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Comparative Legal Perspectives on Cultural Land Trusts for Urban Spaces of Culture, Community, and Art: A Tool for Counteracting Displacement

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ABSTRACT

As cities redevelop and previously less desirable or marginalized portions of the city space are “retaken” by a city, areas that have provided affordable performance, rehearsal, and live/work space for the arts and culture sector are becoming increasingly less available for these uses. Focusing predominantly on the Canadian Civil Law and Common Law context with passing reference to other jurisdictions such as the US, Scotland, and the UK, this article explores techniques for managing the increased pressure on and increasingly rapid displacement of spaces of arts, culture, and community cultural wealth that is taking place in cities. To this end, in assessing newly adopted municipal and provincial cultural strategies that are intended to amplify and promote these same spaces that are being displaced as well as even more recent COVID-19 recovery plans for art and culture in cities, this article will narrow in on the potential application of the community-led cultural land trust structure.

Keywords: Land Trusts, Property Law, Cultural Heritage Law, Comparative Law, Urban Law, Urban Redevelopment, Cities, Culture, Displacement

Il presente contributo è stato sottoposto a referaggio anonimo

Comparative Legal Perspectives on Cultural Land Trusts for Urban Spaces of Culture, Community, and Art: A Tool for Counteracting Displacement

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1. Introduction

As cities redevelop and previously less desirable or marginalized portions of the city space are “retaken” by a city, areas that have provided affordable performance, rehearsal, and live/work space for the arts and culture sector are becoming increasingly less available for these uses. Focusing predominantly on the Canadian Civil Law and Common Law context with passing reference to other jurisdictions such as the US, Scotland, and the UK, this article explores techniques for managing the increased pressure on and increasingly rapid displacement of spaces of arts, culture, and community cultural wealth that is taking place in cities. To this end, in assessing newly adopted municipal and provincial cultural strategies that are intended to amplify and promote these same spaces that are being displaced as well as even more recent COVID-19 recovery plans for art and culture in cities, this article will narrow in on the potential application of the community-led cultural land trust structure.

Urban processes such as “renovictions”, or “demovictions” in cities lead to the unwilling displacement of tenants due to a large-scale renovation, or demolition and replacement, that are theoretically permitted through, for example, provincial (Canadian) residential tenancy acts. Here, culture land trusts draw on the community land trust and community-led ownership structure with the goal of preserving affordable access to land and space for arts and culture in the city. As a means of resisting

displacement processes, the goals of developing a cultural land trust structure is for the long-term security of tenure in a neighbourhood alongside cultural equity and sustained cultural employment where spaces of arts and culture are priced out of a burgeoning neighbourhood or post-industrializing city space despite their community and cultural value.

In Canada, a number of community land trust models exist, such as Toronto's Parkdale Neighbourhood Land Trust, the proposed Hogan's Alley Land Trust in Vancouver, or, even more specifically in relation to cultural land trusts, the Vancouver organization 221A is in the process of investigating the merits of this structure for application to the local arts and culture community. In terms of broader application, however, distinct from the common law trust that is present in other Canadian provinces, under Quebec civil law, there is no direct equivalent to the common law trust. As such, turning to Articles 1260-1298 in Book 4, Title 6, Chapter 2 of the Civil Code of Quebec, this article will also describe the trust (or, "fiducie") as it is structured in Quebec civil law.

Drawing on the Vancouver, Canada context, this article will also explore the interest that cities are beginning to show in the cultural land trust structure as a tool to address the increased pressure on and increasingly rapid displacement of spaces of arts, culture, and community cultural by drawing on Vancouver's recently adopted ten-year culture plan "Culture|Shift – Blanketing the City in Arts and Culture" which prioritizes a "No Net Loss, Plus!" approach to preserving existing spaces of art and culture including studios, music hubs, and affordable housing for artists.⁽¹⁾ Vancouver's new cultural plan provides an interesting example of a city's nascent interest in the cultural land trust as a tool in potentially addressing the widespread displacement of spaces of arts and culture within a city that figures consistently near the top of worldwide city livability rankings,⁽²⁾ and which identifies as the home to the highest concentration of artists out of Canada's major cities.⁽³⁾

To supplement the Canadian context and Vancouver's interest in the cultural land trust as a tool for achieving a "No Net Loss, Plus" goal for arts and culture spaces, this article will also delve into a number of examples of nascent cultural land trusts that exist in various forms in a number of cities around the world—many of them in the US—with some more well-established than others and which take on a number of legal forms,

⁽¹⁾ City of Vancouver, "Culture|Shift – Blanketing the City in Arts & Culture – Vancouver Culture Plan 2019-2029" (2019), online (pdf): City of Vancouver <vancouver.ca> [City of Vancouver, "Culture Plan"].

⁽²⁾ See, e.g., Economist Intelligence Unit, "The Global Liveability Index 2019", The Economist (2019), online: <www.eiu.com/public/topical_report.aspx?campaignid=liveability2019>.

⁽³⁾ City of Vancouver, "Making Space for Arts and Culture – Draft Vancouver Cultural Infrastructure Plan" (3 September 2019), online (pdf): *City of Vancouver* <vancouver.ca> at 6 [City of Vancouver, "Cultural Infrastructure Plan"]. See also Kelly Hill (Hill Strategies Research Inc), "Mapping Artists and Cultural Workers in Canada's Large Cities" (2010) (prepared for the City of Vancouver, the City of Calgary, the City of Toronto, the City of Ottawa and the Ville de Montréal).

such as, charitable non-profit organizations, CO-OPs, charitable companies, holding companies, a non-profit arts property developers. The potential role cities and government can have in forming and sustaining a land trust will be touched on alongside the connection between employing cultural land trusts and their potential for an increase in local citizen and community participation in shaping existing and future urban spaces of art, culture, and community that bring meaning to life in the city.⁽⁴⁾

2. The importance of urban spaces of art, community, culture and performance

Where the arts, music, and culture provide a site for social cohesion,⁽⁵⁾ the physical space for these to flourish are vital for equitable, vibrant cities, and important physical assets to consider in the design of law and policy for the management, growth, and preservation of community and cultural space within a city. Attached to the availability and sustainability of space for music, art, and culture is the physical space needed by those involved in the creation of and active engagement with music, art, and community cultural space in cities. Nonetheless, the life and sustainability of these kinds of spaces in a city continues to be challenged by processes such as rapid urbanization, ongoing post-industrial redevelopment pressures, mixed-use rezoning of formerly marginal or unwanted zones of a city.

2.1. International guiding frameworks for sustainable urban development

While the diversity of cultural practices, interests, and cultural community groups proliferate within urban space, when the physical space needed for these practices, interests and groups their attached spaces, their coexistence can clash once superimposed within the city in terms of use-interests and value-interests, spatiotemporality, and so on.⁽⁶⁾ The management of this reality in the urban

⁽⁴⁾ See also Sara Ross, "Buen Vivir and Subaltern Cosmopolitan Legality in Urban Cultural Governance and Redevelopment Frameworks: The Equitable Right to Diverse Iterations of Culture in the City and a New Urban Legal Anthropological Approach" (2015) 5:1 City University of Hong Kong Law Review 55 [Ross, "Buen Vivir"]; Stephanie Allen, *Fight the Power: Redressing Displacement and Building a Just City for Black Lives in Vancouver* (Master of Urban Studies, Okanagan College, 2002) at 51, 60-63, 76 [unpublished].

⁽⁵⁾ Sound Diplomacy, "Music Cities Resilience Handbook" (2020). See especially *ibid* at 6.

