2013

Museums and the Dilemmas of Deaccessioning

Robert K. Paterson
Allard School of Law at the University of British Columbia, paterson@allard.ubc.ca

Citation Details

Robert K Paterson, “Museums and the Dilemmas of Deaccessioning” (2013) 5 "Art and Heritage Disputes in International and Comparative Law" (2013) 5 Transnat'l Disp Mgmt.

ISSN : 1875-4120
Issue : Vol. 10, issue 5
Published : October 2013

This paper is part of the special issue on "Art and Heritage Disputes in International and Comparative Law" edited for Transnational Dispute Management by:

Dr. V. Vadi
New York University, Lancaster University
View profile

Prof. H. Schneider
Maastricht University
View profile

Transnational Dispute Management
www.transnational-dispute-management.com

Museums and the Dilemmas of Deaccessioning
by R.K. Paterson

About TDM

TDM (Transnational Dispute Management): Focusing on recent developments in the area of Investment arbitration and Dispute Management, regulation, treaties, judicial and arbitral cases, voluntary guidelines, tax and contracting.

Visit www.transnational-dispute-management.com for full Terms & Conditions and subscription rates.

Open to all to read and to contribute

TDM has become the hub of a global professional and academic network. Therefore we invite all those with an interest in Investment arbitration and Dispute Management to contribute. We are looking mainly for short comments on recent developments of broad interest. We would like where possible for such comments to be backed-up by provision of in-depth notes and articles (which we will be published in our 'knowledge bank') and primary legal and regulatory materials.

If you would like to participate in this global network please contact us at info@transnational-dispute-management.com: we are ready to publish relevant and quality contributions with name, photo, and brief biographical description - but we will also accept anonymous ones where there is a good reason. We do not expect contributors to produce long academic articles (though we publish a select number of academic studies either as an advance version or an TDM-focused republication), but rather concise comments from the author's professional 'workshop'.

TDM is linked to **OGEMID**, the principal internet information & discussion forum in the area of oil, gas, energy, mining, infrastructure and investment disputes founded by Professor Thomas Wälde.

Museums and the Dilemmas of Deaccessioning

Robert K. Paterson*

Introduction

One of the most controversial aspects of museum governance has been the practice of deaccessioning, whereby museums sell or otherwise part with possession of objects forming part of their collections. Though such transfers are usually legal, they can sometimes engender heated debate. Much of the controversy surrounding deaccessioning by museums seems to arise from the perception that they are public institutions impressed with the role of protecting and preserving their collections intact for future generations. However, the enormous market prices for certain works of art in recent years have created tempting options for museums to raise funds by selling objects from their collections. An instructive example arose in 2007 when the Albright-Knox Art Gallery in Buffalo, New York, decided to auction off dozens of objects as part of a new plan to focus on modern and contemporary works of art. Several members of the Buffalo Fine Arts Academy challenging the decision of its board to do so, sought an injunction to stop the sales. A New York Supreme Court judge dismissed the claim based on an opinion that the board had exercised its judgment honestly and reasonably and had not misappropriated Academy assets.[1] The sales were a huge financial success. A single Roman antiquity (the sculpture *Artemis and the Stag*) sold for more than $28 million – a record price for an antiquity at auction.[2] Though artworks that many thought should remain the kernel of the gallery's collection were sold, the proceeds multiplied its endowment several times over.

The usual sense in which the term deaccession is used is to describe the voluntary sale of objects for value based on a perceived need on the part of the selling institution for the funds generated by the sale. Included in this definition is when the institution exchanges objects from its collection for other objects. This definition is similar to how the term is defined by the *Oxford English Dictionary*, as "to officially remove [an item] from a library, museum or art gallery in order to sell it".[3] In whatever context the word is used, however, it is not a term of art in the legal sense.

This article aims at illustrating the problems institutions face when considering the disposition of objects in their collections. The legal framework that governs such sales will be outlined and the question posed as to whether these existing laws are adequate to address

* Professor of Law, University of British Columbia.

