An Artist's Guide to Canadian Contract Basics

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PBSC at the Faculty of Law, University of New Brunswick regrets that it cannot provide legal advice. This document contains general discussion of certain legal and related issues only. Please consult with a lawyer for assistance with specific legal problems.

How to use this guide?

Skim the Table of Contents to familiarize yourself with the overall contents and flow of the guide. Then, a thorough review of the general section is strongly recommended. The information provided in the general section pertains generally to all contracts and aims to provide necessary, basic contract information. The next step is to refer to the specific considerations outlined in the various media sections: literary arts, performing arts, music and visual arts. Though this guide cannot possibly address everything that will be relevant to contracting artists, or speak fully to the multitude of possibilities that can arise in business situations, it is our hope that it will serve as a useful starting point for artists.

"So I have this contract...what exactly am I supposed to do?"

General

What is a contract?

A contract is a legal agreement between two or more parties. The parties can be individuals, businesses, or even the agents for a party. Parties who agree to the terms of a contract are "bound" or required by law to perform duties or services or provide goods as agreed upon in the contract in exchange for "consideration" (usually, but not always, money). Contracts can be one-time agreements or agreements that are meant to govern a business relationship over a longer period.

Essentially, contracts are a way to make promises legally binding.

What does it mean to enter into a contract?

Since contracts create legally binding relationships, parties to a contract assume responsibility to comply with the terms set out in it.

Though it sounds simple, this is really the essence of contracts. To illustrate, consider the following example: a fashion designer hires a photographer to take pictures at an upcoming fashion show in an effort to promote a new clothing line. By entering into a contract with one another, the parties – the fashion designer and the photographer – bind themselves to the contract. Perhaps the photographer agrees to show up at the fashion show and photograph the fashion designer's new line. In exchange, the designer agrees to pay the photographer for this service.

Once both parties have fulfilled their contractual obligations, the contract has been satisfied. However, if either of the parties fails to comply with the terms of the contract, it may be considered a "breach of contract" (a legal concept in which a binding agreement is not honoured by one or more of the parties to the contract), depending on the terms of the contract and the circumstances surrounding the "default" (failure to comply with the terms set out in the contract).

Since the contract legally binds the parties to perform, legal recourse is available in the event of a breach. The availability of legal recourse means parties have a "cause of action" (right to sue) if another party fails to carry out the obligations created under the contract. In the above example this could mean that if the photographer does not show up at the fashion show to take the photographs for the designer, the designer could initiate a cause of action against the photographer for "damages" (monetary compensation) resulting from the photographer's breach. If the designer does not pay the photographer for his or her service, the photographer could initiate a cause of action against the designer.

Although contracts provide parties with legal recourse, should it be required, a contract is a tool used in law to avoid dispute and protect the interests of the contracting parties. Framed in this light, it should be apparent that a well-written contract is an invaluable resource in developing reciprocal business relationships.

Do I need a written contract?

Although you may not always require a written contract in your business affairs, it is undoubtedly always a good idea to have one. Written contracts ensure that parties need not rely on memory alone to determine their intentions in business relationships. A written contract can also help parties avoid the frustration of finding themselves in a "he said/she said" position with respect to their rights and obligations. If you are attempting to sell your work or have your work represented by an agent or gallery, are commissioned to do work or display your work for public viewing, are performing or leaving your work with another for the purpose of sale, review, display or representation, it is a good idea to clarify the intentions and expectations of all parties by executing a written contract. This simple act can help you avoid a variety of problems.

You may find that some people with whom you wish to work insist upon using contracts in all their business relationships. In such circumstances, you probably will need a contract, but this need not be viewed as a sign of bad faith or lack of trust. Contracts are commonly used in business affairs. In fact, that you are being asked to enter a contract can be seen as a sign of good faith – a party seeking to contract with you clearly expects to treat you, and have you behave, as a professional. Further, entering a contract helps ensure that rights and obligations you agree to will be honoured.

So, when asking yourself whether you need a written contract, remember: a contract functions to clarify expectations and protect the interests of contracting parties. Developing a habit of using contracts in your business affairs will help you avoid conflicts and help you establish yourself as a serious and knowledgeable professional.

How do I enter a contract?

Essentially, when you have agreed, either verbally or in writing, to do some lawful thing in exchange for consideration (value/payment) you have entered into a contract. The requirement of consideration is what distinguishes a legal contract from a mere promise, which does not normally create a legally binding obligation to perform.

It is important to note that the value of the consideration is not normally an issue at law. In other words, parties are free to determine the value for which they exchange promises. The freedom to pursue your own interests on your own terms is a necessary provision in contract law intended to facilitate business. However, the downside of this freedom is that it may be possible to "sell the farm for a song" as the saying goes. For this reason it is necessary to exercise caution when entering into contracts and to ensure that you fully understand the terms of the contract before signing it.

What interests can contracts cover?

Contracts can be used to bind parties to performance of any lawful deed. However, terms or conditions that weigh heavily in favour of a particular party may be looked upon as "unconscionable." In general a contract should provide some benefit to all parties involved.

What do I need to include in a contract?

A contract should specify, as clearly as possible, the intentions of the parties and should be evidenced in writing. This helps ensure that parties to a contract are aware of one another's expectations.

Take care to address as many details as possible. Try to use clear language and define arbitrary terms. Set out the manner by which you would prefer to resolve disputes should any arise. Include the jurisdiction (province) whose governing law will apply to your contract. Specify how parties are to discharge their obligations and how to bring the contract to a close.

Contracts may be written, oral, or a combination of the two. Contracts can cover innumerable topics ranging from the terms by which a musical score is to be composed to payment for the commission of a public sculpture.

Although verbal contracts create legally binding obligations, they are generally less desirable than written contracts for the obvious reason that there is no record of its terms. This may leave parties in a position tantamount to having no contract.

Putting your contract in writing is the best way to ensure clarity and enforce its terms should the need arise. A written contract may even specify the terms by which parties may resolve any disputes that happen to arise.

How can I resolve a dispute regarding a contract?

The best way to resolve a dispute is to try to work it out with the other party. A written contract can be of invaluable assistance if disputes arise, as the terms are (hopefully) clearly set out for reference. However, disputes can not always be resolved in this manner. If the dispute can not easily be resolved and you feel that the other party is taking advantage of you or is enforcing the terms in a way you find inappropriate, you may want to consult a lawyer for advice.

If the dispute has led to a breach of contract, one party may have a "cause of action" (a right to sue) against the other and can sue in court and may initiate an action for "specific performance" (an order by the court that the defaulting party must carry out their promises under the contract), or "damages" (monetary compensation for losses suffered as a result of the breach).

