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**Martha:** I'm just going to start with a bit of context. This series began in February when we talked about the broader issues of Board Table Disruption and disrupting some of the models of how we do things around the board table. One of the questions that comes up whenever I am in any conversation about this issue or about boards generally is "can I get a lawyer on my board?" "can you be our lawyer?", "do I need a lawyer on my board?" "Should I need a lawyer? I must have a lawyer on my board?"

In fact, the first workshop that I did when we were the Artists' Legal Outreach at I believe it was "Making a Scene," The Greater Vancouver Professional Theatre Alliance Annual Conference, and a very significant long standing arts administrator said, in answer to my question about what are the legal issues facing the arts, "Well the first thing is to get a lawyer on your board." I stood there like a deer in the headlights going, what? Why would you want to do that?"

That began this conversation that I invited Jeanne and Owais to today. We diligently tried to find another lawyer, other than myself who's been on an Arts Board to talk but very few are willing to come forward today which tells us something, I think.

So with that as the context for today. I'll introduce Jeanne Lesage, she's a great friend of the arts in Canada and had a short tenure here in BC. I was happy to get to know her here and we've worked together since. She has her company LeSage Arts Management, she's a certified HR leader, C-H-R-L, what does that stand for?

**Jeanne:** CHRL

**Martha:** CHRL! An arts HR consultant working with Mass Culture on the Future of Arts Work research project, including a current focus on board governance innovation.

LeSage Arts Management was born out of 30 years of excellence in executive arts management across many disciplines by Jeanne. She's a respected senior arts management professional with national and international expertise with festivals, and multi disciplinary Performing Arts.

She's a sought after consultant educator and conference speaker, and I'm really pleased that she's agreed to join us today.

With her is Owais Lightwala, who is an arts leader and creative producer. He's currently an Assistant Professor in the School of Performance, Faculty of Communication and Design at Ryerson University where his teaching and research focuses on creative producing and arts management. Prior to that he spent eight years as the Managing Director for Why Not Theatre, where he produced sold out runs of award winning new works, National and International tours,

presentations from around the world, and co-helmed the creation of innovative new producing models like riser.

So, over to you, Jeanne.

**Jeanne:** Great, thank you Martha and hello to everyone. And I'm very pleased to be zooming into you from Tkaronto in Toronto which is the traditional territory of many nations including the Mississaugas of the Credit, the Anishinaabe Nation, the Chippewa, Haudenosaunee Confederacy, and Huron-Wendat peoples. Tkaronto is the subject of the dish with one spoon wampum belt covenant. I'm very grateful to live, work and play on these lands, and I'm very grateful to be here.

My role today is to be a moderator. So it's not that I don't have opinions about boards and the legal side of boards, and I got a cat about to come into frame, but, I love the conversation we've already had with Owais and Martha so I think today is going to be a very very engaging discussion.

I've framed out a number of questions, and I'm going to ask each of them to give their points of view because these are two very smart folks with institutional experience and Martha's side of legal experience as well. And again I'm gonna say, throw your questions in the Q&A. We will have time in the end to address your questions, please just throw it into the Q&A. And when you're asking questions, please don't quote anything specific about your organization and board, the confidential cases. Let's stay generic and let's go! OK so here we go.

We may often hear that you need a lawyer on your board, so just as Martha was saying, and we often hear this, we need a lawyer on our board, so is this true? And if so, Owais and Martha, what should they do? Should you have a lawyer on your board? Why or why not? Martha, I think you would like to begin, and I think you should begin.

*Little banter about Jeanne's cat and the viral video of the lawyer whose avatar was his cat.*

**Martha:** My answer to that question is, actually, generally, no. You shouldn't go into, I think it's not the right question. The question should be, "What is the board's current makeup? What is our mission? Who's our community? Why are we here? What do we expect our board to be doing? I made the mistake of being, very early days, I was on the board of an organization that shall remain nameless. And in the first week, the first board meeting, The Artistic and Executive Director stood in front of me and said "We just got served with a human rights complaint," put it in front of me, and asked me to help with a response. I, not understanding how the Rules of Professional Conduct worked around these things because it never occurred to me to actually read them apropos of whether or not a lawyer should ever do this because we technically aren't supposed to. I went ahead and I drafted the response on behalf of that company to this human rights complaint because I was a human rights lawyer, so it was like "oh sure I can do that," and it just didn't even occur to me that it was offside of the regulator. But it's also, like, what a bad idea, in part because many people think of lawyers, as if, well, many lawyers think of

themselves as being the font of all knowledge. We're not, you don't ask a real estate lawyer about a human rights situation, and it's like asking a podiatrist about your brain.

