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## Confused update: Court ruling undermines artists' rights

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# Confused Update

## *Court Ruling Undermines Artists' Rights*

SARA DIAMOND

VANCOUVER — On February 21, 1984, the Vancouver Art Gallery cancelled Vancouver artist Paul Wong's video installation, *Confused, Sexual Views*. It had been slated to open three days later. Then director, Luke Rombout contended the work was "not art" because of its use of interview formats. Behind the decision was the fear on the part of the director that a new clientele, attracted by the VAG's move into a renovated courthouse, would be made uncomfortable by the frank discussion of sexuality in the tapes.

The cancellation left both artist and art community up in arms. Not only was the conservatism of the gallery's fears and the obvious censorship disturbing, but fundamental issues of contract rights for artists were at stake. Wong contended that the gallery had made a formal verbal contract with him, one that did not mention the possibility of the show being cancelled. The curator had been familiar with the theme and approach to the work for many months. Yet the "employer" (the gallery) cancelled the exhibition without compunction. The anger generated a number of protests by local artists, including a picket of the VAG. Funds were raised and the artist was encouraged to take the institution to court.

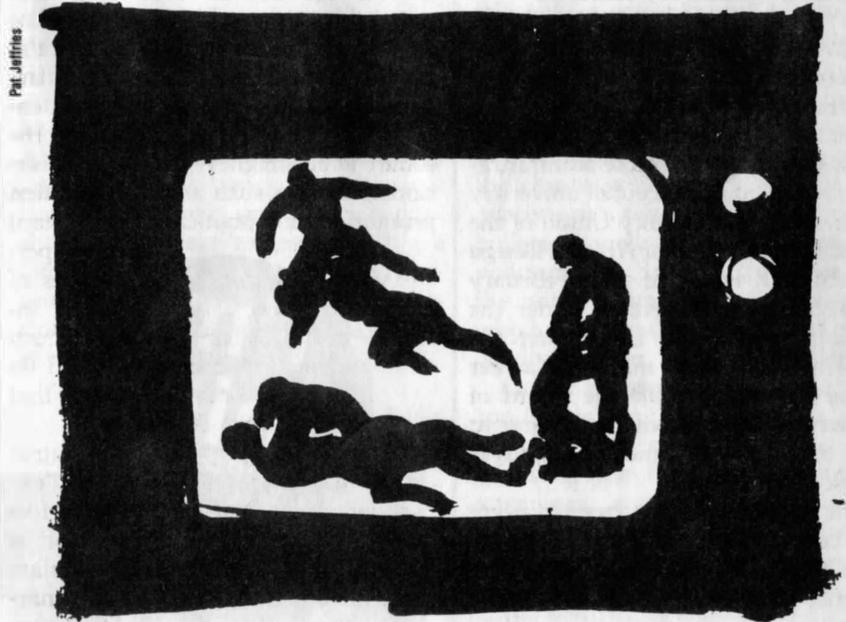
Paul Wong versus Luke Rombout and the VAG was finally heard almost two and one-half years later. The ensuing years have been filled with stress for the artist — the case entails a possible financial risk on his part and he remains notorious. Invitations from public galleries are not flooding his mailbox.

Lawyer Lorne Maclean's case rested on the artist's demands for personal

damages and the exhibition of his work. Charges were filed against both the VAG as an institution and its former director Luke Rombout. Maclean demonstrated that the gallery was familiar with the work; the destructive quality of the precipitous, eleventh hour cancellation; that Wong has been personally and professionally damaged as a result of the show being jettisoned. The case was fought and decided within the terrain of contract law and did not directly address the issues of institutional cen-

lawyer, claimed that the tapes were not ready until eight days before the show for screening; therefore a contract was not in effect. She insisted that the cancellation was of benefit to the artist's career because it placed Wong and his work in the public eye.

Despite the expert testimony of A.A. Bronson (General Idea, Art Metropole) and Renee Baert (curator) who argued the legitimacy of the work and the impossibility of the VAG's procedures on the matter; the fact that the National Gallery had



sorship. Although the gallery director used the excuse that the work "was not art" for cancelling the show, the court felt that the issue of deciding whether the work was in fact art or "not art" was not in its jurisdiction.

The gallery's case rested on the right of the VAG to see the total and final work before proceeding with the exhibition. Wendy Baker, the gallery's

recently acquired the work as "art"; the evidence supporting Wong's dramatic loss of income and commissions because of the cancellation and court case, and the testimony from then-curator Joanne Birnie-Danzker that she fought for the installation to proceed, Justice Reginald Gibbs dismissed charges against both Rombout and the gallery. In addition, he informed

the gallery that Wong was liable for court costs.

