

# The History of Canadian Immunity from Seizure Legislation

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**Abstract:** Perhaps surprisingly, a number of Canadian jurisdictions have been at the cutting edge of legal exemptions from seizure or attachment processes for artworks on loan. Starting with the curious case of Hermitage treasures displayed in Winnipeg in the mid-1970s and using other intriguing examples, this article traces the historical origins of Canadian legislation with particular regard to the international context. The current state of the law in Canada is summarized and compared to that of other international jurisdictions.

## 1. OPENING DAY

It was a day she had been anticipating for months; but it was also a day that must have given her an uneasy feeling in the pit of her stomach. As curator of the Winnipeg Art Gallery, Dr. Ann Davis had a lot on the line on 13 August 1976.

At 10:00 a.m., the gallery was set to open its doors for one of the most significant art exhibitions in Canadian history. It was also one of the most controversial: fraught with security, financial, and legal risk.

*Master Paintings from the Hermitage and the State Russian Museum* could make or break the gallery; 42 masterpieces never before seen in Canada, including spectacular works from Caravaggio, Cézanne, Gauguin, Matisse, Rembrandt, Rubens, and Picasso.<sup>1</sup>

The gallery's financial future was likely at stake. The collection was being billed as priceless, though that did not prevent the media from fixating on a cold, hard number—\$35 million—the valuation generated for insurance purposes.<sup>2</sup> For months, staff had been upgrading security features. There were new bullet- and acid-proof display cases, along with a sophisticated environmental system to control lighting, temperature, humidity, and air filtration. A cadre of security guards—some of them armed<sup>3</sup>—was deployed throughout the building, in place to respond

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to even the slightest hint of trouble. Nearly \$100,000 had been spent on transportation and insurance for the exhibition<sup>4</sup>—more than the gallery's entire razor-thin exhibition budget for that year.<sup>5</sup>

There was reason to be wary. Warnings had been issued.<sup>6</sup> The Winnipeg Group of 35 gave notice of its intention to stage a vigil and hunger strike outside the gallery, on behalf of prisoners of conscience denied human and political rights in the Soviet Union. The shadowy Anti-Bolshevik Bloc of Nations, Winnipeg Branch, sent a letter saying it would launch a mass street demonstration to protest Manitoba's acquiescence to the wishes of a murderous, plundering foreign regime. The Ukrainian Canadian Committee demanded that the gallery make a public statement that two of the Russian artists featured in the exhibition were, in fact, Ukrainian and victims of a Soviet policy of cultural genocide.

Winnipeg police were on high alert, poised to monitor any demonstrations and respond to bomb threats the gallery felt might be imminent. Adding to the tension was the disconcerting habit of the exhibition's traveling Russian curators to disappear into the displays to check and double-check the security measures in place.<sup>7</sup>

The astronomical expense of the show carried consequences. The Winnipeg Art Gallery needed at least 50,000 visitors just to break even. The stakes were sky-high:

[Gallery spokesman] Mr. Scholl said the success of this exhibit will mean the gallery will be given the chance to show future exhibits of similar quality. He said the decision to hold the Soviet exhibit was a risk "but it was a chance worth taking because this kind of exhibit puts us on the map culturally. We've broken the golden triangle of art—Toronto, Ottawa and Montreal." The National Gallery will be more likely to offer major exhibits to its "country cousin" in Winnipeg, he said.<sup>8</sup>

But if security and financial concerns were forefront in Davis's mind, legal liabilities could not have been far behind. After all, she had staked her professional reputation on an unprecedented, untested piece of legislation, hurried through the Manitoba Legislature in what could only be described as a firestorm of political controversy.

The Foreign Cultural Objects Immunity from Seizure Act<sup>9</sup> had received Royal Assent just a scant few weeks before the opening.<sup>10</sup> In fact, it was the testimony of Davis herself before a legislative committee that may have smoothed the way for the bill's eventual passage.

Davis had personally assured the legislature that no valid legal claims could be made against any of the works in the Soviet exhibition. The gallery had done extensive research, she testified, into the method of acquisition and provenance of each piece slated for display in Winnipeg and found no evidence of theft or illegal seizure. The legislation, she had argued forcefully, was about warding off nuisance claims, not frustrating legitimate ones.<sup>11</sup>

So, when the act had passed in a free vote by a 35–14 margin<sup>12</sup>, Davis must have been relieved but not entirely comfortable. After all, Manitoba was the first Canadian jurisdiction to enact an immunity law for loaned art. And with so many mas-

terpieces from Western Europe about to be her responsibility, there was no telling what might happen.

But all that would have to wait. Outside the gallery a queue was forming.

In one respect, the legislation battle had been a blessing in disguise. It had generated much-needed publicity for the exhibition and piqued the interest of those who were not ordinarily gallery-goers. The gallery was just hoping that interest translated into admissions.

By day six, it certainly had:

“2,000 a Day Take in Soviet Art Exhibition”

by Debbie Sproat

They all came to see the Soviet art exhibit in the Winnipeg Art Gallery: mothers with babes-in-arms, fathers and toddlers, teenagers in blue jeans and grandmothers wearing straw hats.

The exhibit, a collection of works by European and Russian masters (including two Ukrainians), on loan from the Hermitage and State Museums in Leningrad, is attracting about 2,000 visitors a day, Michael Scholl, a spokesman for the gallery, said Wednesday.

...

“I’m not a connoisseur,” said one middle-aged Winnipeg man, “But I know what I like when I see a painting.”

...

Two girls said they liked the paintings. “Not all of them but some.”

“What I like is seeing the number of small children,” one elderly gallery member said. “When we grew up there was nothing in Winnipeg like that, though you see it on the continent all the time.”

...

The gallery also hopes that some of those who saw the Soviet exhibit will become regular patrons.<sup>13</sup>

When the doors closed on the exhibition for the last time at 9:00 p.m. on 26 September, more than 93,000 visitors had taken in the show—nearly double what the Winnipeg Art Gallery needed to cover its costs.<sup>14</sup> There were some other noteworthy numbers too: zero arrests, zero bombs, zero damage to the artwork, and zero legal claims made against the collection.

Manitoba was on the map—for Canadian art lovers and legislators alike.

## 2. OVERVIEW

Since 1976, four more Canadian provinces have enacted immunity from seizure legislation: Québec<sup>15</sup>, Ontario<sup>16</sup>, British Columbia,<sup>17</sup> and Alberta.<sup>18</sup> Though each jurisdiction’s statutory regime is similar in spirit, there are significant differences—from the impetus to introduce such legislation, to the nature of legislative debates

and subsequent amendments before passage, and to the steps that must be taken before immunity arises.

Interestingly, however, whether introduction and passage of such legislation generated political controversy and significant media coverage (Manitoba) or sped silently through as part of an omnibus bill with nary a comment from legislators or the public (British Columbia), none of the Canadian statutes appears to have led to any court proceedings. Case law searches reveal neither challenges to the statutory provisions themselves nor proceedings brought thereunder.<sup>19</sup>

The rest of this article will discuss briefly the rationale for and relevance of immunity from seizure legislation, with reference to the international context. Then, the history of the various Canadian statutes will be explored in more detail.

