

EVERYTHING YOU'VE WANTED TO KNOW ABOUT INSURANCE (BUT WERE AFRAID TO ASK)

A Gathering by Neighbourhood Arts Ottawa held March 17, 2021 via Zoom

Neighbourhood Arts Ottawa is a community-engaged arts program by Arts Network Ottawa / Réseau des arts d'Ottawa and is made possible through the generous financial support of the Ontario Trillium Foundation and Ottawa Community Foundation.

Goal

Demystify insurance landscape and connect you with sympathetic folk who are available and curious to engage further and help in answering your questions.

Panelists

Debbie Orth: Partner, BOS Law: <https://www.boslaw.ca/> - Litigation Lawyer, works in the courtroom in the field of insurance law and risk management

Colette Mendenhall: President, ASSURART: <https://assurart.scassurance.com/> - Insurance Broker, to help understand insurance needs and what is available, as an intermediary step to connect you with the correct agency/provider

Claudia Salguero: Artist: <https://www.claudiasalguero.com/> - Community Engaged Artist, MASC artist with a lot of insurance experience as an artist

Related Terms

Risk Management: looking to the future to identify potential problems or issues that could arise and making sure you as the artist have plans and strategies in place to minimize the likelihood of these things happening and are protected should something happen

Common Law: law decided by court decisions

Occupiers Liability Act (Ontario): puts obligations on the owner of the property

Indemnity and Hold Harmless Clause: you could be asked to indemnify (pay) the party with whom you are doing business with should they be sued/charged for damages in a lawsuit due to your negligence

Third Party Liability: insurance coverage that will be paid out to a third party in the event you get sued

Face Page: first page of an insurance agreement, typically including the names of the insured parties

Exclusions: what will not be covered/insured through your policy

Do's and Don'ts of Insurance

Debby:

- **Identify what the risks are.**
 - Find someone who can assist you in managing risk before problems arise, it is very important to take this time at the beginning. You don't need to pay someone

- necessarily but there are people who can help you protect yourself.
- **Figure out which laws apply to your artistic practice.**
 - Ask yourself: in what province will these activities be taking place? What laws apply to your project? Laws differ from province to province, especially in Quebec.
 - Don't assume because you are creating a project in one province that the laws of the province apply. You could be writing and/or signing on to a contract that says the laws of Quebec apply, even though your practice is based in Ontario, meaning disputes would have to take place in the courts of Quebec.
- **When possible, put the terms of your agreement in writing.**
 - This helps give clarity and avoid future misunderstandings, should anything happen you can go back to this contract where it is all laid out, the contract also makes your needs very clear for an insurance broker.
- **You can negotiate the terms.**
 - If you are being handed a contract you can negotiate the terms, such as contracts with groups like the City of Ottawa, to best represent the specifics of your project.
- **Understand your risks in all stages of the process.**
 - Creating, transporting, displaying, etc. the piece of art, all of these bring very different risks, so ensure who you seek out help if needed to understand the roles of creating art and problems that could arise along the way.
 - Occupiers Liability Act (Ontario): puts obligations on the owner of the property.
Ex: if you want to hold a pottery workshop in your home there is legal obligations that fall upon you for the people entering your premises.
- **Ensure you have safeguards in place.**
 - Even with all these legal obligations defined under the contract, if someone gets hurt, everyone involved can be sued whether you're liable or not so make sure you have safeguards in place.
- **Know your obligations.**
 - Often you will see in contracts an indemnity and hold harmless clause meaning the party you are doing the contract with expects you to indemnify them/pay them if they are charged for damages in a lawsuit.
 - Ex: as result of a mistake, you made art falls off the wall and hurts someone, if owner gets sued and they have indemnity and save harmless clause in the contract they can say you have to provide and pay the damages, or any costs incurred because they have been sued.
 - So, when you get these contracts it's important to know "what are my responsibilities of what I have to cover if something goes wrong?"
- **Meet all the insurance requirements in your contract.**
 - Contracts will often require you add them as an additional insured. Meaning, for example if as part of a project you're displaying art through a facility, that contract may say you as the artist have to get insurance and name the facility as additional

insured so that if something goes wrong with the project, the facility also receives coverage for these incidents under your policy.