We don't do that, and yet we have this expectation that somehow this will avoid us ever having to hire a lawyer, instead of, what's the point of having, what is the role of a director? Which is yes, some lawyers are really good at providing guidance to boards and being supportive of the overall mission and vision and values of the organization. I can tell you from experience that is not me. So you don't want me on your board. I'm not a good team player, so you don't want me there.

**Jeanne:** Martha, you said this, and then this quick follow up and then I'll bounce it to Owais, you have said, don't give legal advice, and just for the purposes of the call here, can you explain why a lawyer on a board should not give legal advice?

**Martha:** It puts them in a potential conflict of interest. And it also raises risks about if they're wrong, and the organization has relied on their advice. That's why the rules actually, the appropriate thing for a lawyer on a board to do is to say, "I can't give the advice. However, my firm will." And that's, in many in a larger non-profit's have relationships with law firms, because of this, this "lawyer on the board." But, not every law firm or lawyer is willing to do that. And you gotta ask yourself, do you want a lawyer who's just there to do that? Or, do you want someone to really get your work and can contribute,

**Jeanne:** Like any board member?

**Martha:** Yes, exactly.

**Jeanne:** So ok. Thank you Martha. So Owais, Hi Owais. So great to have you here. Over to you

**Owais:** Hello!

**Jeanne:** Ok, enough of the nice. Should there be a lawyer on the board?

**Owais:** *Owais makes a joke about pleading the fifth.* I think Martha really very articulately captured the gist of it which is what is the purpose of your board? I think that's where all of these conversations always go back to for me. And there's been so much hemming and hawing and panicking around the role of boards. I think we do make some really big fundamental assumptions about what the role of the board is. And when we start there, when we start unpacking, what is it that you actually want from the people who you are basically hiring to be your boss? That is the way I always approached it at Why Not Theatre. I was notorious at Why Not for being very, very, very frustrating to some people in the organization, for being slow at board member recruitment, because to me it was the most agonizing decision to make, was who do we want to give power to fire us? Who do we trust enough to trust us enough to do what we need to do? Especially for an organization like ours, you know. Why Not was going through a lot of growth and change and taking risks that were not, weren't always like, we could never

say to our board was “here's what we did last year, we're going to do it again this year, and everything is going to be great with 1% increase in all.” There was none of that. It was a lot like, here is this was the crazy thing we did last year that almost killed us. Here's the new crazy thing we're doing that's gonna almost kill us. How do you feel about that? Great, we're gonna do it.” So for me it's really a question of what is the purpose of your board in general?

I think we have to make a distinction between lawyers as people and lawyers as their job profession, their job profession, their profession. Something, something happens to us around lawyers and accountants, and a couple of different types of jobs where we conflate the two. And it's like, I think you could absolutely have, as Martha was saying, a great lawyer on your board, who happens to be a lawyer, but the alignment is with your other needs from a governance perspective or from the mission / vision of the organization.

And, and the only part of the profession of a lawyer that I feel is helpful on a board is what I like to think of like, as “not my lawyer, but a lawyer advice.” What I do think is helpful sometimes is to have someone who you can talk to, who understands just how legal language works, and how legal processes work, what, what things you may not be aware of that is helpful to get a perspective from someone who is more experience than that. Jeanne, I've said this to you. When I have an HR problem, my first phone call was Jeanne always, because she has HR experience. I don't care what your certification is. I care that you have the experience to know what I should do next. That's really what we're actually after. Often when we say “I need a lawyer.” What we're actually saying is I need someone with experience with certain kinds of legal problems and knows what to do if those things would happen to me. That's what we mean often.

**Jeanne:** Yeah. It is interesting to compare to HR because I've been known to say, “maybe it is good to have an HR person on your board,” but I also would similarly ask “what kind of HR experience? Is it generalist? Is it somebody that understands non-profit and understands non-profit workplaces? Owais, if I may, something that you had said before is, and I'm just going to, again, I'm trying to frame this for folks that are watching and listening, you know “don't get legal advice but get lawyerly advice,” that was your technical term, Owais. We're going to put it on a t-shirt. Give, get lawyerly advice. And it's what you're talking about. It's understanding the law from the frameworks and the processes and the methods, which I think is actually sort of leads nicely into the next, next question that I'd like to talk about, which is, so we're moving off from lawyers as the people, and I actually like that, lawyers as people versus lawyers as professionals. And I love the fact that all of this started with, yes, but who do you want on your board, doesn't matter who is on our board, what do you want them to be doing, and how does that fit within your mission and vision of what you want to be doing.

