Case Notes

Bolivian Textiles in Canada

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A case currently before the courts of the Canadian province of Nova Scotia illustrates the seemingly inevitable difficulties of enforcing criminal laws dealing with the importation of allegedly illicitly exported cultural objects. This note will examine aspects of this case against the background of Canadian cultural property law and policy for the purpose of assessing their adequacy.

1 Canada and Cultural Property

As a country implementing elaborate cultural property import and export controls Canada shares some of the characteristics of an 'exporting', 'importing' and a 'transit' state. While Canada has some wealthy private collectors it is not a major art market state on a par with countries like the United States or the United Kingdom. Canadian collectors may fear, however, that existing controls on the export of cultural property would tend to lower the value of the objects they do own. Canada is also an 'exporting' state in respect of the art and artifacts of its indigenous peoples and the vast amount of this material now located outside Canada (mostly in Western Europe and the United States). Canada's long border with the United States recurrently presents unique trans-shipment problems – already familiar in other fields such as high technology export controls, movement of armaments and dumped goods and services. In relation to cultural property this strategic characteristic is especially problematic, given that Canadian cultural property import controls are considerably broader in scope than those of the United States.[1]

In terms of international relations, Canada is often perceived as a country more likely to cooperate with other states on solving global problems than many other countries. Respecting cultural property Canada has been described by legal scholars Prott and O'Keefe as a state where 'the forces are more evenly balanced.'[2] This symmetry may change as Canada's immigrant populations develop an interest in the art of their countries of origin and press for more flexible import controls.[3] The official Canadian government position, however, continues to be one favouring a

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mediation role by Canada in relation to the tension arising between pure market 'importing' states (such as France and Switzerland) and pure 'exporting' source states (such as Guatemala, Peru and Bolivia).[4]

2 Canadian Cultural Property Law

Canada's federal legislation relating to controls on trade in cultural property – the Cultural Property Export and Import Act (the 'Act') – came into force in September 1977.[5] The Act preceded, by about five years, similar United States law implementing the 1970 UNESCO Convention on the Means of Prohibiting the Illicit Import, Export and Transfer of Ownership of Cultural Property (the 'UNESCO Convention') which Canada acceded to in June 1978.[6] The Act deals with the export of cultural property from Canada broadly along the lines of the system in place in the United Kingdom. Section 37 of the Act deals with the importation into Canada of cultural property illegally exported from foreign states. Once a 'cultural property agreement' operates between Canada and a foreign state, it is illegal to import into Canada foreign cultural property that has been 'illegally exported' from that foreign state. The Act also establishes a procedure for a reciprocating foreign state to recover its cultural property in such circumstances. The Attorney-General of Canada may institute legal proceedings in Canada to obtain restitution of the cultural property to the foreign state but the Act contains provisions designed to protect the rights of *bona fide* purchasers for value.[7]

The only reported Canadian case involving cultural property import controls is *R. v. Heller* where the accused were charged with unlawfully importing a terra-cotta Nok figure originating in what is now Nigeria.[8] The issue in that case was whether the object had been 'illegally exported' from Nigeria within the meaning of the Act. Nigeria was party to the UNESCO Convention when Canada also became a party in June 1978 and the Alberta judge in *Heller* concluded that there was a 'cultural property agreement' between both countries relating to the prevention of illicit international traffic in cultural property.[9] The object was clearly subject to the Act when imported into Canada, but counsel for the accused argued that there was no evidence as to precisely when the object had been illegally exported from Nigeria. It had apparently been tested for authenticity in France in 1977 so must have been exported from Nigeria prior to that year. The judge reasoned that the Act should be interpreted in a manner consistent with the UNESCO Convention and relied on Article 7(a) of the Convention to conclude that the Act should only apply to property 'illegally exported after entry into force' of the Convention in the states concerned. Since there was

no evidence that the object had been exported from Nigeria after June 1978 he ordered the acquittal of the accused.