However, there may be circumstances in which the terms of a contract cannot be fulfilled, and yet none of the parties is at fault for breach. This may be the case when an "act of God" such as

a snowstorm, prevents performance of the contract. It is possible, and wise, to specify in advance, in the contract, how the parties wish to proceed if such circumstances arise.

Do I have to draft a new contract each time I enter a new business relationship or enterprise?

Probably not, at least, not entirely. A standard form written contract can be drafted and modified accordingly. Any party to a contract can provide a base contract, comprised of standard terms and language that is general enough to be adapted to a number of different situations. The parties can then decide on, and put in writing, the particulars of their specific agreement. Hotels and car rental companies typically use modified standard form contracts to reflect the agreements they negotiate with their clients.

In some circumstances it will be necessary to draft a contract specific to an event, series of events or relationship. Such a contract may be quite different from a standard form contract.

Though contracts vary in appearance, certain features will always be indicated, namely: the parties involved, the consideration which binds the parties, the essential terms of the contract and its duration.

What are negotiations?

Negotiation refers to the process of establishing that which parties intend to commit to in a contract. During negotiations you should discuss all terms and conditions you wish to apply to your transaction. You should ask questions of the other parties, and, to the greatest extent possible, resolve any concerns at this stage. The written contract should reflect the agreements reached during these negotiations. If there are any discrepancies between what you intended or thought you agreed upon and what actually appears in the contract, they should be resolved before signing the contract.

How long is a contract valid?

The contract should specify its "duration" (period during which the contract is effective). When this is the case, it is clear that the contract terminates upon the expiration of the period specified.

How can I get out of a contract?

Typically a contract cannot be terminated without satisfaction of its terms or the consent of all parties. Termination without cause is normally considered a breach of contract.

Parties may negotiate a "unilateral termination" clause to include in the contract that would allow either party to "unilaterally" (without consent of the other party) withdraw from the contract. Typically, such termination clauses permit either party to withdraw from the contract upon giving adequate notice, to be determined by the parties and specified in the contract.

Do I need a lawyer to write or to review a contract?

No. However, if you are using a standard form contract that has been provided by another party, or you have borrowed a contract written for or by another person, or are attempting to write the contract yourself, you should know the basic components of a contract and what those components mean. If you are unsure about anything, it is best to get competent legal assistance. Typically, obtaining legal counsel before an issue arises not only helps prevent problems, but is also a far more cost-effective way to protect your interests.

The most important thing is to ASK QUESTIONS if you do not understand a term or a condition in a contract.

It is crucial that you read the entire contract (including the "fine print") carefully before signing it. If you have questions or concerns, address them before signing the contract. Once you agree to the terms of the contract, and indicate this with your signature, you will be bound to the contract, whether or not you have actually read or understood its terms. Generally speaking, it is presumed that contracts are entered into willingly by the parties with full knowledge of all terms and conditions.

If I need to consult a lawyer, who pays?

Usually the person who requires legal advice pays for it. However, if another party has provided a contract and you require legal assistance to understand or execute it, the party providing the contract may assume responsibility for your legal fees. In any event, you should always read the contract carefully before you sign it and if you have any questions, do not sign the contract until those questions have been addressed.

Can another person sign a contract for me?

Yes, you may use an agent to enter contracts on your behalf. Generally when an agent signs on behalf of a principal, the signature will only bind the principal. The description of the parties in the contract must include the names of both the principal and the agent and indicate that there is an agency relationship between them. The agent must be clear that he or she is signing on behalf of the principal, and is in fact a proper agent of the principal, in order to ensure that the agent does not inadvertently bind him or herself in the contract.

Note that an agency relationship is fiduciary in nature, which means the agent is legally obliged to act in his or her principal's (i.e. your) best interest.

Is it possible to incur criminal charges as a result of a contract?

Generally speaking, the answer is "no." In most cases, disputes arising out of contractual relationships have civil, not criminal, consequences; you can be sued, but not charged as a result of a breach of contract. This is because, although contracts create legally binding obligations, as

set out above, the failure to comply with the promises you make to others is not a criminal offence subject to criminal sanction.

Please note however, if you intentionally misrepresent yourself or your work, or you accept money without performing to the full extent of the terms and conditions in the contract, your actions may amount to fraud, theft or some other criminal offense. In such circumstances civil and criminal proceedings may be brought against you. If you have concerns about the legality of your, or another party's actions you may wish to consult a lawyer for advice.

What is a non-disclosure agreement (NDA)?

A non-disclosure agreement, or a confidentiality agreement, is a contract that defines the terms by which your intellectual property or private information can be used. In short, a NDA is used to keep private, or secret, information that is private.

An NDA allows you to create and maintain control over your work. An NDA prevents others from disclosing your information.

If employed as an artist, how many hours per week may I be required to work?

The *New Brunswick Employment Standards Act* does not limit the number of hours that employees may work (section 14). However, currently an employee may only work a maximum of forty-four (44) hours per week at minimum wage (Regulation 4). Beyond this, you must be paid at the rate of one-and-a-half (1 1/2) times your wage (section 16). In other words, if you are paid more than minimum wage, you may be required to work more than forty-four (44) hours per week.

The *New Brunswick Employment Standards Act* also provides that workers are entitled to a weekly rest period of twenty-four (24) consecutive hours (section 17).

However, the *New Brunswick Employment Standards Act* also provides that an employer may apply to the Director of Employment Standards to seek exemption from any provision of the *Act* (section 8). In order to receive an exemption, the employer must demonstrate that meeting this provision would cause the employer special hardship not suffered by other employers, or that the employee receives a special benefit or advantage that can be seen as reasonable compensation for non-adherence to a provision.

Can a contract affect my income or taxes?

Yes, if a contract addresses income, the method and amount set out prevails for the duration of the contract. This is another reason why care should always be taken when entering contracts.

It is also worth noting that any revenue or profit generated from your art, whether obtained as pay, through purchase and sale, or otherwise, is likely to have income tax implications.

How will my percentage of sales and the venue's payment be calculated?

These factors should be negotiated prior to the execution of the contract and set out in its terms. The standard percentage of sales varies depending on what industry one is in. Yet the venue will always receive its share based on the terms set forth in the contract, if included in the contract. For instance, the venue's payment may be based on a moving scale whereby the more money brought in, the greater the venue's cut, or it could be set at a fixed amount or percentage. It is up to the contracting parties to decide how they will divide the profit and to specify this in the contract. Including this important detail will help provide certainty and avoid conflicts.

Literary Arts

What rights does a writer have with regards to their own work?