[1] *Dennis v. Buffalo Fine Arts Academy*, No. 50520(u), slip op. at 3, 836 N.Y.S.2d 498 (Table) (Sup. Ct. Erie Cty., 21 March 2007).
[2] See "Buffalo: Museum Raises Millions in Auction", *The New York Times*, June 15, 2007.
[3] See http://oxforddictionaries.com/definition/english/deaccession.

concerns surrounding sales, or whether new laws or other strategies are needed to resolve contentious dispositions.

1. The Legal Framework of Deaccessioning

1.1 Introduction

The law surrounding deaccessioning by museums primarily involves the rules of equity concerning charitable institutions, including the fiduciary obligations of those who manage them. Objects that were lent to a museum or that it may have acquired without being aware they were stolen cannot be disposed of since the museum does not have title to such objects. There are noticeably few instances where aspects of deaccessions by institutions have been the subject of findings by courts.

1.2 Museum Organization and Governance

In Canada and the United States most museums are established as nonprofit entities under provincial or state law.[4] Incorporation often occurs under a statute that allows the process for nonprofits. Occasionally an individual statute will incorporate a particular institution. Thus the National Gallery of Canada is established by the federal *Museums Act*[5] and the Smithsonian Institution by a 1846 Act of Congress.[6]

If a museum chooses not to incorporate, it can operate as a charitable trust or some other form of unincorporated association. These various forms of organization have different rules of both statutory and common law that apply to them, but none of these rules arise peculiarly from the fact that an institution is a museum. Other laws and regulations may apply only to museums, such as the immunity of collections from seizure.[7]

1.3 The Charitable Status of Museums

An institution established as a museum is deemed in law to hold its property for a charitable purpose for the benefit of the public. According to the American *Restatement Second of the Law of Trusts*: "A purpose is charitable if its accomplishment is of such social interest to the community as to justify permitting the property to be devoted to the purpose in perpetuity."[8] The Second *Restatement* lists the methods by which a charitable trust may promote education,

[4] See Marie C. Malaro, *A Legal Primer on Managing Museum Collections* (2d. ed.) (Smithsonian Press, 1998) at 9-10.
[5] S.C. 1990, c. 3.
[6] 20 U.S.C. §§ 41-80 (2000).
[7] On immunity and art loans generally see Nout Van Woudenberg, *State Immunity and Cultural Objects on Loan* (Martinus Nijhoff, 2012).
[8] Restatement (Second) of Trusts, §368, comment b, at 248 (1957).

including the establishment of museums.[9] Museums, as charitable enterprises, usually enjoy certain tax relief and are exempt from the rule against perpetuities.

In both Canada and the United States, the common law determines whether a museum is a charity. The decision of the English Court of Appeal in *Re Pinion* is unusually explicit about when a common law court considers that a valid charitable purpose exists.[10] A testator gave his studio and its contents to a trustee and directed that the residue of his estate be used to endow the studio as a museum for displaying his collection. The court thought it was essential that it know something of the quality of the proposed exhibits in order to judge whether they would be conducive to the education of the public. Speaking for the Court, Harman, L.J. trenchantly stated:

> I can conceive of no useful object to be served in foisting upon the public this mass of junk. It has neither public utility nor educative value. I would hold that the testator's project ought not to be carried into effect and that his next-of-kin is entitled to the residue of his estate.[11]

In Canada and the United States the traditional responsibility to enforce charitable trusts or gifts rests with the attorney general of the jurisdiction where the charity is located.[12] If there are grounds to sue the director of a museum for breach of fiduciary duty, the only person with standing to bring the action is the attorney-general.[13] This practice is based on the idea that since a charitable gift must benefit the public at large, it is inappropriate for individuals to have power to challenge the administration of such gifts. In Canada this is part of the Crown's *parens patriae* duty to protect the property of charities.[14]