Let's talk about the law. I think for arts organizations, you don't worry about the law until it's a big problem and then something blows up and then you really need the law. So I would like to think about how should organizations think about the law? And about back to the lawyerly advice as opposed to the legal advice. And we three talked about, is sometimes what can happen with lawyers, where it's well, let's wait until there's a problem and then we'll deal with it.” But, by that

time it might be an adversarial situation. As opposed to, can we think about the law for arts organizations and we talked about the phrase coming to agreement about things versus having agreements? Because sometimes lawyers will be like “we’re going to get the best piece of paper, the best contract that protects us and, it’s going to give us the edge” Opposed to, we know in this sector it’s collaborative, it’s partnerships. We want to come to agreements on things. We do need to protect the organization from risk and making sure that we’re hitting fiduciary marks and compliance marks, but how do we think about the law in a way that’s both healthy for an arts organization, but also is kind of, speaking to our values as a sector? And Owais, I’m going to start with you first and then I’ll go to Martha.

**Owais:** I may get contradicted by an actual lawyer, but my feeling is, and I teach this to my undergrads at Ryerson where, when I talked to them about contracting, everyone is always like, as soon as you say the word “contract”, they’re like, “put on your lawyer robes and go to battle stations.” The thing that I say to my students is that you’re never, ever, ever going to go to court over your \$5,000 engagement with the tiny non-profit. It’s just not going to be worth it. The justice system as far as I understand, in my experience, is really not set up for the scale at which most non-profits work and most people in the arts are working at the rate of money involved. As soon as you’ve called a lawyer, just the billable, rate this is going to far outweigh whatever loss or gain you have. So for me, I think when people approach these things asking “what’s our legal risk?” and “is this gonna be held up in court or not?”, like all the stuff is like, we’re already completely off base. The purpose for me of contracts and agreements is, do we understand each other? And can we actually come to this from a place of using these documents as a way to make sure that we understand the principles of our agreement and document basically what is we know we want to happen.

The pandemic was a great example last year where we had tons of things that got cancelled left right and center, tons of things that we cancelled left, right, and centre. And in a whole bunch of contracts, there were some places where there were some force majeure clauses, and there were some places where there weren’t force majeure clauses. I can tell you, there was a whole bunch of places where we were like, “oh, through this technicality here’s how we’re going to get this person to pay for this,” and nothing happened. Basically, it was completely 100% relationship based. Where we had good relationships, people were helpful and kind and we helped each other. But where we had bad relationships, we got nothing. The deal was over and we weren’t gonna sue them because it’s not really worth it.

And that’s been my approach. Thinking about the law in the TV sense is not often helpful to the reality of what we are actually doing and, and then you can start with a place that’s true to your values, and be informed, obviously, but it doesn’t have to be, I don’t know I feel like it may be a little bit overblown how much law we actually need in our work.

**Jeanne:** Right. I think, although we often say things can be built on relationships and then, if, if that doesn’t work then you do need that piece of paper to fall back on because I will say on the other side, I’ve seen it where there’s not enough written down, and obviously the perspective of

like “well this is what I understood when we talked about it” and “this is what I understood” at some points of written agreements” can help kind of confirm.

**Owais:** But if you use it for that purpose, which is to remind someone “Hey, but when you said that we wrote that down, Remember?” That’s a different purpose than saying, “Okay, well I’m gonna see you in court where it says that right here.” That purpose is almost never going to be a win win solution. It’s almost always going to be a lose lose solution.

**Jeanne:** Well, you might win once, and then you’ve lost a partnership.

**Owais:** Right, and this cost you more money than the problem actually did you know?

**Martha:** Absolutely. Absolutely. So, I do, I have three comments. But I’ll start with the last one which is really the most important point. Which is that, as I always say, it’s about relationships. I spend a lot of time actually disabusing people of the idea that a contract is going to protect them necessarily from issues that arise in a relationship. Because if somebody is really hell bent for leather, as they say, to go after you, they’ll do that, disgruntled people file Employment Standards complaints.

And you know, you can have the strongest employment agreement, drafted by whoever you want. You pay them however many 1000s of dollars if you’re talking about a larger firm, and sure, you’re going to get an iron clad agreement, and that person may still not agree that they should not be, they shouldn’t have been terminated. They have a right to make a claim, and the first thing that an Employment Standards officer will do is they’ll try to get the parties to settle. So you’re going to end up paying money whether you think you should or not. Because, the reality is, is that if the relationship is broken to that extent, and you got that person, and you usually know before this person makes that claim that there’s a possibility of this.