A writer may think that they trade in ideas, but in fact, they trade in expression. Both skills and effort go into this expression, but essentially only the expression is protected. Writers need to be aware of the limits and the extent of their copyright. For more information on this, see the Fredericton Arts Alliance publication: *Demystifying Copyright: A Guide to Canadian Copyright Basics for Writers, Performers, Musicians and Artists*. Writers should be looking to limit the number of rights within the copyright which they have agreed to license to their client.

How can a writer protect the rights to their work?

Contracts are the means by which a writer protects the work that they have created. As an artist, consider having a clause that retains (reserves) all of the rights not explicitly licensed. Every contract for a writer should contain some explanation of exactly which forms of expression are covered by the contract. Writers should also know if these rights are going to be sold, rented or leased.

How specific should the contract be?

Think of a contract as if it were computer program. It can only do exactly what you tell it to do, nothing more and nothing less. The terms of a writer's contract should have very specific meanings, and will cover specific rights to the work in question. If the contract is too general, some rights may be signed away unintentionally. Keep in mind however, that a contract that is too specific may limit what can be done with the product.

Some things that should be considered:

Is this work being sold, rented or leased? Is it going to be published in an anthology? Is it going to be performed? What if it is taped on video and that video is sold? Will it appear on the internet or be translated into another language?

How are a writer's rights affected by electronic media, such as online archives and websites?

Whether an archive or a website is included or not included needs to be addressed specifically in the contract. A publisher presumptively has some right to use the work they commissioned, once licensed, in compilations, anthologies, or digests in addition to the primary use. These can be electronic, online or published media. Consider that a newspaper article might be stored electronically onsite for in-house records, published on the newspaper's online website for free or for a fee, pressed as electronic files or images on CD-ROMs, sent across a wire service or preserved on a plaque.

Why does the publisher have these “extra” rights to my work?

The reason a publisher has some “extra” rights is that a publisher also holds a copyright in the finished work. The arrangement of content in a collective work belongs to the publisher. That means the particular layout of the article on the page of a magazine, or the way the pages of a book appear in print, belongs to the group of rights that the publisher holds - though the writer’s copyright covers the content itself. The column size, the font, the choice to put in an illustration or insert a pull quote are indices of the publisher’s additions to the content. A client is generally free, absent wording to the contrary, to sell copies of the collective work, including back issues, laminated pages and facsimile reproductions of the pages as they were printed.

There is a distinction, however, between a reproduction of the page as it was printed and a searchable archive of individual articles. Once the publisher’s additions are stripped out (layout, etc.) and the author’s content is provided in a generic form, it is an unauthorized reproduction that requires a specific license from the author.

Does the type of contract change depending on how the hiring is done?

Nearly every publication medium has a set of submission guidelines that dictate how to approach the client. Obtain this set of guidelines before doing any work on the project; many are available online. Some publishing outlets will not accept unsolicited works at all from individuals and prefer to work through agencies and guilds. Typically, a writing assignment involves a query letter, a draft and a final version. Occasionally, publishers will request completed works, as in the case of contests.

Once a tentative agreement is made, obtain clear and specific guidelines about the specific project. A writer should strive towards concise and understandable requirements, or a short description that is easily grasped. The details should be set out in writing, in order to avoid disagreement over the terms in the future.

What are the contractual differences between being a staff writer and being freelance?

There is usually language in a writer's contract – especially if the writer is a journalist – which states that the author is not an employee of the client. Although intuitively there is a clear distinction between a freelance and a staff writer, in practice it can be quite difficult to tell one from the other. Calling someone a freelancer, or a stringer or an independent contractor is irrelevant – what matters is the nature of the relationship. Some of the things that need to be considered when determining which category you fall into are: who is in charge of how the work is performed, whether there is a risk of economic loss or gain, and who pays for equipment. For example, an employee would be more likely to have hours of work and be provided a workspace and a computer, while a contractor is simply given an assignment and a deadline. An employee is paid whether the work is completed or not while the contractor is paid only upon completion. Permanence and exclusivity are also factors – someone who has worked for a long time with the same client doing the same work and does not work for others, is more likely to be considered an employee than a freelancer.

How do titles and by-lines work?

The final title of a work usually falls within the discretion of the client. Some publication venues discuss the issue with the author, while others request the author submit a tentative title. This freedom over the title is somewhat balanced against the inclusion of the author's name. A writer's by-line is jealously guarded and entirely within the author's discretion. (A by-line is a line placed between the headline and the text of the work, and contains the author's name and position on staff, if applicable. It may also include a short summary of the work in question.) Some writers may wish to put a clause in their contract to specify the exact wording of the by-line. This "Attribution right" belongs to the author according to the Copyright Act, s. 14.

What sort of deadlines need to be included in the contract?

Be clear about deadlines, and choose either relative times (e.g. "within 15 days") or a particular date and time. An author who misses a deadline, without excuse, can find him or herself without any payment. Besides the submission deadline, there are other important dates that should be specified in the contract. These include: how long the client can wait before either using or refusing the material, time between drafts, how long the material can be held without being used, and when payment becomes due. Be aware that the form of submission may also be included in the contract. If the contract specifies a specific computer file format or online submission, make sure that the requirements are complied with.

Are drafts and revisions covered in this contract?

As every writer knows, editors are a constant companion. Drafting can be a never ending process, but you should strive to place limits wherever possible in order to introduce certainty to the relationship. While it is reasonable to expect that revisions will have to be made to the submission within a relatively tight timeframe, ensure that there are clear deadlines to balance the equation for communication from the client. It should be noted that there are several types of edits that can occur. A "light edit" consists mainly of superficial changes dealing with format and grammar, while a "heavy edit" can involve changes to the intellectual property itself.

How is payment determined?

Payment should, obviously, be clearly laid out. If there is a calculation involved (i.e. sales), the method of calculations should be easily understood by both parties and capable of being objectively measured. Be wary of undocumented remuneration or ethereal compensation such as future but non-specific assignments, as it can be difficult to enforce such terms.

Advances are generally available only in larger engagements such as with books or grants, and often include a percentage of estimated sales with a timeline for when the estimate will be reconciled. If sales occur over a lengthy period of time, such as with a book, a schedule should be established to provide a regular accounting in order to ensure regular payments.

What kind of penalties can be incurred if the terms of the contract are defaulted or if the client does not accept the work?

A rejection kill fee occurs when the client refuses to accept the submission, usually claiming that the final product was not what was promised in the contract. Copyright is retained by the author because nothing has been exchanged.