⁽⁶⁾ See generally Sara Ross, "Making a Music City: The Commodification of Culture in Toronto's Urban Redevelopment, Tensions between Use-Value and Exchange-Value, and the Counterproductive Treatment of Alternative Cultures within Municipal Legal Frameworks" (2017) 27 Journal of Law and Social Policy 126 [Ross, "Making a Music City"]; Laam Hae, *The Gentrification of Nightlife and the Right to the City: Regulating Spaces of Social Dancing in New York* (New York: Routledge, 2012); John R Logan & Harvey L Molotch, *Urban Fortunes: The Political Economy of Place* (Berkeley: University of California Press, 1987). See also Sheila R Foster & Christian Iaione, "The City as Commons" (2016) 34 Yale L & Pol'y Rev 281 at 281, 288; Sophia Labadi & William

environment is frequently characterized by unequal treatment by local governments and a city's legal complexes.⁽⁷⁾ Working towards greater urban social justice that better reflects the potential of international human rights frameworks for cities calls for municipal legal complexes, and the urban development they shape, to better represent, sustain, and celebrate the distinctive cultures that make up a city and the "third places" outside of work and home where cultural community wealth is generated and which makes up the vibrancy and meaningfulness of a city or a neighbourhood for urban citizens.⁽⁸⁾

An array of international guiding frameworks shape our understanding of the human right to culture in the city. These frameworks have been developed as tools for application at national and, more specifically, local levels by city governments as they navigate the need to meaningfully address cultural diversity and equality as necessary ingredients for current and future sustainable urban development. These guiding frameworks include, for example, the 2005 *Convention for the Protection and Promotion of the Diversity of Cultural Expressions*, the 2007 *UN Declaration on the Rights of Indigenous*

Logan, "Approaches to Urban Heritage, Development and Sustainability" in Sophia Labadi & William Logan, eds, *Urban Heritage, Development, and Sustainability* (London, UK: Routledge, 2016) 1 at 1.

(7) See UN-Habitat, Habitat III Issue Paper #6, "Urban Rules and Legislation" (31 May 2015) at 2. See also Iris Marion Young, *Justice and the Politics of Difference* (Princeton: Princeton University Press, 1990); Logan & Molotch, *supra* note 6; David Harvey, *Social Justice and the City*, revised ed. (Athens: University of Georgia Press, 2009); Hae, *supra* note 6 at 5-6; Alison Young, *Street Art, Public City: Law, Crime and the Urban Imagination* (Abingdon: Routledge, 2014); Mariana Valverde, *Everyday Law on the Street: City Governance in an Age of Diversity* (Chicago: University of Chicago Press, 2012); Mariana Valverde, "Taking Land Use Seriously: Toward an Ontology of Municipal Law" (2005) 9:1 *Law, Text, Culture* 34; Davina Cooper, "Far Beyond 'The Early Morning Crowing of a Farmyard Cock': Revisiting the Place of Nuisance Within Legal and Political Discourse" (2002) 11:1 *Soc & Leg Stud* 5; Paul Chatterton & Robert Hollands, *Urban Nightscapes: Youth Cultures, Pleasure Spaces and Corporate Power* (London, UK: Routledge, 2003).

(8) Ray Oldenburg, *The Great Good Place: Cafes, Coffee Shops, Bookstores, Bars, Hair Salons and other Hangouts at the Heart of a Community*, 2nd ed (Philadelphia: De Capo Press, 1997); Heather E McLean & Barbara Rahder, "The Exclusionary Politics of Creative Communities: The Case of Kensington Market Pedestrian Sundays" (2013) 22:1 *Can J Urban Research* 90; Sara Gwendolyn Ross, *Law and Intangible Cultural Heritage in the City* (Abingdon, Oxon: Routledge, 2020) [Ross, *Law and ICH in the City*]; Ross, "Buen Vivir", *supra* note 4; Katherine N Rankin, Kuni Kamizake & Heather McLean, "Toronto's Changing Neighborhoods: Gentrification of Shopping Streets" in Sharon Zukin, Philip Kasinitz & Xiangming Chen, eds, *Global Cities, Local Streets: Everyday Diversity from New York to Shanghai* (New York: Routledge, 2016) 140 at 154, 159; Dolores Hayes, *Urban Landscapes as Public History* (Cambridge, MA: The MIT Press, 1997). James Michael Buckley & Donna Graves, "Tangible Benefits from Intangible Resources: Using Social and Cultural History to Plan Neighborhood Futures" (2016) 82:2 *Journal of the American Planning Association* 152; Lisa T Alexander, "Hip-Hop and Housing: Revisiting Culture, Urban Space, Power & Law" (2012) 63 *Hastings LJ* 803 at 807, 829-30 Miranda Campbell, *Out of the Basement: Youth Cultural Production in Practice and Policy* (Montreal: McGill-Queen's University Press, 2013).

Peoples, the 2000 *European Charter for the Safeguarding of Human Rights in the City*, as well as UN-Habitat's 2016 *New Urban Agenda* and the UN's 2015 *International Guidelines on Urban and Territorial Planning*. The response of cities to the terrain of human rights can be understood and evaluated through the level of inclusiveness of local cultural policy and urban law in accounting for the distinctive and wide-ranging cultures, cultural spaces, and cultural practices that comprise a city and one's "right to the city".⁽⁹⁾

In the Canadian context, the *European Charter for the Safeguarding of Human Rights in the City* is of particular interest where Montreal was the first city in North America to develop a human rights-oriented charter document (the 2006 *Montreal Charter of Rights and Responsibilities*) that reflects the right to the city approach and explicitly adopts the emphasis on culture that appears in the *European Charter for the Safeguarding of Human Rights in the City*. Of note, for example, are the European Charter's sections that lay out a Right to Leisure, such as Article XV, which delineates a right for urban citizens to culture "in all its expressions, forms and manifestations" as well as the importance of spaces for cultural activities; Article XXI, which formulates a right to leisure activities and space for leisure activities; as well as the Preamble which begins by noting that "[c]ity life today also demands that certain rights be more clearly defined" and that newly arising issues must also be accounted for, such as "the opportunity for social exchange and leisure".

3. Challenges to sustaining space for arts and culture in the city

A city's spaces of art, culture, and community can take a variety of shapes. Generally, the size of these spaces and proximity in identity to what might be identified as more mainstream cultural practices, spaces, and activities can lead to less precarity in exposure to and potential protection from displacement in a city due to redevelopment initiatives, gentrification processes, funding opportunities, and so on.⁽¹⁰⁾ Whether grassroots or relationally marginal spaces of art and culture take the form of DIY (Do-It-Yourself) venues, small performance spaces, coffee shops with live music, nightclubs, artist studios, galleries, much of their value as well as the value of larger, less relationally marginal spaces of art and culture such as a city's principal theater or concert hall, is the community cultural wealth generated within the walls of these "third spaces".⁽¹¹⁾ While

⁽⁹⁾ Elif Durmas, "A Typology of Local Governments' Engagement With Human Rights: Legal Pluralist Contributions to International Law And Human Rights" (2020) 38:1 *Netherlands Quarterly of Human Rights* 30 at 50; Henri Lefebvre, *Le Droit à la Ville* (Paris: Anthropos, 1968); Harvey, *supra* note 7 at 8; P Hamel, *Urban Social Movements* in HA van der Heijden, ed, *Handbook of political citizenship and social movements* (Cheltenham: Edward Elgar, 2014) at 464–92; Mark Purcell, *Excavating Lefebvre: The Right to the City and its Urban Politics of the Inhabitant*, 58 *Geojournal* 99; Mark Purcell, "Citizenship and the Right to the Global City: Reimagining the Capitalist World Order" (2003) 27 *Int'l J. Urb. & Regional Studies* 564, 576-79 (2003)

⁽¹⁰⁾ See e.g. City of Vancouver, "Cultural Infrastructure Plan", *supra* note 3 at 7, 8. See also Ross, *Law and ICH in the City*, *supra* note 8 at 16-23.