And some groups in the arts and outside the arts with non-profits, and you know I deal a lot with this with the arts and with non profits, and you know, it’s a big shock, and you’re like “well, you know, you have an executive director you expect to be able to do all the fundraising, they’re supposed to be experts in employment, they’re supposed to be experts in privacy, they’re supposed to be experts in everything. You don’t have enough HR experience yourself.” And now, in the landscape we’re living in day to day right now we’re talking mostly about respectful workplace / bullying, harassment, sexual misconduct issues. That’s what I’m seeing, I see one a week, and 90% of them are great, we have a policy. What difference does the policy make if you don’t have the skills, you don’t have the wherewithal to support the relationship?

And, and I think in the arts especially where you’re dealing often with people who’ve put their heart and soul into a piece of work over a period of possibly years, and you know, you’re past the workshopping stage and you’ve got the first production up, and somebody loses their stock. And, you know, that’s real life, and you need to be able to respond, and people need to be empowered to respond. And it isn’t the speed dial to the lawyer that’s going to solve that. It never is, in my experience, and I have several years, a decade of experience as a human rights

lawyer and mediator, I can say with some certainty that I've never seen anybody come out of that process happy.

It's, so, I think the relationship piece is really really really important and I think that is actually why we do the work, why I do the work I do, and why the National Network of Legal Clinics for the Arts is so important, why access to justice is so important. Is so that we can also demystify legal concepts, empower people to understand what their obligations are so they don't freak out. Make things easier to understand plain English goes a long way.

And this is also something, and this is my last point, which is actually my first point is, lawyers are notoriously risk averse. They are the first people when you invite them onto a board, who are going to be asking what is our risk? What is our liability? and what's our coverage? Especially, and I'm not trying to paint a particular picture here, if they are younger lawyers coming from a big firm with very little experience, maybe they've never been on a board before, and they're there, they're not that familiar with a very risky world of making theatre or making art. And they come on with a whole lot of expectations that in order for them to be on that board their firms are telling them, "did you check the DNO? or "do they have this agreement or that agreement." And it really becomes this, it can create a lot of tension actually between a lawyer on a board who is extremely risk averse. And not just staff, artistic staff or other, but also other board members who could be like, "who are you? Why are you pushing us in this direction? When we're already over here? And we'll cross that bridge when we come to it? And avoiding controversies like the Capture Photography Festival issues here in Vancouver with Stephen Shear. And sometimes having a lawyer on your board can be really helpful, but sometimes it can be like oh my god, we have to shut it down. And yeah, so

**Jeanne:** So I mean, well, I think what's interesting, there's two things that I want to kind of come back to so I'm going to go off. Because, one thing is about demystifying the legal function for the Arts Board, and Owais, you and I were working on a project a couple years ago where we were talking about what's the criteria to think about for a project. And looking at artistic criteria, and also like, does it serve who we're want to serve? and what does it mean from a budget point of view? From an HR point of view? Then maybe the legal point of view. And so, maybe the answer is that legal gets called in, for something, when something, they get called in for the fire as opposed to being called in on a preventative basis. So it's like, what are the ways, It's a component, just like if we are thinking about our marketing needs and our fundraising needs and how we're serving our community and HR as well as compliance. So I do wonder if there's a role for an arts org, whether it's the lawyer on the board. But again, I always feel like I'm always saying to arts leaders "well now you're gonna be, you were saying this Martha, now you're going to be an expert with this and this and this and this and this." So now I'm going to turn this on its head a little bit, and if you're following for questions, when should an arts organization call a third party lawyer? When do you think it's time to spend resources, which are very precious, on billable time with an outside lawyer? And I'm going to ask Owais the not-lawyer first.

**Owais:** For me, I will say just building on the point that you just made about professional legal advice coming in for when you have a fire, versus the not maybe necessarily getting them in a preventive way by saying “I have a lawyer on my board therefore we’re going to avoid any, any legal risks” because I think that is an important thing to make the distinction of like, that that doesn’t mean that you shouldn’t be prepared. I think in all of what we’re saying, we shouldn’t also confuse with what we’re saying with like, having a lawyer on your board is a very different thing from saying, or us saying, you don’t need a lawyer on your board is very different, than saying “you don’t ever need to know anything about the law, the law is nonsense and everything will be fine later, just figure it out” in case there’s anyone who is sitting at home saying, ok these very smart people including one lawyer are saying, ok the law is nonsense so don’t worry about it. The balance there is like figuring out enough that you need to know.

