



# A need for arts smarts

There is a growing need for more experienced lawyers with specialized knowledge in *pro bono* or legal aid work, especially in the arts community, says Vancouver's Martha Rans, legal director of the Artist Legal Outreach (ALO) program offered by the Alliance for Arts and Culture. "I'm not sure it would work in all [specialized practice] areas," says Rans, but the questions being raised in the arts and entertainment community are now becoming so complex and challenging that they require seasoned and experienced lawyers. This need has prompted ALO to want to expand its outreach program in 2009 deeper into B.C. communities.

The boom in digital technology, the 2010 Paralympic and Olympic Games, and more public use of art has predicated the need for arts smarts. More challenging questions of artists' rights and obligations and longer legal documents are emerging. "You have to know your rights in order to sign them away," says Rans. Most artists have little understanding of their rights or binding contractual obligations, and have had little exposure to lawyers.

Rans maintains that a "first-year call lawyer who has not articulated in that area" may not have the insight needed to resolve problems and see future glitches. "But my experience has been that the person wants to know how to get out of the situation," she says, adding that's where the experienced lawyers' expertise kicks in. She says she finds it ironic that the least experienced lawyers are often the ones providing *pro bono* or legal aid services. "I want to see more top people giving out advice," she says.

This month, ALO — as part of the PuSh International Performing Arts Festival held on Granville Island — is providing leading lawyers to "speed date" with representatives of art associations. An assembly, attended by small and large provincial performing arts organizations, allowed art administrators to ask legal questions in 10-minute "speed dating" sessions. "All the questions that you didn't know who to ask," says Rans. This year's lineup includes Margaret Mason of Bull Housser & Tupper, known for her expertise on the Society Act, Patrick Aldous, a well-known music lawyer with Atkins and Co., and arts lawyer Denis Walz. Rans, with a history in the visual arts and legal work for non-profit groups, also participated.

The ALO's three-year success pales compared to similar groups in Toronto and Seattle that have existed for 20 to 30 years. Its short history though, casting back to music lawyer Burt Harris, who succumbed to cancer in 2006 after a trial six-month program in 2003, has not been without successes. "We [have] provided advice for 100 individual artists in all disciplines," says Rans.

She became involved in 2003 and Artist Legal Outreach officially began hosting bi-weekly sessions in late 2005 using lawyers in Vancouver plus law students to help with the administration. "What I have noticed with consistency is that this is often the first time for individuals speaking with a

lawyer and getting any legal advice," she says. The sessions have also provided artists with greater confidence to seek out a lawyer later in a career.

Lawyers who volunteer time are often artists themselves or have expertise in the arts and entertainment field. Rans says they include individuals such as lawyer and photographer David Wotherspoon, a partner with Fasken Martineau LLP; and Robert Galletti with Bacchus Corporate and Securities Law, who has extensive experience with film financing, television production, and music; Steve McKoen, a partner with Blake Cassels & Graydon LLP; entertainment lawyer Andrew Atkins, a partner in Atkins and Co.; and lawyer Kyle Fogden, who has expertise in film, television, and the music industry.

Rans says a fall 2008 forum was held involving VANOC, the organizing committee for the 2010 Olympics, and artists to discuss creative freedom as it relates to the Olympics and Paralympics Marks Act. "The impact of the Marks Act on artists is really a grey area," she says. At the conference Rans says VANOC noted it was not interested in prosecuting artists who engaged in creative expression. But, the question remains what happens when an artist creates an artwork, then tries to commercialize it, even if it is critical and considered fair comment. Can Olympic sponsors intervene? "There is little guidance from the courts and these are open questions," she says, adding that even the threat of a suit can inhibit free expression within the arts community, where artists have limited resources.

On the other hand, major events like the Olympics result in more dollars flowing into the arts community for projects by governments, corporations, and sponsors. And, Rans says, artists commissioned to do works are facing complex contracts that can run up to 35 pages and can be full of pitfalls for artists.

The area of public displays of art by corporations and governments has also become a focal point involving issues such as moral rights or what the owner does with a piece of art. (*Snow v. Eaton Centre Ltd.* (1982) is a leading Canadian decision.) Rans cites another case where Michael Hermesh successfully sued the City of Penticton for failing to prevent vandalism to his sculpture *The Baggage Handler*.

Rans says she is pleased with the talented lawyers that have helped the program and a Vancouver Law Foundation grant, which will allow ALO to expand its web site and give artists more information and resources. But, she says, more work and funding is needed.

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