

# 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)...

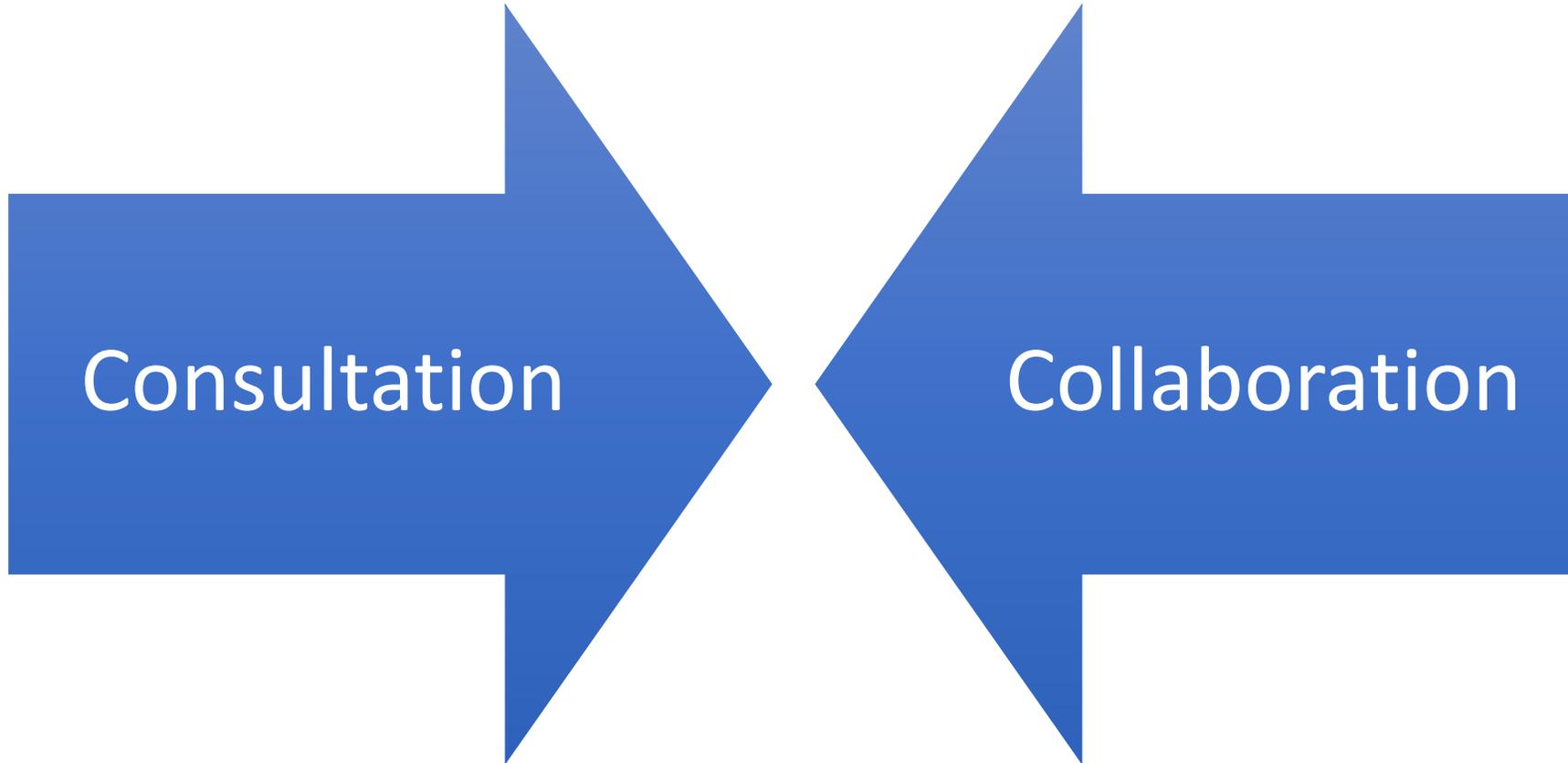
- collect works of art and other museum material;
- document, record, preserve, conserve and restore
- sell, exchange, give away, destroy or otherwise dispose of works
- lend or borrow works of art and other museum material on long-term or short-term loan;
- organize, sponsor, arrange for and participate 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