

Setting Up a Specific Ownership Status (Co-Ownership, Trust, etc.)

The out of court settlement (August 1998) relating to a painting by Degas, *Landscape with Smokestacks*, looted by the Nazis and later acquired by a North American collector: the collector donated half of the interest in the painting to the Art Institute of Chicago and the other half went to the descendants of the victim of the spoliation, who could sell their share to the Institute for half of the value of the painting as determined by an expert appointed by both parties.

Making Copies

This technique was used in the Swiss mediation on the ancient manuscripts and other cultural goods: one of the parties was allowed to keep the original of the terrestrial and celestial globe of Prince-Abbey Bernhard Müller (1570 AD), but it had to make, at its expense, a perfect copy of the globe, which it was to donate to the other party.

The Formal Recognition of the Significance of the Cultural Properties to the Claimant's Cultural Identity

The Swiss ancient manuscripts agreement provides that the objects not returned to one party (Saint-Gall) are nevertheless expressly recognized by the other party (Zurich) as having for the former an important identity value.

Cultural Cooperation Agreements

In the field of antiquities, recent agreements between states and museums provide for the restitution by the museums of certain

cultural objects to the state of origin, but they simultaneously put into place long-term cooperation between these museums and that state, by providing for loans of certain important objects to these museums and the establishment of common international exhibitions (e.g., agreements entered in 2006 and 2007 between North American museums and Italy).

Other Possible Solutions

- ▷ The transfer of ownership to a third party not linked to the restitution claim;
- ▷ The withdrawal of the restitution claim in exchange for financial indemnification (e.g., the settlement of the litigation regarding Kandinsky's *Improvisation N° 10* in Basel);
- ▷ The re-purchase of the object by the person claiming restitution;
- ▷ The re-purchase of the object by the person/institution facing the restitution claim.

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SELECTED ISSUES FOR AMERICAN ART MUSEUMS REGARDING HOLOCAUST ERA LOOTED ART

This paper is presented on behalf of the Association of Art Museum Directors (AAMD) to the *Looted Art Working Group* of

the 2009 Holocaust Era Assets Conference. The purpose of the paper is to provide an overview of the American museum response to the Principles set forth in the Washington Conference on Nazi-Confiscated Art, to identify areas that need attention, and to suggest solutions.¹

Introduction

The AAMD, which was founded in 1916 as a not-for-profit organization whose director/members represent approximately 190 of the major museums in the United States, Mexico and Canada, abhors the unspeakable crimes committed against Jews during the Holocaust and recognizes the plight of Holocaust survivors who struggle to be reunited with works of art stolen from them by the Nazis and the heirs of Holocaust victims who seek resolution for the wrongs done their ancestors. The American art museum community is firmly committed to assisting Holocaust survivors and heirs by making all provenance research on potential Nazi era looted art available on websites and responding to every claim seriously, respectfully, and in a timely manner in an effort to bring justice to those so long denied it.

The AAMD, among other mission-related activities, establishes policies and guidelines for its members that are followed by most art museums in North America. The AAMD also works closely with the American Association of Museums (AAM) on a number of policy-related activities. The AAM establishes policies and best practices for museums of all types throughout the United States.

¹ For classification of countries see annex p. 1251.

The AAMD was the first professional organization to establish policies and guidelines for addressing Holocaust looted art and cultural property. In June of 1998, the AAMD published its Report of the AAMD Task Force on Nazi Looted Art ("*1998 Report*"). The *1998 Report*, among other things, provides that the AAMD:

- ▷ Deplores the unlawful confiscation of art that constituted one of the many horrors of the Holocaust and World War II;
- ▷ Reaffirms the commitment of its members to weigh promptly and thoroughly claims of title;
- ▷ Urges the prompt creation of mechanisms to coordinate full access to all documentation concerning the spoliation of art;
- ▷ Recommends the review of the provenance of works in the collections of member museums, including research of museum records and contact with archives, databases, art dealers, auction houses, donors, art historians, and other scholars, to attempt to ascertain whether any were unlawfully confiscated during the Nazi/World War II era and never restituted;
- ▷ Recommends that records relevant to such provenance information be available;
- ▷ Recommends that, in connection with acquisitions, donors and sellers should provide as much provenance information as possible with regard to the Nazi/World War II era and, where that information is incomplete, available records should be searched and databases consulted; if the foregoing fails to show an unlawful confiscation, the

acquisition may proceed, but if the evidence shows unlawful confiscation without restitution, the acquisition should not proceed;

- ▷ Recommends that new acquisitions be published;
- ▷ Recommends that if a member museum discovers that a work in the collection was unlawfully confiscated and not restituted, the information should be made public and if a legitimate claimant comes forward, the museum should offer to resolve the matter in an equitable, appropriate, and mutually agreeable manner;
- ▷ Recommends that if no claimant comes forward, the member museum should acknowledge the history of the work on labels and publications;
- ▷ Recommends that when a claim is received, the member museum should review the claim promptly and thoroughly and if the museum should determine that the work was illegally confiscated and not restituted, the museum should offer to resolve the matter in an equitable, appropriate, and mutually agreeable manner, using mediation wherever reasonably practical;
- ▷ Recommends that the provenance of incoming loans be reviewed and that works should not be borrowed if they were illegally confiscated during the Nazi/World War II era and not restituted; and
- ▷ Recommends the creation of databases and the participation in those databases by museums.