### 3. ART LOANS AND THE RATIONALE FOR IMMUNITY FROM SEIZURE LEGISLATION

The appetite for art loans is related to the reason for art itself:

Art enhances the human experience by providing examples of humanity's greatest achievements; it offers testimony, by its infinite shapes and forms, to the diversity and scope of our species; and, it provides a tangible means of identifying with one's past. Art is a rich source of scholarly information and benefits the viewing public in countless pedagogical and psychological ways. Thus, the exchange for artworks increases the visibility of these sources of knowledge and benefits the public greatly.<sup>20</sup>

However, it is clear that international art loans are about much more than just art for art's sake. As Palmer notes, "it has long been accepted that art loans are a cardinal form of modern cultural exchange. To some they are also a notable element in the 'soft power' exerted by civilized states".<sup>21</sup>

In many instances, a gallery or museum's ability to secure a traveling exhibition or arrange a long- or short-term loan requires more than simple agreement with the owner of the artwork. This can be a source of considerable frustration:

"Few are the museums of such vast scope and depth that their permanent collections can, in themselves, offer special exhibitions substantial enough to rival any display of loaned works" [said former Metropolitan Museum of Art Director Philippe de Montebello] . . . for many museums exhibitions of high-quality artwork are an integral part of their mission and the need for outside sources is vital to that continuance.<sup>22</sup>

Governments invariably intrude on international art loans, and political considerations may play a role in determining whether a loan is to take place. This is particularly so in jurisdictions where immunity is contingent on administrative approval.

However, the greatest obstacle to international art loans in recent history has been what Palmer describes as the rise of third-party legal claims seeking to capitalize on the loan by asserting a superior right of possession.<sup>23</sup> The basis of most

claims is “an original theft of the work and the inability of any later alienation to extinguish the claimant’s title”<sup>24</sup>; however, other types of claims may arise, such as in cases of historic state expropriations or when modern states seek possession under domestic anti-export laws.<sup>25</sup> In this view, art loans may be sitting ducks highly vulnerable to litigation.<sup>26</sup>

Public exhibition exposes cultural objects to widespread scrutiny, alerting potential claimants. The volume of art borrowing is vast and many borrowing museums lack the capability to research title for themselves. It can be diplomatically difficult to require a lender to give assurances about title, and museums may be tempted to avoid this.

...

Such circumstances can place the borrower in a serious dilemma. Many claims are morally compelling; to oppose them can seem callous or wanting in merit. . . . Resistance by museums can imperil valuable relationships, particularly where defensive arguments are perceived as casuistic or technical. . . . All these are matters that bear heavily on parties to cross-border loans.<sup>27</sup>

Of course, the most important reason for protecting artworks on loan is that immunity facilitates the loans in the first place. The merit “rests in assuring foreign lenders that their artwork will be protected against any kind of seizure while it is on loan,”<sup>28</sup> to assuage fear of legal claims, which “might occur when a claimant takes advantage of the fact that the object is temporarily in a different country with a different set of laws from those of its normal location and takes the opportunity to seize or immobilise the object.”<sup>29</sup>

According to O’Connell, such claims take three primary forms,<sup>30</sup> each of which is discussed below.

### 3.1. *Claim for Injunctive Relief*

First, an object on loan could be subjected to a claim for injunctive relief if there is a dispute concerning rightful ownership, such as in the case of Nazi or Soviet looted art or nationalization without compensation. A recent example is the so-called *Liechtenstein* case<sup>31</sup> at the International Court of Justice.<sup>32</sup>

According to the Liechtenstein royal family, a painting called *Scene at a Roman Lime Kiln*, by seventeenth-century Dutch baroque painter Pieter van Laer, had been part of its art collection since at least 1767. The painting was stored in one of the family’s castles in the now Czech Republic until the end of World War II. However, in 1946, Czechoslovakia confiscated all of the royal family’s property located inside Czech territory, as part of a wider program of retribution against people of German and Hungarian ethnicity in the aftermath of the war. A 1951 attempt at recovery failed.

In 1991, a museum owned by the city of Cologne obtained *Scene at a Roman Lime Kiln* on loan from the Czech government as part of an exhibition. Once again, the royal family attempted to regain the painting, this time applying to

Cologne's Regional Court for an interim injunction ordering the museum to hand over the van Laer to a court bailiff at the exhibition's close. The injunction was granted and *Scene at a Roman Lime Kiln* was sequestered. Ultimately, however, the action to regain possession failed, though no immunity from seizure statute was involved.

### 3.2. *Initiation of Attachment Processes*

Second, an individual or company claiming to be a creditor of the art lender might attempt to initiate attachment processes to overcome difficulties in enforcing a financial judgment against the debtor's assets in the jurisdiction where the art is usually located. This may be particularly so if the debtor is a sovereign state. O'Connell attributes just such a scenario to the United Kingdom's hurried enactment of immunity from seizure provisions in the Tribunals, Courts and Enforcement Act 2007, c. 15.<sup>33</sup> British legislators scrambled to respond to a case involving the Russian government and a Swiss import-export firm.<sup>34</sup>

In 2005, 54 paintings, including works by Picasso, Matisse, and Cézanne were confiscated in Switzerland at the behest of a company called Noga S.A. Russia's Pushkin State Museum of Fine Arts had sent the works on a three-month loan to a museum in Martigny.

Noga claimed it was owed tens of millions of dollars by the Russian government as part of a series of oil-for-food agreements signed in the early 1990s. Noga had tried on a number of occasions to seize Russian assets in France, including a sailing ship taking part in a regatta and two military jets at the Le Bourget air show near Paris, and by freezing the bank accounts of the Russian embassy. These efforts failed.

However, on the basis of a Swedish decision in its favor, Noga obtained a court order in Switzerland, prompting Swiss customs agents to track the paintings, by now loaded on six trucks for the journey back to Moscow. Three of the trucks were intercepted in Basel, just meters from the border with Germany, two in Martigny, and one in Geneva. According to the Russian embassy, the 25 paintings seized had a value of more than \$1 billion.

In response to intense diplomatic pressure, the Swiss government quickly engineered cancellation of the order for seizure, but not before the Hermitage warned that no future art loans would be forthcoming from its collection without prior legal guarantees. Notably, Switzerland had recently enacted immunity from seizure legislation, but it had not yet come into force by the time the Pushkin exhibition opened in Martigny.

### 3.3. *Criminal Investigation*

Third, works of art may be seized as part of a criminal investigation. This is what happened in 1998 in the first case of foreign artwork being seized while on loan to a museum in the United States. The case was the first judicial test of section 12.03

of New York's Arts and Cultural Affairs Law (ACAL),<sup>35</sup> among the earliest art immunity statutes, enacted in the late 1960s.<sup>36</sup>

The investigation was connected to an October 1997 to January 1998 exhibit at the Museum of Modern Art (MoMA), entitled *Egon Schiele: The Leopold Collection, Vienna*. The collection had been amassed over several decades by a controversial and eccentric Austrian ophthalmologist, Dr. Rudolf Leopold.

Leopold had acquired more than 5,400 works of art, including about 250 by Schiele. Leopold was apparently well known for his unusual and aggressive acquisition tactics; these included repeated late-night phone calls to people whose artworks he coveted and, on at least one occasion, a dead of night stake-out on an owner's doorstep. Indeed, Leopold was sued successfully by Schiele's sister, whom he had convinced to trade some of the painter's highly valuable watercolors and drawings that she had inherited for some of the artist's significantly lower-valued early oil paintings. Schiele's sister also alleged that Leopold tricked her into signing a receipt for sale for some works, after leading her to believe she was merely signing a loan document.