With increasing concerns about the standards of management of many charitable organizations the extent to which attorneys general should dominate legal challenges involving those standards has been reconsidered.[15] This trend is particularly noticeable in the United States where there have been several attempts to expand the concept of who has standing to sue in cases involving charities. Standing to sue can expand through the granting of relator status by the attorney-general.[16] In effect the attorney-general permits a person to sue in his or her stead. This issue is likely to arise more frequently as charity constituencies (such as students in universities, "friends" of museums, and civil society groups) become more involved and interested in how charities, such as museums, are managed. In a well-known case involving deaccessioning of artworks by the Pasadena Art Museum the court noted that the attorney general had not granted formal relator status but it allowed a short period of time for him to decide whether or not he

---

[9] See *People ex rel. Scott v. George F. Harding Museum*, 374 N.E. 2d 756 (Ill. App. Ct. 1978).
[10] [1965] 1 Ch. 85 (C.A.).
[11] *Id.*, at 107.
[12] In Canada the provincial attorney-general is usually vested by common law or statute with the power to oversee charities. The same situation obtains in the United States, see Note, 'The Enforcement of Charitable Trusts in America: A History of Evolving Social Attitudes', (1968) 54 *Va. L. Rev.* 436.
[13] See Marie C. Malaro, *A Legal Primer on Managing Museum Collections (*Smithsonian Books, 2nd. Ed. 1998) at 23 to 24.
[14] See Donovan Waters, *Law of Trusts in Canada* (Carswell, 2nd. Ed. 1998) at 633.
[15] See *Hardman v. Feinstein*, 240 Cal. Rptr. 483 (Ct. App. 1987) and *Owens v. Magill*, 419 S.E. 2d 786 (S.C. 1992).
[16] See *Wiegard v. Barnes Foundation* 97 A. 2d 81 (Pa. 1953).

wished to. Subsequently, the plaintiffs, who were former trustees of the museum and opposed the sales, obtained such status.[17]

1.4 The Fiduciary Duties of Museum Managers

The trustees and directors of a museum stand in a fiduciary relationship toward their institution and must not place themselves in a position of real or potential conflict between their personal interests and those of the institution.[18] This responsibility includes an obligation not to appropriate to themselves any opportunity for personal profit or benefit that might arise in connection with the execution of their responsibilities and a duty of care regarding the performance of their role as trustees. Liability for breach of fiduciary duty is strict and therefore does not depend on proof of actual harm or loss to the institution.

It may be, however, that directors of a museum, whether it is organized as a charitable trust or as a nonprofit corporation, are not held to as high a fiduciary standard as trustees of a private trust. Given the complexity and magnitude of the tasks facing trustees of large museums, compared with those of a traditional trustee, it would be unrealistic to expect museum trustees to acquit themselves "of the punctilio of an honor the most sensitive".[19] Many museum trustees are wealthy collectors who may owe their position to an expectation that they will eventually give items from their collections to the museum. This can lead to acts by museum managers, such as hiring a relative of a trustee whose motivation may be clear enough but whose legitimacy may be questionable.

Re Charles M. Bair Family Trust,[20] is a rare instance in which a court unambiguously ruled that members of a museum board had breached their fiduciary duty. The case involved allegations that a board of advisers created under a family trust had breached its obligations by, among other things, closing the Charles M. Bair Family Museum, in Martinsdale, Montana. The Supreme Court of Montana found that the board had failed in its duty to administer the trust according to the trust instrument. It was the board's failure to bring the museum up to operational capacity that most concerned the court.[21] The court also found that the board had breached its fiduciary duties in closing the museum without first concluding that it had ceased to serve its scholarly, educational, and historical purposes.[22] The court instructed the successor trustee to appoint a new board pursuant to the trust agreement. Because the Montana attorney general, supported by *amicus* briefs filed by thirteen states, had intervened in the case as a matter of right, the court did not find it necessary to rule on whether a community group, Friends of the Bair, had standing to intervene.

In Canada, where there are fewer private-funded museums than in the United States, many government-controlled institutions have adopted the corporate form of legal association.