⁽¹¹⁾ Oldenburg, *supra* note 8.

availability of affordable space for community, cultural, arts, and music events is precarious and continues to decrease in many cities,⁽¹²⁾ processes like renovictions and demovictions are a further blow to already marginalized spaces, and the much-needed communities that gather within them. “Renovictions”, or “demovictions” lead to the unwilling displacement of tenants due to a large-scale renovation, or demolition and replacement, that is permitted through, for example, the provincial (British Columbia) *Residential Tenancy Act*. However, as the term renoviction conveys, the process frequently involves the eviction of tenants due only to a *claimed* large-scale renovation that then enables the landlord to raise the rent of the new space, whether or not a large-scale renovation has actually been carried out.⁽¹³⁾

4. Calling for solutions: applying a cultural land trust mechanism

While seeking out concrete implementation of the right to culture in the city and moving towards taking what appears within guiding international framework for the human right to culture in the city, putting these into action in the city will take different shapes depending on the city. Implementation might, for example, take place within a city’s officially adopted cultural policy designed for promoting, sustaining, and/or capitalizing on a city’s public and private cultural and artistic resources through “creative city” branding, or how zoning bylaws are designed and enforced in terms of enclaves of artistic and cultural production and consumption, or whether mixed-use developments that introduce residential property into a post-industrial space occupied by artists accounts for increases in property taxes and noise complaints from new residents, or how height and density bonusing and public amenity provision is structured and negotiated with private developers, their local development applications, and constructions bids.⁽¹⁴⁾ Nonetheless, the exploration and application of common tools can be helpful as cities work towards managing these processes.⁽¹⁵⁾

⁽¹²⁾ City of Vancouver, “Cultural Infrastructure Plan”, *supra* note 3 at 8.

⁽¹³⁾ See e.g. *Baumann v Aarti Investments Ltd*, 2018 BCSC 636 at para 40 for the following definition: “[M]aking an unusually long list of repairs after earlier failing to secure an increase in the rent by consent.” See also the relevant legislation through which renovictions take place: British Columbia’s *Residential Tenancy Act*, SBC 2002, c 78, s 49(6)(b):

(6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following: (...)
(b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

⁽¹⁴⁾ Sharon Zukin, *Naked City: The Death and Life of Authentic Urban Places* (Oxford: Oxford University Press, 2010) at 234, 236; Hae, *supra* note 6; Johannes Novy & Clair Colomb, “Urban Tourism and Its Discontents: An Introduction” in Johannes Novy & Clair Colomb, eds, *Protest and Resistance in the Tourist City* (Abingdon: Routledge: 2017) 1; Shoshanah Goldberg-Miller, *Planning for a City of Culture: Creative Urbanism in Toronto and New York* (New York: Routledge, 2017); Ute Lehrer & Peter Pantalone, “The Sky is Not the Limit: Negotiating Height and Density in Toronto’s Condominium Boom” in Kevin Ward et al, eds, *The Routledge Handbook on Spaces of Urban Politics* (Abingdon, Oxon: Routledge, 2018) 85.

⁽¹⁵⁾ See e.g. City of Vancouver, “Cultural Infrastructure Plan”, *supra* note 3 at 64-65.

4.1. Vancouver's new 10-year culture plan "Culture | Shift"

Vancouver's recent "Making Space for Arts and Culture: Draft Vancouver Cultural Infrastructure Plan" (a report integrated into "Culture|Shift: Blanketing the City in Arts and Culture"), which comprises Vancouver's new Culture Plan for 2019-29 (formerly known as Vancouver's "Creative City Strategy" — adopted by Vancouver City Council in September 2019) identifies the rising trend of renovictions taking place in Vancouver, and links this process to significant increases in rent and property taxes as well as the competition arts and culture spaces encounter when faced with the higher-value land use potential that their spaces carry, notably within Vancouver's industrial zones, which contributes to development and redevelopment pressure.⁽¹⁶⁾ Under "Goal 4: Expand Tools to Prevent Displacement and Secure Spaces", the document notes the doubling and tripling of commercial rents that has led to displacement by renovation and also observes that in just the prior year, over sixteen studios were lost from within Vancouver's industrial zones where about 300 artists either remain in danger of being displaced or have already been displaced.⁽¹⁷⁾

One of the central goals presented in this new ten-year culture plan and its associated documents—"Making Space for Arts and Culture", "Vancouver Music Strategy", and the Staff Report on a new special events policy framework— is a commitment to a "No Net Loss, Plus!" approach to preserving spaces for art and culture in the city.⁽¹⁸⁾ This approach also prioritizes the provision of "affordable, safe, and accessible places to create, produce, experience, and share music;" the elevation of "the voices of underrepresented groups"; the amplification of "all genres and music cultures in the city;"⁽¹⁹⁾ and notes that "[m]usic produced, presented, and performed in nontraditional spaces is an integral part of Vancouver's music scene and requires further consideration and support."⁽²⁰⁾ While Vancouver's publicly owned and operated art, music, and performance spaces are plentiful, the insecurity of short-term rental space, the lack of affordable space, and little community ownership of spaces contributes to the vulnerability of Vancouver's private spaces for art and culture and has exacerbated the displacement of arts and culture spaces in the city as well as the artists that characterize

⁽¹⁶⁾ *Ibid* at 27. The Plan is based on a 2018 report of the same name presented to Vancouver City Council that "examines in depth the current state of Vancouver's arts and cultural spaces, and lays out the City's long term vision and commitment to address [the] acute space challenges" (at 1). An integral component of the document are the six interconnected goals it outlines and the accompanying twenty-seven actions that are to be undertaken in order accomplish these goals (at 21); City of Vancouver "Culture Plan", *supra* note 1.

⁽¹⁷⁾ City of Vancouver, "Cultural Infrastructure Plan", *supra* note 3 at 27.

⁽¹⁸⁾ *Ibid*; City of Vancouver, "Vancouver Music Strategy - Draft Final Report" (2019), online (pdf): *City of Vancouver* <vancouver.ca> [City of Vancouver, "Vancouver Music Strategy"]; General Manager of Engineering Services, Policy Report to Vancouver City Council, "Special Event Policy Framework" (20 August 2019), online: *City of Vancouver* <vancouver.ca>.

⁽¹⁹⁾ City of Vancouver, "Vancouver Music Strategy", *supra* note 18 at 11.