In 1994, as part of a complex deal to discharge his liability for years of unpaid taxes, Leopold sold the Schiele collection to the Austrian government. By that time, the Schiele pieces had been loaned out on numerous occasions without serious incident.

However, in December 1997, while the paintings were on display, MoMA received letters asserting ownership of two works—*Dead City III* (1911) and *Portrait of Wally* (1912).

*Dead City III* was claimed by the heirs of an Austrian man who was murdered in Dachau in 1941. According to the Leopold Foundation, after Fritz Grunbaum was killed, his property passed to his wife, who then bequeathed the painting to her sister. She, in turn, sold it to a Swiss gallery, after which it was acquired by a New York dealer who then passed it on to Rudolf Leopold.

The Grunbaum family disputed the evidence that Mrs. Grunbaum had given *Dead City III* to her sister and argued that even if she had, the transfer from the sister to the Swiss gallery had not been a legitimate sale but rather was the result of Nazi looting.

The return of *Portrait of Wally* was requested by 76-year-old Henry Bondi on behalf of his aunt, who had died in 1969. Lea Bondi was the owner of a Viennese art gallery who had fled the continent for London in 1937 but not before being intimidated into giving the gallery and the Schiele painting to a Nazi art dealer.

In fact, after the war Bondi returned to Austria and successfully sued for return of some of her property. However, *Portrait of Wally* had apparently been confiscated from the Nazi dealer by U.S. officials, who had detained him on suspicion of war crimes, and given the painting to the Belvedere, the Austrian National Gallery. Bondi eventually contacted Leopold, by then a well-known Schiele collector, and asked him to retrieve the painting for her:

Mrs. Bondi, as she was known, then tells of meeting with an eager collector of Schiele, Dr. Rudolf Leopold: “Later, Leopold came to London, and we talked about my picture. As I thought he was a nice, decent person, I asked him to pick up my picture from the Belvedere and send it to me immediately. And I promised him that I would make efforts for him to find drawings and other works by Schiele in London. The next thing I heard was that my picture was owned by Dr. Leopold.”<sup>37</sup>

Indeed, it appears that Leopold never attempted either to return *Portrait of Wally* to Bondi or to make her an offer of compensation. In fact, at the time of the MoMA exhibition, Leopold offered a provenance for the painting that contradicted both Bondi’s claim and prior published provenance for the work. Subsequently, Bondi could never afford to sue for ownership of her painting, although she did continue to press for its return until her death.

Despite the Grunbaum and Bondi letters, no formal legal claims were initiated in New York. Yet, on the day the collection was due to be shipped to Barcelona for a subsequent show, Manhattan’s district attorney launched criminal proceedings, convening a grand jury on the strength of the letters and other publicity surrounding the collection. Some argued the real motivation stemmed from his additional role as chair of the Museum of Jewish Heritage. At any rate, the grand jury issued a subpoena *duces tecum* for the two paintings, preventing them from leaving the state.

The move sent shockwaves through both diplomatic and art circles. The Austrian government, which owned the Schiele collection, lodged an official protest with the U.S. State Department. Leopold himself proclaimed it would be the last time the paintings would be shown in the United States. Around the world, a number of significant exhibitions of loaned artworks were canceled by major museums and galleries. Meanwhile, New York galleries and museums were horrified. The immunity law, which for years had served as their ace in the hole against potential private legal claims, now appeared to have a major loophole—the public criminal investigation.

For nearly two years, uncertainty prevailed. MoMA moved to quash the subpoena, citing ACAL. In May 1998, a judge on the New York State Supreme Court granted the motion. But in March 1999, with the two paintings still locked away in storage, the New York Supreme Court’s Appellate Division overturned the trial decision, stating that the immunity law did not extend to criminal investigations. Six months later, in September 1999, in a 6–1 ruling, the New York State Court of Appeals restored the trial decision, finding the grand jury subpoena invalid by virtue of ACAL.

As the foregoing examples illustrate, immunity from seizure statutes facilitates art loans by guaranteeing legal protection for lenders. However, such legislation also improves the position of borrowers. First, quite clearly, effective immunity provisions mean galleries and museums are less likely to get caught in the middle



of expensive, long-running, image-tarnishing legal disputes over loaned works. Second, and arguably more importantly, immunity for loaned pieces significantly reduces the burden on borrowers. According to Sarraf:

Another goal that the protection of loaned artwork serves to promote is the conservation of a nonprofit exhibitor's own financial resources. Museums, though they may showcase priceless objects, are under heavy financial constraints. In addition to their daily operating costs, the expenses incurred in hosting an exhibition include installation costs, carrying fees and insurances costs. If museums were forced to add to their tasks the requirement of examining the provenance of every piece of artwork they borrow for temporary exhibition, it would severely handicap their ability to host exhibits. Provenance investigations have the potential of occupying the time of museum employees and delaying and increasing the costs of exhibits. Thus, offering immunity against seizure can greatly minimize the financial and potential legal complexities incumbent when borrowing art.<sup>38</sup>

Of course, while freeing museums from having to investigate the provenance of artworks on loan is justifiable from a financial and practical standpoint, it may be less defensible on a moral or ethical basis. However, that discussion is beyond the scope of this article.

#### 4. INTERNATIONAL CONTEXT

Cosmopolitan though some of its major cities are, few would argue that Canada is at the forefront of the international art world. There is no comparing Vancouver, Calgary, Winnipeg, Toronto, or Montreal to New York, London, Paris, Moscow, or a host of other European centers. Yet, surprisingly, a number of Canadian provinces stand out as legislative leaders when it comes to immunity from seizure for art loans. Until 1998, Canada was one of just three countries with immunity legislation in force.<sup>39</sup>

The United States pioneered such measures with the 1965 passage of the Immunity from Seizure Act (IFSA)<sup>40</sup> in the federal jurisdiction. Ostensibly, the legislation was enacted on the basis of a general "congressional determination to promote and increase the number of temporary loan exhibitions of cultural material, particularly from countries with which the United States has had hostile or volatile relations."<sup>41</sup> However, New York attorney Rodney Zerbe writes that there was also a more immediate impetus:

A strong sponsor of the bill was Senator Harry F. Byrd, Sr. of Virginia. The motivation for his staunch support of the bill was a pending exchange between a Soviet museum and the University of Richmond, through which the Virginia gallery sought to import several artworks that had been appropriated by the Soviet government from expatriots [sic]. As a condition to the loan, the Soviets insisted on a grant of immunity from seizure as protection against former Soviet citizens who

had valid claims to the title of the works. Thus, the enactment of the statute was stimulated in part by a desire to facilitate a pending exchange with the Soviet Union, despite the presence of valid claims to the artwork by United States citizens. In this light, the statute can be seen to represent a legislative preference for the benefits of cultural exchange over the claims of United States citizens.<sup>42</sup>

Under IFSA, an application is made to the President or his designee, on the basis the borrowed artwork is of such cultural significance as to be in the national interest of the United States to protect. Once an application is granted, notification is published in the Federal Register and immunity is in place.<sup>43</sup>

According to Sarraf, about 30 applications for immunity are received each year by the federal government.<sup>44</sup> Interestingly, between 1965 and 1999, only once was approval denied.<sup>45</sup>

In 1980, an enormous exhibition of 400 pieces from the Hermitage was due to begin a two-year tour of five U.S. museums, starting at Washington's National Gallery of Art, which happens to be at the foot of Capitol Hill.<sup>46</sup> As a sign of disapproval of the Soviet invasion of Afghanistan, and as part of a wider diplomatic campaign that included the boycott of the 1980 Moscow Olympic Games, federal authorities refused to acknowledge the collection as culturally significant. The application for immunity was denied and the tour was canceled.<sup>47</sup>

Three years later, New York enacted ACAL, which duplicated some aspects of IFSA at the state level but also extended the potential for immunity to artworks from other U.S. jurisdictions.<sup>48</sup>

Then came Canada.