And I think maybe I’ll just answer this question from Carol because it is part of this point which is you know the thing you’re saying Carol around having a lawyer on the board be a coach in terms of compliance things like I think within that you’ve answered. To me the big, big thing that I’ve always kind of been puzzled about is like, if you want a coach, get a coach. If you want a board member, get a board member. There’s, the conflation of the two is where I get confused. At Why Not Theatre we had a pro bono relationship with an employment lawyer who generously committed a certain amount of time to give us employment law advice whenever we needed. And that person was not our boss, and like, we didn’t have to do anything else beyond we asked for some help and they gave it to us. If that’s all you’re looking for is a friend, who will give you free advice, there’s a lot of lawyers who would be happy to do that and put their logo on your website, and be thankful and give them some tickets. You don’t need to make them your actual boss with governance responsibility. The reason they get risk averse is because it’s their risk, they are more liable than you are. Like, it’s that’s the part where I get confused of why on boards. There’s so many relationships and I feel this way about, like I feel this way about accountants. I feel like this about donors, I feel like this about so many positions that we just assume need to be on the board as the only way to engage people. And we jump right to that conclusion.

And it’s like, there’s a million other ways you could build a relationship that doesn’t need this one shot solution. Because that, like, how many boards have we seen blow up until last year? And like how many more is it going to take before people go “maybe we should be careful about who we bring on our board.” And you know, this is roping to your point, by the time you’re asking questions like “how do I convince my risk averse board to be more risk taking?” It’s too late! Wrong board. Like that’s, Again, now we’re litigating. We’re not going to change people. You’ve got the wrong fit of either leadership or board. Someone’s going to have to change very drastically.

Sorry what was your question? When was the right time to get an outside lawyer? I think as soon as you’re in a position where there is going to be an impending threat of legal action, like that’s when I would immediately get in touch with a professional because as soon as there’s a threat of that, that’s where I don’t want to do anything wrong, now, while we’re still in relationship mode, I feel like you can get, you can do a lot on your own. Or, generally I have managed to fine

in a lot of situations. And then there's been situations where I've been like, "oh, this could end in court." And if it's going to go there, we should be prepared on our side as well.

**Martha:** Yeah, I'm going to respectfully disagree, Owais, with a few things you said.

And, I think it depends a lot on where you are, right, you're in Toronto. A place like Vancouver is a very different experience than it might be for in a smaller community, where even finding an employment lawyer, like seriously, as someone who specializes in employment law, in a random community choice like Kitchener, or London, who is going to be that available? I'm not so sure. And, and I think that, I think it is about building relationships at some level with the legal community, at the same time, you know, and you can develop relationships with people who love your work, right? I've brought some of our board members, and certainly most people know me as a significant patron of the arts in all disciplines in this town. So it, it shouldn't come as a surprise to people that I get what they're doing at least. And there's a few of us out there. Our time however is really precious.

And I look at it like this, and I've given a lot of thought to this, because I started a legal clinic, and there's a reason why I did it that way. First and foremost I think funders need to separate, in their sample budgets, there needs to be a line item for legal that's separate from accounting. You know, there's just no real rational reason for an organization with over half a million dollars, not to have, I don't know, 1000 bucks set aside. And you may never need it. Ideally, you don't need it, but at least it gives the Executive Director or the board some comfort that there's something there in case they actually do need to get somebody, say to review all their employment contracts to make sure they're up to date.

And you know, that's another thing. One of the things that, and this is what the Legal Self Assessment and Learning Tool project that we're doing is all about. We're developing a legal digital platform that actually answers most questions that you need to know in order to be preventative, to be compliant, to know the difference between an employee and a contractor, so that you don't end up having to argue that before the Employment Standards branch, or alternatively, the EI people calling you up after your intern has filed an EI claim because they didn't seem to understand that they were not employees within the meaning of the Income Tax Act. Meanwhile, the organization has been making its remittances, and the contract that this person signed suggests otherwise. It's a mess, but it's a mess because we cobbled things together off the interwebs, instead of, we've already decided that we can't afford it. Even organizations that have the means, have decided they can't afford it. Now I admit, I'm not going to sit here and suggest that fees aren't expensive. People are spending hundreds of dollars on haircuts. I'm like, if you can find a few \$100 to get your hair done, you can find a few \$100 to get, to at least make the effort, to see, to at least find some people who might be able to support your non-profit, whether it's an arts group, or otherwise. So I would push back a bit.

**Owais:** Very good point.

**Martha:** And I really want to go back to why this legal clinic for the arts thing is so important and the National Network is because the Department of Canadian Heritage and the Canada Council. And here in BC the BC Arts Council and the City of Vancouver Culture have explicitly now told us, we agree. These folks need some support. So now you have an opportunity to actually see something happen in these directions, and the only way we're going to be able to meet those needs is if people participate.