A cancellation kill fee occurs according to the terms of the contract when a submission is accepted but not used. Unlike rejection, a cancellation transfers the copyright to the client under the terms of the contract.

A recommended kill fee is usually fifty percent (50%) of the value of the contract, but it can vary from nothing to one hundred percent (100%). A rejection fee tends to be lower than a cancellation fee. It is not unusual for editors to overbook or keep works "in the can."

A writer needs to be aware of how long the client can hold on to their submission before deciding to reject or cancel. Though the rejection fee is typically lower than the cancellation fee, consider accepting a rejection fee if you would like to try to get the work published elsewhere.

If the editor cites defects in the work as the reason for offering a kill fee then the artist is generally free to retake the work and copyright. If the editor merely refuses to publish the work as previously agreed, the client has retained copyright, potentially for a future use.

If both types of kill fees are included in the contract, the rejection fee is typically lower than the cancellation fee.

Clients do not usually need a reason to offer the kill fee, but be very careful about accepting the payment without looking at the contract terms and the implications to the copyright. You may hold the view that the requirements were met, and that the client is attempting to back out of the agreement, or trying to get you to agree to a lower kill fee by accepting the rejection.

The main concerns should be how much the compensation will be and how soon after the deadline you are informed of the decision. It may be that there is time to shop the piece around to another outlet. It may also be that the effort put into the piece is significant or the material is time sensitive and you need to cut your losses.

Are taxes affected by the type of contract?

Keep in mind that there can be significant tax consequences to both writer and client if the Canada Revenue Agency determines that you are an employee and not an independent contractor. In particular, employers have to make allowances for tax collection, and deductions for Employment Insurance and Canada Pension Plan, while a contractor has to think about HST collection and remittance. One means for a writer to clearly establish that they are a freelancer is to incorporate their own business. By doing so, it may be possible to take advantage of the lower corporate tax rate and deduct some expenses from your income before paying taxes.

Sources:

Professional Writers Association of Canada http://www.pwac.ca

Canadian Association of Journalists http://www.caj.ca

The Writers Guild of Canada (WGC) http://www.writersunion.ca

The Writers' Union of Canada (TWUC) http://www.writersguildofcanada.com

The Playwrights Guild of Canada http://www.playwrightsguild.ca

Writers' Federation of New Brunswick http://www.umce.ca/wfnb

Performing Arts[1]

You should always sign a written contract with the company or theatre with which you are working. While verbal contracts are valid, putting the agreed terms in writing will help to ensure that there are no misunderstandings. Typically, at a minimum, your contract should include a pay agreement, a method and time of payment, specific work hours and relevant rest periods, duration of employment, description of the work, and relevant break and vacation periods.

A good template for such a contract is provided by Equity. Equity is the short form of the Canadian Actors' Equity Association ("Equity") and is the professional association of English-speaking Canadian performers, directors, choreographers, and stage managers who work in live theatre, opera and dance.[2]

The *Canadian Theatre Agreement* governs all contracts entered into by members of Equity in the preparation and presentation of theatrical performances in theatres that are members of the Professional Association of Canadian Theatres ("PACT").

For those members of Equity who contract with theatres that are not members of PACT, contracts are governed by the *Independent Theatre Agreement*.

In the sections that follow, additional factors that you may wish to consider are described. These sections shall heavily reference both the Canadian and Independent Theatre Agreements available through Equity. These contracts provide very good examples of sample theatre agreements, and if you are entering into your own employment arrangements you may wish to consult these contracts as a reference. Links to these documents are provided at the end of the section.

Although the sections that follow will heavily reference theatre arrangements, it is worth noting that these principles and recommendations are equally applicable to artists of cinematography. Where there is a discrepancy between theatre and film, it is noted in the relevant section. Additionally, at the end of this segment separate links relating to such artists are provided should you seek additional information.

Are there special contracts for performing artists?

If you are a performing artist, it is strongly recommended that you seek a specialized contractual agreement given your special circumstances. A standard type of such a contract, the Engagement Contract, is provided in section 34.01 of both the *Canadian Theatre Agreement*

[1] Includes: actors, dancers, directors, choreographers, designers, and others. Playwrights and musicians are not included in this section. For contract information specific to playwrights and musicians, see the Literary Arts section above and the Music section below.

[2] *Canadian Theatre Agreement* – Preamble

(“CTA”) and the *Independent Theatre Agreement* (“ITA”). Your Engagement Contracts are recommended to be continuous, and indeed, Equity requires its members to confine themselves to such contracts. This means that from the time rehearsals begin (or the time of required arrival – if this is earlier), artists must be paid for consecutive rehearsals or performances. Further, section 34.02 provides that, unless written permission is provided by Equity, the period of engagement must not be less than two weeks.

Other types of specialized contracts you may wish to consider are as follows:

A Run-of-the-Play Engagement Contract is used for productions without a scheduled closing date. Here, termination before one year from the start of the contract is prohibited unless agreed to by both the theatre and the artist, and approved by Equity or the company that is closing. The one-year period can be extended, but only by a minimum of three months and a maximum of one year. Fees for this type of engagement contract are amended as in section 35.02. In order for a contract to be considered a Run-of-the-Play Engagement Contract, it must contain the following provision: “The Theatre and the Artist agree that this CTA Engagement Contract is designated as a Run-of-the-Play CTA Engagement Contract pursuant to the provisions of Clauses 35:02, 35:12, 38:07, 38:10, and 38:14 (C).”

If any other wording is used, the contract is considered to be a standard contract, not a Run-of-the-Play Engagement Contract.

A Guaranteed Engagement Contract is described in section 35.03. A Guaranteed Engagement provides that termination of the contract is prohibited prior to the date specified in the agreement, unless agreed to by both the theatre and the artist and approved by Equity. The maximum period of a guaranteed engagement is fifty-two weeks or one year. Fees are also amended as in section 35.03. Again, in order for a contract to be considered a Guaranteed Engagement and not a standard contract, it must contain the following provision: “The Theatre and the Artist agree that this CTA Engagement Contract is designated as a Guaranteed CTA Engagement Contract pursuant to the provisions of Clauses 35:03, 35:12, 38:08, 38:10, and 38:14 (C) of the CTA.”

Different rules apply with respect to theatre for young audiences, covered in section 55 of the CTA, and musical theatre, covered in section 56.

Both the CTA and the ITA deal primarily with “Sector 1 theatres” which are not-for-profit organizations. If the theatre is a for-profit corporation, different rules apply. In particular, for-profit and not-for-profit theatres handle fees differently. It should also be noted that non-Equity members cannot be involved in production for a for-profit corporation.