O'Keefe and Prott argue cogently that Article 7(a) should have been irrelevant to the timing problem in *Heller*. Article 7 involves the illegal export of objects stolen from museums or similar institutions and their subsequent purchase by such institutions in importing countries. The prospective operation of Article 7 is made clear but the Canadian import control law seems based, instead, on Article 3 which provides: 'the import, export or transfer of ownership of cultural property effected contrary to the provisions adopted under this Convention by the states parties thereto, shall be illicit.' O'Keefe and Prott contend that Article 3 places no time limit on the export of goods from their source country and it is permissible for states to leave the timing issue open.[10] The wording of the Canadian Act suggests that Canada has imposed a ban on the import of goods which have been illegally exported from reciprocating foreign states at any time.[11] Thus, while resort to the treaty to aid in the interpretation of domestic law in *Heller* was laudable it appears to have been misguided in that case.

3 *R. v. Yorke*

In January 1990 Roger Yorke was charged under the Act with unlawfully importing into Canada cultural property that had been illegally exported from Bolivia. The charge was precipitated by a communication from United States Customs to the Canadian Departments of Communications and National Revenue that Yorke's name had been connected with that of an individual under Grand Jury investigation in the United States for similar importations in that country. Investigations by Canadian authorities led to a search of Yorke's residence in Truro, Nova Scotia in July 1988. In April 1989, Bolivia made an official request for the return of certain Bolivian textiles seized during the search of Yorke's residence.[12]

3.1 The Preliminary Inquiry

In October and November 1990 a preliminary inquiry into the charges against Yorke was held in Nova Scotia and he was committed to stand trial on a charge under the Act. Peruvian textiles had also been discovered during the search of Yorke's home but the judge was not satisfied that the laws of Peru specifically designated the Peruvian objects found 'as being of importance for archaeology, prehistory, history, literature, art or science' within the meaning of section 37(1) of the Act.[13] Yorke then moved for an order quashing his committal on the basis that the judge at the preliminary inquiry had not permitted him to cross-examine the prosecution witnesses

or call his own witnesses on the origin and provenance of all the items covered by the charge (some 474) but had restricted such defence actions to the 66 items actually put in evidence.

3.2 Yorke's Motion to Quash his Committal for Trial

The defendant's motion came before Boudreau J. of the Nova Scotia Supreme Court (Trial Division).[14] The judge noted that the proper purpose of a preliminary inquiry was to allow the court to decide if there was sufficient evidence to put the accused on trial for either the offence charged or some other offence. At such an inquiry, the accused must be asked if he wishes to call witnesses and they should be heard on any matter relevant to the inquiry. Boudreau J. stated that since the implementation of the Canadian Charter of Rights and Freedoms (the 'Charter') in 1982, he thought the Supreme Court of Canada had enlarged this recognition of the rights of a criminal accused.[15] He concluded, therefore, that the curtailment of cross-examination by the accused at the preliminary inquiry had gone beyond a mere evidentiary ruling, deprived the accused of his constitutional rights and amounted to a denial of natural justice. Accordingly he quashed the committal for trial.

The Crown next successfully appealed this ruling to the Appeal Division of the Nova Scotia Supreme Court. A panel of three judges ruled in September 1991 that the original committal order of November 22, 1990 against Yorke be restored.[16] Chipman J.A. (for the Court) applied a decision of the Supreme Court of Canada which held preliminary hearing magistrates lacked jurisdiction to determine whether or not Charter rights had been denied.[17] He thought Charter challenges were more appropriately dealt with by a trial judge since that person would have a more complete picture of the evidence. The Appeal Division was also sympathetic to the problem the Crown had in *Yorke* with the number of artifacts that were the subject of the proceedings and with its decision to select only a portion of these for introduction as evidence — even based on this limited selection the preliminary hearing consumed over three weeks. On these facts Chipman J.A. did not think Yorke had been improperly denied his right to call witnesses. Yorke subsequently applied to the Supreme Court of Canada to appeal the decision of the Supreme Court of Nova Scotia, Appeal Division but this application was dismissed in December, 1991.

3.3 The Legality of the Search and Seizure

When Roger Yorke's trial finally commenced in April 1992, Yorke (represented by counsel for the first time) successfully challenged the admissibility of the evidence seized at his residence. The ruling, by the Nova Scotia County Court, represented yet another deferral of the substantive aspects of the cultural property charge. This time,

however, issues more characteristic of such cases were raised and discussed. Again, Canada's new Charter of Rights and Freedoms had considerable impact on the outcome of the proceedings.

