

# *An Introduction to the Deaccession and Disposal of Collections*

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## The Long View of Collections

There is an implicit assumption (usually enshrined in the museum's Acquisition Policy) that gifts to or purchases for a museum's accessioned collection<sup>3</sup> are never done with the idea of their eventual disposal. **We collect objects because they are important and therefore deserve to be held in public trust.** At one time this was viewed as acquisition in perpetuity, however, constrained resources (staff, time and money) and a growing view that for collections to thrive they need to be treated as organic entities has altered this view. We need to deaccession and dispose of artifacts from our accessioned collections to allow for better examples to enter the collection, and to remove objects falling outside our core collecting mandate allowing us to re-direct resources towards the remaining works. Carefully used, deaccessioning and disposal can make our collections, and therefore our museums, stronger.

Because of this long-term view of collection development, each acquisition must be carefully examined and scrutinized before a final decision to acquire is made: to ensure that the object is in authentic and in good condition; that there are no faults in its legal title; and that we have adequate resources to ensure its preservation. It is once an object passes all these trials that it undergoes **accessioning**. In other words, formally accepted and entered into the register of the accessioned collection.

## Definitions

Deaccessioning is this process in reverse. **Deaccessioning** is the formal process of removing an artifact from your accessioned collection. The process may end here with the object still in the possession of the museum, but no longer part of the accessioned collection. (For example, it may be transferred to the Education department for use in hands-on programming, or to Exhibit Design to become a prop in a period room display.)

Or the process may be taken further; the museum may seek to transfer possession and ownership of the artifact to another person<sup>4</sup>. **Disposal** is the formal and permanent

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<sup>3</sup> For reasons that will become clear I have used "Accessioned Collection" throughout this paper in place of "Permanent Collection". Once we admit the utility and necessity of deaccessioning and disposal for all its reasons and in all its forms, nothing in the collection is "permanent".

<sup>4</sup> Under law only a 'person' can own a 'chattel' (any personal property other than land or a building). There are two classes of 'people': natural persons – like you, living, breathing, above the age of majority; and, artificial persons – entities created by law, like corporations, unions and municipalities.

transfer of legal title from your institution to another institution, group or individual either by way of gift, exchange or sale. In certain rare cases disposal may be by purposeful destruction of the artifact.

### Due Diligence

Deaccessioning and disposal should never be entered into without due diligence. **Due diligence** refers to the policy and procedures followed to ensure that an appropriate level of care is taken during the formulation and execution of a decision. These are designed to leave a trail of verifiable and accurate legal evidence to document each step of the process.

Here is an important point to consider regarding the standard of diligence you will be held to. Ordinarily, you will be subject to the "**prudent man rule**" (essentially this is "do unto others as you would have them do unto you"), however, the standard of care required from individuals with expert knowledge can be set much higher (a.k.a. "you should have known better").

### Relationship to Other Ownership Issues

Deaccessioning and disposal relate to several other collections management policies and procedures involving the transfer of legal title and physical possession of an artifact. After acquisition and accessioning the most common of these are related to loans and losses. In the case of **loans**, we assume stewardship obligations and physical possession of the artifact, but legal title to the artifact does not transfer between parties. And when an artifact is **lost or stolen** physical possession of the artifact changes but generally speaking the legal title does not. (Hence the legal axiom that you cannot acquire good title to an artifact from a thief – the **Nemo Dat** rule.<sup>5</sup>)

### Policy Guidelines

A Deaccession and Disposal Policy should be part of every museum's comprehensive Collections Management Policy.<sup>6</sup> In framing your policy several areas should be addressed. From the examples listed you will observe that there is not a single best structure for laying out a policy statement. Some can be as short as a single page, while others may go on at length. Which approach you choose will largely depend on

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<sup>5</sup> *Nemo dat quod non habet* roughly translates to 'he who has not cannot give'. This applies to acquisitions and deaccession/disposal – you can only give as much good legal title as you possess.