You may also be interested in the Small Scale Theatre Addendum to the ITA. This addendum has been created for small theatres, particularly in initial stages of development, who wish to hire Equity members. Fees, rehearsal hours and other provisions can be amended from the standard contract under the Small Scale Theatre Addendum.

Alberta Ballet, the National Ballet of Canada and the Royal Winnipeg Ballet have individually negotiated agreements with Equity. A Dance Policy for dancers who contract with other dance companies has been formulated, and came into effect on June 1, 2008.

Can artists collect royalties?

According to the Federal Copyright Act, a performer has a copyright in his or her performances and sole rights to authorize acts of communication, performance, fixation, reproduction and rental. These rights also provide the performer a basis by which to collect royalties for the use of the copyrighted material. However, not having these royalties established in an employment contract can make their collection lengthy and difficult. Additionally, where performers authorize the embodiment of their performance in a cinematographic work, under certain circumstances they may lose their copyright in those performances. For these reasons, you should also include these terms in an employment contract.

In the CTA and the ITA, if an artist leaves a production and a visual or sound recording has been made, in lieu of making a new recording, the artist shall receive a minimum royalty of two-and-a-half percent (2 1/2%) of the artist's contractual fee for each week of use of the recording. If an artist is engaged solely for the purpose of an audio/visual recording, he or she shall receive one-sixth (1/6) of the applicable minimum fee per day of recording sessions, and an additional two-and-a-half percent (2 1/2%) minimum weekly royalty of the applicable minimum fee. Finally, if an artist engages in an audio/visual recording for sole use in a current production, and they are either in the background or not recognizably featured, he or she shall not receive any relevant royalties. However, if the closing date of the contract is prior to the closing date of the production, the artist shall receive a two-and-a-half percent (2 1/2%) royalty of the original contractual fee for each week in excess of six (6) weeks from the closing date of the contract. The relevant sections of the CTA and ITA referring to such royalties are 45.02, 45.03, and 45.04.

Just as the Copyright Act provides a copyright to performers for their performances, under certain circumstances it may take them away from directors and choreographers. Therefore, it is even more important for you, if you are a director and/or choreographer to establish your royalty compensations in your employment agreements. For directors and choreographers, the CTA and ITA state that for each week of a performance during their contract a minimum three percent (3%) royalty of their minimum fee is required. If there is an extension beyond the proposed run of the production, or if the production exceeds ninety-six (96) performances, a minimum two percent (2%) additional weekly royalty is required. If no such royalty is negotiated between the parties, directors and choreographers shall receive an additional four percent (4%) weekly royalty. Relevant sections of the CTA and ITA are sections 58.26, 58.28, 60.05, 62.07.

If directors and choreographers are involved in a joint production, and their productions or choreographies are used for multiple performances in multiple locations, they shall receive a minimum thirty percent (30%) royalty of the applicable minimum director's/choreographer's fee. In the event of multiple minimum fees, the higher of the first two shall be used for subsequent calculations. Sections 54.15 of the CTA and ITA pertain to such royalties.

Finally, when radio broadcasts, recordings or cast albums of the entire production are made, directors and choreographers shall receive a minimum two-and-a-half percent (2 1/2%) royalty of either their total original or "Company Category A" minimum fee, whichever is greater. For visual recordings or broadcasts, a ten percent (10%) royalty for the first thirty (30) minutes and a subsequent five percent (5%) royalty for any additional thirty (30) minutes of a finished recording or broadcast are required. Refer to sections 60.06 and 62.08 of the CTA and ITA for such royalties. You may wish to note that, generally, Equity members tend to collect royalties more commonly than non-members.

Like directors and choreographers, artists for cinematography should exercise great caution when establishing royalty compensation in their contracts. Typically (and the Copyright Act allows for this) a producer of a cinematographic work may already own the copyright to that production. Therefore, when an artist signs on to work on such a project, this may void his or her ability to claim a copyright to the performance. For these reasons, it is again best to ensure that these issues are dealt with in the terms of the employment contract.

What types of clauses should be in a performing arts contract?

If you are a member of Equity, the standard contracts described above must be used. If you are not, take great care in reviewing or drafting contracts. Read all contracts thoroughly to ensure that your interests are protected.

Some of the most important provisions to look for are described below.

Travel

You should ensure that the contract addresses responsibility for expenses arising out of any travel requirements. Be sure that the contract speaks to both rehearsals and performance, and includes mention of responsibility for accommodations and per diems and method of payment/reimbursement if applicable.

Method and Time of Payment

In order to avoid misunderstandings later, you should include a provision in the contract which specifies how payments of royalties and salary are to be made and on what dates.

Safety

Depending on factors such as whether or not you are a casual employee, and the total number of employees of the company or theatre, you may or may not be protected under the *Workers' Compensation Act*. You should ensure that there is a provision in your contract stating that your employer takes responsibility for your safety while you are engaged in work on his/her behalf including during rehearsals and performances.

<u>Type of Work</u>

If you are employed as a performer or in another creative capacity (e.g. as a director) by a company that expects you to do administrative work or other work not typical of your profession, ensure that the percentage of creative work to other duties is outlined in your contract as well as what the additional duties are.

<u>Licensing</u>

See the Fredericton Arts Alliance publication: *Demystifying Copyright: A Guide to Canadian Copyright Basics for Writers, Performers, Musicians and Artists*.

<u>Dispute Resolution</u>

Regardless of which agreement you work under, it is important to include a dispute resolution clause. A sample clause is found at section 52 of the CTA. Section 52 encourages the parties to resolve a dispute directly. However, it also provides a joint standing committee to help resolve disputes that parties cannot address adequately on their own. If you are not a member of Equity, you may want to include a clause in your contract that specifies that a hearing with an independent adjudicator shall resolve any disputes that arise and cannot be properly addressed by the parties. In the event that a hearing is necessary, the adjudicator's decision may be final, or you may specify that the decision can be appealed.

<u>How can a project be cancelled?</u>

For employment contracts which do not specify a cancellation procedure, the *New Brunswick Employment Standards Act* governs the termination of a period of employment. Generally, the requirement is either two or four weeks' notice by the employer depending on the previous period of employment of the employee. Employees have no such minimum requirements in New Brunswick. Again, given that employment relationships are somewhat unique within the performing arts, provisions dealing with such issues are recommended.

