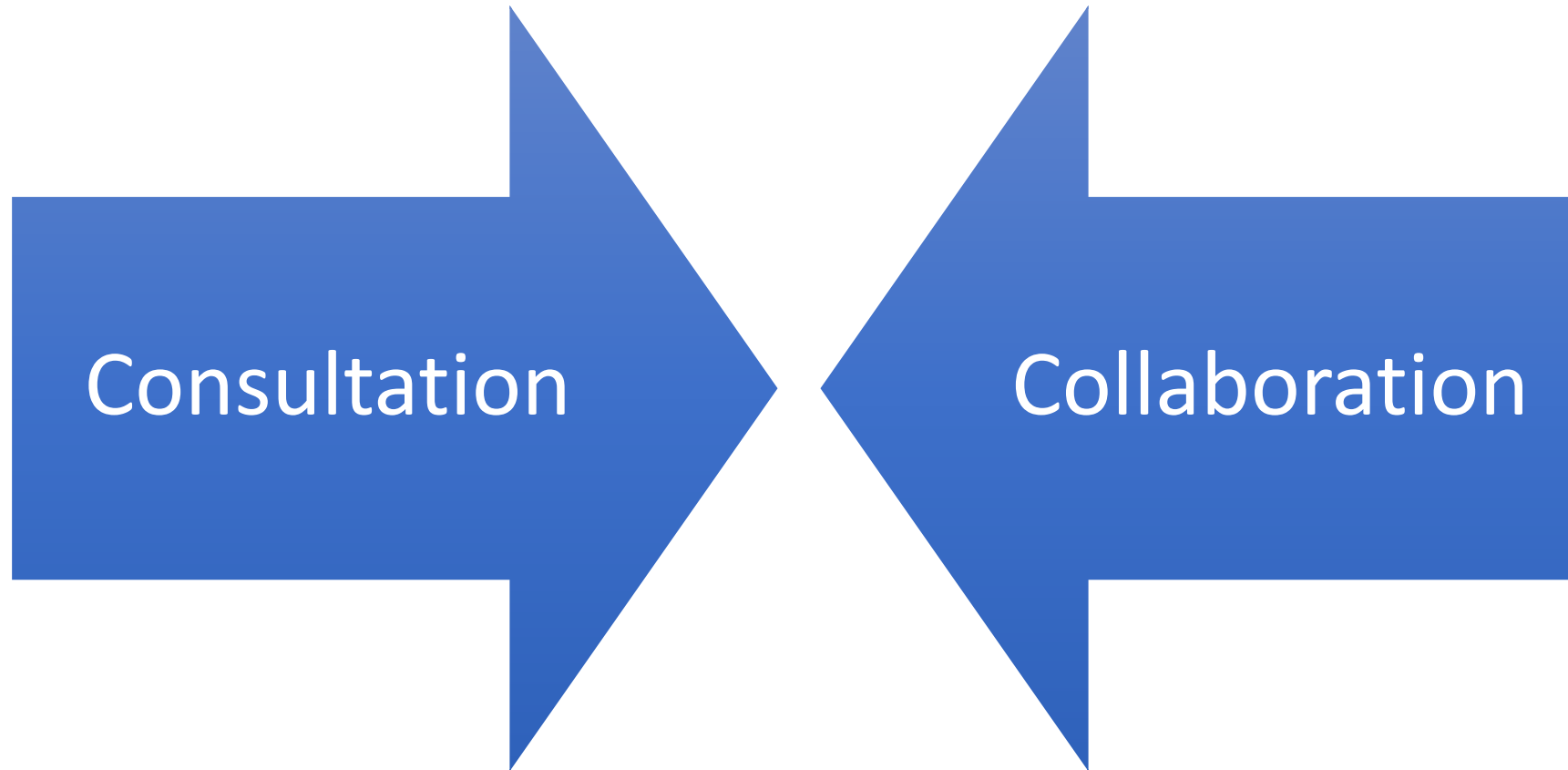
- collect works of art and other museum material;
- document, record, preserve, conserve and restore
- sell, exchange, give away, destroy or otherwise dispose of works
- lend or borrow works of art and other museum material on long-term or short-term loan;
- organize, sponsor, arrange for and participate in travelling exhibitions, in Canada and internationally
- undertake and sponsor any research, including fundamental or basic research and theoretical and applied research, related to its purposes and to museology, and communicate the results of that research
- provide facilities to permit qualified individuals to use and study its collection;
- promote knowledge of and disseminate information about works
- acquire property by gift, bequest or otherwise and hold in trust or otherwise, expend, invest, administer and dispose of that property;

Restrictions on Capacity

- S.6(2) The National Gallery of Canada may not deal with property otherwise than in accordance with the terms, if any, on which it was acquired or is held

Curation and the Stewardship

- Traditional museology practices require a reboot
 - Curatorial authority may not and likely will not rest with the curator
 - Stewardship expectations are two-fold
 - Collections maintained and managed in trust for the public
 - With stewardship standards created and maintained by the cultural heritage institution
 - Collections maintained and managed in trust for the Community
 - With stewardship expectations and trust terms including preservation and access terms mandated by the Community
 - Accession and de-accession protocols and guidelines require reconsideration



5 Stages of Collaboration

1. Inquiry

- Do not underestimate importance of initial inquiry
- Not analogous to the permissions process

2. Dialogue

- An iterative process
- To understand each other's objectives requires exploratory discussion
- The community members with whom you work may be representatives who themselves seek instructions from community members holding authorities

3. Negotiation

- Purpose is to identify the protocols within which to share knowledge about the objects
- Understand your objectives – **be purposeful**
- Their objectives may not and do not often include immediate repatriation or restitution
- In many cases, communities rely upon the museum to safeguard the objects in the interim
- Not all objects hold TK or TCEs

The 5 Stages of Collaboration

4. Trust

- Understand and respect the normative traditions of the community if known or communicated to you and commit expressly to them
- Especially relevant in connection to the authority to keep and then re-tell the narrative comprising TK or relating to TCEs
- Establish protocols of commitment that avoid endless iteration mimicking the permissions process

5. Attribution

- Agree to attribution expectations whether to a single community, individual community representatives, several communities, acknowledging both TK and TCEs
- Where appropriate, consider joint copyright if joint copyright is needed to inject equity into the relationship
- Consider scholarly benefits of attribution

The Caretaker Agreement

- An example of new accession and curation approaches
 - Proposes an alternative form of acquisition
 - Where materials and objects are held for a limited period only with strict handling instructions
 - Restrictions on access to the narrative and reproduction rights based on authorities provided for by the Community
 - Documentation of the object or the narratives connected to it may be strictly controlled
 - The cultural heritage institution holds only a time limited right to work with the object or materials in order to meet certain programmatic or scholarly objectives