According to section 8 of the Charter everyone has the right to be secure against unreasonable search and seizure (compares with the Fourth Amendment to U.S. Constitution). On the facts of the *Yorke* case, Cacchione J. found that the search warrant was deficient and granted without jurisdiction.[18] He based this conclusion on the description of the articles in the warrant as being so broad that it allowed the officers executing the warrant to seize almost any objects and later sift through them for evidence. Over 6,000 items were seized at Yorke's residence, but only 428 were to be introduced as evidence; 'the seizing officer determined within the first ten to twenty minutes that he would seize everything and this led to what can only be described as a trawling expedition.' In addition, the judge found that the search and seizure included items unrelated to those known to have been imported by the accused and items not specified in the warrant:

> 'During this tour [of Yorke's residence], which lasted approximately five to ten minutes, Sergeant White encountered items and would ask the accused questions about their points of origin and their value. As a result of the statements made to Sergeant White during the tour, he decided to seize the items. It is clear from the evidence of Sergeant White and Customs Officers Edwards and Melanson that the accused was with them the entire time and that he explained things to them. His explanations were given as a direct result of questions being put to him by Sergeant White and the questions related to the items being seized and what they were.'[19]

Cacchione J. therefore concluded the search and seizure was unreasonable and that the accused's rights under section 8 of the Charter were violated.

The Charter goes on to provide (in section 24(2)) that evidence obtained contrary to the rights guaranteed under it (including those set out in section 8) '... shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.' The burden of establishing this standard rests on the accused, on a balance of probabilities (rather than beyond a reasonable doubt – the standard applicable to the prosecution in criminal cases). After reviewing the facts, the judge concluded that the section 8 breach was a serious and flagrant one and that the police and customs officers involved were not acting in good faith. In doing so he reiterated the deficiencies in the information to obtain the search warrant despite it being prepared by a senior police officer, and the

variance between its contents and the information available to the informant.

Counsel for the Crown had argued that preventing the Crown from trying the *Yorke* case would impair Canada's prestige in the international community and entail unnecessary expense. According to one source an eight-foot-high protective wall was built around the courtroom where the Bolivian objects were stored and museum experts had been consulted on matters such as shelving and temperature and humidity controls.[20] Cacchione J. thought that these external factors had to be subordinated to the abuse of the accused's rights by the police. This conclusion is, of course, consistent with the entrenched nature of the accused's rights in the Charter, compared to the inferior legal status (in Canadian law) of the UNESCO Convention, which is enacted merely in the form of federal legislation.

The Crown appealed against the ruling of the County Court to the Nova Scotia Supreme Court (Appeal Division). The appeal court (a panel of three judges) agreed with the lower court's understanding of the law, but reversed its application of the law to the facts. It allowed the appeal, set aside the dismissal of the charge against Yorke, and ordered a new trial.[21] The appeal court found that the information to obtain the search warrant was adequate. It agreed, however, that the search warrant was void due to its being issued under a provision of the Customs Act which had been held unconstitutional in earlier cases.

The appeal court then went on to reverse the County Court's findings as to the exclusion of the illegally obtained evidence, based on section 24(2) of the Charter. The court reached this view on the basis of Yorke not raising the Charter argument until after the preliminary inquiry into the charge, not being detained or deprived of his right to counsel and not being conscripted against himself:

> 'In this case, the officers were in possession of a warrant that was valid on its face. At the time the warrant was issued the search provisions of the *Customs Act* were still in effect and had not been declared unconstitutional. The police investigation was entirely lawful and they took steps, prior to obtaining the warrant and during the search itself, to take the advice of a senior Crown attorney and head office customs officials. The actions of the police officers, both before and during the search were entirely reasonable...' (at 26–27).

To reach this conclusion, the appeal court did not comment on the remarks of the trial judge as to Canada's international reputation and the high costs of the prosecution in cultural property cases. Indeed it made no comments whatsoever on the unique problems of crimes against cultural property.

The *Yorke* case has not yet progressed to the point where the issues surrounding the charge of importing cultural property have been addressed. Despite this it already provides several instances of the problematic nature of such proceedings.

4 Investigatory Problems in Importing States

The facts as so far in *Yorke* reveal the difficulties domestic authorities face in dealing with cultural property crimes as distinct from more conventional crimes (such as assault or drug dealing). The lack of police familiarity with cultural property in *Yorke* led the officers searching the accused's home to have to rely on answers voluntarily provided by the suspect and in turn to the rejection of this evidence by the trial judge as having being obtained in violation of Yorke's constitutional rights. The County Court judge was highly critical of the police tactics in *Yorke*, which he clearly regarded as a substitute for the more painstaking investigation and formulating of charges that could have been conducted, instead of the expeditious methods that were adopted. The appeal court took a more pragmatic approach.