## 5. THE CANADIAN IMMUNITY FROM SEIZURE LANDSCAPE

In 2005, Weller surveyed immunity from seizure legislation by then enacted in 15 jurisdictions worldwide,<sup>49</sup> identifying a number of regulatory choices differentiating the various regimes:

(1) a self-executing return guarantee versus administrative act in each individual case, including rescission of the administrative act under certain conditions or exclusion thereof; (2) inclusion of private lenders versus immunity only for artworks from non-individual or even only public lenders; (3) immunity only for exhibitions versus immunity also for scientific purposes such as restoration or art historian analysis; (4) immunity from any kind of seizure, including those under criminal law, versus immunity merely from seizures pursuant to motions under private law; (5) immunity only for non-profit activities versus immunity for commercialized exceptions as well; (6) exceptions from immunity for stolen artworks; (7) exclusion of the host state's cultural property; and (8) immunity only from seizures or from any kind of court proceedings with respect to loaned art.<sup>50</sup>

In Canada, those regulatory choices are reflected in the following table:<sup>51</sup>

Immunity is or includes:	<i>British Columbia</i>	<i>Alberta</i>	<i>Manitoba</i>	<i>Ontario</i>	<i>Québec</i>
Self-executing	YES	NO	NO	NO	NO
Private Lenders	YES	YES	YES	YES	YES
Criminal Law Seizure	YES	YES	YES	YES	YES
Commercial Activities	NO	YES	NO	NO	NO
Stolen Artworks	YES	YES	YES	YES	YES
Court Proceedings	YES	YES	YES	YES	NO

The legislative history and features of the various provincial regimes are discussed next.

### 5.1. *Manitoba—1976*

As noted, Manitoba's Foreign Cultural Objects Immunity from Seizure Act<sup>52</sup> was passed for an initial, specific purpose—to clear the way for *Master Paintings from the Hermitage and the State Russian Museum*.

The collection was first offered on loan to the United States. Starting in July 1975, it was to embark on a tour of five U.S. cities—Washington, Los Angeles, Houston, Detroit, and New York—as part of a cultural exchange to mark both the U.S. Bicentennial and the 30th anniversary of the end of World War II in Europe.<sup>53</sup> In a letter accompanying the exhibition catalogue, Soviet General Secretary Leonid Brezhnev wrote:

This exhibition represents one of the manifestations of the improvement in relations between the Union of Soviet Socialist Republics and the United States of America reached in the recent years and illustrates the growing interest of the American and Soviet peoples towards history and culture of both countries.

The exhibition is opened in the year when the peoples of the world commemorate the 30th Anniversary of the victorious ending of the Second World War in which the Soviet and American peoples have fought against the common enemy. Our countries cannot forget the lessons of the last war and with all their strength they have to further establishing peace and cooperation among the peoples.<sup>54</sup>

Upon hearing of the tour, the Canadian government, through the Department of External Affairs and the National Museums Corporation of Canada, requested stops in two Canadian cities. Ottawa apparently invited bids from various museums and galleries before settling on Winnipeg and Toronto.<sup>55</sup>

The Soviets, however, imposed a condition on the Canadian visit. They required a guarantee that third parties would be prevented from using any legal procedure to interfere with the exhibition. The Soviets pointed to IFSA in the United States as offering the type of assurance being sought.<sup>56</sup>

This apparently put the federal government in a difficult position. There were both temporal and constitutional constraints on its ability to extend immunity, according to Manitoba's Opposition Leader:

Now I know that we would all feel that it would be much better if the Federal Government acted on this and if we could somehow avoid the requirements of provincial legislation. My understanding is that if the Russian Embassy in Ottawa were to declare this a property of the Embassy, that the art collection would have immunity throughout the country, and that Section 92 of the BNA [British North America] Act which is the part that leads to our requirement to pass legislation provincially would in that case not have to be passed. However that is not the case, and the problem of getting approval of that nature would necessitate it going back to Russia and probably the collection would not be available for viewing in Canada or in Manitoba under those conditions. I would rather that that were the case and I think everybody would rather that were the case so that we wouldn't have to deal with it. But the likelihood is that if this bill is turned down, the Art Gallery will not be able to get those approvals through in sufficient time, although it could probably over a period of time get that sort of approval.<sup>57</sup>

As a result, the federal government turned to the provincial governments to enact their own immunity from seizure legislation.

In Manitoba, there was significant opposition to Bill 56, which was modeled on IFSA, even though no specific concerns had been raised about the provenance of pieces in the Hermitage collection. Many of the works had been purchased by the Tsarist regime prior to the Russian Revolution in 1917, although some were obtained later through noncommercial means:

By the eve of the October Revolution of 1917, certain important schools and periods of art, which should be included in any great museum, were either represented inadequately or not represented at all. To remedy this, major acquisitions were made after the Revolution from important private collections and noblemen's palaces which had been nationalized.<sup>58</sup>

There was no suggestion that any of the pieces had made their way into the collection as a result of either Nazi or Soviet looting during World War II, prompting one supporter of the bill to say:

The fact is, Mr. Speaker, that of these 40 paintings not one was stolen from the people of Manitoba, not one was stolen from the people of Western Europe. . . . So I think really the essential point is, Mr. Speaker, that the members who are voting against this bill are voting against the showing of this exhibition. They are denying our rights.<sup>59</sup>

Nevertheless, the debate was notable for its histrionics. Supporters were accused of communist sympathies, surrendering to the wishes of a totalitarian regime, and denying the individual rights and freedoms of Manitobans who might, even though the possibility was exceedingly remote, have a property interest at stake in the collection. Opponents, on the other hand, were branded enemies of culture who would

deprive Manitobans of a once-in-a-lifetime opportunity to see some of the finest artwork in the world. The following excerpts demonstrate some of the vitriol:

We are being told ... [w]e should not be denying Manitobans ... and we should look at it from that point of view. Well, Mr. Speaker, I can accept that as I accept Russian hockey, as I accept Russian ballet, as I accept Russian music or whatever. But that's not the question ... knowing as I know, that the Member from Portage la Prairie ... languished for years in German imprisonment camps, would he be that quick to support the bill if the request came from Herman Goering or Mr. Goebels. I think not Mr. Speaker, I think not.<sup>60</sup>

....

I am not voting to eliminate anybody's rights. I am not voting for the Soviet Union. I am not clicking heels to Mr. Brezhnev.<sup>61</sup>

....

... my ancestors came to this continent in 1642 from England ... because they believed in the kinds of freedoms that were being conceptualized and then realized under the New World and the democratic system being constructed here. ... I want to evoke the immortal lines of the Battle Hymn of the Republic ... "Midst the beauty of the lilies, Christ was born across the sea with a glory in his bosom that transfigures you and me; as He died to make men holy, let us live to make man free, his truth goes marching on."<sup>62</sup>

....

