

The Board of Governors on April 17, 2009 approved the recommendations embodied in this report.

April 6, 2009

To: CNEA Executive Committee & Board of Directors
The Board of Governors of Exhibition Place

From: David Bednar Dianne Young
General Manager/CNEA Chief Executive Officer

Subject: **CNEA Haines Mural Agreement**

Summary:

The Board of Governors and the CNEA Board of Directors have entered into successive agreements for the care and control of the Haines Mural and the Garden of the Greek Gods Statues which are assets owned by the CNEA and located on the Exhibition Place grounds.

At its meetings of May/June 2008, both Boards approved of a three-year Memorandum of Understanding which included a provision for the Board of Governors to purchase the Haines Mural and the Garden of the Greek Gods statues through the payment to the CNEA Foundation of \$90,000 for 2008, \$90,000 in 2009 and \$100,000 in 2010 provided there is a consolidated operating surplus in those years. Given there is a surplus in 2008, the \$90,000 was paid out to the CNEA Foundation for the year ending 2008 as a first instalment of the purchase price for the Haines Mural of \$150,000.

This report recommends the terms for a three-year lease agreement between the CNEA Board of Directors and the Board of Governors for the loan of eight Haines Murals which terms and conditions provides for an early termination of this lease if the Board of Governors pays the total fair market value of \$150,000 to the CNEA Foundation at the end of 2009.

Recommendation:

It is recommended that the Board of Directors (CNEA) and the Board of Governors (BOG) approve of entering into an agreement for three years (2009 to 2011) for the loan of eight Haines Murals (the "Murals") to be displayed in the Direct Energy Centre on the terms and conditions set out in this report, and such other terms and conditions satisfactory to the Chief Executive Officer, CNEA General Manager and City Solicitor.

Financial Impact:

There is no financial impact as the terms and conditions proposed are the same as in the previous lease agreement.

Decision History:

At its meetings of November/December 2006, both Boards approved a three-year agreement with respect to the loan of eight Haines Murals that are currently displayed in the Direct Energy Centre which agreement expires on March 31, 2009.

At its meetings of May/June 2008, both Boards approved of a three-year Memorandum of Understanding which included a provision for the Board of Governors to purchase the Haines Mural and the Garden of the Greek Gods statues through the payment to the CNEA Foundation of \$90,000 for 2008, \$90,000 in 2009 and \$100,000 in 2010 provided there is a consolidated operating surplus in those years.

At its meeting of March 26, 2009, the CNEA Board of Directors approved of entering into this agreement with the Board of Governors.

Issue Background:

The Haines Murals were commissioned by the CNEA for installation around the base of the dome in the Government Building (now Medieval Times). Frederick Haines and his students from the Ontario College of Art completed the eight Murals, also known collectively as the "Settlement of Canada," in 1929. The Murals hung in that building until 1996 when they were removed and restored by Fine Art Conservation and Restoration (cost of \$41,700 borne by the NTC Project budget) and re-installed in 1997 in their current home, the Galleria of the Direct Energy Centre. A recent valuation for fair market value for these artefacts was completed in April 2008 and has valued them at \$150,000.

Comments:

This report is recommending an agreement between the CNEA and BOG for loan of these Murals in the Direct Energy Centre, generally on the same terms and conditions which are as follows:

- (a) Term: 3 years commencing April 1, 2009 subject to early termination should the Board purchase the Haines Murals at a cost of \$150,000 during the Term of the Agreement.
- (b) Ownership of the Murals: The ownership of the Murals shall remain with the CNEA.
- (c) Use by CNEA: If the CNEA requests the use of the Murals at any time during the Term, the Murals will be removed from and returned to the Direct Energy Centre at the cost and expense of the CNEA.
- (d) Insurance: The BOG will provide necessary insurance coverage for the Murals at all times.
- (e) Cost of Maintenance: The BOG will maintain the Murals at the Board's expense at an appropriate level of maintenance, as determined by the Conservator chosen by the Association, acting reasonably.
- (f) Standard of Care: The BOG will take all reasonable precautions as indicated by the Conservator: (i) to ensure that the Murals are protected from interference from the public; (ii) to protect the Murals from extreme variances in temperature; and, (iii) to protect the Murals from damage from fire and water including moving the Murals to protect them from fire and water. To regularly inspect the Murals for signs of deterioration and/or damage and to immediately inform the CNEA if any such signs are detected.
- (g) Relocating the Murals: If the Murals are moved at the request of the BOG they will be moved and replaced at the cost and expense of the BOG under the supervision of the Conservator chosen by the CNEA.
- (h) Inspection by CNEA: The BOG, at all reasonable times, will allow representatives of the CNEA, at its own expense, access to the Direct Energy Centre in order to inspect the Murals.
- (i) Other Terms and Conditions as are satisfactory to the City Solicitor, Chief Executive Officer and General Manager, CNEA.