<sup>6</sup> Here are several different examples of collection management and collection development policies from organizations in Ontario: City of Toronto (<http://www.toronto.ca/legdocs/2002/agendas/council/cc020618/edp6rpt/cl010.pdf>, accessed 13 May 2013); Town of Fort Francis (<http://fort-frances.com/sites/default/files/reports-policies/community-services/Museum%20Collections%20Management.pdf>, accessed 13 May 2013); Orillia Museum of Art and History (<http://www.orilliamuseum.org/pdf/OMAH-OperationsManualUpdatedDec14-11.pdf>, accessed 13 May 2013); Bell Homestead National Historic Site (<http://www.brantford.ca/pdfs/5.5.6%20Bell%20Homestead%20Policies.pdf>, accessed 13 May 2013); University of Toronto Art Collection Policy (<http://www.utac.utoronto.ca/getting-involved/donatingart/university-of-toronto-art-collection-policy>, accessed 13 May 2013).

the complexity of both the collection and the organization that oversees it; however, they all share certain core attributes. These include reference to the decision-making authority, criteria for deaccessioning, method of disposal procedural guidelines, documentation and use of proceeds.

### Decision Making Authority (Governance)<sup>7</sup>

Who has the legal capacity to authorize deaccession and disposals will be defined in the legislation, by-law, act of incorporation or whatever other legal instrument created the museum.<sup>8</sup> This authority will normally be vested in a board of directors, municipal or band council, or the officers of a corporation.<sup>9</sup>

The initial recommendation to deaccession normally comes from the curator. However, recommendations based on a defect in legal title could originate with a registrar/collection manager, or a conservator if the object is a physical hazard.<sup>10</sup> In all cases recommendations should be reviewed in consultation with all collection staff, and ultimately approved or refused by the museum's senior management.

The ultimate decision to approve or deny a specific deaccession and disposal recommendation will be based on the museum's governance model. As noted above, this has important policy implications because governance varies from museum to museum, thus one size definitely does not fit all.<sup>11</sup>

Because an artifact is a financial asset (i.e. it has a fair market value) removal of that asset should be approved and recorded as any other transfer of an asset. The practical implication of this is you could create a system of delegated authority allowing for deaccessioning of low value objects by curatorial recommendation with approval falling to the museum director, but for high value or controversial works a much higher level

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<sup>7</sup> For a broader discussion see Susan Chen (2009) "Art Deaccession and the Limits of Fiduciary Duty", *Art, Antiquity and Law* 14(2): 103-142

(<http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1001&context=studentpapers>, accessed 10 May 2013) and Patty Gerstenblith (2003) "Acquisition and Deacquisition of Museum Collections and the Fiduciary Obligations of Museums to the Public", *Cardozo Journal of International and Comparative Law* 11: 409-465.

<sup>8</sup> For an example see *McMichael Canadian Art Collection Act, RSO 1990, c M.4*, (<http://canlii.ca/t/51v5v>, accessed 10 May 2013) and the discussion in Kenneth Cavalier. (2002) "One Premier's Obsession? The McMichael Legislation in Ontario." *International Journal of Cultural Property* 11(1): 65-79.

<sup>9</sup> All these entities are 'artificial' persons.

<sup>10</sup> These titles may vary but by 'curator' I mean the person who possesses subject area expertise of the proposed deaccession allowing them to make an informed recommendation based on the merits of the object and the best needs of the remaining collection. By 'registrar/collection manager' the person who oversees the legal, financial and location aspects of the collection. By 'conservator' the person who oversees the physical well being of the collection.

<sup>11</sup> It gets much more complex in a municipal environment where ultimate authority is vested in municipal council through "Spheres of Jurisdiction" Section 11(3)(5) of the Municipal Act (Municipal Act, 2001, SO 2001, c 25, <http://canlii.ca/t/520fb>, retrieved on 2013-05-10) then authority is further delegated, or not, under specific by-laws.

authority would be required.<sup>12</sup> Assuming, of course, authority has been properly delegated from the organization's fiduciary/governance body.<sup>13</sup>

A relatively recent development relating deaccessioning to governance has to do with museum/galleries that are part of larger institutions, like libraries, hospitals, universities and municipalities, whose primary purpose may not be operating a museum. In these cases we may have competing (and possibly conflicting) trust interests between the parent body and the museum operation.<sup>14</sup>

### Criteria for Deaccessioning<sup>15</sup>

The Glenbow Museum used six criteria to undertake their deaccessioning process in 1992:

- **Representativeness and completeness** of the artifact;
- **Relevance** to the institutions collecting mandate or national importance;
- Completeness of **documentation and provenance**;
- **Condition** of the artifact;
- **Effective use** in current and future exhibitions, research, interpretation and public use;
- **Ethical issues** related to ethnographic collections and human remains;<sup>16</sup>

I will add three more:

- **Restrictions on legal title.** A common issue in Canada are artifacts certified as being of national importance under the Cultural Property Review Board that must be held for 10 years, unless transferred to another Category "A" institution.<sup>17</sup> A less common issue are restrictions placed on legal title at the time of acquisition.<sup>18</sup>

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<sup>12</sup> This is analogous to the Canadian Revenue Agency's guidelines for internal appraisals where a curator may appraise objects valued under \$1000, but an arms-length appraisal is required for valuations above this. See <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/csp/csp-f07-eng.html>, accessed 16 May 2013.