---

[17] *Rowan v. Pasadena Art Museum*, No. C322817 (Cal. Sup. Ct. L.A. County, 22 September 1981).
[18] See Patty Gerstenblith, *Art, Cultural Heritage, and the Law* (Carolina Academic Press, 2004) at 279 to 280.
[19] *Meinhard v. Salmon*, 164 N.E. 545, at 546 (1928), per Chief Justice Cardozo.
[20] 183 P.3d 61 (Mont. 2008).
[21] *Id.* at para 60.
[22] *Id.* at para. 81.

The federal *Museums Act*[23] establishes several national museums as Crown (government) corporations, including the National Gallery of Canada and the Canadian Museum of Civilization. The corporate form has led to concerns about the risk that directors and officers of such institutions might compromise their obligation to further the public interest through commercial activities aimed at increasing economic efficiency. However, as long as commercial activities – such as corporate sponsorships and licensing agreements – are seen as furthering the long-term interests of the museum they should not amount to a breach of fiduciary duty. Because Canadian museums are also charitable institutions, the federal or provincial attorneys general would have standing to bring such claims.[24]

1.5 An Attempt to Regulate Deaccessioning in New York

As the 2008 recession deepened there were several examples of planned or actual deaccessioning in the United States. These included the controversial sale by the National Academy Museum in New York City of two Hudson River School paintings and the proposal by Brandeis University in Massachusetts to sell the entire contents of the Rose Art Museum.[25] In response to these developments, and other examples, a bill was introduced into the New York state legislature in 2009 that would have made illegal all sales of artworks to cover operating expenses by state cultural institutions.[26] The bill, in fact, extended emergency measures already taken by the Board of Regents of the University of the State of New York, to all New York State museums – those operating under legislative charters as well as those chartered by the Board of Regents, which supported the new legislation along with the Museum Association of New York.[27] The bill would have been the first comprehensive legislation targeting the perceived problems surrounding deaccessioning.

However, almost immediately many leading museums and art organization in New York voiced opposition to the bill. The director of the Metropolitan Museum of Art, Thomas P. Campbell, wrote:

> While we respect efforts to bring clarity to the deaccessioning process, we believe the Metropolitan Museum has maintained a scrupulously transparent process for more than three decades – tightly governed by its trustees, subject to review by the State Attorney-General, and requiring that funds from deaccessioning be used only for the purpose of acquiring other works of art.[28]

---

[23] S.C. 1990, c. 3.
[24] See Robert K. Paterson, *Totems and Teapots: The Royal British Columbia Museum Corporation*, (2007) 40 *UBC L. Rev*. 421.
[25] See Judith Dobrzynski, 'Rose Art Museum Lawsuit Settled', *The Art Newspaper*, 30 June 2011.
[26] Assemb. B.6959-A, 232 Sess. (N.Y. 2009).
[27] See Robin Pogrebin, 'Bill Seeks to Regulate Museum's Art Sales', *The New York Times*, (18 March 2009), at C1. Permanent Board of Regents regulations, which also prohibited the use of deaccessioning sale proceeds for operating costs, became effective in May 2011. See Sara Tam, 'In Museums We Trust: Analyzing the Mission of Museums, Deaccessioning Policies, and the Public Trust', (2012) 39 *Ford. Ur. L. J.* 849.
[28] See Robin Pogrebin, 'Bill to Halt Certain Sales of Artwork May be Dead', *The New York Times*, 10 August 2010 at C1.

Even after various amendments were made to the bill, in an attempt to accommodate these and other concerns, it failed to become law. Among these concerns was the cost of producing inventories of collections which the bill required and whether the pledging of whole collections as collateral for loans could be seen to be subject to the law.

2. Non-binding Codes of Ethics

In light of the few reported cases involving deaccessioning and a general perception that judges would be reluctant to second-guess the decisions of museum trustees or directors, non legally-binding codes of ethics frequently address the issues surrounding the disposal of objects in museum collections. Despite lacking legal stature such codes increasingly drive museum practice and may even influence the attitudes of courts in some cases. Apart from the rarity of judicial decisions on deaccessioning, the spread of codes of ethics can also be explained by changing attitudes and norms espoused by museum leaders as they expand and modify their institutional agendas to better respond to public expectations about such things as exhibition policies and the museum visitor experience. Along with greater transparency and accountability, codes of ethics can also be seen as a means to legitimize evolving practices of museum management and deflect criticism that museums might otherwise attract.