... I say in conclusion Mr. Speaker, "the painting has yet to be painted" or "the sculpture has yet to be sculpted," indeed "the poem yet to be written" that is worth just one of my rights.<sup>63</sup>

Toward the end of July 1976, after the act had come into force, the Winnipeg Art Gallery applied to the provincial cabinet for an order-in-council extending immunity to the exhibition. On 26 July, the order was granted.<sup>64</sup>

## 5.2 Québec—1976

Québec too enacted immunity from seizure legislation so it could receive *Master Paintings from the Hermitage and the State Russian Museum*. The exhibition was due to open at Montreal's Museum of Fine Arts on 9 October 1976 and run until 14 November.<sup>65</sup>

Three weeks after Manitoba's statute received Royal Assent, Bill 59 was introduced for first reading in the National Assembly.<sup>66</sup> The bill sought to amend the Québec Code of Civil Procedure<sup>67</sup> to provide immunity for loaned works of art brought into the province. Though the bill was introduced in anticipation of the Hermitage exhibition, it was clear the government had contemplated its future application as well:

Cette mesure est nécessaire suivant les exigences de certains pays qui proposent des expositions itinérantes d'importance. Notamment le Musée des beaux-arts se voit offrir, à l'occasion, de telles expositions et ne peut

les accueillir, précisément parce qu'il n'est pas en mesure de fournir de telles garanties d'insaisissabilité.<sup>68</sup>

Debate was swift. Only three speakers rose—from the governing Liberals, the Minister of Cultural Affairs to introduce the bill, and one speaker each from the Parti Québécois and the Union Nationale—all in support.<sup>69</sup> All three readings of the bill took place during the day and by the end of 30 June 1976, Royal Assent was granted.<sup>70</sup>

### 5.3 Ontario—1978

Ontario introduced Bill 156, the Foreign Cultural Objects Immunity from Seizure Act<sup>71</sup> on 26 October 1978,<sup>72</sup> two years after the Hermitage exhibition had returned to Leningrad. Toronto had originally been chosen as the second Canadian city to host the Hermitage exhibition.<sup>73</sup> However, at the time, the provincial government would not agree to introduce immunity from seizure legislation, and the collection went instead to Montreal. Why Ontario refused initially to enact immunity legislation is not completely clear, although a reason was insinuated by the Opposition during the 1978 debate of Bill 156:

I tried to find out the reasons, the motivation behind Ontario not allowing these magnificent works of art to be displayed here in the province for the people of Ontario to see and admire. I found out the reason. The reason, of course, was the minority government of the Premier (Mr. Davis) was very much concerned at that time that the property rights of people in Ontario would be trampled upon.

...

On the other hand the province of Quebec, because it had a majority government I would assume, passed the legislation in two hours of debate. One must wonder why, in 1976, this same legislation was a blow to the property rights of the people of Ontario but in 1978 this legislation is no longer a blow.<sup>74</sup>

Regardless of the reason for the 1976 refusal, in 1978 there was once again the pressure of an imminent high-profile exhibition—*Treasures of Tutankhamen* had been booked for November 1979 at the Art Gallery of Ontario.

The ancient Egyptian collection had been attracting huge crowds during a prolonged world tour that had started in 1972. Ontario was keen to capitalize, and according to the bill's sponsor, the Tutankhamen pieces gave rise to none of the same legal concerns as the Hermitage paintings:

I do recall there were some real questions at that time... I think there were some people living in this country who might have felt they had some rights to claim title to that property... I really do believe at this time—the occasion being the forthcoming King Tut exhibition—that there's very little likelihood that we'll be finding aunts and uncles and other ancestors or relatives of King Tut coming forward to claim that

the property in fact belongs to the family. I would think we certainly don't have to worry about that.<sup>75</sup>

As a result, Bill 56 passed with the support of all parties in the Ontario Legislature.<sup>76</sup>

#### 5.4 *British Columbia—1980*

In contrast to Manitoba, Québec, and Ontario, British Columbia introduced immunity legislation in 1980 without reference to any upcoming exhibition. In fact, for British Columbia there appears to be no publicly available information setting out the motivation for the enactment at that time.

The British Columbia provisions are contained in two statutes: the Law and Equity Act<sup>77</sup> and the Court Order Enforcement Act.<sup>78</sup> The two statutes were amended in a process that began 8 August 1980 as part of the omnibus Bill 55, Attorney General Statutes Amendment Act 1980.<sup>79</sup> None of the immunity provisions was even mentioned throughout the course of exceedingly brief debate over Bill 55, which received Royal Assent on 22 August 1980. This is perhaps surprising, as the amendments ushered in the broadest protection scheme<sup>80</sup> of any Canadian province. British Columbia alone offers immunity without prior administrative approval. According to Weller:

On the one hand, self-executing statutes save lenders from potentially cumbersome and lengthy administrative proceedings and usually provide for a predictable legal situation. On the other hand, a state that reserves the power to issue a return guarantee upon an administrative proceeding, to some extent, keeps control over the artworks falling within the statutorily granted immunity and may thus be able to avoid percussive controversies about artworks with dubious provenance claiming statutory immunity.<sup>81</sup>

Though it is impossible to say for sure, given the dearth of available historical material, it may well be that avoidance of administrative complication was behind the regulatory choice made in British Columbia:

It is mere speculation; however, British Columbia may have decided on the basis of administrative convenience to not create an approval process, which requires the resources of government.<sup>82</sup>

#### 5.5. *Alberta—1985*

Alberta is the most recent Canadian province to enact immunity from seizure legislation. Like British Columbia, Alberta appears to have had no specific exhibition in its sights, although it did point to Ontario's failure to secure the Hermitage collection as a motivation for enacting its own statute.<sup>83</sup>

Alberta's Foreign Cultural Property Immunity Act<sup>84</sup> was introduced by a government backbencher on 18 March 1985 and explained in detail during second-reading on 25 March:

Alberta has only rarely been the location for exhibits of truly international significance, and it is likely, although it cannot be proven, that our current lack of immunity-from-seizure legislation has been at least partially the reason. If we are in the future to bring to this province for the education and enjoyment of all our peoples some of the exhibits of art and archaeological material that are of truly outstanding international merit, it is essential that immunity-from-seizure legislation be introduced without delay ... Through this Bill we are extending the principles of diplomatic immunity to the realm of objects. Diplomatic immunity has long made communication and the mutual protection of individuals and property possible between civilized states whose ideologies may be poles apart. By the same token, if we are to play our part in lessening tension between states and the development of peaceful and rational relationships on this small planet, we must keep as many doors open as we can, including most particularly those involving culture. To understand, learn, and enjoy, we must be able to lend and borrow the objects on which such understanding, learning, and enjoyment depend. To do so, we must be able to give and receive assurances as to the inviolability of such objects while they are in our care or in the care of those to whom we may lend our treasures.<sup>85</sup>

Once again, debate was cursory, with only one speaker rising from Alberta's Opposition to comment on the bill. However, while Jim Gurnett did mention similar concerns to those expressed in other provinces, he added a new reservation—art or cultural objects coming into Alberta that might have been taken from aboriginal populations:

I think there's a particular problem in cases of objects that belong to or are part of the culture of indigenous peoples. ... I have a concern that this Bill is supporting its being more difficult rather than supporting the indigenous people's being able to reclaim some of these objects. So I have those worries about this. Many of these objects that would be involved by a Bill like this were originally lost as the spoils of conquest, war, or something, and in a sense there's an implicit acceptance of that robbery, Mr. Chairman, when we bring in a Bill to protect those objects and allow them to not be able to be recovered. ... I think if we put it into perspective and thought about how we would feel about some of the cultural artifacts that are important to us being held by another group of people and our being unable to regain them, it might give us a little more ground to respect what's happening here and the kind of feelings some of our native peoples may have about these objects that will come and be put on display but that they will have no right to claim even though they, in fact, are part of their own heritage. We add insult to injury in a sense. It's bad enough that the things were taken from these people originally, but that we now make it legally more difficult for them to have any chance of working through a restitution of these things is something that I think should be troubling us more than it seems to me that it is as we look at this Bill.<sup>86</sup>

Gurnett's concern, though noted, was dismissed by the government. Bill 14 sped through and received Royal Assent just a few days later.