⁽²⁰⁾ *Ibid* at 26. See also *ibid* at 17.

these spaces.⁽²¹⁾ For those operating arts and cultural spaces, ownership of these spaces can make an enormous difference in the ongoing feasibility and sustainability of the space in question.⁽²²⁾ Vancouver's Cultural Infrastructure Plan also recognizes that spaces that are particularly vulnerable to these displacing effects are artist studios and presentation and performances spaces for music and LGBTQ2+ events.⁽²³⁾

In relation to the artists who shape Vancouver's vibrant arts and culture environment and these displaced spaces of art and culture, Vancouver's Cultural Infrastructure Plan further acknowledges the immediate need to address the ongoing loss of art and cultural space in the context of Vancouver's identity as the Canadian city with the highest concentration of artists per capita and its location within the Canadian province (British Columbia) that "has the largest number of working artists in Canada."⁽²⁴⁾ Despite the importance of these numbers to the City, the majority of these artists are nonetheless living below the poverty line—63% of Vancouver-based artists report an income of less than \$40,000 a year and a median income of \$22,000 per year.⁽²⁵⁾

Further, Vancouver's accompanying Music Strategy recommends an increase in the "access, availability, and use of venues (established, new, and prospective)"; the protection and preservation of existing music venues and spaces in addition to cultural heritage merit of non-traditional music spaces.⁽²⁶⁾ And, perhaps most significant to the need for applicable tools for the preservation of space for art, community, and culture like music venues, the Music Strategy again proposes to "[w]ork toward no net loss of existing spaces: implement data collection, policies and incentives to track and prevent net loss of music, arts, and cultural spaces through redevelopment processes."⁽²⁷⁾

In terms of Vancouver's recently adopted Culture Plan, the potential for the development of cultural land trusts is specifically acknowledged under "New approaches": "Exploring ways to support planning and development of a community-led cultural land trust including seed funding, and investigating new ways to partner with the cultural community on development, and—in some cases—shared ownership of amenity facilities secured through development",⁽²⁸⁾ as well as under Goal 6 of the Cultural Infrastructure Plan to "Increase Community Ownership and Support a Cultural Land Trust."⁽²⁹⁾ This same interest is additionally expressed in Goal 3 "Support Community-Led Ownership and Community-Led Projects" under Strategic Direction 4 "Affordable, Accessible, Secure Space"⁽³⁰⁾ as well as in Vancouver's accompanying

⁽²¹⁾ City of Vancouver, "Cultural Infrastructure Plan", *supra* note 3 at 4, 7, 8, 9.

⁽²²⁾ *Ibid* at 33

⁽²³⁾ *Ibid* at 7.

⁽²⁴⁾ *Ibid* at 6. See also Hill, *supra* note 3.

⁽²⁵⁾ *Ibid*.

⁽²⁶⁾ City of Vancouver, "Vancouver Music Strategy", *supra* note 18, Recommendations 5.3, 5.5, 5.6 (at 38)

⁽²⁷⁾ *Ibid*, Recommendation 5.8 (at 38).

⁽²⁸⁾ At 2.

⁽²⁹⁾ City of Vancouver, "Cultural Infrastructure Plan", *supra* note 3 at 33.

⁽³⁰⁾ City of Vancouver, "Culture Plan", *supra* note 1 at 66-67.

Music Strategy under Recommendation 7, which calls on the city to “Support increased community ownership of music spaces and development of a potential City-endorsed Cultural Land Trust.”⁽³¹⁾

5. Cultural land trusts: description and application

Cultural land trusts can be used as a tool by groups, communities, and private operators of cultural spaces for creating, preserving, or safeguarding urban spaces of art and culture and can also be used by cities as a city-supported or -generated initiative as well as a province-generated initiative. Largely initiated as a response to increase in the cost of real estate, rent, property taxes, and insecurity of tenure for arts and culture workers and organizations, cultural land trusts draw on community land ownership models.⁽³²⁾

5.1. The Trust (Common law)

At base, in unpacking what the notion of a cultural land trust entails at common law, a trust represents a legal relationship and equitable obligation where legal title to the trust property is granted to a trustee to hold for the benefit of another (the beneficiary or beneficiaries). Where property rights can be legal, equitable, or both, while the trustee is considered to be the full owner and hold legal title to the trust property, the beneficiaries of the trust property hold an equitable interest in the trust property and are considered to be owners of the trust property in equity. In addition to the trustee and beneficiaries, the settlor is the party who establishes the trust—it is possible for one to be the settlor, trustee, and beneficiary of the same trust.

5.2. Mixed jurisdiction: the Civil law trust in Quebec, Canada

The civil law trust in Quebec presents an example of a civil law jurisdiction found within a common law political structure or country (Canada) that integrated a form of the common law trust in the 19th century.⁽³³⁾ This was necessary within Quebec to, for example, transfer assets within a family, to constitute a charitable trust, and so was, in reality, mostly encountered in the matrimonial context or the law of succession.⁽³⁴⁾ In

⁽³¹⁾ City of Vancouver, “Vancouver Music Strategy”, *supra* note 18 at 40.

⁽³²⁾ See e.g. City of Vancouver, “Cultural Infrastructure Plan”, *supra* note 3 at 33; 221A, “Cultural Land Trust Study – Update” (9 April 2019), online: <221a.ca>.

⁽³³⁾ See the *Civil Code of Lower Canada*. Another example the *Louisiana Civil Code*. See also Madeleine Cantin Cumyn, “Réflexions autour de la diversité des modes de réception ou d’adaptation du *trust* dans les pays de droit civil” (2013) 58 :4 McGill LJ 811 at 813, 815-16 [Cantin Cumyn, “Réflexions”]; Ruiqiao Zhang, “A Comparative Study of the Introduction of Trusts into Civil Law and its Ownership of Trust Property” (2015) 21:8 Trusts & Trustees 902 at 911-12.

⁽³⁴⁾ For more on the origins of the civil law trust in Quebec, see Cantin Cumyn, “Réflexions”, *supra* note 35 at 815-17. See also generally Sylvio Normand, *Introduction au droits des biens*, 1st ed (Montreal: Wilson & Lafleur, 2000) at 321ff.

contrast to the common law trust and its concept of dual ownership described above, within Quebec civil law there is no accepted distinction made between legal title or ownership and beneficial title or ownership.⁽³⁵⁾ The trustee does not have legal title to the trust property,⁽³⁶⁾ and the beneficiaries and the settlor also do not hold any title to the trust property.⁽³⁷⁾ Rather, the rights of the beneficiaries under Quebec civil law exist in relation to both the trust as well as the trustee⁽³⁸⁾—meaning that there is no owner of the trust property for the life of a trust in Quebec.⁽³⁹⁾ As Zhang explains further, “the nature of the trustee’s right is the power to manage the trust property and that of the beneficiary [is the] right is to receive the benefits of the trust.”⁽⁴⁰⁾ In terms of the power to manage the trust property that the trustee is granted as an administrator of the trust property, Cantin Cumyn notes that within Civil Law “the concept of powers incorporates the duty to act exclusively for the benefit of another or the fulfilment of a purpose.”⁽⁴¹⁾

To manage the lack of dual ownership within civil law where ownership is viewed as absolute and indivisible, the trust that appears within the Civil Code of Quebec (CCQ) (structured as a “special patrimony”, or, more specifically, as a patrimony by appropriation/“patrimoine d’affectation”⁽⁴²⁾) is an autonomous entity that includes the trust property itself alongside the obligations that arise from the fulfilment of its purpose,⁽⁴³⁾ and exists instead as “a unique expression that reflects the encumbered nature of ownership in which title to property is held for the fulfilment of a purpose (i.e. fiduciary ownership).”⁽⁴⁴⁾ As Vaudry and Altschul have noted alongside Cantin Cumyn, a patrimony by appropriation appears to be a concept that uniquely exists within Quebec

⁽³⁵⁾ See generally Cantin Cumyn “Réflexions”, *supra* note 35 at 821; Madeleine Cantin Cumyn, “The Quebec Trust: A Civilian Institution with English Law Roots” in Jan M Smits & J Michael Milo, eds, *Trusts in a Mixed Legal System* (Nijmegen: Ars Aequi, 2001) 73 at 75 [Cantin Cumyn, “The Quebec Trust”]. See also Roger Cotterrell, “Power, Property and the Law of Trusts: A Partial Agenda for Critical Legal Scholarship” (1987) 14:1 *Journal of Law and Society* 77 at 82.