The following summaries describe the deaccessioning codes adopted by the International Council of Museums (ICOM) and museum associations in Canada and the United States. Individual museums, in turn, have adopted codes regarding their deaccessioning practices, often borrowing from these national and international organization policies.

2.1 The International Council of Museums (ICOM)

The International Council of Museums has developed a *Code of Ethics for Museums.*[29] The Code is binding on all museums that belong to ICOM. Section 2 of the Code states that there is a strong presumption that a deaccessioned item should first be offered to another museum.[30] There is an obligation to keep complete records of museum decisions to dispose of objects.[31] The ICOM Code sidesteps a categorical prohibition on the use of proceeds from disposition for purposes other than acquisitions for the museum's collection, but it does state that proceeds from deaccessioning "should be used solely for the benefit of the collection and usually for acquisitions to that same collection".[32]

[29] The ICOM Code of Professional Ethics was adopted unanimously by the 15th General Assembly of ICOM meeting in Buenos Aires on 4 November 1986, amended by the 20th General Assembly of ICOM in Barcelona, on 6 July 2001, and revised by the 21st General Assembly in Seoul, on 8 October 2004.
[30] *Id.*, section 2.15.
[31] *Id.*
[32] Section 2.16.

2.2 The Association of Art Museum Directors (AAMD)

The AAMD was established in 1916 and its members include over 200 directors of leading art museums in the United States, Canada and Mexico. There is also a Canadian Art Museum Directors' Organization which was founded in 1964 and modeled on the AAMD. Its deaccessioning guidelines prohibit the use of the proceeds of sales of objects in member museum collections for operating costs. [33] The AAMD Policy on deaccessioning was adopted by the AAMD in June 2010.[34] The AAMD policies on deaccessioning are stricter than most similar guidelines promulgated by museum organizations and prohibit museums whose directors are AAMD members from using funds received from the disposal of deaccessioned work for operational or capital expenditures. Such funds may be used "only for the acquisition of works in a manner consistent with the museum's policy on the use of restricted acquisition funds."[35] Detailed criteria for the justification of deaccessioning are set out, such as the work being of poor quality and lacking value for exhibition of study purposes.

In 2009 the AAMD took the unusual step of publicly censuring one of its member institutions. New York's National Academy Museum and School of Fine Arts had sold two Hudson River school paintings for approximately $US13 million to raise much-needed funds for operations. The AAMD responded by prohibiting its member institutions from sharing exhibitions with or making loans to the nearly 200 year old New York museum. The result was to compromise the museum's ability to mount exhibitions and force it to undertake a major re-evaluation of its future role. This ended nearly two years later when the AAMD placed the museum on a five-year probation, allowing it to function again as an AAMD member. The reality behind the original deaccessioning was that of declining museum attendance and rising operating costs. In effect, the informal sanctions for non-compliance with the AAMD Policy on Deaccessioning were a catalyst for the reinvigoration of a venerable New York museum. [36]

2.3 Canadian Museums Association (CMA)

While Canadian museums tend to be much less dependent on private financial support than their American counterparts, they too face the issue of what criteria should apply when deaccessioning is proposed. Unlike the AAMD Policy on Deaccessioning, the Ethics Guidelines of the Canadian Museums Association (CMA)[37] do not specify what sanctions are available for non-compliance with its policies on disposals. It is implicit, however, that, as with the codes of conduct of any organization, expulsion from membership is always a possibility. The CMA ethical guidelines also appear to be strongly influenced by the ICOM *Code of Ethics*. There is reference to the desirability of objects of national, provincial or regional importance remaining in Canada and to the need for respectful responses to requests from restitution of objects, along with a

[33] See www.camdo.ca.
[34] See AAMD Policy on Deaccessioning, 9 June 2010, online at https://aamd.org/standards-and-practices.
[35] *Id.*, at (B), p.4.
[36] For a discussion of these events see Robin Pogrebin, 'A Chastised Museum Returns to Life', *The New York Times*, 17 April 2011..
[37] Ethics Guidelines, Canadian Museums Association, Ottawa, 2006.
Online at www.museums.ca/Publications/Reports_and_Guidelines/?n=15

commitment to the return of human remains and culturally sensitive objects.[38] This seems to directly reflect the experiences of Canadian museums with requests for the return of such material to Aboriginal representatives in Canada as well as to indigenous claimants abroad.