## 6. CONCLUSION

It is difficult to judge the legal effectiveness of Canada's immunity from seizure statutes. As noted, none appears to have been challenged or invoked in the face of a legal claim launched against artwork on loan.

However, from a practical standpoint, the provisions seem to have served their purpose. As a form of symbolic legal assurance, the statutes have allowed Canadian museums and galleries to compete for some of the most prestigious international traveling art exhibitions. Major collections now routinely appear in Vancouver, Calgary, Winnipeg, Montreal, and Toronto.

At the same time, it is also arguable that the legislation has served to deter claims in those jurisdictions, although one cannot say unequivocally that this is so; it may simply be that no claims have arisen in a Canadian context.

### Appendix of Statutes

#### A.1 Manitoba

##### *Foreign Cultural Objects Immunity from Seizure Act, C.C.S.M. 1987, c. F-140.*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

##### **Immunity from seizure of foreign cultural objects**

1 When any work of art or other object of cultural significance from a foreign country is brought into Manitoba pursuant to an agreement between the foreign owner or custodian thereof and the Government of Manitoba or any cultural or educational institution, providing for the temporary exhibition or display thereof, in Manitoba by the Government of Manitoba or the cultural or educational institution, no proceeding or action shall be taken or permitted in any court and no judgment, decree or order shall be enforced in Manitoba for the purpose of, or having the effect of depriving the Government of Manitoba or the institution or any carrier engaged in transporting the work or object within Manitoba, of the custody or control thereof, if, before the work or object is brought into Manitoba the Lieutenant Governor in Council where the agreement is with the Government of Manitoba, on the recommendation of the member of the Executive Council who executed the agreement for and on behalf of the Government of Manitoba and where the agreement is with a cultural or educational institution, on the application of the institution determines

- (a) that the work or object is of cultural significance; and
- (b) that the temporary exhibition or display thereof in Manitoba is in the interest of the people of Manitoba;

and the Order in Council is published in the Manitoba Gazette.

##### **Enforcement of agreement not precluded**

2 Section 1 does not preclude any judicial action for or in aid of the enforcement of any of the terms of an agreement referred to in that section or the en-

forcement of the obligation of a carrier under any contract for the transportation of the work or object in the fulfilment of any obligation assumed by the Government of Manitoba or the cultural or educational institution pursuant to the agreement.

## A.2. Québec

*Code of Civil Procedure*, R.S.Q. c. C-25—Book IV Execution of Judgments, Title II Compulsory Execution, Chapter I Preliminary Provisions, Section III Exemptions from Seizure (1976, c. 48, s. 1).

553.1. Works of art or historical property brought into Québec and placed or intended to be placed on public exhibit in Québec are also exempt from seizure, if the Government declares them so, and for such time as it determines. Such works or property must not have been originally conceived, produced or created in Québec.

The order in council passed in virtue of the first paragraph comes into force on its publication in the *Gazette officielle du Québec*.

Exemption from seizure as prescribed in this article does not prevent the execution of judgments rendered to give effect to service contracts relating to the transportation, warehousing and exhibition of the works and property referred to in the first paragraph.

## A.3. Ontario

*Foreign Cultural Objects Immunity from Seizure Act*, R.S.O. 1990, c. F-23.

### Immunity of certain foreign cultural objects from seizure while in Ontario

1(1) When any work of art or other object of cultural significance from a foreign country is brought into Ontario pursuant to an agreement between the foreign owner or custodian thereof and the Government of Ontario or any cultural or educational institution in Ontario providing for the temporary exhibition or display thereof in Ontario administered, operated or sponsored by the Government of Ontario or any such cultural or educational institution, no proceeding shall be taken in any court and no judgment, decree or order shall be enforced in Ontario for the purpose or having the effect of depriving the Government of Ontario or such institution, or any carrier engaged in transporting such work or object within Ontario, of custody or control of such work or object if, before such work or object is brought into Ontario, the Minister determines that such work or object is of cultural significance and that the temporary exhibition or display thereof in Ontario is in the interest of the people of Ontario and notice of the Minister's determination is published in *The Ontario Gazette*. R.S.O. 1990, c. F.23, s. 1 (1); 2002, c. 18, Sched. F, s. 1 (1).

### Subs. (1) not to preclude enforcement of agreements, etc.

(2) Subsection (1) does not preclude any judicial action for or in aid of the enforcement of the terms of any such agreement or the enforcement of the obligation of any carrier under any contract for the transportation of any such work or object or the fulfilment of any obligation assumed by the Government of Ontario or such institution pursuant to any such agreement. R.S.O. 1990, c. F.23, s. 1 (2).

**Definition of Minister**

- (3) In this Act,  
 “Minister” means the Minister of Culture or such other member of the Executive Council to whom the administration of this Act may be assigned under the *Executive Council Act*, 2002, c. 18, Sched. F, s. 1 (2).

**A.4. British Columbia*****Law and Equity Act*, R.S.B.C. 1996, c. 253.****Art exempt from seizure**

- 55(1) A proceeding for possession or for a property interest must not be brought in respect of works of art or objects of cultural or historical significance brought into British Columbia for temporary public exhibit.
- (2) Subsection (1) does not apply
- (a) to proceedings in respect of a contract for transportation, warehousing or exhibition in British Columbia of the work or object, or
  - (b) to a work or object that is offered for sale.

***Court Order Enforcement Act*, R.S.B.C. 1996, c. 78.****Art exempt from seizure**

- 72(1) Works of art or other objects of cultural or historical significance brought into British Columbia for temporary public exhibit are exempt from seizure or sale under any process at law or in equity.
- (2) Subsection (1) does not apply
- (a) to execution on a judgment respecting a contract for the transportation or warehousing or exhibition in British Columbia of the work or object, or
  - (b) to a work or object that is offered for sale.

**A.5. Alberta*****Foreign Cultural Property Immunity Act*, R.S.A. 2000, c. F-17.**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

**Definition**

- 1 In this Act, “cultural property” means property belonging to any one or more of the following categories:
- (a) collections and specimens of fauna, flora, minerals and objects of palaeontological interest;
  - (b) property relating to history, including the history of science and technology and military and social history, to national leaders, academics and scientists and to events of national importance;
  - (c) products of archaeological excavations or of archaeological discoveries;
  - (d) elements of artistic or historical monuments or archaeological sites that have been dismantled or dismembered;
  - (e) antiquities, including inscriptions, coins and engraved seals;

- (f) objects of ethnological interest;
- (g) property of artistic interest, including:
  - (i) pictures, paintings and drawings produced entirely by hand on any support and in any material;
  - (ii) works of statuary art and sculpture in any material;
  - (iii) engravings, prints and lithographs;
  - (iv) artistic assemblages and montages in any material;
- (h) manuscripts, books, documents and publications of special interest;
- (i) postage, revenue and similar stamps;
- (j) archives, including sound, photographic and cinematographic archives;
- (k) articles of furniture and musical instruments.

