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Ignorance no excuse for
owning looted art, Page A18

Who knew what about Nazi loot?

A public inquiry
into art plunder
might be in order

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The topic of Nazi-looted art and war plunder has finally become a hot one in Canada. Until now, Canadian galleries, museums and institutions have been silent on whether their collections might contain any works plundered from Europe. The plea for information on this matter was finally acknowledged last week, when both the National Gallery of Canada and the Art Gallery of Ontario announced they will post a list of paintings they feel have questions regarding provenance. Yesterday, the *National Post* revealed the role that Anthony Blunt, a notorious British/Soviet double agent, played as chief advisor for new European acquisitions to the National Gallery of Canada immediately after the Second World War. This suggests Canada might have had a larger role in the trade in looted art than was previously known.

The National Gallery has described 1939 to 1955 in its own catalogue, as being the Great Years of Collecting. During and shortly after the Holocaust era, the National Gallery purchased many European paintings at low prices. What was the process by which Canada came into possession of these paintings? What were the legal obligations of the galleries and their buyers? Should galleries have suspected at the time that some of these paintings might have been wartime plunder? These questions are important to answer; and where plunder is found, restitution should be made.

Collectors may be unclear on the law in Canada on this matter. The Canadian Criminal Code specifically makes it a crime to possess or deal in property obtained by crime, even if the transaction took place outside Canada. There are no limitation periods.

The Canadian Criminal Code clearly requires *mens rea*, or knowledge, as a requirement for an offence. Having said this, can a person hide behind the excuse of being an innocent buyer? Under Section 354 of the Canadian Criminal Code, "everyone commits an offence who has in his possession any property or thing ... knowing that all or part of the property ... was derived directly or indirectly from an act or omission anywhere that, if it had occurred in Canada, would have constituted an offence punishable by indictment." The question is: What is "knowing" for the purposes of the Criminal Code? What if a person has a suspicion of questionable provenance of a painting, but asks no questions? Is he safe from criminal prosecution?

The answer was enunciated in 1998 in the Ontario Court of Appeal, case *Regina v. Duong*, which outlines the conduct that constitutes wilful blindness. A party will be found criminally responsible where he has actual knowledge of the offence. Actual knowledge includes actual suspicion, combined with a conscious decision not to make inquiries that could confirm or disprove that suspicion. Where a person chooses to make no inquiries, and instead prefers to remain deliberately ignorant of the offence, that person is culpable. Speculation as to what the person might have learned, had he chosen to make the necessary inquiries, does not affect the culpability. In the case of Nazi-looted art, the question is: Did a buyer of a painting purchased at below market value, during or right after the Holocaust, have an obligation to be suspicious, and to satisfy himself that the title of the painting was satisfactory?

Under these circumstances, it would be difficult for public galleries to fulfill their obligations by using their own judgment to decide what paintings have questionable provenance. They may be too close to the subject. How can it be that many of the paintings that Blunt was involved in purchasing were not included in the National Gallery's list of works with questionable provenance? The Canadian government might wish to follow the example of the United States and Europe. For example, in 1998, the U.S. Congress created the Presidential Advisory Commission for the purpose of finding Holocaust assets located in the United States. A public inquiry might be in order for Canada, too. This would allow an impartial and transparent investigation of the questions now raised.