It is beyond the scope of this paper to explore the legal status of provisions of non-legally binding professional codes such as those discussed above. While such provisions clearly lack force of law, they undeniably affect the behavior of museums, their directors and employees. The unresolved question is to what degree these voluntary codes of conduct are likely to be adopted by courts in deciding whether breaches of fiduciary duty have occurred as a direct result of non-compliance? The role of courts differs from that of professional associations insofar as courts must adjudge unique factual situations and not general policy concerns in an abstract sense. Thus, courts are unlikely to apply a code provision whose application seems inappropriate in the context of the facts of a particular case. On the other hand, when a norm has received widespread national and international support by self-regulatory associations, it is likely to commend itself where there is no binding case on point and the court feels it lacks the expertise to substitute its own opinion for that of the profession itself.

In the case of an alleged breach of fiduciary duty, however, courts may show less deference to professional expertise. Courts may feel that their opinions as to what is fair are more or just as perceptive as those of outsiders. While museums may feel that a professional norm that discredits the use of funds from disposals of collections for operating expenses is appropriate, courts may see this as merely aspirational and not an appropriate basis for a finding of unlawfulness. Perhaps the best that can be said is that a court will likely be willing to hear testimony about customary museum practice, but will reserve to itself the power to decide on a finding of breach of duty.

3. An Individual Museum's Initiative: The Indianapolis Museum of Art

The Indianapolis Museum of Art (IMA) is notable for having adopted a pre-emptive strategy towards deaccessioning designed to make the process more transparent. The museum published a list of some 900 deaccessioned items on its website which, along with images and value estimates, included identification of planned sales along with reasons for the deaccessioning of individual objects.[39] This means that members of the public will now have the opportunity to comment on sales before they occur.

In 2008 the IMA's revised Collection Management Policy outlined guidelines regarding deaccessioning of works of art in the IMA's collections.[40] In particular, these sanctioned the disposal of objects that are inconsistent with the goals of the museum, possess little potential for research or education, are forgeries, duplicates, or are damaged beyond reasonable repair.[41] Allegedly, the IMA policy was not designed to support the sales of objects of good quality to acquire a work "that is considered to be a yet finer work by another artist – or *trading up*, not

[38] *Ibid.*
[39] See *Deaccessioned Artworks* at http://www.imamuseum.org/collections/deaccessioned-artworks.
[40] See Indianapolis Museum of Art Deaccession Policy (February, 2008).
[41] *Ibid.*

from a lesser work, but from one avowedly fine work or works to acquire another".[42] This would expose the museum's permanent collection to the risk of shifting tastes, from one generation of curators and directors, to another.[43] In 2013 the IMA illustrated further innovation by launching a searchable database of recently deaccessioned artworks and announcing that it would also reveal how income from deaccessioning was use to acquire new works.[44]

4. The Risks of Deaccessioning

As the examples discussed above illustrate, deaccessioning is not a recent phenomenon. As long as museums have claimed title to objects in their collections, they have also asserted the legal right to dispose of them. What then has changed? Perhaps the main current underlying the increased debate over instances of deaccessioning has been the opinion of many that museums should be held to higher ethical standards than owners of more conventional properties? With reference to recent instances of deaccessioning, cultural critic James Panero has said:

> While the profit motive drives the businesses that fund philanthropy, the perceived profiteering of American museums breaks a covenant they have made with the public and damages the culture of virtue that continues to sustain them. Sometimes this is done consciously, as museum professionals attack the past from within. At other times these professionals do damage with the best intentions. Any museum decision that appears to capitalize on the permanent collection – from gift shops to high ticket prices to fancy restaurants to facility rentals – risks diminishing the museum's virtue in the eyes of the public. What most museum professionals fail to recognize is that the principle of virtue means that good business often becomes bad business once inside the gates of these institutions.[45]

In light of this and similar views how can a museum best defend itself when it decides it must part with objects in its collection?