And they have to participate by acknowledging that sometimes we're going to need this help, and the funders have to say, yes, we understand that. So we agree you should, CADAC for example, have a line item. The difference that would make, I think culturally in the non-profit sector would be monumental, because a lot of people are afraid of us. And you know, sure, I'm afraid of hiring a lawyer. I don't want to spend \$5,000 I don't have. But there's other ways of approaching it. And, and, all of us, there's, I don't know 60 to 70 lawyers involved in this project. We're all out here trying to work on behalf of the arts. It's inspiring actually, as we found yesterday to listen to all these young people say, I just want to give back. And one way they're doing it is by these vehicles, but if you're not willing as an organization to even take that step, then, that's an issue. And.

**Jeanne:** No, I think that's great. What's interesting is that, Martha you know, some of the research that I had done a couple years ago which was surrounding workplace harassment investigations, is, you know, understanding that difference of when do you need to seek outside help, specifically, depending on the incidences in cases that are coming forward. And that's as much about protecting the organization as about protecting an unbiased and respectful process for all. So, I think there's, and then I go back when we talk about prevention so if it's a sandwich where you put a lot of attention on the prevention side and then you build the relationships and do the work, and then you access it, if you need to. It's sort of that, I'm going to move metaphors from house fires since that feels very angry and horring, but you know, it's like health prevention and then if you need to see a doctor, then you see a doctor. But you try to really, and I think if we're able to do more on the prevention side and say how do we approach all of this, the law, the legal requirements, the agreements, everything, everything we need to do.

**Owais:** And there's some things we waste money on lawyers for that we don't need to. I think you're totally right. We've decided what we need and decided what we don't need. And like, I see people spend 1000s of dollars on things like getting non-profit incorporated and I'm like, have you tried? It takes 10 minutes and like \$200 dollars. Like, have you tried to do it yourself? We make an assumption that that's something that's too scary to do.

**Martha:** Yes, exactly my point. It's like, it's, you know, don't get me started on the amount of also, you know this attitude that permeates the consulting world, this attitude that consultants have that somehow your records office should be a law firm. Like, that's absurd. This is an organization of under \$250,000 spending even \$500 a year on this service, when we're all online now in BC. It's absurd. It's like, anybody can do this. And you know, I remember one of the inquiries to the solicitors roster was a fairly significant international organization, a bunch of engineers, struggling with how to file an annual report, and they put it out to a bunch of lawyers

and I put up my hand and said “send them to us.” I’ll get a law student to explain how to do it. That’s all they need. There’s no reason.

And it’s partly the legal profession that is in the business of, maybe, mystifying things. But it’s also incumbent on the sectors to say, hang on, we can demystify this for ourselves. And I really, again, sort of to go back to, we’ve created, for our Pivoting to Digital series we’ve created some contract templates that set out rights provisions a lot of small non-profits are struggling with this as they start to stream stuff. We’re putting together a workbook that will hopefully help a non-profit to incorporate without the assistance beyond perhaps a law student. You know, there’s lots of things that we could be doing.

And, we also need the support of the art sector and say, with the work we’re doing right now with the legal clinic. We need you to be saying this is “what we need” and telling your funders. And speaking out and saying “hey this really made a difference for us.” And if it was available to everybody, how much more could we be doing.

You know, the SHARP clinic opened, the Community Legal Assistance Society and Sexual Harassment and Prevention Legal Clinic that was set up with federal money here in BC. They didn’t know about the Respectful Workplace and the Arts project that the CHRC had undertaken. They were completely unaware of it, and as a result there’s this disconnect between, “here’s an amazing resource, five hours of free legal advice to anyone with a complaint in this area” and a sector. Among other sectors that are not even aware that that exists. There’s a lot of siloing going on. You get a bit here, a bit here, and bit there and a bit there, and that’s another thing that we as a sector should be really looking at, you know, like why do we think we should be going here, here, and here? Why don’t we expect more for ourselves? You hear this a lot, you know, the austerity mentality or the starvation. All of us have been nickel and dimed to death and I understand, as someone who has started a non profit, I understand that feeling as someone who started in non-profit. Believe me. And we have to get beyond our own sense of that experience to be asking for more of what we need, especially now. This is the moment where we have to demonstrate that we can start filling some of those gaps that we’ve known have existed for a long time. And it’s one of the reasons for example that our focus, among other focuses has been to reach out to all of the emerging and not emerging BIPOC lead arts organizations to say explicitly how can we help you as we ramp up this legal clinic in Canada, which is the first in Canada with a staff lawyer. How can we begin by helping you? So that when you’re set up, you know that you don’t need to, and we’ll hopefully minimize the likelihood that the scenario that you know about Owais and Jeanne and that we’re never talking about, and we can all name at least one, doesn’t happen again. And that we really do empower this next generation of folks to have a different relationship with their experience with not only the law and their own capacity to own this, especially, you know.