Gibbs concluded that there was a contract but decided that the gallery could choose to cancel that contract on the basis of "taste, sensibility, suitability and acceptability." In making this decision, he neatly nullified artists' contract rights across the country. Director Birnie-Danzker responded with relief that stronger contracts would inhibit gallery administrators. The case was precedent setting in backing up the rights of institutions to cancel shows at will.

At present Wong has filed for appeal in order to meet his consistent desire for compensation and a showing of his work. He may yet be hit with not only his, but also the gallery's, court costs.

This unending saga is further proof that strong artists' organizations, not just individual heroic efforts, are needed if artists' rights are to be respected. The constraints placed by court procedures and available laws, and the delay involved in getting a case into court mean that legal action is a last recourse. A union contract might work more effectively.

Without question, Paul Wong deserves a hand from all of us, for the outcome of the case and the appeal affect us directly. The very fact of the court battle indicates that artists are no longer willing to turn the other cheek when slapped by public institutions.

Sara Diamond

February, filed his report on July 18, placing the College in a legal lockout/strike position on August 1.

The faculty at the College remains united in its determination to achieve its original objectives. FUNSCAD is particularly proud of the fact that it has 100% membership — all members of the bargaining unit have voluntarily joined the Union. FUNSCAD has further demonstrated its commitment to the collective bargaining process by filing an application to bring sessionals and part-time faculty into the Union. The Nova Scotia Labour Board has given the Union direction for achieving this goal and further applications will be filed in the near future.

FUNSCAD had received a great deal of support from CAUT as well as invaluable assistance from the Nova Scotia Confederation of University Faculty Associations. In response to the worsening situation at the College, the trustees of the CAUT Defense Fund have voted to provide FUNSCAD with benefits in the event of a lockout. In addition, the Fund has agreed to provide loans to FUNSCAD should the employer cut off premiums on its existing benefit package. To underline their concern, the trustees have moved the next meeting of the Defence Fund from Montreal to Halifax. Other Faculty Associations across Canada have recognized what's at stake at the Art College bargaining table and have rallied to FUNSCAD's support. Letters of concern may be sent to Mr. David Dibblee, Chair of the Board of Governors, 5163 Duke Street, Halifax, Nova Scotia B3J 3J6, (copies to the Union).

Unfortunately, the College is also in the midst of contentious debates on academic issues. In February of 1985 a petition signed by faculty and students was submitted to the Dean requesting an emergency faculty meeting to deal with what many felt to be a crisis of confidence in the administrative decision making process with regard to academic matters. Still another controversy emerged after the Dean of the College resigned to become President of the Emily Carr College of Art in Vancouver. Despite the fact that the College Policy book details specific instructions for filling senior administrative vacancies, the President and the Executive of the Board unilaterally restructured the administration and appointed new Deans without even the

## ***FUNSCAD Union Battles Board***

The following report originally appeared in the *CAUT Bulletin*, (paper of the Canadian Association of University Teachers).

**HALIFAX** — The current labour relations crisis at the Nova Scotia College of Art and Design (NSCAD) reveals an ironic disparity between the school's avant-garde image and the administration's reactionary concept of university governance. The Faculty Union of the Nova Scotia College of Art and Design (FUNSCAD) was formed in February of 1985 and was certified under the Nova Scotia Trade Union Act the following May. After more than a year at the bargaining table the Board of Governors is still unwilling to agree to even the most fundamental employee rights.

The Union's goal has been to negotiate terms and conditions of employment in line with those at other universities in Nova Scotia and across Canada. Their priorities have been Academic Freedom, Grievance Procedures, Job Security, Consultation on Academic Matters, Hiring and Dismissal Procedures, etc. — principles that other institutions take for granted as being fundamental to quality university level education. Unfortunately, the College's progressive image masks some very primitive ideas on labour relations. For example, the Board has

refused to accept the idea of continuing appointments as an alternative to the current system of fixed contracts renewable at the sole discretion of the employer. The Board also claims the authority to be the final judge of the competence and qualifications of faculty and refuses any grievance procedure which might review Board decisions on issues such as reappointment promotion or sabbaticals.



At the end of June, the Board presented the Union with its final contract offer and broke off negotiations. To the Union's amazement, significant agreements that were secured during the months of negotiations in the spring were reneged on in the Board's final package. On July 17, the membership unanimously turned down the Board's proposals. William McCallum, a provincial conciliator who has been at the negotiating table since