The problems faced by ordinary police officers in enforcing cultural property laws are well summarized by O'Keefe and Prott.[22] The lack of training and sophistication of the average police or customs officer regarding the characteristics and means of evaluating cultural property items makes the procedures used in *Yorke* unexceptional and unsurprising. A conservator from the Canadian Conservation Institute and an archaeologist had prepared an initial report about the nature and condition of the seized material. An expert on South American material culture was also hired to conduct a preliminary examination of the collection. These sources apparently led to the determination that a detailed description of each object was required but it appears that this never occurred.[23] Experts on Bolivian material culture apparently provided expert testimony at the preliminary inquiry. Given that the items subject to the charge are valued at around $CDN1.5 million, it is surprising that more specialists were not called upon at all stages of the investigation in *Yorke*. The most critical phase in such cases, however, is the preliminary investigation and it is at such point that expertise is often most lacking amongst law enforcement organizations.

The comments of Cacchione J. in *Yorke* also reveal a judicial attitude that is common in cultural property cases. In rejecting the Crown's argument that excluding the illegally obtained evidence would compromise Canada's ability to respond to requests from source countries concerning cultural property, the court typically prioritizes domestic legal concerns (the rights of a criminal accused) over concerns for international cooperation regarding cultural property. This is a problem analogous to that which has confronted the

Canadian government at times in its attempt to affect the outcome of antitrust proceedings in American courts. United States courts have typically given little credence to arguments that inter-governmental arrangements be taken into account in lawsuits involving federal antitrust laws.[24] A court might regard the significance to Canada of its accession to the UNESCO Convention and its implementation into federal law as justification for allowing the admissibility of illegally obtained evidence in cases under the Act but also may well conclude that, since the main object of the Convention is the protection of cultural property, that can best be pursued by civil rather than criminal means that involve impairing civil rights. This approach seems to have recommended itself in Europe where an English antiques dealer charged with stolen property offences succeeded before the European Court of Human Rights in establishing that the tapping of his phone to obtain evidence was a violation of the European Convention of Human Rights and Fundamental Freedoms.[25] Seen in this way, criminal cases like *Yorke* may increasingly be regarded as misconceived if the interests of Bolivia in reclaiming its cultural patrimony are the principal motivation of the prosecution.

5 Civil Proceedings Respecting Illegally Exported Cultural Property

While criminal proceedings such as those in *Yorke* are seen by some as having important potential punitive and deterrent value, they do not secure the return of the objects involved to the country of origin. The criminal prosecution is independent of any claim Bolivia might have for the return of the artifacts. In *R. v. Heller*, a civil suit by the Attorney-General of Canada was brought at the request of the government of Nigeria seeking recovery and return of the sculpture to Nigeria.[26] When rulings in the criminal case made the evidence questionable the civil action was discontinued. While failure of criminal proceedings is not conclusive as the success of a civil suit (where the applicable substantive law differs and the standard of proof is lower) a successful prosecution clearly makes a civil action appear more likely to succeed than does an acquittal. An alternative to a civil claim under the Act that is also available in certain instances is forfeiture under the provisions of the Canadian Customs Act.[27]

There may also be as many difficult issues involved in civil as in criminal proceedings. For example, the return of objects to their country of origin may mean that they continue to be the property of the person who imported them or purchased them from an importer.[28] Section 37 of the Canadian Act allows a court ordering the return of an object to its country of origin (the 'reciprocating state') to order compensation be paid to a *bona fide* purchaser for

value or someone who has valid title to the property and was unaware of the illegal circumstances of its exportation. This procedure would mean that the problems that arose in a case like *Attorney-General of New Zealand v. Ortiz*[29] would give rise to less difficulty in Canada because our courts have jurisdiction to order both recovery and return of the imported property and compensation to innocent parties.