### Immunity from seizure of foreign cultural property

2(1) When any cultural property ordinarily kept in a foreign country is brought into Alberta pursuant to an agreement between the owner or custodian of the cultural property and the Government of Alberta or any cultural, educational or research institution for the purpose of the temporary exhibition or display of the cultural property or the temporary use of the cultural property for research purposes by the Government of Alberta or the institution, no proceedings shall be taken in any court and no judgment, decree or order shall be enforced in Alberta for the purpose of, or having the effect of, depriving the Government of Alberta or the institution or any carrier engaged in transporting the cultural property into, within or out of Alberta of the custody or control of the cultural property if, before the cultural property is brought into Alberta,

(a) the Lieutenant Governor in Council, by order, determines that the cultural property is of significance, and

(b) the order is published in *The Alberta Gazette*.

(2) Where the Lieutenant Governor in Council rescinds an order made under subsection (1), subsection (1) ceases to apply with respect to the cultural property referred to in the order.

(3) Subsection (1) does not preclude any judicial action for or in aid of the enforcement

(a) of any of the terms of an agreement referred to in subsection (1), or

(b) of the obligation of a carrier under any contract for the transportation of the cultural property in the fulfilment of any obligation assumed by the Government of Alberta or the cultural, educational or research institution pursuant to an agreement referred to in subsection (1).

### ENDNOTES

1. Advertisement in the *Winnipeg Free Press* (Manitoba, Canada), 14 August 1974, 24.
2. "Art Treasures on Display in Winnipeg," *Winnipeg Free Press New Leisure Saturday Magazine* (Manitoba, Canada), 7 August 1976, 3.
3. Kenlyn Collins, e-mail message to author, 8 March 2010. Collins is the librarian at the Winnipeg Art Gallery. Collins searched through gallery archives for information related to the 1976 exhibition and retrieved minutes from a security meeting, as well as a number of letters received by the gallery.
4. "Even Enns Likes Soviet Show," *Winnipeg Free Press* (Manitoba, Canada), 13 August 1976, City News 1.
5. "Curator Doubts if Claims Possible," *Winnipeg Free Press* (Manitoba, Canada), 3 June 1976, City News 2.

6. Collins e-mail, 8 March 2010.
7. Collins e-mail, 8 March 2010.
8. "2,000 a Day Take in the Soviet Art Exhibition, *Winnipeg Free Press* (Manitoba, Canada), 19 August 1976, City News 1.
9. C.C.S.M. 1987, c. F-140.
10. Royal Assent proclaimed 11 June 1976, Manitoba Legislature, *Debates and Proceedings*, 4936.
11. "Even Enns Likes Soviet Show."
12. "Art Treasures on Display in Winnipeg."
13. "2,000 a Day Take in the Soviet Art Exhibition."
14. "93,000 View Art Show Lent by Soviet Union," *Winnipeg Free Press* (Manitoba, Canada), 28 September 1976, City News 1.
15. *Code of Civil Procedure*, R.S.Q. 1976, c. C-25, Book IV Execution of Judgments, Title II Compulsory Execution, Chapter I Preliminary Provisions, Section III Exemptions from Seizure.
16. *Foreign Cultural Objects Immunity from Seizure Act*, R.S.O. 1990, c. F-23.
17. British Columbia, like Québec, does not have a stand-alone statute. Instead, the *Law and Equity Act*, R.S.B.C. 1996, c. 253 and the *Court Order Enforcement Act*, R.S.B.C. 1996, c. 78 both contain immunity provisions for artworks on loan.
18. *Foreign Cultural Property Immunity Act*, R.S.A. 2000, c. F-17.
19. The author searched for cases citing the various legislative provisions using Quicklaw and WestLaw, as well as various printed statute citators. There were no reported decisions citing the immunity from seizure provisions.
20. Sarraf, "The Value of Borrowed Art," 741.
21. Palmer, "Adrift on a Sea of Troubles," 949.
22. Sarraf, "The Value of Borrowed Art," 729. Here, Sarraf quotes former Metropolitan Museum of Art Director Philippe de Montebello.
23. Palmer, "Adrift on a Sea of Troubles," 949.
24. Palmer, "Adrift on a Sea of Troubles," 949.
25. Palmer, "Adrift on a Sea of Troubles," 950.
26. Palmer, "Adrift on a Sea of Troubles," 950.
27. Palmer, "Adrift on a Sea of Troubles," 950–51.
28. Sarraf, "The Value of Borrowed Art," 730.
29. O'Connell, "The United Kingdom's Immunity," 3.
30. O'Connell, "The United Kingdom's Immunity," 3.
31. *Certain Property (Liechtenstein v. Federal Republic of Germany)*, [2005] I.C.J. Rep. 123 [Liechtenstein Case].
32. The following details of the *Liechtenstein* case are summarized from the discussion in Weller, "Immunity for Artworks on Loan?" 1000–6.
33. O'Connell, "The United Kingdom's Immunity," 1.
34. Details of the Noga case are summarized from information in O'Connell, "The United Kingdom's Immunity," as well as Bigg, "Switzerland Raises Russia's Ire," and Agence France-Presse, "Swiss Seize Pushkin Paintings."
35. N.Y. Arts & Cult. Aff. Law § 12.03 (1999).
36. The summary of the Schiele case is derived from Sarraf, "The Value of Borrowed Art," 730 and 744–52, as well as three articles written by Judith H. Dobrzynski: "The Zealous Collector—A Special Report: A Singular Passion for Amassing Art, One Way or Another," *New York Times*, 24 December 1997, E1; "German Court Revokes Ruling on Ownership of a Schiele Painting," *New York Times*, April 16, 1998, E1; and "Modern Wins Ruling on Art Seizure," *New York Times*, 22 September 1999, E3.
37. Dobrzynski, "The Zealous Collector," E1.
38. Sarraf, "The Value of Borrowed Art," 742.
39. O'Connell, "The United Kingdom's Immunity," 5. In addition to Manitoba, Quebec, Ontario, B.C., and Alberta, legislation had been passed in the United States federally, in New York, and in France.