<sup>13</sup> See the Royal Ontario Museum's Collections Policy for an example of tiered decision making based on FMV, [http://www.rom.on.ca/sites/default/files/imce/collections\\_policy\\_reviewed\\_nov\\_2012\\_0.pdf](http://www.rom.on.ca/sites/default/files/imce/collections_policy_reviewed_nov_2012_0.pdf), accessed 9 May 2013.

<sup>14</sup> For an interesting discussion see Linda Sugin. "Lifting The Museum's Burden from the Backs of the University: Should the Art Collection Be Treated as Part of the Endowment?" *New England Law Review* 44: 541-79. (<http://www.nesl.edu/userfiles/file/lawreview/Vol44/3/Sugin.pdf>, accessed 10 May 2013)

<sup>15</sup> Deaccessioning is often part of a larger collection review process. University College London (England) has placed a PDF of their toolkit on-line at <http://www.ucl.ac.uk/museums/research/review>, accessed 10 May 2013.

<sup>16</sup> Patricia Ainslie, "The Deaccessioning Strategy at Glenbow." *Museum Management and Curatorship* 15:1 (1996) pp. 21-35

<sup>17</sup> According to the CCPERB's website they are currently considering extending this to a 25-year term (<http://www.pch.gc.ca/pgm/bcm-mcp/pol/abc-ccp-2010-eng.cfm#a16>, accessed 10 May 2013).

<sup>18</sup> For example when the Brant Museum and Archives (operated by the Brant Historical Society) wanted to deaccession the Harrison Scheak collection in 2009 they were required to offer it to the City of Toronto because of a 'right of first refusal' clause in the donation agreement (see Heather Ibbotson. "Legacy Lost". *Brantford Expositor* [newspaper], 25 July 2009, <http://www.brantfordexpositor.ca/2009/07/25/legacy-lost>, accessed 10 May 2013).

- **Lack of legal title.** This frequently occurs when an individual or their estate can prove superior legal title to the museum. This is commonly in connection to 'permanent' or 'long-term' loans<sup>19</sup>, or where someone 'donated' a work they did not own<sup>20</sup>, or where a 'temporary deposit' was never either picked up by the owner or a gift agreement signed.<sup>21</sup> Often this lack of title, or flaws in a museum's proof of title, are discovered only during the due diligence process associated with deaccessioning.
- Correcting **old accessioning mistakes.** Too often display cases, reproductions, exhibition props, photostats, library books, etc. have picked up accession numbers relating to enthusiastic, but uninformed, cataloguers' activities.<sup>22</sup> Since these were never meant to be part of the accessioned collection, they should be removed.

### Method of Disposal

Disposal may be by way of exchange, sale or gift. In rare instances, disposal may be by destruction or long-term loan. Once the decision to deaccession an artifact and permanently remove it from the collection is made, the method of disposal chosen should:

- Adhere to all the requirements of all **applicable laws**<sup>23</sup>;
- Be in the **best interest** of the artifact, your institution and the public;
- Take into account any **restrictions** placed on the original gift or purchase;
- Be in accordance with professional **ethical standards**;
- Make every effort to **keep the artifact in the public domain**. Artifacts with significant national, regional or local importance should be directed towards appropriate public institutions;
- The receiving institution must be able to **adequately care** for the artifact.
- Public sales should be **open and transparent**, through reputable auction houses or dealers;
- **Criteria for destruction** should be clearly defined in your policy. A staff members and representative of the governing board should **witness the** permanent destruction of any artifact;

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<sup>19</sup> A loan is a loan, forever. It does not magically transform into gift with the passage of time.

<sup>20</sup> It could be a stolen object, or the 'donor' lacked the legal authority to make the gift on behalf of the true owner. In either of these cases the museum may have no other option than to return the object to its true owner, their agent or law enforcement.

<sup>21</sup> Unless there is language in the 'temporary deposit agreement' either showing intent to gift, or forcing a transfer of title after a period of 'abandonment', this becomes a loan to the museum.