For a standard CTA Engagement Contract, a minimum notice period of two (2) weeks is required by either party (the artist or the theatre) who seeks to cancel a contract. This notice needs to be delivered in writing and a copy of the notice must be filed with Equity. The only exception to this rule occurs when the two (2) week notice period would begin within a period less than two (2) weeks before or ending two (2) weeks after the date of the first public performance. Within this period of time, notice may not be given by the artist to the theatre. Additionally, when giving notice, the party issuing the notice will typically have to pay a "contractual fee" of no less than two (2) weeks (i.e. 2 weeks pay) to the party receiving notice. The "contractual fee" includes the payment the artist would receive from the theatre on a regular basis for the engagement specified in the contract.

Run-of-the-Play and Guaranteed Engagement Contracts may be cancelled at any time as long as both parties agree to the cancellation in writing and such agreement is filed with Equity. For Run-of-the-Play Contracts, if agreement cannot be reached and rehearsals have not begun, a

contract may nevertheless be cancelled if the party seeking cancellation immediately pays four (4) weeks contractual fee payments to the other party. If rehearsals have begun, either the contract must be fulfilled or the party seeking termination must provide at least one (1) week's notice and shall be liable for the contractual fee from the last date of service performed by the artist to the date of the end of the engagement. Under no circumstances can this period exceed twelve (12) months from the beginning of the Run-of-the-Play Contract.

If agreement cannot be reached for Guaranteed Engagement Contracts the contract must be fulfilled. Otherwise, the party seeking to terminate the contract must provide at least one (1) week's notice and be liable for the contractual fee from the last day of service of the artist to the date of the end of the engagement. Termination payments for both Run-of-the-Play and Guaranteed Engagement Contracts shall be based on a weekly or mutually agreed-upon schedule.

If a production is discontinued, abandoned, or postponed, an artist engaged in such a production shall be paid two (2) weeks' contractual fee in lieu of notice. Alternatively, if a production closes prior to the date stated in the engagement contract two (2) weeks notice must be posted and a copy filed with Equity.

In all the above mentioned circumstances, should an artist be obliged to end their CTA Engagement Contract as a result of an accident, illness or pregnancy, s/he will not be required to give notice and there will be no penalty payment. At the discretion of the theatre a doctor's certificate may be required.

If you would like information relating to a force majeure, refer to the Music section below.

These conditions typically apply to all members of Equity. The relevant sections relating to cancellation can be found in Section 38 ("Termination") of both the CTA and ITA.

Conclusion

When entering into a contract, you should always document the agreement in writing. Although contracts take many forms, depending on the particular wants and needs of the contracting parties, good templates to follow are the contractual forms set out in the CTA and ITA which govern the rights and obligations of members of Equity. These agreements, in general, set out the conditions under which a member can enter into an employment contract with a theatre and the form these contracts must take. These principles are, for the most part, equally applicable to artists of cinematography.

As stated within these Agreements, contracts will typically take the form of a standard Engagement, Run-of-the-Play, or Guaranteed Engagement contract. The terms and conditions of these contracts do in some cases significantly change; however, at a minimum they all include a pay agreement, a method and time of payment, specific work hours and relevant rest periods, duration of employment, description of the work, and a determination of relevant break and vacation periods. Although not all artists are members of Equity, it is strongly recommended that your written contract address these issues.

The federal *Copyright Act* extends a certain level of copyright protection to the performances of performers. This may entitle them to receive certain royalties throughout the course of their employment. It is generally prudent that you include these royalty allocations within the terms of your employment contract. As per the CTA and ITA, royalties are typically issued to the artist once they have taken part in an audio or visual recording and typically require payment of a minimum two-and-a-half percent (2-1/2%) royalty of the artist's contractual fee for each week the recording is used. Although not necessarily guaranteed by the *Copyright Act*, directors and choreographers may receive even larger royalties for longer durations depending on the nature of their agreement. If you are an artist of cinematography, you should exercise great caution when dealing with royalties and should ensure that any royalties you are seeking are clearly stipulated in your employment contracts. In most cases the collection of royalties is more common for members of Equity than for non-members.

In addition to general contractual clauses, whether you are an Equity or non-Equity artist, you may find certain clauses of a contract particularly important to you given your distinct profession. These may include work hours, travel, safety, type of work, licensing and dispute resolution. In addition to the CTA and ITA provisions, clauses such as these may also be regulated by the *Employment Standards Act*. You may wish to consult this Act before signing a contract.

Unless the particular employment contract says otherwise, the *Employment Standards Act* will also govern the terms of cancellation of a contract. Such cancellation typically requires a minimum notice period of two (2) weeks by the party who seeks to cancel the contract. Indeed, even the theatre agreements under Equity generally require such notice. Under certain circumstances, a cancellation may require the payment of a penalty for a set period of time. These notice periods and penalty fees will typically differ depending on the type of contract entered into. As a general rule, if you cancel a contract because of accident, illness or pregnancy, you will not be required to submit notice and not have to pay a penalty. However, at the discretion of the theatre, a doctor's certificate may be required.

Ultimately, all of these resources allow you to know your rights and responsibilities when entering into a contract. These will change depending on the nature of your relationship, your particular circumstances, and your location in relation to your employer. Getting as much information as possible before entering into a contract will prove invaluable to protecting your interests.

For more information on any of these topics you may refer to the following sources:

The EQUITYONLINE homepage: http://www.caea.com/EquityWeb/Default.aspx

The Canadian Theatre Agreement 2009-2012 (CTA):
http://www.caea.com/EquityWeb/EquityLibrary/Agreements/Theatre/CTA/eSearch.html

The ITA 2006-2009 (ITA):
http://www.caea.com/EquityWeb/EquityLibrary/Agreements/Theatre/ITA/eSearch.html

Dance: http://www.caea.com/EquityWeb/EquityLibrary/Agreements/Dance/DanceLibrary.aspx

http://www.caea.com/EquityWeb/EquityLibrary/Agreements/POLICIES/Dance/CanadianDancePolicy.pdf

Opera:
http://www.caea.com/EquityWeb/EquityLibrary/Agreements/Opera/OperaLibrary.aspx#COA

The Federal Copyright Act: http://laws.justice.gc.ca/en/C-42/FullText.html

The New Brunswick Employment Standards Act: http://www.gnb.ca/0062/acts/acts/e-07-2.htm

Additionally, if you are an artist of cinematography may also wish to consult the following sources:

The ACTRA National homepage: http://www.actra.ca/actra/control/nat_home?menu_id=1

The Actor's Fund of Canada homepage: http://www.actorsfund.ca/resource.php

The CFTPA homepage: http://www.cftpa.ca/newsroom/publications/

The CSC homepage: http://www.csc.ca/default_home.asp

The DGC homepage: http://www.dgc.ca/

Music

Generally, musicians who enter into contracts are performers, recording artists and composers. (For musical composition, please refer to the Literary Arts section above). Most of this section will affect performing musicians, some of it will affect recording artists and some of it will affect both.