- Contracts will often require you to have a set amount in third party liability meaning its insurance coverage that will be paid out to a third party in the event you get sued (such as injury), and you must insure you have that set amount.
- If you don't meet the terms of the contract the facility can sue you.
- **Companies you hire/are working with need insurance too.**
 - When you look at the scope of the project, are you sub-contracting any of the work? Are there liabilities (legal responsibilities) you hold for these sub-contractors? In the transportation, and installation? Usually this is not in the artist's expertise, so ensure the company you hire to install your work, or that will be handling your work in any way, also has the right insurance in place.
- **Use contract language verbatim.**
 - If you're hiring a company to install a piece of artwork or installation and you have a contract of terms you need to meet, write those same terms into their contract to ensure you have transferred responsibility by transferring language verbatim to their contract and you are named as additional insured in their policy, so you are no longer required to pay.
- **Understand what a policy provides for you.**
 - You may get sued even if not liable. The policy you have ensure that your insurance provider has a duty to defend you, so they must pay for the lawyer whether you are at fault or not.
 - While there is a duty to defend there is also duty to indemnify and pay if they have to.
- **You have the duty to report as soon as possible.**
 - If something happens, report it to your insurance broker/provider as soon as possible or you could be found in breach of your contract, allowing them to deny you coverage.
- **Tell your insurance broker/agent everything.**
 - Do not hold it back because you think you will have to pay more because if they find out after they will no longer have to protect you, put it in writing if you can.
 - If there are changes after you put policy in place, make sure you advise your insurer because that may change risk and policy.

Working with an Insurance Broker and coverages to ask for.

Collette:

- Insurance allows you to transfer the risk to someone else.

- For public arts projects, most contracts are standard in Quebec, and in Ontario they are fairly standard by city.
- Make sure you **ask for a quote** which will cover general liability which is coverage for damage to the property and a third person party (unassociated with you) ex: someone walks by and is hurt by the art in any way (it falls, etc.)
- Ensure the artwork is insured at all phases of the process (purchasing material → installation).
- Other coverages you should ask for includes:
 - Faulty workmanship: Cost to redo a job that was badly done. This only comes into effect after artwork is approved, ownership is transferred over to the facility and there is a clause in your contract saying you are responsible for physical damage that is a result of faulty (bad) workmanship (ex: gold leafing starts peeling off after 3 months, this insurance coverage would cover the cost of that work needing to be redone.)
 - Life insurance is sometimes asked for in case you pass away, the group contracting you for the work would be paid or reimbursed whatever amount they gave you. This is typically for larger scale project. However, the coverage is often found to be insufficient, so instead often it's suggested you name someone else who can finish the project for you.
 - Media liability: Covers claims brought by third parties relating to copyright infringement (you reproduce, distribute, perform, or display a protected work without permission), plagiarism, invasion of privacy, etc. Any risks specific to media/digital content, etc.
 - Coverage during installation, ex: artists benches were stolen during installation and they were responsible to finish this work. Luckily, insurance covered the cost of materials and time etc.
- What is the cost (premium) to insure third party liability? Depends on what maximum coverage is required (usually maximums range between 1-5 million), the total budget for the project + the scope of your project activities.
- **Top Tip:** Write it down, share contracts with your insurance broker before you sign them! They will be able to let you if contract requirements are feasible/insurable at an affordable rate (especially if doing business in outside of Canada.)
- Most policies cover Canada/USA but if you're doing work in Europe make sure your coverage is worldwide.
 - Ex: tiles come from Japan and could potentially be broken on route, and you are liable for insuring their safe transportation. You need to let your insurance broker know because most policy apply to activities happening in Canada and USA only. A specific coverage may be required.