⁽³⁶⁾ See generally Cantin Cumyn, “Réflexions”, *supra* note 35.

⁽³⁷⁾ See also Daniel Clarry, “Fiduciary Ownership and Trusts in a Comparative Perspective” (2014) 63 *Int’l & Comp Law Quarterly* 901 at 917. See also Zhang, *supra* note 35 at 921.

⁽³⁸⁾ See also Ernest Vaudry & Susan Altschul, “Using Civil Law Trusts for Affordable Housing: A Community Land Trust Model” (2004) 106 *La revue du notariat* 75 at 78.

⁽³⁹⁾ See e.g. Cantin Cumyn, “Réflexions”, *supra* note 35 at 822; Zhang, *supra* note 35 at 919. See also *Royal Trust Corp of Canada v Webster*, [2000] RJQ 2361 (SC) [*Royal Trust Corp*].

⁽⁴⁰⁾ Zhang, *supra* note 35 at 921.

⁽⁴¹⁾ Cantin Cumyn, “The Quebec Trust”, *supra* note 37 at 76. See also CCQ Articles 1299 – 1370, which deal specifically with the administration of the property of others. (Book 4, Title 7 of the CCQ).

⁽⁴²⁾ See further Zhang, *supra* note 35 at 906-907, 921. See also Michel Benoit, ‘The Development of the Concept of Pension Trust under Quebec Civil Law’ (1998) 17 *Estates, Trusts & Pensions Journal* 203, 210–11.

⁽⁴³⁾ Cantin Cumyn, “The Quebec Trust”, *supra* note 37 at 76. See also Articles 1260-1261 (CCQ).

⁽⁴⁴⁾ Clarry, *supra* note 39 at 917-18. See e.g. Cantin Cumyn, “Réflexions”, *supra* note 35 at 822 for a more in-depth explanation of how this functions within Quebec law.

civil law.⁽⁴⁵⁾ Per Article 1260 of the Civil Code of Quebec (CCQ): “A trust results from an act whereby a person, the settlor, transfers property from his patrimony to another patrimony constituted by him which he appropriates to a particular purpose and which a trustee undertakes, by his acceptance, to hold and administer.” Article 1261 CCQ goes on to explain: “The trust patrimony consisting of the property transferred in trust, constitutes a patrimony by appropriation, autonomous and distinct from that of the settlor, trustee or beneficiary and in which none of them has any real right.”⁽⁴⁶⁾ However, as Article 1265 CCQ further describes: “Acceptance of the trust divests the settlor of the property, charges the trustee with seeing to the appropriation of the patrimony and is sufficient to establish the right of the beneficiary with certainty.” While the ability of this trust structure—as owner of the property that is included in the patrimony—to enter into contracts and debt agreements may make it appear as though it could be understood as a legal person, and it does work in a similar manner, it has never been classified as a legal person by the legislator and better understood as a device that only exists for the “purpose of pursuing its mission.”⁽⁴⁷⁾

With the new Civil Code of Quebec, which came into effect in 1994 and replaced the Civil Code of Lower Canada, the earlier trust structure that appeared previously in Quebec was transformed entirely from its prior iteration and, notably, also became accessible for application to social purposes beyond its prior exclusively private applicability.⁽⁴⁸⁾ A social trust, per the CCQ (Article 1270), “is a trust constituted for a purpose of general interest, such as a cultural, educational, philanthropic, religious or scientific purpose,” and “does not have the making of profit or the operation of an enterprise as its main objective,” which aligns well with the purposes iterated for constituting a cultural land trust as well as community land trusts despite the structural legal differences from community ownership as it would be under a purely common law framework. However, the ability to actually constitute a community land trust as a private trust or a social trust will be discussed further in the next section.

Essentially, envisioning the community land trust model functioning in the civil law context includes a dynamic fourth entity—in addition to the settlors, trustees, and the beneficiaries/land—with the land itself as the trust patrimony within which title is bound up.

⁽⁴⁵⁾ Vaudry & Altschul, *supra* note 40 at 79; Cantin Cumyn, “The Quebec Trust”, *supra* note 37 at 73; Clarry, *supra* note 39 at 917-18.

⁽⁴⁶⁾ For a further explanation, see also Zhang, *supra* note 35 at 921.

⁽⁴⁷⁾ Cantin Cumyn, “The Quebec Trust”, *supra* note 37 at 76; Vaudry & Altschul, *supra* note 40 at 79. Per Article 1296 CCQ: “A trust is terminated by the renunciation or lapse of the right of all the beneficiaries, both of the capital of the fruits and revenues. A trust is also terminated by the expiry of the term or the fulfilment of the condition, by the attainment of the purpose of the trust or by the impossibility, confirmed by court, of attaining it.”

⁽⁴⁸⁾ Article 1266 CCQ: “Trusts are constituted for personal purposes or for purposes of private or social utility.” Vaudry & Altschul, *supra* note 40 at 78; *ibid* at fn 1; See also Clarry, *supra* note 39 at 917; Royal Trust Corp, *supra* note 41 at 264-73. See also generally Cantin Cumyn, “The Quebec Trust”, *supra* note 37 at 77.

5.3. Community land trusts versus cultural land trusts

Community land trusts, which form the basis for conceptualizing the mechanics of a cultural land trust, are becoming an increasingly sought after tool for sustainable local urban development and the democratic ownership of land by local communities in order to preserve long-term community affordability and access to land, and to counteract gentrification and displacement forces by removing the land from the market to maintain long-term access.⁽⁴⁹⁾ Further, the community land trust structure is encouraged within UN-Habitat's *New Urban Agenda* as a potential "cooperative solution" amongst the list of tools, mechanisms, policies, and financing models available for preventing "arbitrary forced evictions and displacements."⁽⁵⁰⁾ The Parkdale Neighbourhood Land Trust, for example, exists "to protect the social, cultural, and economic diversity" of the Parkdale neighbourhood.⁽⁵¹⁾ Or, in Vancouver, the Hogan's Alley Land Trust has been proposed in order to prevent the further displacement of Vancouver's black community and to "create a renaissance movement for social, political, cultural economic revival" for the community.⁽⁵²⁾

Community land trusts, however, differ in terms of their structure from one jurisdiction to the next in the same way that trusts, as a legal structure, also differ from one jurisdiction to the next.⁽⁵³⁾ As noted above, while the community land trust structure is deployed for a variety of objectives, generally it is centered on a social purpose, collective relevance, is socially desirable, and is frequently drawn on as a mechanism for ensuring or maintaining affordable space, property, or housing, and avoiding the speculation and inflation processes that alter affordability.⁽⁵⁴⁾ Its application indicates that the land in question is sequestered in perpetuity or for a specific period of time in order to be used for the identified purpose.⁽⁵⁵⁾ While a common law trust theoretically

⁽⁴⁹⁾ See generally, Center for Community Land Trust Innovation, online: <www.cltweb.org>; Community Land Trust, online: <www.cltrust.ca>; John Emmeus Davis, Line Algoed, Maria E Hernandez-Torrales, eds, *On Common Ground: International Perspectives on the Community Land Trust* (Madison: Terra Nostra Press, 2020); John Emmeus Davis, "Common Ground: Community-Owned Land as a Platform for Equitable and Sustainable Development" (2017) 51:1 USF L Rev 1.