In a musician's contract, it is important that some factors stay flexible and others be precise. If the Playhouse hires John Lennon, he may want a certain amount of freedom as to what he can play on stage but the contract may stipulate that to get paid; he has to play 'Let It Be'. Ultimately, negotiating a contract for a musician is a balancing act between flexibility and precise terms.

When entering into a contract, the other party has interests in making money off the musician and his/her product(s). It is important for musicians to do everything in their power to protect their interests. One may do this by negotiating terms and making sure they are crystal clear when written in the contract.

What should I include in the contract?

Names of all parties to the contract
Method of payment
Time of payment
To whom the payment must be made
Deposit(s)
Time, date, location, and length of the performance
What service(s) or product(s) are being exchanged and under what terms

Whose names should be in the contract?

The name(s) of the band or group, the individual musician(s), the manager(s) or agent(s), the venue(s) or signing companies, and any other names of parties to the contract should be included. The contract should be clear on who is agreeing to the terms. Is it the band as a whole or is it the individual members? This is relevant in considering what could happen if one band member breaches the contract. How will this affect the other members of the band?

Generally, a contract with a band or musical group will make the band responsible as a whole in fulfilling terms of a contract. Like all terms though, this may be negotiated. Band members may also contract among themselves but usually small local bands do not. Generally the more that is at stake, the more pressing it is that band members contract between themselves.

What products/services must I provide?

With regards to the musician's part of the contract, are you being paid to perform, to perform and sign autographs, to sell albums, or for something else? Clarify in the contract what you are being paid to do so you know what you have to do to get paid. With regards to the other party, is the venue providing a stage, security, a practice room, meals, or transportation of equipment? If it's not in the contract, you cannot expect to receive it.

What is expected in the performance?

The contract should include a detailed explanation of what is expected in the performance. Is it song and dance? Is it talking with the crowd? Do the musicians have to wear particular attire? Will the musician(s) be advertising during the performance? Will equipment be provided? Who will be responsible for lighting? Will security be provided? Do the musicians have to play certain songs? Will there be breaks? Anything expected in the performance should be included in the contract.

Time, date, location and length of performance

The clarity of these terms is essential to being able to carry out the terms of the contract. Make sure the contract is clear on how long the performance will be. Are you being paid for a two-hour performance? Does it include breaks? If you play longer than was specified in the contract, will you be paid more? Will you have to pay the venue more for its time? If you do not finish the performance, will you be paid a portion of what was agreed upon? Will you be paid at all? Does transportation and setting up count as part of the paid work? Again, all of this may be negotiated and these terms should be clearly written in a contract.

What happens if I forget to include terms about breaks?

Unless these terms are expressed in the contract, a court will turn to the *New Brunswick Employment Standards Act* to sort out any disputes. With regard to breaks, unless otherwise stipulated, musicians, like all other employees, are entitled to one thirty-minute break for every five hours of work. Everyone employed in New Brunswick is entitled to 24 consecutive hours of rest. New Brunswick employees are entitled to their regular hourly wages plus half for any hours worked beyond 44.

It is especially important for musicians to address issues about the time, date, location and length of the performance because the *New Brunswick Employment Standards Act* is not very accommodating to this kind of work. Musicians are paid for projects, not by the hour. If a court did have to turn to the Act as a default, the minimum wage a musician would be paid would probably barely cover the costs associated with a performance. It is up to the contracting parties to sort out these issues. Ultimately, musicians should be aware that these terms are better off negotiated and in the contract than not.

How will I be paid?

There are four possible methods of payment:

Flat fee;
Percentage of ticket sales;
Guaranteed percentage of the gate or a flat fee (whichever is higher); and
Guaranteed percentage of ticket sales plus a guaranteed amount

While these are the most common methods of payment, other methods may be negotiated. Just be sure the method is clear. In addition to understanding how pay will be calculated, make sure you understand when you will be paid, under what conditions you will be paid, who will pay you and who among band members will receive payment. Make sure the contract is clear on these terms.

When will I be paid?

A musician may be paid before a performance, after a performance, after a certain number of CDs are sold, or at some other point. Payment may be divided up so a band or musician will receive a portion of the payment before the performance and the remainder after. Again, you may negotiate the terms. Make sure everything is clearly stated in the contract.

Who receives payment?

A contract should also be clear on who will actually be paid. Generally, one person is paid on behalf of the group, be it a band member or an agent or some other party.

How do royalties work?

Royalties will affect musicians selling albums. Royalties are calculated based on the price for which the recorded material is being sold. It is important to pay attention to the precise wording used in this part of the contract. Certain terms will be commonly used and they have a precise meaning.

The 'royalty base price' is the suggested retail price less taxes, duties, excises, tariffs, and the cost of the container/packaging.

The 'suggested retail list price' is the price you would pay in a store for the individual product. This is not the price you would necessarily pay if you bought the product in bulk.

The 'wholesale price' is the average price the production company receives from distributors. The wholesale price is usually calculated based on a certain time frame. For example, it could be calculated based on a three (3) month period. It is not going to be calculated based on every price the production company will ever receive for the product because it could be sold for decades.

All of these prices are subject to change and so is your royalty. Your royalty may be subject to the value of your product and the cost of producing it.

How do deposits work?

A deposit may help ensure that a term of a contract will be carried out. In the case of cancellation, the party who received a deposit will not have completely lost. A band or musician may have to make a deposit to use a venue. In the event that the band does not show up, it will not get the deposit back. The amount may be negotiated and whether or not someone may be reimbursed for a deposit may be negotiated.

Should I be concerned with insurance?

The main type of insurance musicians should be concerned with is insuring their equipment. Any property should be covered by property insurance and personal liability. As a precaution, you should double check before signing a contract.

What about the necessary permits?

Permits and licenses are usually provided by venue owners. If you are concerned about whether a venue has the necessary permits, verify before signing a contract.

What if a party had to cancel?

Typically, a cancellation provision is meant to protect all contracting parties. The cancellation provision should stipulate whether there will be a fee attached to a cancellation and how much it will be. Usually, there will be a certain time frame within which the parties may cancel to avoid penalties.

A *force majeure* clause is a common provision that allows parties to cancel or suspend the contract due to some critical unforeseeable event without penalties. If the clause stipulates that the contract will be suspended in this event, include the time frame for the suspension within the contract. This clause could also allow for termination of the contract in certain cases, and suspension in others. For example, if a band member dies, a contract may be terminated. If a family member of a band member dies, the band may have two years to fulfill its obligation(s) under the contract.

