

# Art and about: recent happenings

By Louisa Gommans

The last few months have seen some interesting developments in the art law world, both here in New Zealand and further afield in the United States and Britain.

## Auckland art business to offer resale royalties

An new art business is set to open in Auckland in August offering a voluntary resale royalty of 2.5% of the hammer price at auction for any work by a living artist. Bowerbank Ninow will deliver auctions, exhibitions, valuations and private sales from its premises on Karangahape Road in Auckland.

The business is the first of its kind in New Zealand to offer resale royalties, which its directors say will be paid at no cost to the vendor or buyer.

This bold move comes just a few months after my article about resale royalties published in *LawTalk* 863 (24 April 2015). Not only has the debate surrounding resale royalties been reignited, but art professionals are now taking it upon themselves to make progress in this area despite no legislative movement for a number of years.

It will be very exciting to see the response to Bowerbank Ninow's first auction on 25 November.

## Britain to join Hague Convention 1954 ... finally!

It appears that the British government is finally going to introduce legislation which will see it ratify the Hague Convention 1954.

The Convention for the Protection of Cultural Property in the Event of Armed Conflict (known as the Hague Convention) was adopted in The Hague in 1954 following the destruction of cultural heritage that had occurred on a colossal scale during the Second World War.

It aims to prevent theft, looting and vandalism of items of cultural heritage such as monuments, archaeological sites, art works, manuscripts and books. It also prohibits exportation of cultural property from occupied territories.

Cultural property is often at risk during conflict, as aggressors seek to control the history and identity of occupied territories, and to exert power over their enemies. Cultural property is often looted and trafficked through conflict zones, for purposes including black market sale to finance conflict.

Oddly, Britain has remained one of the few western countries not to sign up to the Convention, which has been implemented by more than 115 states.

Britain's reasons for not adopting the Convention seem to have included a belief that it was not the best way



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to protect cultural property. However the information surrounding Britain's decision to finally endorse the Convention suggests it has now identified the value of a co-operative approach toward protecting cultural property.

Britain's Culture Secretary, John Whittingdale, has said: "While the UK's priority will continue to be the human cost of these horrific conflicts, the UK must also do what we can to prevent any further cultural destruction.

"The loss of a country's heritage threatens its very identity. The knowledge and expertise of the experts in our cultural institutions makes us uniquely qualified to help. I believe that the UK therefore has a vital responsibility to support cultural protection overseas."<sup>1</sup>

Collective breaths are not being held as yet, as unfortunately this is not the first time Britain has stated its intention to ratify the Convention. Similar claims were made in 2004 but did not progress to any legislative action.