⁽⁵⁰⁾ (2016) at para 107. The *New Urban Agenda* is intended as "a resource for every level of government, from national to local; for civil society organizations; the private sector; constituent groups; and for all who call the urban spaces of the world 'home'" to achieve "a shared vision for a better and more sustainable future – one in which all people have equal rights and access to the benefits and opportunities that cities can offer, and in which the international community reconsiders the urban systems and physical form of our urban spaces to achieve this" (*ibid* at iv).

⁽⁵¹⁾ Parkdale Neighbourhood Land Trust, online: <www.pnlt.ca>.

⁽⁵²⁾ Hogan's Alley Trust, online: <www.communityland.ca>

⁽⁵³⁾ Vaudry & Altschul, *supra* note 40 at 77.

⁽⁵⁴⁾ Bruce Ziff, *Principles of Property Law*, 5th ed (Toronto: Thomson Carswell, 2010) at 227 [Ziff, 5th]; Vaudry & Altschul, *supra* note 40 at 77. See also Ayda Agha, "Perpetual Affordability and Community Control of Land" (2018) Canadian Housing and Renewal Association Congress Session Series 2018 at 2-3, online: <chra-achru.ca>

⁽⁵⁵⁾ Vaudry & Altschul, *supra* note 40 at 77. See also Agha, *supra* note 56 at 2-3

entails an equitable obligation that binds a person (the trustee) to hold real or personal property (the trust property), by legal or equitable title, for the benefit of another person or persons (the beneficiaries),⁽⁵⁶⁾ most community land trusts are more akin to variations on a long-term lease structure with a dual or divided ownership model where the land is owned by the community land trust while the structures built on the land are leased out to persons, groups, non-profits, and so on, for an extended period of time.⁽⁵⁷⁾

As a “place-based” bottom-up approach to development, the community land trust, or community-owned land trust, is centered on “community-led development of individually owned buildings on community-owned land.”⁽⁵⁸⁾ Generally community land trusts, or community-owned land trusts, are characterized by three facets: a non-profit organization that acts on behalf of a community (usually geographically proximate) and acquires parcels of land to become the landowner; the structures or buildings on the land are sold or leased to discrete owners where their ownership interests are limited by affordability restrictions over the use and sale of the structure; and the community shapes the non-profit organization’s development of the land it holds.⁽⁵⁹⁾

In applying the community land trust model to a civil law context in a mixed jurisdiction such as Quebec, Vaudry and Altschul warn against attempting to shape the community land trust itself as a social trust as it may not be recognized as a charity in order to fit under the category of a social trust.⁽⁶⁰⁾ Rather, they suggest shaping it as a private trust that would be a non-profit organization and provide affordable housing to a set class of beneficiaries.⁽⁶¹⁾ The trust would ideally only include the land itself such that the structures or buildings on the land could then be owned, alienated as well as hypothecated. However, if this is not the case, Vaudry and Altschul suggest a superficiary transfer of ownership of both the structures or buildings as well as the enjoyment of the land to a set of non-profit organizations that would then become the beneficiaries of the land trusts as well as then being able to secure ownership rights to the structures or buildings.⁽⁶²⁾ At this point the non-profit organizations in question

⁽⁵⁶⁾ Ziff, 5th, *supra* note 56 at 216; Waters, *supra* note 33 at 5; Vaudry & Altschul, *supra* note 40 at 87.

⁽⁵⁷⁾ *Ibid* at 87-88.

⁽⁵⁸⁾ Davis, *supra* note 51 at 2.

⁽⁵⁹⁾ *Ibid* at 2.

⁽⁶⁰⁾ Vaudry & Altschul, *supra* note 40 at 80-81. As Article 1270 CCQ describes: “A social trust is a trust constituted for a purpose of general interest, such as cultural, educational, philanthropic, religious or scientific purpose.

⁽⁶¹⁾ Vaudry & Altschul, *supra* note 40 at 80-81.

⁽⁶²⁾ *Ibid*. In this regard, Vaudry & Altschul (*ibid* at fn 18) also point us towards Article 111 CCQ relating to the establishment of superficies (Chapter 4 under Title 4 on “Special Modes of Ownership). As Article 1110 CCQ explains: “Superficies results from division of the object of the right of ownership of an immovable, transfer of the right of accession or renunciation of the benefit of accession.”

could then grant leases to a defined set of individuals or members.⁽⁶³⁾ Beyond the structures and buildings on the land, the private trust would also be able to shape the development of the trust land to include community, arts, cultural, and/or green space through the appropriation of property to these specific uses.⁽⁶⁴⁾

6. Cultural land trusts: studies, models and examples

6.1. 221A

Drawing on the cultural land trust study underway by 221A—a Vancouver-based organization designed to work with artists and designers in researching, developing, and improving social, cultural, and ecological infrastructure⁽⁶⁵⁾—Vancouver’s Cultural Infrastructure Plan, in its desire to establish, sustain, and expand community partnerships notes that for a community land trust to operate successfully, there must be (a) effective community-led governance alongside a sustainable business model; (b) cash available in order to support the development, operation, and acquisition of land over time; and (c) a sound investment strategy coupled with viable real estate holdings.⁽⁶⁶⁾

In line with the structure described previously, the cultural land trust structure that 221A is investigating is intended to create long-term security of tenure in a neighbourhood alongside cultural equity and sustained cultural employment for artists and well as arts organizations in the context of pressure created by escalating real estate prices.⁽⁶⁷⁾ As canvassed through the following examples from a number of different cities, cultural land trusts can exist in various forms, with some more well-established than others, and can take on a number of legal forms—similar to community land trusts—such as, charitable non-profit organization, a CO-OP, a charitable company, a holding company, a non-profit arts property developer, and so on.

6.2. Creative land trust, London (UK)

The Creative Land Trust in London is a charitable organization intended to address the demand for, lack of security, ongoing loss and increased cost of artist studios and, more generally, creative workspace in London. While functioning independently

⁽⁶³⁾ *Ibid.*

⁽⁶⁴⁾ *Ibid* at 80. See also Article 1268 CCQ: “A private trust is a trust created for the object of erecting, maintaining or preserving a thing or of using a property appropriated to a specific use, whether for the indirect benefit of a person or in his memory, or for some other private purpose.”

⁽⁶⁵⁾ See <221a.ca>. 221A originated as a student-led and artist-run centre in 2005 as a student-led artist-run centre based in Vancouver’s Chinatown neighbourhood and now operates about 50,000 square feet of space dedicated to arts and cultural production (*ibid*; see also City of Vancouver, “Cultural Infrastructure Plan”, *supra* note 3 at 32).

⁽⁶⁶⁾ *Ibid* at 33.