<sup>22</sup> In Canada, these often relate to grant-funded inventory sweeps done by high school students in the 1970s, where they were told "anything without an accession number call 1975.2.xxxx".

<sup>23</sup> **Please note** that many of the papers and guides referenced here are come from the US or the UK and are for general information and guidance. The legal specifics for each of the jurisdictions differ from Canada and Ontario. Make sure you are in compliance with the laws the impact you and your museum.

- Occasionally, it may be in the best interest of the artifact to place it on **longer-term loan** to determine the standard of care and financial viability of the receiving institution;
- According to Canada Revenue Agency, artifacts donated to museums that are registered charities **cannot be returned to their original donors**, even if a tax receipt has not been issued.<sup>24</sup>

### Procedural Guidelines

The exact process followed in your deaccessioning and disposal procedure will vary according to your governing authority, stated policy objectives, staffing and funding model, and the legal specifics of the original donation. However, below is a general framework for moving the process forward adapted from the Museum Documentation Association's SPECTRUM Guidelines.<sup>25</sup>

- Ensure that your museum has **valid legal title** to the object before commencing with deaccession or disposal. Never assume legal title is held unless it is proven. If legal title is unclear, or if restrictions appear to be in place, it may be prudent to seek professional legal advice before proceeding with the deaccession.
- **Fully document** the artifact to be deaccessioned, including updated condition and valuation information. Ensure that the object's catalogue record is up to date. Obtain and retain an image of the object.
- Obtain and record the **formal approval** for deaccession from the collection's governing authority (or designate), according to your institution's policy.
- Obtain formal agreement the **method of disposal** from the collection's governing authority (or designate), according to your institution's policy. Obtain a formal written agreement with the recipient of the object documenting the transfer and any restrictions on the legal title.
- Provide the recipient with a copy of **all** documentation of the artifact, including a description of the object and its provenance, and the documentation authorising the deaccession and disposal.
- Destroy objects only in **exceptional circumstances**, such as where objects are a hazard to health or the collection. The destruction must be witnessed officially by the governing body's designate.
- When the object formally ceases to be part of the collection **annotate the accessions register** and all other documentation. A complete set of all documentation from the process should be kept with the artifact's catalogue records.

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<sup>24</sup> **Please note** that returning a gift to a donor is different than returning an object to its owner where the museum holds no legal title (i.e. no gift has occurred). For a discussion of the former see Carl Juneau, (1996), "Deaccessioning and the Income Tax Act", *MUSE* 13(4): 59

<sup>25</sup> See Spectrum 4.0 is available for license holders at <http://www.collectionslink.org.uk/programmes/spectrum>, (accessed 10 May 2013), but the Spectrum 3.2 "Deaccession and Disposal Procedure" can be found at [http://www.collectionslink.org.uk/media/com\\_form2content/documents/c1/a829/f6/Deaccession\\_and\\_disposal\\_3.2.pdf](http://www.collectionslink.org.uk/media/com_form2content/documents/c1/a829/f6/Deaccession_and_disposal_3.2.pdf) (accessed 10 May 2013).

- If the artifact is going to public auction remove all accession numbers and institutional identification tags/labels. If it is remaining in the public sector discuss this with the recipient institution, they may wish to retain these as part of the object's history.
- Carefully document the receipt and **subsequent use of all funds** from the sale of deaccessioned artifacts.

## Documentation

The documentation generated by the deaccession and disposal process will vary according to your policy and the requirements of your governing authority. At a minimum the documentation, **whatever its format**, should:

- Ensure that the decision to dispose is carefully considered and that all relevant evidence and opinions are sought according to your museum's policy and statutory legal requirements.
- Ensure that your museum makes every effort to determine and document legal title to the artifacts involved and that any relevant special conditions attached to the original acquisition are adhered to.
- Ensure that the decision to dispose does not rest with an individual and the action is formally approved by a governing body (or designate).
- Ensure that legal title to the artifact is transferred to any receiving institution. Including a clear description of any and all restrictions on title
- Ensure that objects disposed of are recorded as such on the accessions register, and that a full description of the artifact and decision is added to the permanent catalogue record.
- Ensure that all proceeds from the sale of deaccessioned artifacts are fully documented and used only as permitted under law and according to your institution's policy.