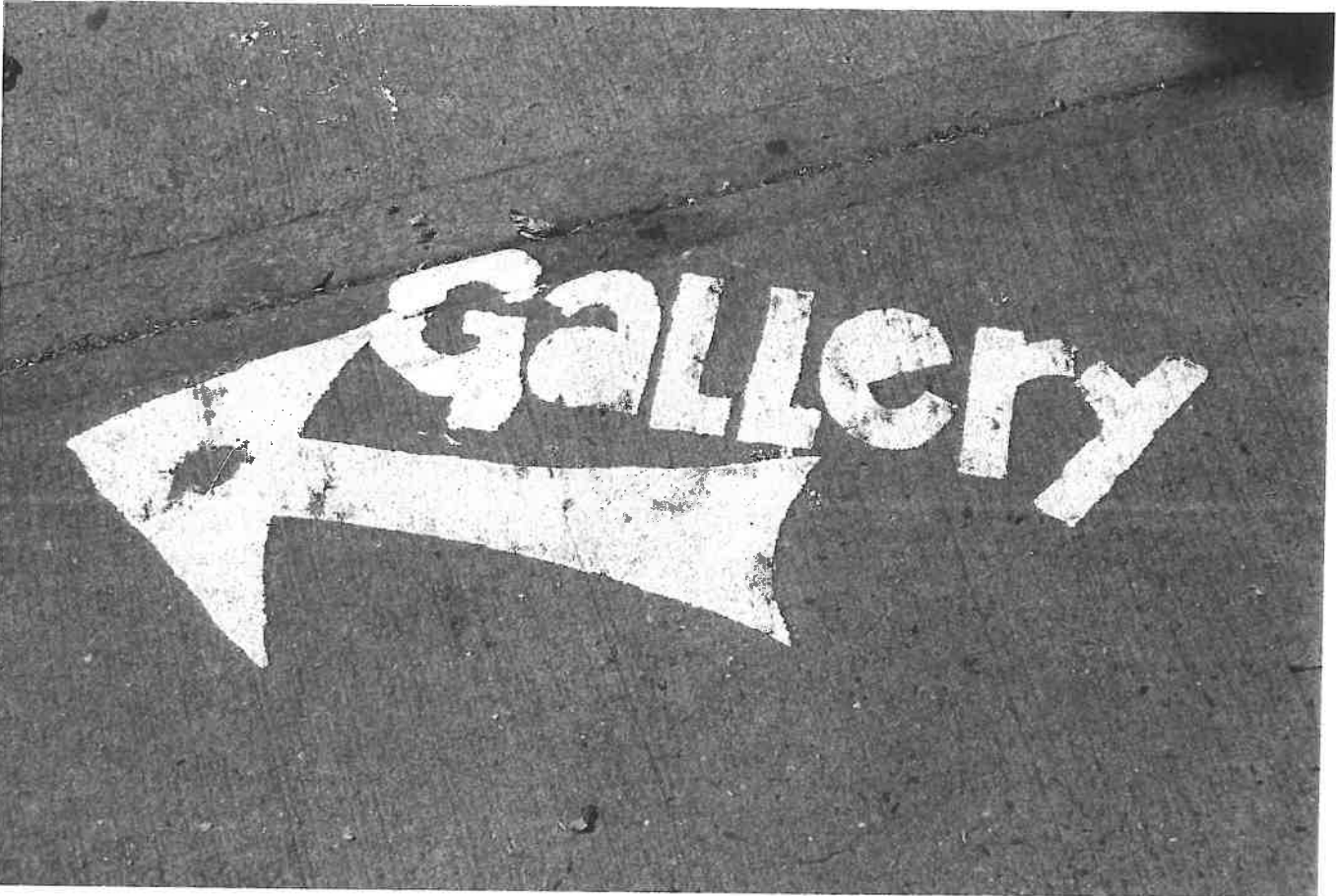
Meanwhile Britain looks set to address specific conflict zones where cultural property is at risk, namely Syria and Iraq, over the coming months.

## New York legislation to protect art authenticators from spurious lawsuits

Art authenticators in the United States have grown wary of offering authentication opinions for fear of exposing themselves to legal action from disgruntled collectors who disagree with their views.

Even where an action is thrown out of court for being unjustified or frivolous, libel lawsuits have come at an enormous cost to art authenticators who are forced to fork out for legal fees and suffer injury to their reputations as a result of bad publicity.

In recent years the problem has become so serious that some authenticators have refused to authenticate works at all. One such example is the Andy Warhol Foundation, which in 2012 stopped providing



certificates or opinions of authenticity.<sup>2</sup>

This sudden freeze on art authentication has had a negative impact on art research and connoisseurship, especially in a state like New York where art galleries and museums are an integral part of the cultural landscape.

Finally in June this year the New York State Senate passed long-awaited legislation protecting art authenticators from bogus libel lawsuits.

The legislation, Bill S1229A-2015, provides that “only valid, verifiable claims” against authenticators will be allowed to proceed in court. The wording of the legislation is broad enough to cover any “person or entity” with expertise relevant to “authenticity, attribution, or authorship of a work of...art”, although it excludes anybody not practising in good faith.

Perhaps most significantly for worried art professionals,

the legislation specifies that authenticators must be compensated for their legal expenses where they win their cases.<sup>3</sup>

The final hurdle now is for the legislation to be voted on by the State Assembly before it can pass into law.

This law will be a boon for New York, and will hopefully have a flow-on effect for other states which have experienced a similar departure of authenticators from the art world in recent times. ■

**Louisa Gommans** is a commercial lawyer at Rainey Collins Lawyers in Wellington. She has an honours degree in art history and Italian, and is slightly obsessed with art. In her spare time she reads and researches about art law, and sometimes travels to Italy to attend art crime conferences. She is also involved in organising New Zealand’s first art crime symposium, to be held in Wellington in September 2015. You can contact Louisa at [lgommans@raineycollins.co.nz](mailto:lgommans@raineycollins.co.nz).



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1 “Britain signs convention on protecting treasure in war zones”, The Guardian, <http://www.theguardian.com/world/2015/jun/21/britain-signs-up-to-protect-cultural-treasures-war-zones>.

2 “Authentication Committees Disband: Warhol 2011, Basquiat 2012, Who’s Next?” Center for Art Law, <http://itsartlaw.com/2012/01/25/authentication-committees-disband-warhol-2011-basquiat-2012-whos-next/>.

3 Bill S1229A-2015, <http://open.nysenate.gov/legislation/bill/S1229A-2015>.