⁽⁶⁷⁾ See also <221a.ca/about>.

as a social enterprise and led by a steering group, the Creative Land Trust is supported by the office of the Mayor of London, the Arts Council of England, Bloomberg Philanthropies, and Outset Contemporary Art Fund, and its overarching goal is to secure affordable workspace for artists in perpetuity through purchasing or acquiring buildings freehold, long-term (minimum 25 years) leases, community infrastructure levies (a levy that can be set on a new development where the resulting funds are directed towards facilities, services, and infrastructure in a community),⁽⁶⁸⁾ or section 106 agreements (case-by-case planning obligations).⁽⁶⁹⁾ In addition, in terms of other support work for spaces of art and culture, the Creative Land Trust has also helped to administer a portion of the Mayor of London's emergency fund for relationally marginalized creative enterprises and nighttime businesses identified as "Culture at Risk" due to the effects of COVID-19, such as creative workspaces, grassroots music venues, LGBTQ+ arts and culture spaces, and independent cinemas.⁽⁷⁰⁾

6.3. Austin (Texas) creative trust

Briefly, with a stated mission to "advance, connect and advocate for Austin's arts, cultural, and creative communities to strengthen and protect the character, quality of life, and economic prosperity of our region," the Austin Creative Trust was initially founded in 1975 as the Austin Circle of Theaters.⁽⁷¹⁾

6.4. Workshops and artist studio provision, Scotland LTD. (WASPS)

WASPS is a registered charity that has been supported by a range of both public and private entities and was developed to support artists, arts organizations, creators, and creative businesses through the provision of affordable space for their activities (usually through the redevelopment of historic under/unused buildings, currently numbering twenty), and to do so for the benefit of not only current Scottish artists and future generations of artists but also for the benefit of the greater public. The WASPS Trust acquires the properties and owns them in trust for the arts community. WASPS Ltd. then rents out these spaces at affordable rates to a range of artists, arts charities, as well as groups and individuals working in creative industries. WASPS Ltd., the WASPS Trust as well as the community interest company – WASPS Creative Industries C.I.C. – owned by WASPS Ltd. is steered by a thirteen trustees/directors from an assortment of backgrounds ranging from finance and property to the arts.⁽⁷²⁾

⁽⁶⁸⁾ See *Planning Act* (UK), 2008.

⁽⁶⁹⁾ See the *Town and Country Planning Act* (UK), 1990. See also *The Town and Country Planning Regulations* (UK), 2013 and *Community Infrastructure Levy Regulations* (UK), 2010, reg 122, 123. See generally Creative Land Trust, online <www.creativelandtrust.org>; Bloomberg Philanthropies, online: <www.bloomberg.org>; outset, online: <outset.org/uk>.

⁽⁷⁰⁾ See Creative Land Trust, online: <www.creativelandtrust.org/covid-10-grant-fund>.

⁽⁷¹⁾ Austin Creative Alliance, online <www.austincreativealliance.org>.

⁽⁷²⁾ See Wasps, online: <www.waspsstudios.org.uk>.

6.5. Community arts stabilization trust (CAST), San Francisco, U.S.

Concerned with assuaging the displacement effects felt by artists in San Francisco and Oakland due to the significant increase in the cost as well as demand for physical space in the city despite the importance of art and culture to San Francisco and Oakland's vibrancy, economy, and both historical and present identity, the Community Arts Stabilization Trust (CAST) turns to new financial instruments to secure permanent space to sustain a diversity of arts and culture communities, organizations, "art-anchored institutions", and work towards equitable urban (re)development and neighbourhood revitalization.⁷³ Focusing on community-based arts as a key tool within socioeconomic revitalization and property development processes. Structured as a holding company, CAST draws on public-private partnerships to activate its goals by: (1) utilizing philanthropic grants alongside the US federal community-revitalization-oriented New Markets Tax Credit Program to subsidize the cost of renting physical space that arts institutions face;⁷⁴ (2) collaborating with local government and private property developers to acquire permanent physical space for arts and culture purposes through the use of restrictive covenants within the deed; (3) working with arts and culture institutions to develop their financial ability to acquire their own space from CAST; while (4) maintaining below-market rental opportunities for arts institutions that are not able to purchase their own space from CAST by structuring multi-tenant leases where CAST remains the permanent "place-keeper".⁷⁵ CAST was created in 2013 by the Kenneth Rainin Foundation with the Northern Community Loan Fund.

6.6. Parkdale neighbourhood land trust (PNLT), Toronto, Canada

Turning back to the community land trust model that cultural land trusts draw on, the Parkdale Neighbourhood Land Trust (PNLT) is an example of a community land trust focused on protecting the socioeconomic and cultural diversity that makes up the Parkdale neighbourhood affected by rapid change, (re)development, and the increasing lack of affordable housing.⁷⁶ In addition to affordable housing for the community, PNLT is interesting due to its additional concern with ongoing active community participation and with acquiring and maintaining property availability for physical community spaces beyond housing that contribute to the creation and sustainability of vibrant and meaningful communities, such as open and available spaces for the community, for initiatives like the shared urban agriculture spaces—such as the Milky Way Garden,

⁽⁷³⁾ See Community Arts Stabilization Trust, online: <cast-sf.org>.

⁽⁷⁴⁾ See also Community Development Financial Institutions Fund, online: <www.cdfifund.gov>.

⁽⁷⁵⁾ See Community Arts Stabilization Trust, online: <cast-sf.org>.

⁽⁷⁶⁾ See Parkdale Neighbourhood Land Trust, online: <www.pnlt.ca>.

PNLT's first community-owned parcel of land⁷⁷—and for space for community-oriented enterprises and non-profit organizations.⁷⁸

The land trust, the idea for which was generated in 2010, has yet to attain charitable status but became a non-profit corporation in 2014 with the primary objective being poverty alleviation addressed through housing provision alongside accessible social, community, and commercial services for the neighbourhood.⁽⁷⁹⁾

6.7. Hogan's Alley community land trust

The push towards shaping the Hogan's Alley Community Land Trust, is another example of a community land trust, but one which also reflects goals for arts and cultural space that are found within cultural land trust models—such as space for community building through art, dance, music, food, gathering, celebration, and historical research and knowledge sharing. Hogan's Alley refers to what used to be an alley and T-shaped intersection—officially named Park Lane—located in the Strathcona neighbourhood of Vancouver, Canada. Hogan's Alley was a cultural hub and home to Vancouver's Black community from the early 1900s until it was ultimately demolished and displaced by the City in the early 1970s to make way for the new Georgia Viaduct that replaced the initial Georgia Street Viaduct.⁽⁸⁰⁾ This displacement of Hogan's Alley, its community, and community spaces and cultural institutions followed years of City-initiated processes, such as rezoning—that affected property values, external perceptions of the neighbourhood, and so on—and, eventually, expropriation.⁽⁸¹⁾

The Hogan's Alley Trust's (part of Hogan's Alley Society, a non-profit organization) efforts towards acquiring land and developing and operating a community-led community land trust through the support of public as well as private partnerships seek to not only address the displacement of Black Canadians from the historic site of Hogan's Alley but also own, operate, and sustain the current physical site of Hogan's Alley in a manner that “will promote inter-generational community benefits, affordability, and building the capacity of racialized and marginalized communities to participate in city building,”⁽⁸²⁾ while also curbing gentrification pressures on neighbouring communities of Strathcona, Chinatown, and Vancouver's Downtown

(77) Parkdale Neighbourhood Land Trust & Greenest City, “Milky Way Tseyshing (Garden): A Community Owned Shared Urban Agriculture Space for Parkdale” (2016), online (pdf): <www.pnlt.ca>.

(78) Parkdale Neighbourhood Land Trust, online: <www.pnlt.ca>.

(79) *Ibid.*

(80) See generally Hogan's Alley Society, online: <www.hogansalleysociety.org>; Vancouver Heritage Foundation, online: <www.vancouverheritagefoundation.org>.

(81) See also Agha, *supra* note 56 at 6 on the role of rezoning and expropriation.

(82) See Canadian Network Community Land Trust, online: <www.communityland.ca>; Hogan's Alley Society, online: <www.hogansalleysociety.org>.