Conclusion

There are many factors for musicians to consider when negotiating a contract. It is easy to miss the opportunity to protect an interest. Before signing a contract, think about how you want a performance to proceed from start to finish, what you want it to look like, what you want it to sound like, what needs to happen before the performance and what needs to happen afterwards. This should help you decide what needs to be in the contract.

Visual Arts

I’ve completed a piece of art or collection of pieces. What do I do now?

First things first, you need to decide on your market. The kind of contract you will need will depend on whether you are selling your art directly to the consumer, selling your art through a gallery, or displaying your art for exhibition (but not for sale) in a public gallery.

I want to sell my art directly to the consumer or the dealer:

In this case, you’ll probably be engaged in an Outright Purchase and Sale contract. In this type of contract, the sale is essentially final in that the ownership of the artwork has been transferred from the artist to the purchaser. In most cases, these are pretty simple agreements. However, it is necessary to consider that the proper copyright terms have been established when making these contracts. Normally, the copyright should remain with the artist, unless there is cause for the owner of the piece or work to use copyright (for more information about copyright issues, see: Fredericton Arts Alliance’s copyright booklet: *Demystifying Copyright*.)

There are some extra considerations when these contracts are made between an artist and an art dealer. It is important to discuss the ‘end price’ of the piece to prevent the dealer from selling the piece to a third party at a much higher price than the artist was paid. The ‘end price’ also prevents the dealer from selling the piece at a much lower price which can be damaging to an artist’s reputation and future marketing opportunities.

It will also be necessary to outline the control over the exhibition of the artwork to limit how and when it will be displayed (e.g. whether it can be displayed in commercial galleries or in group exhibits). Some final considerations are: whether or not this dealer will be your sole and exclusive dealer in the area, whether you want to agree on the number of pieces or collections that you will create or sell to the dealer, and general copyright issues.

I want to sell my art through a Gallery:

In this case, the best contract would likely be a Consignment Contract. In this type of contract, the dealer functions as the artist’s agent for the purposes of selling the pieces or collections created by the artist. The artist retains the ownership of all of the pieces until the dealer sells them to a third party (unlike in the Outright Purchase and Sale Contract). The dealer, in turn, will receive a commission for his or her services.

The primary consideration in this type of contract is the rate of commission. The amount should be agreed on ahead of time and it will represent a percentage of the ultimate sale price. The amount can be contingent on how many pieces or collections are sold in a particular time frame (e.g. per year) or can be calculated per individual piece.

Another consideration under these contracts is the responsibility for the associated costs for things such as framing, insurance against damage and theft, publicity, catering at openings and other events, and invitations. It will also be important to consider, as in the Outright Purchase and Sale Contract, the degree of control you and/or the dealer has over the exhibition of the artwork; whether or not the dealer will be your sole and exclusive dealer in the area, whether you want to agree on the number of pieces or collections that the dealer will be responsible for selling on your behalf, and copyright. In terms of the exclusivity agreement, it will be important to determine whether or not this has an affect on your ability to make gifts of your art, or on your ability to make sales directly out of your studio (this concern can extend to the price at which you sell your work, in order to ensure that the dealer is not being undercut through the contractual requirement to sell your work at a higher price). A final consideration will be whether it will be necessary to include a terms of payment after sales provision which outlines a schedule for delivery and payment. This will be necessary to establish in circumstances where payment and delivery are not simultaneous.

I want to display my art in a public gallery. What kind of agreement do I need for that?

For displaying or showcasing art in a public gallery, you will require an exhibition agreement. In these agreements, the terms will outline how and when the works will be displayed within the gallery as well as both artist and gallery duties. Some of the duties may include whether or not the artist will be required to appear and participate in any sort of presentation in conjunction with the exhibition, or if the gallery is under any obligation to undertake any particular promotional campaigns. Exhibition fees to be paid to the artist are becoming more and more common in Canada, and as such, it is important that the contract is clear as to whether or not this will apply. It is important that the contract deals with any insurance requirements to cover any losses or damages due to accidents, vandalism or theft. In larger galleries, it is likely that they will have insurance coverage that will automatically extend to the work being displayed, but it is important that this responsibility is clearly expressed in the contract when the work is being displayed in galleries. The contract should be explicit with regard to which party is responsible for insuring the work during the transportation to and from the gallery.

What kind of agreement will I need if I'm commissioned to create a piece or collection?

You will need to create an agreement with the consumer who has commissioned your work. It should include a time schedule which will outline the expected 'time-to-completion'. It is to your advantage to make sure this schedule is reasonable and has enough flexibility built into it to accommodate unforeseen delays. Inserting a clause into the agreement stating that the schedule can be altered by a written agreement ensures this flexibility. This time schedule may be linked to the payment method. It is important to determine whether payments will be made in intervals on a regular basis, or as a lump sum. Whatever method is decided upon, it is important to make sure that it is clearly outlined in the agreement to the satisfaction of both parties.

If the commission is for a public work, it is important to deal with the future maintenance of the work. While clauses to this effect can be difficult to frame, it is important to try to include agreements about who will be responsible for and how to perform the maintenance. Linked to this is the consideration and agreement about which party will bear the risk of loss or damage to

the work. Related clauses to add for public commissioned works are those referring to the time limit for the display of the piece and the responsibility of the public body to consult the artist before any action is made to remove the piece.

In the case of commissioned work, it is important that the contract deal with the copyright issues for the piece or collection that is commissioned. If the copyright is to be transferred from the artist to the person commissioning the work, it is important that the contract includes an explicit explanation of that transfer. This will help establish the duties and permissible conduct of both parties in relation to the piece or collection in question.

Finally, it is important to deal with the insurance coverage and requirements. It might be in the best interest of the artist to include a provision in the contract that requires the public body that is commissioning the work to insure the work against any losses or damages due to accident, theft, vandalism or weathering, if the work is installed outdoors.

In the case of an artist-in-residence program, what kind of contract should I enter into?

The kind of contract to enter into in the case of an artist-in-residence program will reflect the kind of project that the artist is working towards, such as a piece of performance art or a solo exhibition]. In those circumstances, the contract will most likely follow the format of commission contracts (see above). Additional provisions in the contract will deal with the number of hours that the artist must spend on the site per day, the length of the residency program, and whether or not the artist is responsible for taking on any additional duties. If the residency is for an out-of-town artist, the contract will include provisions for accommodation, stipend and other necessary costs associated with travel.

Sources:

The Art World: Law, Business & Practice in Canada by Aaron Milrad

Model Agreements for Visual & Media Artists in Ontario by CARFAC Ontario