**Jeanne:** This brings up a conversation that three of us had which is, you know, in the midst of, this conference will be about building your capacity in fundraising, and then this conference is about building your HR, and so on and so forth. At all of this right now and all these collaborative partners, you know, we’re also really trying to do the important work of

decolonizing our organizations and implementing true sincere anti racism anti oppression approaches. I think Owais you mentioned this earlier like, the justice system, what is the construct of the justice system, in light of everything that's happening? And then if we assign a certain legal approach, is that exacerbating harm? How do we also serve that notion of what we're trying to do in the sector right now?

**Owais:** I don't have a great solution. But I think that point is a key one, and like my real talk feelings are that the justice system is for rich white people, and and it works really well if you are in that category. But like for everybody else, I think it's, at best, really intimidating and probably going to be bad. At worst, it's a predetermined destiny for your entire community that is, that is like, harm doesn't even begin to capture what the justice system does to some communities that I don't even need to name because we all live in the same world. So, this is again where I go, you know, we put a lot of stock into these ideas of the law and the lawyer and the legal systems. But, they are not necessarily the systems that serve, you know, when we're talking about shifting to BIPOC communities if we're talking about any kind of community that has a much much different level of, your point about, you know what we assume we can and can't differ I think is is widely applicable to a lot of organizations. Then there's like another tier of organization that's not even paying themselves anything right now. Like that's, in that category of compensation like it's not for you, it's not going to be for you, like let's just be real and honest about what this is, because I don't think we're serving people really. I hope that'll change and I'm sure there's lots of great people working on that, and solving that problem. But in the meantime, for me it's like, if your values are committed to transformative justice which is the thing I've been hearing more and more come up in all kinds of conversations. You can build relationships and contracts, like you can build a contract to say almost anything you want in terms of how you're going to remediate your disagreements if they come up, as long as they don't contradict I guess like federal or provincial whatever laws, like you can't supersede the law but you can still come up with your own systems. I think community lead systems would be great, it would be better in a lot of cases than us trying to use systems that weren't designed for us, that don't really work for us that are kind of, you know, a massive sledgehammer when we're trying to work with like very fragile, I don't mean that the communities are fragile, that was not the best analogy, but once you bring that lens to this conversation, it really becomes even more intentional that are very very intentional about when and how and why we're interfacing with the legal system. Lawyers are part of that legal system. In this list of attendees I see a BIPOC lawyer from the arts community who went off to law school and I'm like, this is all dynamic and changing and it's going to be super interesting to see where it goes. But, like lawyers are part of the legal system primarily, that is their profession. Again, separate from lawyers as people, as humans, they have much more value than just what they do for work.

**Jeanne:** And I think it's, like, back to like even the very first question which is, do you need a lawyer on your board? What do you need to support the goals and mission for your

organization? I sort of also go back to, you know, that the policy and rules should be demonstrating your values. I believe in our sector in my Pollayana world. Yes you need to do that baseline compliance fiduciary, but can we come to a place where all of the instruments truly demonstrate your values in it?

**Martha:** And the you know lawyer in the room, at least, there are probably a number of lawyers on this call with the mic, I guess, you know, a big part of why I do what I do is I'm trying to figure out ways, what is that term about, I think it was Leonard Cohen about cracks in the sky, or cracks appear, and the idea, you know, we hired to Indigenous law students to work on this project with us. And my hope is that we'll begin to develop some of those relationships that will lead to the next generation taking on some of these issues, and ensuring that the next generation are supported in their effort to transform the various rules and systems that we use, whether it's bylaws or constitutional purpose statements, or rules of procedure and a meeting, what our aspirations are, our employment relationships are in ways that I can think a few up. But really, I see my role is to say hey, let's open the doors here, and start seeing that if we say, as I've said repeatedly this week, we want to be a catalyst for something different to happen as a result. And now, over at least over the next two years, you know, there's a bunch of us who are just going to put as much as we can into hopefully in some places, building that out. And, you know, I'm not going to prejudge what that legal service for, particularly say, Indigenous artists is going to be. I know one thing though, it isn't going to be us running it. I will be, we will be the catalyst that propels it that supports it and says, "you guys can do that. You don't need me." There's plenty of opportunities to do this. It's just that, there's not a lot of folks. Creativity in the legal world realm is discouraged and people who are creative often, like in the litigation world where I used to reside, they were often ostracized. And treated, like some of the criminal lawyers, like for example, Clay Ruby, at the beginning was not an exalted senior member of the profession. He was seen as, you know, a crazy man. And what he was doing, when he was out there advocating, and I think we've gone some distance, but we have a hell of a long way to go. And everything about law school and the profession, tells us every day we have to do "this," and I hope that our project, and other projects like this, start to go, push this, open doors. It's tough though, I mean, in BC, you know, you talk about the threat of courts, Owais, you just be grateful you're not in BC right now because we have the civil resolution tribunal that now is addressing disputes under the Societies Act.