Eastside where non-profit or public land ownership can work to “devalue” land as it is removed from the speculative real-estate market.⁽⁸³⁾

7. City and local government involvement in cultural land trusts

While community (or cultural) land trusts are typically held and managed by a non-profit organization, it is also possible for governments (municipal, provincial, and so on) to maintain a land trust or do so through an arms-length organization. Turning back to Vancouver, Vancouver’s Community Land Trust is an example of what a public-initiated land trust—but one that is centered around housing provision—might look like. It is operated as an arms-length organization of the Co-Operative Housing Federation of BC.⁽⁸⁴⁾ As we have seen, however, the “community” component of the community or cultural land trust is a key differentiating factor where the non-profit holding the land trust is community-based and decision-making tends to be more directly engaged with by the community. Nonetheless, rather than direct government involvement, it is also possible for a cultural land trust to be simply supported by a municipal government in order to create a partnership, which is what Vancouver’s new culture plan documents discussed previously seem to largely gesture towards.

Drawing on how cities and community land trusts have worked together, support from a city can be provided in a number of ways that will depend on the stage that the cultural land trust is at in terms of its establishment. During the planning phase or as a cultural land trust is being set up, the local government might provide administrative or financial support.⁽⁸⁵⁾ Discrete projects or portions of a project might be funded or developed through grants from the city, donations of city-owned land, or low-interest loans.⁽⁸⁶⁾ The city might also work with private developers through, for example, density bonusing, in order to support the cultural land trust’s acquisition and preservation of space in the city.⁽⁸⁷⁾ Grants from local government in support of the ongoing operation of the cultural land trust could be provided alongside a revision of tax assessments applicable to arts and culture spaces located on the cultural land trust’s land in order to ensure fair treatment and maintain affordability.⁽⁸⁸⁾

As with a community land trust, local government can also serve as the instigator of a cultural land trust, which can provide a number of advantages. Local government support can provide more direct access to not only local subsidies but also to possible provincial and federal subsidies for both land acquisition as well as for building and/or preserving spaces located on the land acquired by the cultural land trust.⁽⁸⁹⁾ Municipal

⁽⁸³⁾ Allen, *supra* note 4 at 60-61.

⁽⁸⁴⁾ See Community Land Trust, online: <www.cltrust.ca>.

⁽⁸⁵⁾ John Emmeus Davis & Rick Jacobus, “The City-CLT Partnership: Municipal Support for Community Land Trusts” (2008) Policy Focus Report, Lincoln Institute of Land Policy at 2, 10-14.

⁽⁸⁶⁾ *Ibid* at 2, 15-18.

⁽⁸⁷⁾ *Ibid* at 2, 15-18.

⁽⁸⁸⁾ *Ibid* at 2, 19-27.

⁽⁸⁹⁾ See e.g. *Ibid* at 33.

governments can also provide support in terms staffing and their involvement can correspondingly lead to more frequent consideration of the cultural land trust as a beneficiary of city-imposed regulations on private developers that lead to, for example, density bonusing that requires a private developer to provides affordable spaces for art and culture. Of course, recent creative city oriented development and a desire by local governments to capitalize on their local arts and culture resources can also be regarded suspiciously by local arts and culture stakeholders due to gentrification and displacement processes that result in the surrounding neighbourhood around a city-supported arts and culture hub as well as tendencies for art and culture to be regarded in a commodified manner as part of a city's wider cultural development strategy.⁽⁹⁰⁾

8. Conclusion and future directions

While other strategies—such as, developing a zoning category based on non-profit arts and cultural facility use⁽⁹¹⁾—might provide a route towards aligning the various municipal bylaws, licensing and permitting requirements, policies, and applicable regulations, and certainly merit further investigation beyond the scope of this paper, cultural land trusts for the sake of increased community ownership of art, culture, and music spaces provide a property law mechanism or, with City-support, the potential for public-private intersection and partnership that carries significant potential for the preservation of invaluable cultural and community space in the city. The further benefit of a community ownership model in contrast to or reaching beyond participatory planning models, for example, can additionally lead to a more significant shift of power from the city (and state) to the community—notably in terms of more direct fulsome community participation in the shaping, design, and structure of urban arts and cultural spaces.⁽⁹²⁾

⁽⁹⁰⁾ Heather E. McLean, "Cracks in the Creative City: The Contradictions of Community Arts Practice" (2014) 38:6 *International Journal of Urban and Regional Research* 2156; Zukin, *supra* note 14; Ross, "Making a Music City", *supra* note 6; Davis & Jacobus, *supra* note 87 at 33.

⁽⁹¹⁾ See e.g. where this is identified as a potential tool for the long-term sustainability of music spaces by Vancouver's new Music Strategy, *supra* note 18 (Recommendation 10.4 (*ibid* at 43) and Recommendation 3.8 (*ibid* at 35) within Phase 2 of implementation (*ibid* at 60) as well as by Vancouver's new Culture Plan, *supra* note 1 (Goal 2 under "Expand Planning Tools and Reduce Regulatory Barriers" (*ibid* at 65) of Direction 4 "Affordable, Accessible, Secure Space" (*ibid* at 60)) and the accompanying Cultural Infrastructure Plan appendix (Action 14 "Develop an Arts Facility Zoning" under Goal 3 "Remove Regulatory Barriers" (*ibid* at 25-26).

⁽⁹²⁾ Regarding this potential as identified in the case of Hogan's Alley, see Allen, *supra* note 4 at 78-79. See also Andrea Cornwall, "Locating Citizen Power" (2002) 33:2 *IDS Bulletin* at 3 (DOI: <doi.org/10.1111/j.1759-5436.2002.tb00016.x>); Sherry R Arnstein, "A Ladder of Citizen Participation" (1969) 35:4 *Journal of the American Institute of Planners* 216 at 217 (where the cultural land trust model carries the potential of corresponding to the "citizen power" upper rungs of the ladder of citizen participation). Regarding international guiding frameworks for urban planning, see also UN-Habitat, *International Guidelines on Urban and Territorial Planning* (2015) at 3: At a neighbourhood level, street development and public space plans and layouts

While the logistics of constituting a cultural land trust may more readily fit within a common law jurisdiction, it is nonetheless possible for a similar structure with the same goals of long-term security of tenure to be constituted within a civil law jurisdiction—which is particularly relevant in the context of a mixed jurisdiction, such as the province of Quebec, and other civil law jurisdiction found within a common law political structure or country (like Canada) that have integrated an civil-law-adapted form of the common law trust.

Legal tools like the cultural land trust that can be adapted for a variety of local contexts, take on a variety of forms, and be structured in a number of ways in order to curb and counteract the widespread displacement of urban spaces of art, culture, and community have a high utility for cities, their local law, policy, and governance processes that shape their (re)development plans and the implementation of these plans in such a way that will ideally better reflect current international sustainable urban development frameworks, such as UN-Habitat's 2016 *New Urban Agenda* and the UN's 2015 *International Guidelines on Urban and Territorial Planning*.⁽⁹³⁾ But tools like the cultural land trust are also highly useful structures for arts, culture, and community groups as they seek to mobilize to preserve their access to urban space with or without the involvement or support of public actors and resist urban displacement processes such as renovictions and demovictions.

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could improve urban quality, social cohesion and inclusion, and the protection of local resources. Participatory planning and budgeting involving communities in managing urban commons, such as public spaces and services, could contribute to improved spatial integration and connectivity, human security and resilience, local democracy and social accountability.

⁽⁹³⁾ See also Cotterrell, *supra* note 37.

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