6 Living Next Door to a Transit State

The *Yorke* case highlights the dramatic differences between Canadian and American cultural property laws and the difficulties that this can give rise to. The most well-known of these differences is that Canada accepts, for the purposes of the UNESCO Convention, the right of a foreign government to designate its cultural property and to impose export restrictions upon it, whereas the United States does not.[30] The United States has even applied this policy to Canada by refusing to respond to the latter's request for recognition of Canadian laws prohibiting cultural property exports.[31]

Until American and Canadian approaches to cultural property export controls become more harmonious, the long and sparsely populated border between the two countries will invite Canadian importers to avoid Canadian law by channelling imports of objects through the United States. This in fact is what occurred in both the *Yorke* and *Heller* examples. These elements, together with the relatively low priority accorded by customs authorities to cultural property importations, make it unlikely that Canadian legislation will be effective in the long term respecting third (source) country export controls.

7 Conclusion

The scenario in *Yorke* suggests a lack of careful planning on the part of the various agencies involved regarding the selection of legal options. While the outcome of any criminal proceedings is unpredictable, since in cultural property cases the priority is presumably the security of the artifacts themselves, it would seem that more sophisticated techniques than those evidenced in *Yorke* will be needed if Canada is to be able to discharge its international undertakings to source states.

In the medium term one approach to the sort of problems that arose in *Yorke* may be to secure a separate cultural property customs cooperation agreement between Canada and the United States. Such an arrangement might seek to establish a framework for attempting solutions to the various policy issues affecting the movement of cultural property in North America.

Notes

1 This difference is apparent in that Canadian cultural property import legislation (infra, n. 5) was enacted in anticipation of Canadian accession to the UNESCO Convention (infra, n. 6) so as to facilitate enforcement in Canada of the export controls of all other parties to the UNESCO Convention.

2 O'Keefe and Prott, *Law and the Cultural Heritage: Volume 3 Movement* (1989), p. 576.

3 Id., at p. 586.

4 See *Proposal for the International Exchange of Information to Combat Crimes Against Cultural Movable Property* (Canada, 1990), p. 7.

5 Cultural Property Export and Import Act, R.S.C. 1985, c. C-51. See also S. Katz, 'Penal Protection of Cultural Property: The Canadian Approach' (1993) 1 IJCP 11–24.

6 *UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* (1970), (1971) 10 International Legal Materials, 289.

7 Supra, n. 5, s. 37(3)-(6) which provide:

(3) Where the government of a reciprocating State submits a request in writing to the Minister for the recovery and return of any foreign cultural property that has been imported into Canada illegally by virtue of subsection (2) and that is in Canada in the possession of or under the control of any person, institution or public authority, the Attorney General of Canada may institute an action in the Federal Court or in a superior court of a province for the recovery of the property by the reciprocating State.

(4) Notice of the commencement of an action under this section shall be served by the Attorney General of Canada on such persons and given in such manner as is provided by the rules of the court in which the action is taken, or, where the rules do not so provide, served on such persons and given in such manner as is directed by a judge of the court.

(5) A court in which an action has been taken under this section on behalf of a reciprocating State may, after affording all persons that it considers to have an interest in the action a reasonable opportunity to be heard, make an order for the recovery of the property in respect of which the action has been taken or any other order sufficient to ensure the return of the property to the reciprocating State, where the court is satisfied that the property has been illegally imported into Canada by virtue of subsection (2) and that the amount fixed under subsection (6), if any, has been paid to or for the benefit of the person, institution or public authority referred to in that subsection.

(6) Where any person, institution or public authority establishes to the satisfaction of the court in which an action under this section is being considered that the person, institution or public authority

(a) is a *bona fide* purchaser for value of the property in respect of which the action has been taken and had no knowledge at the time the property was purchased by him or it that the property had been illegally exported from the reciprocating State on whose behalf the action has been taken, or

(b) has a valid title to the property in respect of which the action has been taken and had no knowledge at the time such title was acquired that the property had been illegally exported from the reciprocating State on whose behalf the action has been taken, the court may fix such amount to be paid as compensation by the reciprocating State to that person, institution or public authority as the court considers just in the circumstances.

8 (1983) 27 Alberta Law Reports (2d) 346 (Provincial Court). Seizure in this case was a result of a request from the Government of Nigeria; see Clark, 'Establishing Export Controls: The Canadian Experience,' in Prott and Specht, *Protection or Plunder: Safeguarding the Future of our Cultural Heritage* (Canberra, 1989) 70, at 80.