And what that means is, is that, I'm seeing claims being made against small non-profits, that are now forcing, and you're not allowed to have a lawyer involved. You want to talk about panic stricken boards? Holy crap, because they know the amount of hours it's going to take to respond to the claim, forget everything about money or lawyers, it is so time consuming. But that's a vehicle, but the more that people are using it, and we're seeing some really wacky cases. It's exactly the wrong way to go.

And yes, and I had this conversation with the Attorney General two years ago. I said, “please don't do this without an educational campaign to support non-profits with their requirements under the Societies Act because this is a recipe for people freaking out and ending up needing to spend more money on lawyers, rather than help with really meaningful prevention, self-help, and empowerment.”

**Jeanne:** Right, so Martha, we've got one minute before the hour. There's some questions in the Q + A, but I'm wondering if we can get some of these, I think, I think Owais you answered the first one that was directed to you. If you can answer that.

**Owais:** Yeah, I touched on one, two.

**Jeanne:** Yeah, Martha, the resources that are through the clinics, are those, I think Angela has been putting links in the chats, so maybe we can follow up with attendees with all the various mechanisms that are available through PLEO. Is that something we can follow up with attendees? Angela says you betcha. We're almost at the hour. Do you think there can be a conflict between organizations that employ artists, and individual artists using the same clinic services? And maybe that's a follow-up.

**Martha:** Yeah, because we are going to be the legal clinic with a staff lawyer, who is on the call today, hi River, we're looking forward to you starting in June. We're going to be working that out. We are in active conversation about how we're going to address the possible conflicts that could arise. I think we're also not going to close the summary advice clinic. We're going to retain relationships with our existing pro bono lawyers, so that we have a referral source. And when we start to really look at employment issues in particular which we'll be looking at more for the second part of the pilot starting in January, then we may have to make some choices, and we are looking at how we're going to resolve those.

Because of the availability of legal support to complainants in particular, and other individuals, they have more opportunities than a small non-profit arts or non arts organization does to access legal advice. I think we may end up focusing on the arts organization's ability to access the legal advice, rather than the individuals, so as to precisely avoid that issue. But our hope, and I'll make one other comment, because I think that one of the most important issues that is facing us is around bullying, harassment, and general risk that we understand is respectful workplaces. We are really putting some energy into developing a series which we're calling Respectful Workplaces: A Harm Reduction Approach, and developing some actual practical tools to support organizations. And we're working with SHARP and CLAS on doing the best we can to empower organizations, smaller organizations, especially, so that they can start to be good, you know, identify issues ahead of time, understand how to implement policies, and develop some of those tools like witnesses. These lay witness programs.

People are talking about “lay people” who would be available to be sounding boards. They're not associated with the organization but they're skilled. So much about conflict we don't handle well. And we've gotten worse at it and it's polarizing. And so the idea behind some of these efforts, that are going on out here that I'm aware of, I'm hoping we can start getting people to rethink avoiding the adversarial boss person or complainant and respondent, and get us into a place of real relief, of what I guess you would call “right relationship.”

**Jeanne:** Also for those boards and for leadership to kind of not feel adrift and feel that they do have the right information, are they taking risks, how do they...

**Martha:** And don't all resign en masse when there's a problem. Right? Like this is the standard response. It's like, oh my god. Better go now, bye!

**Owais:** Doesn't that also not actually alleviate your liability for another few years?

**Martha:** No. Not if there's been a serious breach if you're a director.

**Owais:** So You're still on the hook.

**Martha:** If there's a wrongful dismissal action taken against the society, and you were on the board at the time, and you didn't do your due diligence by asking the Executive Director for the explanation for why they took X and Y action, in theory, that liability will follow you until the CRA decides to stop sending you letters. And who knows who that person is who says, aha, I think I'll stop sending the nasty letter about that thing. I wonder about these things. I know people who've got letters, years after issues arose. But eventually they stop because you can't get blood from a stone, but that's another conversation.

**Jeanne:** Alright, well we're over the hour so I'm going to suggest we bring this to a close. Thank you, Owais, I often like to cajole him, or volun-tell him to join, and it's always a great, I knew that Owais and Martha would have a great conversation, which is the case Martha, I'll hand it over to you and your team, and I know that this is the closing of your Forum.

*Martha thanks Owais, Jeanne, and the PLEO Team for their contributions to the Forum.  
Martha also thanks our funders.*