## Use of Proceeds

- Generally speaking, any proceeds raised from sales from the collection should go back into the collection, either as new acquisitions or for direct care and support costs of the collection.<sup>26</sup>
- The Canadian Institute of Chartered Accountants guidelines require that not-for-profit organizations disclose the proceeds from sales from their collection in their annual statements, and how these proceeds were used to acquire new items for the collection or in direct collection care costs.<sup>27</sup>

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<sup>26</sup> See Canadian Museums Association Ethical Guidelines (1999), Section E.4.3 "Use of Funds Generated by Disposals", [www.museums.ca/filestorage/ethicsguidelines.pdf](http://www.museums.ca/filestorage/ethicsguidelines.pdf), accessed 16 May 2013.

<sup>27</sup> See "Collections Held by Not-for-profit Organizations", CICA Handbook, Section 4440 and <http://www.htkconsulting.com/HTKNotes/PMR/COLLECTIONS%20HELD%20BY%20NPO%20-%20NPO.pdf>, accessed 10 May 2013.

- If funds raised from deaccessioning an artifact are used to purchase another artifact, the original donor should be credited where possible. ("This acquisition was made possible through ...")
- Deaccessioning for financially motivated reasons is generally unacceptable. However, in financially dire and exceptional circumstances it could be undertaken. UK Museum Association's Code of Ethics ("Ethics of Disposal", section 6.13 to 6.15) outlines an ethical process.<sup>28 29</sup>

### Special Cases

There will be special classes of artifacts that will always pose more difficult issues in deaccessioning and disposal due to the object itself and/or the legal and ethical issues associated with them. Here are a few examples:

- Firearms
- Explosives and ammunition
- Hazardous and toxic materials
- Endangered/Extinct Species
- Human remains
- Archaeological specimens
- Found in Inventory objects
- Repatriation

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<sup>28</sup> 6.13 Refuse to undertake disposal principally for financial reasons, except in exceptional circumstances as defined in 6.14.

Financially motivated disposal risks damaging public confidence in museums and the principle that collections should not normally be regarded as financially negotiable assets.

6.14 Consider financially motivated disposal only in exceptional circumstances and when it can be demonstrated that:

- It will significantly improve the long-term public benefit derived from the remaining collection
- It is not to generate short-term revenue (for example to meet a budget deficit)
- It is as a last resort after other sources of funding have been thoroughly explored
- Extensive prior consultation with sector bodies has been undertaken
- The item under consideration lies outside the museum's established core collection as defined in the collections policy.

6.15 Ring-fence any money raised as a result of disposal through sale, if this exceptional circumstance arises, solely and directly for the benefit of the museum's collection. Money raised must be restricted to the long-term sustainability, use and development of the collection. If in doubt about the proposed use of such restricted funds consult sector bodies.

(<http://www.museumassociation.org/ethics/10960>, accessed 13 May 2013)

<sup>29</sup> The Field Museum of Natural History has undertaken deaccessioning to raise funds to protect collections, and the staff who research and manage them, while dealing with a multi-million dollar budget deficit. See <http://www.npr.org/2013/05/06/180855132/cash-crunch-prompts-controversial-sales-at-chicagos-field-museum?ft=1&f=1001>, accessed 13 May 2013.

## Other Resources

Michelle Piazzai. (2012) *Stop Amassing Crusts and Stones: a quantitative enquiry into the practise of deaccessioning in Italian Museums*. Master's Thesis in Cultural Economics and Cultural Entrepreneurship, Erasmus University, Rotterdam ([thesis.eur.nl/pub/12775/Piazzai%20-%20Thesis%20final.pdf](http://thesis.eur.nl/pub/12775/Piazzai%20-%20Thesis%20final.pdf), accessed 10 May 2013)

Museums Association (2008) *Disposal Digest: an introduction for museums*. (8 p.) <http://www.museumsassociation.org/collections/disposal>, accessed 10 May 2013

Museums Association (2008) *Disposal Toolkit: guidelines for museums* (22 p.) <http://www.museumsassociation.org/collections/disposal>, accessed 10 May 2013

National Museum Directors Council (2003) *Too Much Stuff: disposal from museums*. (22 p.) [http://www.nationalmuseums.org.uk/media/documents/publications/too\\_much\\_stuff.pdf](http://www.nationalmuseums.org.uk/media/documents/publications/too_much_stuff.pdf), accessed 10 May 2013.

National Park Service (2000) *NPS Museum Handbook, Part II: Museum Records*, Chapter 6 "Deaccessioning", <http://www.nps.gov/museum/publications/MHII/mh2ch6.pdf>, accessed 10 May 2013