The *1998 Report* was a collaborative effort by major collecting museums and reflected the growing worldwide concern with unresolved property issues arising out of the Holocaust. Perhaps one of the most notable aspects of the *1998 Report* was that the vast majority of the directors who served on the Task Force that drafted the *1998 Report* were directors of museums that are private institutions. Furthermore, a large proportion of the AAMD museums that adopted the *1998 Report* are private institutions. This is an important distinction. Unlike art museums in almost any other country, most art museums in the United States are private institutions. With the adoption of the *1998 Report*, both private institutions and museums owned or controlled by governmental entities undertook voluntary standards of conduct not imposed by any government policy.

Even before issuing the *1998 Report*, both in hearings before the United States Congress and discussions within the field, the AAMD took a proactive position with respect to addressing responsibly issues that might arise concerning objects that were looted during the Holocaust and not restituted. The *1998 Report* was followed by the Washington Principles for which the *1998 Report* served, in part, as a model¹ and in 1999, by the American Association of Museums' AAM Guidelines Concerning the Unlawful Appropriation of Objects During the Nazi Era ("*AAM Guidelines*").

¹ The *1998 Report* is broader in a number of significant respects than the Washington Principles. For example, the *1998 Report* addresses not only objects in museum collections that may have been confiscated during the Nazi era and not restituted, but also new acquisitions and loans.

Acquisitions

While the undertaking by member museums to research their collections and provide accessible information about those objects that had gaps in their provenance during the Nazi era (defined in the *1998 Report* as 1933–1945) was perhaps the most significant portion of the *1998 Report*, the most immediate effect of the *1998 Report* was to change the nature of collecting by American art museums. Art museums have long sought to obtain provenance information on objects they intend to acquire, whether by purchase, gift, bequest or exchange. After the adoption of the *1998 Report*, museums asked much more specific and pointed questions of sellers, dealers and donors before acquiring objects that might have been in Europe during the Holocaust. In addition, museums conducted independent, multi-source research on such objects, especially as more information became available after the fall of the Berlin Wall and on searchable databases. This effort continues today and now not only do museums carefully research provenance for Nazi era issues, but many private collectors take the same care before acquiring works of art. At least in the United States, the increased awareness resulting from the Washington Principles, the *1998 Report*, and the *AAM Guidelines*, has fundamentally changed the market for art objects.

American museums also routinely publish their acquisitions. As a result, unlike private transactions and those of institutions in some other countries, the acquisition of works by American museums brings objects into the public eye. If there is a potential claim, the publication of the acquisition of the work can bring it to the attention of the claimant allowing a potential resolution. This open policy on acquisitions by American museums is an important cornerstone of the efforts to address responsibly the difficulties in researching Nazi era provenance.

Research

When American museums committed to review objects in their collections that had gaps in their provenance between 1933 and 1945, during which time they were in Europe or had actually been confiscated, few probably understood the enormity of the effort. Of course, a gap in the provenance does not mean that an object was confiscated or confiscated and not restituted. A gap, in this context, simply means that there is an absence of information for some period of time between 1933 and 1945 and an indication that during that period of time the object might have been in Continental Europe.

The first priority for review has been European paintings; some museums have been able to complete that portion of the project and have moved on to other aspects of their collections, e.g., sculpture and Judaica. Provenance research is specialized work requiring both education and experience, often beyond the capabilities or time available of the current curatorial staff. As a result, museums have hired additional personnel in order to do the necessary research. This effort has resulted in multiple millions of dollars in direct expenditures for research and much more in indirect expenses as existing museum personnel are retrained to do this specialized provenance research on the collections and respond to claims.

Once an object has been identified as one that changed hands or may have changed hands in Europe between 1933 and 1945, with or without a complete provenance, the next step is publication. Pursuant to an agreement between AAM, AAMD, and the Presidential Advisory Commission on Holocaust Assets in the United States, AAM created a website known as the Nazi-Era Provenance Internet Portal. The Portal provides a central, searchable

registry of objects in US museums that changed hands in Continental Europe during the period 1933 to 1945. To date, over 164 museums have published over 27,000 works on the Portal. The Portal links researchers to individual museum websites or staffs, from which users can obtain detailed provenance information, exhibition and publication history, and other information about specific objects.

