

## Within our Rights?

**Appropriation Art in the Exhibition *Michèle Provost: Everything must go / Liquidation totale***

Catherine Sinclair

This curatorial reflection examines a particular case in which a contemporary artist engaged in appropriative practice in the service of institutional critique. This involved the appropriation of another artist's work in order to achieve the desired point. This is not a unique scenario. Precedents for such practice exist historically as far back as Marcel Duchamp's use of Leonardo Da Vinci's *Mona Lisa* to create *L.H.O.O.Q* (1919), and as recently Jon Rafman's use of Picasso's *Desmoiselles d'Avignon* to create *Brand New Paint Job: Picasso Everybody Loves Raymond Set* (2014). Artist-to-artist appropriation has held a prevalent place within twentieth and twenty-first century art to date. The institutional support for such a critique is complex, in that the art gallery purports to uphold the rights of all artists as well as their estates. Therefore, in the case that the proposed subject estate did not agree to the use, the artist and its supporting institution were thrust into a mire of questions about what risks to take and what boundaries were within our rights to push.

The case study in question is the exhibition *Michèle Provost: Everything must go / Liquidation totale* held at the Ottawa Art Gallery (OAG) from October 11, 2018 to March 17, 2019. This paper discusses the difficulties the artist and the institution encountered in following through with the exhibition's original premise in light of the wishes of the estate of its proposed subject. It outlines the original proposal by contrast with the outcome, and argues that though the situation offered a fruitful forum for dialogue on the boundaries and limits of artist's rights under the Copyright Act and the Privacy Act, the strictures within which both the artist and the Gallery had to operate ultimately stifled freedom of artistic expression. The frustration encountered by the artist in not being able to present her full vision, as well as the Gallery in not being able to support it, reveals that legislation which affects appropriation artists in Canada has the need for revision and growth.

In 2013, Gatineau, Quebec-based artist Michèle Provost approached me at the OAG proposing to use the legacy, personal and aesthetic, of Canadian art history icon Jean-Paul Riopelle as a case-study to critique the potential for commercialization, and therefore devaluation, of artists' work with the art-world's market-driven economy. The original proposal for the exhibition, *The Riopelle Home Collection*, centered on this figure purposefully due to his status, in her view, as one of Canada's only art stars. Riopelle was known and admired in both Canada and France at his peak in the mid-twentieth century. Provost has a history of appropriative practice, having produced more than one show by creatively applying her meticulous hand-made aesthetic to unpack the hierarchies prevalent in the current art world. Always tongue-in-cheek, previous bodies of work, such as *Art Now* and *Selling Out*, addressed the yearly "Art Now" publication and the marketability of personality of known art world figures such as Cindy Sherman, respectively.

This proposal of engaging in art history was in line with my own curatorial interests, as I had created multiple projects in which contemporary artists worked with the legacies of historical artists to well-received ends. The exhibition approached finally in 2018, and Provost, supported by a project grant from the Canada Council for the Arts, had developed a full body of work. Ironically meant to furnish Ikea-like showrooms of a teenager's bedroom and a living room, the items, from curtains, posters, a desk chair, stock-frames, stickers, a couch, love seat, coffee tables and more, riffed off the aesthetic of Riopelle's painting *Pavane* (1954), on permanent display at the National Gallery of Canada. They also drew on Riopelle's irresistible personality traits, such as his stylish smoking of Gauloise Caporal cigarettes and collection of Bugatti cars, as well as the careful entombment of such characteristics within both Canadian and French art history books. Provost's labour-intensive DIY method of creating these objects visibly countered the mass-production normally used to produce such items. She proposed to set up mock-showrooms, as well as piles of items in duplicate akin to those found in IKEA's marketplace section. The installation questioned how personality factors into art-stardom; what happens to the value of art object once they are commodified; and do artists themselves play into the creation of the cult of personality to augment the value of their practice?