9 Section 37(1) of the Act defines 'cultural property agreement' as follows: 'cultural property agreement', in relation to a foreign State, means an agreement between Canada and the foreign State or an international agreement to which Canada and the foreign State are both parties, relating to the prevention of illicit international traffic in cultural property;

10 Supra, n. 2, at 779.

11 An appeal in *Heller* was upheld on procedural grounds but the appeal court seemed to agree with the lower court interpretation of the Act; see *R. v. Heller* (1984) 30 Alberta Law Reports (2d) 130 (Court of Queen's Bench).

12 For a provocative discussion of the background to Bolivian concerns, see Lobo, 'The Fabric of Life: Repatriating the Sacred Coroma Textiles,' (1991) *Cultural Survival Quarterly* 40. On September 24, 1992 the U.S. Customs Service returned a quantity of seized Coroma textiles to Bolivia in a ceremony in Washington, D.C. The return was apparently made possible through the co-operation of the San Francisco art dealer (Steven Berger) who received an assurance from the U.S. Attorney from the Northern District of California that he would not be prosecuted; see *New York Times*, September 27, 1992 (p. 14Y).

13 Section 37(1) defines 'foreign cultural property' in relation to a reciprocating State (a foreign State that is a party to a cultural property agreement) as 'any object that is specifically designated by that State as being of importance for archaeology, prehistory, history, literature, art or science.'

14 *R. v. Yorke* [1991] Nova Scotia Judgments No. 358 Action No. S.H. 77560 (Nova Scotia Supreme Court – Trial Division).

15 *Canadian Charter of Rights and Freedoms, being Part I of Schedule B of the Constitution Act*, R.S.C. 1985, Appendix II, No. 44.

16 *R. v. Yorke* [1991] Nova Scotia Judgments No. 368 Action S.C.C. No. 02573 (Nova Scotia Supreme Court – Appeal Division).

17 See *Mills v. The Queen* (1987) 26 C.C.C. (3d) 481 per McIntyre J. at 492. The basis for the ruling is that a preliminary inquiry is not a 'court of competent jurisdiction' under section 24 of the Charter because the legislation defining its powers (the federal Criminal Code) is not wide enough.

18 *R. v. Yorke* [1992] Nova Scotia Judgments No. 184 Action No. C.R. 11741 (Nova Scotia County Court).

19 Id., p. 29.

20 'The Fine Art of Prosecution', (1992) 16 Can. Lawyer 10.

21 *R. v. Yorke* (November 23, 1992) SCC No. 02698 (Supreme Court of Nova Scotia – Appeal Division) (unreported).

22 Supra, n. 2 at 386–389.

23 Annual Report: Cultural Property Export and Import Act 1988–1989, p. 17.

24 See Campbell, 'The Canada-United States Antitrust Notification and Consultation Procedure: A Study in Bilateral Conflict Resolution,' (1978) 56 Canadian Bar Review, 459.

25 See *Malone v. Metropolitan Police Commissioner* [1979] 1 Ch. 344; and Berger, *Case Law of the European Court of Human Rights*, Vol. One, 1960–1987, pp. 257–261.

26 See Act, s. 37(3).

27 This procedure was used in June 1983 for five pre-Columbian ceramics seized by Canada Customs at Toronto and whose return was requested by the Government of Peru. Canadian forfeiture law is set out in sections 122–142 of the Customs Act, S.C. 1986, c. 1. In the United States certain constitutional rights (such as the privilege against self-incrimination) have been held applicable in forfeiture cases (see *Boyd v. United States* 116 U.S. 616 (1886). In Canada it has yet to be settled whether forfeiture proceedings are protected by the Charter of Rights and Freedoms. In *R. v. Amway of Canada Ltd. et al.* [1986] 2 F.C. 312 (Trial Division) the Court did not decide whether the privilege against self-incrimination in section 11(c) of the Charter applied in forfeiture proceedings.

28 See O'Keefe and Prott, supra, n. 2, at 603 and 606.

29 [1983] 2 W.L.R. 809 (H.L.).

30 See O'Keefe and Prott, supra, n. 2, pp. 734–737.

31 On October 2, 1985 Canada became the first country to ask the United States to place import controls on its designated archaeological and ethnological artifacts. See Kaplan, 'Assistance Under the 1970 UNESCO Cultural Property Convention: Canada's Request to the United States,' (1986) 22 Stanford J. of International Law 123.