40. 22 U.S.C. § 2459.
41. Zerbe, "Immunity from Seizure," 1124.
42. Zerbe, "Immunity from Seizure," 21.
43. The IFSA scheme is discussed in more detail by Sarraf, "The Value of Borrowed Art," and Zerbe, "Immunity from Seizure."
44. Sarraf, "The Value of Borrowed Art," 734–35.
45. Sarraf, "The Value of Borrowed Art," 734–35.
46. "U.S. Will Not Allow Hermitage Art Tour," *The Washington Post* (Washington, DC), 17 January 1980, B1 and B4.
47. "U.S. Will Not Allow Hermitage Art Tour," B1 and B4.
48. Palmer, "Adrift on a Sea of Troubles," 735.
49. Weller, "Immunity for Artworks on Loan?" 1018–23. At the time of writing, jurisdictions with some type of immunity from seizure legislation were Australia, Britain, France, Germany, Ireland, Switzerland, the United States federally, New York, Rhode Island, Texas, Alberta, British Columbia, Manitoba, Ontario, and Québec.
50. Weller, "Immunity for Artworks on Loan?" 1018–19.
51. Adapted from Weller, "Immunity for Artworks on Loan?" 1019.
52. C.C.S.M. 1987, c. F-140.
53. Richardson and Zafran, *Master Paintings from the Hermitage*, 4. The U.S. exhibition catalog notes that the tour as having been "designated an official event by the American Revolution Bicentennial Administration."
54. Richardson and Zafran, *Master Paintings from the Hermitage*, 4.
55. This information comes from transcripts of the debates on Manitoba's Bill 56. See the comments of Public Works Minister Russell Doern: Manitoba Legislature, *Debates and Proceedings*, 27 May 1976 at 4289. In fact, Montreal, not Toronto, was the second Canadian city to host the exhibition. Though it is not completely clear, the switch may have been necessitated because Ontario had a minority government at the time, which may have been either unwilling or unable to push immunity from seizure legislation through, particularly in the wake of such fiery debate in Manitoba. Québec, with a Liberal majority government under Robert Bourassa, apparently had no such qualms.
56. Manitoba Legislature, *Debates and Proceedings*, 18 May 1976, 3962–63, per Howard Pawley, attorney general.
57. Manitoba Legislature, 4076, per Donald Craik, leader of the opposition.
58. Richardson and Zafran, *Master Paintings from the Hermitage* in "Introduction," per Academician B. Piotrovsky, director of the State Hermitage Museum, 7.
59. Manitoba Legislature, *Debates and Proceedings*, 4302, per Wally Johannson.
60. Manitoba Legislature, *Debates and Proceedings*, 4282, per Harry Enns.
61. Manitoba Legislature, *Debates and Proceedings*, 4294, per Sidney Green.
62. Manitoba Legislature, *Debates and Proceedings*, 4316, per Bud Sherman.
63. Manitoba Legislature, *Debates and Proceedings*, 4316, per Harry Enns.
64. "Soviet Art Exhibition Clears Hurdle," *Winnipeg Free Press* (Manitoba, Canada), 26 July 1976, City News 1.
65. "Soviet Art Prompts Protest," *Winnipeg Free Press* (Manitoba, Canada), 7 October 1976, 71.
66. National Assembly of Québec, *Votes and Proceedings*, 30 June 1976, 345.
67. *Code of Civil Procedure*.
68. Assemblée Nationale, *Journal des Débats*, 30 June, 1976, 1908.
69. Assemblée Nationale, *Journal des Débats*, 1908 and 1921–22.
70. *Votes and Proceedings of the National Assembly of Québec*, 358–59.
71. *Foreign Cultural Objects Immunity from Seizure Act*, R.S.O. 1990, c. F-23.
72. Legislature of Ontario, *Legislature of Ontario Debates*, 26 October 1976, 4219–20.
73. Manitoba Legislature, *Debates and Proceedings*, 4289.
74. Legislature of Ontario, *Legislature of Ontario* 28 November 1978, 5388–89, per Tony Grande.
75. Legislature of Ontario, *Legislature of Ontario Debates*, 5390, per Reuben Baetz, minister of culture and recreation.

76. Legislature of Ontario, *Legislature of Ontario Debates*, 5390.
77. *Law and Equity Act*, R.S.B.C. 1996, c. 253.
78. *Court Order Enforcement Act*, R.S.B.C. 1996, c. 78.
79. British Columbia, *Debates of the Legislative Assembly (Hansard)*, 1980 Legislative Session: Second Session, 32<sup>nd</sup> Parliament, 3815.
80. Sarraf, "The Value of Borrowed Art," 737.
81. Weller, "Immunity for Artworks on Loan?" 1020.
82. Tyler Nyvall, e-mail message to author, 2 March 2010. Nyvall is Legal Counsel in the Justice Services Branch of the British Columbia Ministry of Attorney General.
83. Legislative Assembly of Alberta, *Alberta Hansard*, 25 March 1985, (<http://www.assembly.ab.ca/Documents/isysquery/9707281d-03bf-4952-8744-21625c4ee2d8/1/doc/>).
84. *Foreign Cultural Property Immunity Act*, R.S.A. 2000, c. F-17.
85. Legislative Assembly of Alberta, *Alberta Hansard*, 25 March 1985.
86. Legislative Assembly of Alberta, *Alberta Hansard*, 3, June 1985, (<http://www.assembly.ab.ca/Documents/isysquery/c1c1247b-39c3-4430-b905-6d92ceeacd2f/1/doc/>).

## BIBLIOGRAPHY

- Agence France-Presse. "Swiss Seize Pushkin Paintings in dispute with Russia." (<http://www.artinfo.com/news/story/1584/swiss-seize-pushkin-paintings-in-dispute-with-russia/>).
- Assemblée Nationale. *Journal des Débats*, Vol. 17, No. 57. Québec: L'Éditeur Officiel du Québec, 1976, 30 June 1908.
- Bigg, Claire. "Switzerland Raises Russia's Ire by Seizing Prized Art Collection." *Radio Free Europe, Radio Liberty*. (<http://www.rferl.org/content/article/1062994.html>) (16 November 2005).
- British Columbia. *Debates of the Legislative Assembly (Hansard): 32nd Parliament, 2nd Legislative Session*. Victoria, 1980.
- Legislative Assembly of Alberta. *Alberta Hansard*. Edmonton: Queen's Printer, 1985.
- Legislature of Ontario. *Official Report (Hansard) Daily Edition, Second Session, 31st Parliament*. Toronto: Queen's Printer, 1978.
- Manitoba Legislature. *Debates and Proceedings, Volume 23*. Winnipeg: Queen's Printer, 1976.
- National Assembly of Québec. "Bill No. 59: An Act Respecting the Exemption From Seizure of Foreign Cultural Property." Québec City: Québec Official Publisher, 1976.
- O'Connell, Anna. "The United Kingdom's Immunity from Seizure Legislation." *London School of Economics and Political Science Law, Society and Economy Working Papers* 20 (2008).
- Ontario Ministry of Culture. "Application Guidelines for Determination under the *Foreign Cultural Objects Immunity from Seizure Act*," Toronto: Queen's Printer for Ontario, 2006.
- Palmer, Norman. *Art Loans*. London: Kluwer Law International, 1997.
- . "Adrift on a Sea of Troubles: Cross-Border Art Loans and the Specter of Ulterior Title." *Vanderbilt Journal of Transnational Law* 38 (2005): 947–95.
- Richardson, John, and Eric Zafran, eds. *Master Paintings from The Hermitage and The State Russian Museum Leningrad*. New York: M. Knoedler, 1975.
- Sarraf, Ronen. "The Value of Borrowed Art." *Brooklyn Journal of International Law* 25 (1999): 729–58.

*Votes and Proceedings of the National Assembly of Québec: Fourth Session of the Thirtieth Legislature, No. 57.* Québec City: Québec Official Publisher, 1976.

Weller, Matthias. "Immunity for Artworks on Loan? A Review of International Customary Law and Municipal Anti-Seizure Statutes in Light of the *Liechtenstein* Litigation." *Vanderbilt Journal of Transnational Law* 38 (2005): 997–1039.

Zerbe, Rodney M. "Immunity From Seizure for Artworks on Loan to United States Museums," *Northwestern Journal of International Law and Business* 6 (1984): 1121–45.