Experiences of an artist and advice

Claudia:

- Every project is different and will bring new questions.
- Make sure your insurance broker knows everything, write it down.
- Works with many different people and places, of all ages and trying various skills and every situation is different.
- Ex: Had received a grant from ANO to install this mural and decided to put it up in a City of Ottawa building, and even though it was a donation, had to pay 5 years' worth of insurance on the piece.
- Requirements will depend on who you are working with. When working and doing workshops with schools and facilities offering programming there are sometimes options for you to be covered under their insurance. However, you should get that in writing and understand what their policies cover and what they do not.
- Consider insurance related to persons, vs materials and making sure there is also insurance covering the owner of the space.
- Singers/Performers: you may not have to worry about a contract for audience protection (typically covered by the locations insurance). However, you need to consider insurance for circumstances such as what if you get sick? You still have to pay musicians, and there is a refunding of tickets too.
- If you are holding a concert outside, make sure you call your insurance broker and tell them exactly everything about the situation.

Q&A

- Mutual indemnity clause?
 - Duty to indemnify may go both ways but ensure you know your obligations. A lawsuit often throws in allegations that are often everything but the kitchen sink, this may be between companies however in the lawsuit if the plaintiff adds anything that is not provided by the facility you could be found at fault.
- Should every project have mutual indemnity clauses?
 - Depends on each project and it is typically hard to find mutual indemnity rather than hold harmless indemnity where the artist is liable to pay.
- Does general liability cover all locations?
 - Typically, these policies cover the project anywhere in Canada, unless you specify the work will be taking place elsewhere. If you have a studio some policies work differently. Ex: if you have a studio space with 6 people doing all different mediums the insurance company will never want to cover outside the studio because activities will be so varied so they will likely only be willing to cover on location. Such as if a ceramist oven overheats and catches fire that would be covered, but if they have a show outside and someone trips, falls, and sues, it's outside of the premise so they

won't be covered. It all comes down to what are you doing? If you're out and about going to different spaces, you will need your own insurance for yourself (not shared) to cover you.

- Studio coverage?
 - Different from project insurance!
 - Sit down and think of risks and where these risks can happen and write them down, getting a good idea of what to ask for from your insurance broker.
- If you're working with multiple parties and companies at different stages of your project and they all have their own insurance, do you still need your own?
 - It depends on the risks. You can have yourself added as an additional insured and ask for a copy of the face page and the policy to actually see if you are included.
 - Check that the policy covers all your risks: it may not, it may only cover you day of event, but you have many other risks.
 - If you are being added under a policy, you should get a copy of the face page and make sure your name is listed as an additional insured. If you're being included on a policy, there is no reason they shouldn't give you a copy, so you can then take that policy to the insurance broker and they can help identify any gaps where you aren't covered.
 - If you are also named as the additional insured through the facility, that will lower your premium because there is less risk to the insurance company.
 - Make sure you also understand the exclusions under the policy.
 - Take it to an expert to analyze it and they can help you find those holes where you may not be covered.
- Exclusions?
 - This is what will not be covered/insured (and can often be quite extensive). Don't be afraid to ask questions. Brokers exist to help guide you through the process.
- How do you find an insurance broker who is comfortable with "weird things"?
 - The insurance broker is the intermediary between the insurance company and the artist so you should not be scared to share any information with an insurance broker because they are there to help you find the right insurance provider. Being forthcoming is necessary to finding the right insurance.
 - Find a broker that specializes in arts and entertainment if you can. They will know which insurance agencies are more likely to cover you and can help make the case on your behalf.
 - Go step by step with your insurance broker and they will advise you on changes or adjustments that can make your project safer and therefore more insurable/affordable. Often, these types of changes/adjustments can be quite minimal.
- Has Covid-19 given new meaning to general liability in a digital space?

- Because of Covid and so many claims be made due to events/project being cancelled, etc. many insurance companies have left the arts sector. In-person art projects, especially live performance art projects are considered higher risk.
- When moving online, the risks are different. Whereas a general liability policy may not apply, media liability would (ex: sharing content online increases the risk of potential copyright infringement, plagiarism, etc.)
- How often can you change your policy?
 - As often as you want, it can also be hard to find an insurance company to cover too many different things.