The artist and I discussed the question of whether to approach the estate of Jean-Paul Riopelle from the outset. Provost firmly held that as an appropriation artist working with aspects of a public figure's creation and public personae, she did not need to ask permission. My spidey-sense, largely centered on the exhibition's singular naming of the historical figure in its title and not-so-subtle reference to one artwork, led me to continue to bring it up. We debated and reasoned: would not Fair Dealing, under the Canadian Copyright Act, allow for such use for the purposes of critique, satire and education – clearly a goal of her exhibition? If writers can publish essays on the topic of a public figure without asking permission, how is an exhibition not a visual essay? Following a presentation of the proposed exhibition in January 2018, the OAG's Acquisitions and Programming Committee recommended that we alert the Estate to the plan. By June, I sent a letter to the Estate and a flurry of communication began between their appointed agency, SODRAC, and myself. Despite repeated attempts on the artist and my part to explain the nuance of the project, with three months to spare, the Estate stated their wish that the name "Riopelle," nor his image, be used in association with the exhibition. Interestingly, while the Estate had cited Privacy legislation in their requests, they did not comment on the use of Riopelle's artwork despite having seen images of the work in all its forms. After legal consultation, the OAG felt we could not proceed with the exhibition as planned given these strictures, and I had to toggle between the wishes of the Estate, supporting the vision of the contemporary artist, and responsible stewardship of the institution's programming. Always creative, Provost rallied and proposed the alternative exhibition, which we ultimately put on view: *Everything must go / Liquidation totale*. We all agreed to proceed with this new version of the exhibition, to adhere to the Estate's exact requests, yet to fully support a transparent alluding to the original subject of Jean-Paul Riopelle as well as a public discussion of the grey areas of copyright law and appropriation art that this case unleashed.

With the exhibition looming in October of 2018, this new format required Provost to work tirelessly to "liquidate" her work in three months: altering and censoring every branded item

that had had the name “Riopelle” emblazoned on it with 70% off stickers and other strategies. She also replaced his face in numerous instances with a bird icon drawn from a 1970s lithograph. In calling it a liquidation, she added conceptual layer of the new version meant that the artist herself was part of the exhibition. As I wrote in my essay, “accentuating the contrast evident between the fame achieved by the icon, and Provost’s lesser-known artistic status; a reality anthropologically interesting to the artist in relation to her meticulous studies of social hierarchy in the art world” (Sinclair, 9-10). At the OAG, visitors were intrigued to uncover the subtle/not-so-subtle allusion to “the Icon” in my curatorial writing, and clear in the aesthetic of *Pavane*, still visible everywhere in the objects on display. The subject of the exhibition became appropriation art itself.

Though Provost had reluctantly proposed this altered version of the exhibition, in the end she produced a powerful installation of work that participates in the history of performances of “institutional critique” in the same vein as New York-based artists such as Daniel Buren and Hans Haacke – both whom critiqued the very institutions in which they were showing. How is an appropriation artist to balance the creation of art that criticizes the “art world” of which galleries, including the OAG, are part of, while seeking to exhibit in them? Performance artist and cultural critic Andrea Fraser argued that there is sometimes a censorship or self-censorship in which artists engage which perpetuate the conditions of the art world:

Every time we speak of the "institution" as other than "us," we disavow our role in the creation and perpetuation of its conditions. We avoid responsibility for, or action against, the everyday complicities, compromises, and censorship —above all, self-censorship — which are driven by our own interests in the field and the benefits we derive from it (Fraser).

Unlike the negative slant that Fraser puts on this compromise, Provost and the OAG achieved a new commentary by working together to create and support, respectively, another way. Through *Everything must go / Liquidation totale*, Provost turned what could have been an exhibition’s cancellation, into a exposé of an important and often overlooked quagmire of questions related to privacy, ownership and copyright that are pertinent to today’s world of social media where access is considered a right. She exposed important questions, including: can the appropriation artist find a supportive voice within the institution? Can institutional critique find a place of display within an institution, or does the irony of this render it ineffective? Does appropriation art require permission, or does this negate its effect entirely? Is there a potential position in between?

The OAG held a public airing of the situation’s complexity at the end of January 2019, feeling that we could not be the only artists and institutions mired in such complicated questions of copyright and appropriation. In an “in conversation” between myself, the artist, and copyright lawyer and contemporary art collector Glen Bloom, Provost spoke honestly about her experience of having to respond to the wishes of a subject’s Estate, which she cited as a first for her throughout her appropriative practice. Consequently, she felt that much of her initial intention had been removed from the final iteration, including aspects such as a contrast she

wished to make between Riopelle as a young and old artist, only illustratable through use of his image. She also felt that the overall potency of her critique which purposefully centered on one iconic figure, was diminished.

In their request to the OAG that Riopelle's name and image not be associated with Provost's exhibition, the Estate had cited the Right of Personality. Were they right? At our request during this panel, Glen Bloom provided meticulous guidance through this, as well as Fair Dealing under the Copyright Act, which had been discussed at length between the artist and myself. Right of Personality, or Privacy law, Bloom explained, is provincially-legislated in Canada; Quebec has the strictest in the country, while Ontario uses "cause-of-action" if it is felt that a personality has been co-opted and commercialized in some way. As Provost created the work in Quebec, the Riopelle Estate and SODRAC are in Quebec, and the OAG's location is in Ontario, Bloom concluded that the Gallery was correct in trying to avoid these risks which could have come from either province (Bloom).

