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Bad Faith In Copyright Bid

A Crown agency, the [National Gallery of Canada](#), has been cited for bad faith in a copyright dispute. The Supreme Court determined management acted improperly when it sought out a legal opinion that it did not have to bargain around mandatory minimum fees for using existing artworks.

The gallery had for years negotiated the fees with artists' societies. In a unanimous 7-0 decision justices concluded the gallery did not deal fairly with copyright owners.

"The made up their mind fairly quickly," said Christopher Rootham, partner with [Nelligan O'Brien Payne LLP](#) in Ottawa; "It turned out to be a fairly straightforward case for them".

The labour group [Canadian Artists Representation/le Front des artistes Canadiens](#) and its francophone counterpart, [Le Regroupement des artistes en art visuel du Québec](#), opened first-ever contract talks with the gallery in 2003. Artists attempted to negotiate a fee schedule including minimum copyright royalties and lecture fees.

The gallery agreed to contract minimum fees and then changed its mind. In a statement management argued that unions had no "collective mandate to deal with copyright"; and that the point of negotiations was to fix a fee schedule for exhibitions with a "first-ever collective agreement for the visual arts between a federal producer and Canadian visual artists".

A federal panel, the Canadian Artists and Producers Professional Relations Tribunal, had found the gallery acted in bad faith when it reversed its bargaining position after four years. The tribunal ruling was overturned in Federal Court, prompting the final appeal to the Supreme Court.

"The Court characterized this as setting a minimum wage that galleries are going to pay," said Rootham. Justices ruled that establishing minimum fees for use of existing works does not affect any rights conferred on copyright holders. The decision written by Justice Marshall Rothstein also held that fee agreements can include existing works.

Canadian Artists Representation in a commentary on the case noted issues with the gallery dated from 1967, when management asked permission from artists to reproduce works without pay for Centennial exhibitions. Artist and filmmaker [Jack Chambers](#) led copyright holders in refusing the gallery terms, leading to creation of the union in 1968.

Under the *Copyright Act* artists are entitled to payment whenever their work is “presented at a public exhibition for a purpose other than sale or hire”.

By Dale Smith 🍷🍷