A common argument against a decision to sell an object in a museum collection is that such sales will deter prospective donors from gifting objects to the institution involved. This argument has not been the subject of any empirical study and is necessary speculative. If the objects being sold belong to a completely different category from those that might be gifted, a would-be donor might even be encouraged by the planned deaccessioning as a sign of a welcome change in direction by the institution concerned. The scope for infinite variations in the nature of collections makes generalizations problematic. The most credible assessment is probably that no significant drop in donations (in the form of cash or objects) to museums has occurred since the start of the modern debate over deaccessioning.

---

[42] See Maxwell Anderson, 'Deaccessioning Without Putting Your Mission Up for Sale', *Art: 21 Blog*, 29 March 2010.
[43] *Ibid.*
[44] Online at www.imamuseum.org/explore/deaccessions.
[45] James Panero, 'Future Tense, VII: What's a Museum?', (2012) 30 *The New Criterion*, 4.

A sounder argument surrounds the charge that museums, especially these under financial exigency, will tend to sell off their more valuable artworks in order to realize the most money. However, there appear to be few reported examples of such sales. If museums adhere to the generally accepted professional ethic of using funds from sales to buy new objects for their existing collections, then concern with maintaining the excellence of those collections would tend to undermine a decision to dispose of its most important components. The sale of significant objects by a museum is more likely to occur when its managers decide to make a major change in focus – which is usually a rare occurrence. Of course, there is always the risk that after a disposition occurs, the market value of the sold object sold rises significantly. This is an inevitable risk in any sort of sale but one that is minimized if the object purchased with the proceeds of sale belongs to the same category as the object sold and is of similar or better quality.

The risks of deaccessioning that precipitate calls for greater regulation can be substantially diminished by the voluntary adoption of "good practices". In addition to those already discussed and often incorporated into codes of ethics, good museum governance should include establishing a link between acquisitions and planned deacquisitions, so that the same individuals are involved in both processes. Other museums should have a "right of first refusal" to buy any objects that are to be offered for sale. The factors that give rise to pressures for deaccessioning in the first place, particularly those arising from budgetary issues, could be pre-emptively addressed by strategies such as the sharing of conservation and storage costs between institutions proximate to one another.

Conclusion

Despite the continued controversy surrounding deaccessioning it has so far resisted the forces of monetization and legislation. An argument against legislation is that the sale of assets in museum collections is only one facet of the management of such institutions. Furthermore, proof of a breach of fiduciary duty has long been the exclusive preserve of the courts and special reasons should be identified before an isolated aspect of a flexible general principle is made the subject of detailed legislation.

One dimension of deaccessioning that has not been extensively examined is that of dispute resolution. Museums seem universally reluctant to involve themselves in legal proceedings. Most controversial deaccessionings have involved the intervention of museum organizations or some form of compromise or reversal on the part of the museum itself. Deaccessioning could learn from the parallel controversies surrounding repatriations of ethnographic objects or stolen Nazi-era artworks. In most instances repatriation processes have also eschewed judicial or legislative approaches. All but the most problematic cases have usually been resolved through negotiation. Museum organizations could consider drafting frameworks that their member institutions could use, both when a deaccession is in the planning stage and when it is challenged by stakeholders. The active engagement of such individuals and groups – such as donors, trustees, members, and community groups – would likely serve to reduce the level of confrontation. Processes that are principled and follow recommended guidelines are

likely to be less vulnerable to challenge. The voluntary adoption of uniform principles governing disposals, coupled with procedures applicable if conflicts arise, would not eliminate the possibility of legal proceedings, but it could significantly reduce their likelihood.