What of Fair Dealing under the Copyright Act? While this was not cited by the Estate for the use of *Pavane* in Provost's work, Bloom concluded that in his opinion, we would have had a good argument for proceeding with the work under Fair Dealing if it had been. Unlike Fair Use in the United States which is much broader, allowing for a wide variety of appropriative work if it is "transformative," Fair Dealing in Canada is applied under narrower strictures. It is applicable if an appropriation is: a) used for the purpose of research, private study, parody or satire;<sup>1</sup> and b) considered "fair," taking into account such factors as purpose, character, amount.<sup>2</sup> Bloom argued he felt Provost's original proposal would have been considered "parody" in that it took existing work, *Pavane*, and created something substantially different from it, while enlisting humour to point the finger at outside structures, in this case, the potential commercial power of the art star. Secondly, he felt the work could have been argued to be "fair," therefore satisfying the two criteria under which it would have been allowed under Fair Dealing. Bloom indicated that Fair Dealing is an area of Canadian law that is still lacking clarity, despite several substantial court case rulings in recent years. Yet he concluded that while ultimately Provost's work could be argued to fall within this, the OAG could also have been at risk in proceeding with the exhibition against the wishes of the Estate.

I articulated my belief in the strength of the new conceptual layers added to Provost's critique. Though not what the artist intended, it manifested in the end as a layered and honest commentary on the complexities of presenting appropriation art itself. Furthermore, it posed

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<sup>1</sup> Copyright Act, section 29: Fair dealing for the purpose of research, private study, education, parody or satire does not infringe copyright (Bloom, slide presentation).

<sup>2</sup> Bloom cited conditions taken into account when determining the "Fairness Factors": 1) the purpose of the dealing (parody, satire, etc.); 2) the character of the dealing (single work, not widely distributed); 3) the amount of the dealing (reproduced in part or whole) and the importance of the work (of origin); 4) the alternatives to the dealing (could an alternative choice of origin work have been used?); 5) the nature of the work (of origin) (well-known and in the public eye); and 6) the effect of the dealing on the work (of origin) (could the use harm the work of origin in any way). (Bloom, slide presentation)

the importantly self-reflective question galleries should ask, of where does the artist “rank” amongst the pressures and directions in which an institution is pulled?

Artist-to-artist appropriation practices engenders particular challenges for the institution. The goal of the OAG, and other contemporary art galleries, is to support the best of current, critical practice, yet we also have relationships to art historical estates and the law. The Copyright Act and Privacy Act laws are set out to protect the rights of the individual – including artist’s estates – yet they are difficult to interpret and can present roadblocks to artistic vision, as occurred in this case. There is much precedence for other artists appropriating art works rights in the name of art. Perhaps it is time to open up the allowances of such laws. At the moment, these laws present grey areas, and cast questions about what the responsibilities are in regards to appropriation for both artist and curator. In the end, did the OAG fail this artist? Was the artist unrealistic in her expectations of institutional support considering the nature of the project? What I know is that in the end, the exhibition provided a successful exposé on the complex territory of appropriation for visitors and audiences. If contemporary art is uncomfortable, then it is doing its job. In this case, neither the artist nor the institution found themselves in a comfortable place. Is it not in these challenging places that we find the most growth in understanding?

## References

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## Short Author’s Biography

Catherine Sinclair is Senior Curator at the Ottawa Art Gallery (OAG). She has curated over forty exhibitions including *We’ll all become stories: A Survey of Art in the Ottawa-Gatineau Region* (2018, co-curated) and *Alma: The Life and Art of Alma Duncan (1917-2004)* (2014-16). She has published in the *Journal of Curatorial Studies* (2018, co-author) and is a recipient of the Association of Art Museum Curators’ (AAMC) Foundation Engagement Program for International Curators (2017).

**Abstract**

Gatineau-based artist Michèle Provost's proposed an installation that would appropriate the legacy of Jean-Paul Riopelle as a critique of the potential for the commercialization of artists' work. The Estate did not allow his name and image to be used, through an incitement of the Privacy Act. An entirely new exhibition *Everything must go / Liquidation totale* was ultimately held at the Ottawa Art Gallery in the fall of 2018. Though the situation offered a fruitful forum for dialogue on the boundaries of artists' rights under the Copyright Act and the Privacy Act, the strictures within which both the artist and the Gallery had to operate ultimately stifled freedom of artistic expression.

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