Museum Restitutions and Settlements

Since the *1998 Report*, an estimated sixteen paintings have been returned by American museums to Holocaust survivors or their heirs and mutually agreeable settlements have been reached with claimants on an estimated thirteen claims, settlements that allowed those works to remain in the public domain at the museums.¹ These twenty-nine resolved claims are a very small number when considered in relation to the number of works of European origin in collections of American museums, but James Cuno, Director of the Art Institute of Chicago, explained the issue very well in his testimony before the Subcommittee on Domestic and International Monetary Policy, Trade and Technology of the Committee on Banking and Financial Services of the United States House of Representatives on July 27, 2006:

“Of all of the art museums in the US, approximately half have no permanent collection, or have collections of only contemporary, many of which are of only local or regional

¹ These restitutions and settlements involved museums that are both private institutions as well as museums that are owned or controlled by government entities. The numbers do not include litigated cases where the claimants did not prevail, unless there was a subsequent settlement, or cases where the claim was not accepted by the museum.

art, and by definition do not have Nazi-era looted art in their collections. This is true also of 30 percent of AAMD's 170 member museums: only 120 member museums could have Nazi-era looted art in their collections.

The 120 AAMD member museums that may have Nazi-era looted art in their collections have collections totaling 18 million works of art. Of these, fewer than 20,000 are European paintings, thousands of which were acquired before World War II. Unlike Eastern and Western Europe, the US was never a repository for any of the 200,000 works of art recovered after the war. Any Nazi-era looted art that may be in US art museums is there as a result of second-, third-, or even fourth-generation, good faith transactions. I mention this only to remind us of the scale of the potential problem in this country: the likelihood of there being problems in US art museums is relatively low; nevertheless, the amount of research to be undertaken on the tens of thousands of works of art that, by definition, may have Nazi-era provenance problems is significant, requiring large allocations of staff time and money, allocations US art museums have made and will make until the job is done.”

US museums are proud of their record of resolving claims based on diligent investigation of the underlying historical facts. Each story is distinct; the facts are invariably complicated and unique to the case. Some examples can hopefully clarify both the efforts of the American museums to resolve cases through original research and the challenges involved.

One case that demonstrates how information on a confiscated painting can come to the museum through many different

sources involved the Utah Museum of Fine Arts in Salt Lake City, Utah.¹ While compiling information for a book on Hermann Göring's collection entitled *Beyond the Dreams of Avarice*, Nancy Yeide of the National Gallery of Art in Washington, DC, discovered information about a painting by François Boucher, *Les Amoureux Jeunes* at the Utah Museum. Yeide determined that the Boucher had been looted from the collection of the French art dealer Andre Jean Seligmann. The painting had been acquired by a collector from a New York gallery in 1972 and the collector had donated it to the Utah Museum in 1993. After the Utah Museum was contacted by Yeide, it undertook an extensive provenance research investigation with the assistance of the Art Loss Register. In 2004, the Utah Museum determined that the Boucher should be restituted to Mr. Seligmann's heirs, Claude Delives and Suzanne Geiss Robbins, both of whom traveled to Salt Lake City to receive the painting and to express their thanks to the museum staff, who Ms. Robbins called "adorable."²

In another case, this time involving the Virginia Museum of Fine Arts,³ the Museum was conducting research on its collection and determined that there was a gap in the provenance with respect to a small oil on panel by the 16th century artist Jan Mostaert entitled *Portrait of a Courtier*. After more research, the Museum determined that the painting had been in the Czartoryski family collection in Poland and was transferred from the family collection at Goluchów Castle to safekeeping in Warsaw in 1939. The Nazis located the painting and seized it in 1941, moving it to the Castle of Fischhorn in Austria after the 1944 Warsaw Up-

¹ The Utah Museum of Fine Arts is a university and state art museum.

² The Museum did not assert defenses to the claim such as the statute of limitations, although the work had been in the collection since 1993.

³ The Virginia Museum of Fine Arts was created by the government of the Commonwealth of Virginia.

rising. The painting surfaced at the Newhouse Galleries in New York and was sold in 1948 to a collector who gave it to the Museum in 1949. After discovering these facts, the Museum contacted the Polish Embassy and returned the painting in 2005 to the Embassy on behalf of Adam Count Zamoyski, the representative of the rightful owner's descendants. The family later deposited the painting in the Princess Czartoryski Museum in Krakow, Poland.⁴

Another example of a museum promptly addressing an issue occurred in 2000 at the North Carolina Museum of Art.⁵ The Holocaust Claims Processing Office of the New York State Banking Department, acting on behalf of the heirs of the Viennese industrialist Philipp von Gomerz, contacted the Museum about a painting by Lucas Cranach the Elder, *Madonna and Child in a Landscape*. The heirs claimed that the painting had been illegally seized by the Gestapo from the von Gomerz collection in 1940. During the ensuing correspondence, the Holocaust Claims Processing Office provided documentary evidence confirming the looting of the painting, including the signed authorization of the seizure and a photograph of the looted painting taken by the Gestapo, presumably for showing to Hitler and other Nazi "collectors." The painting was acquired by Baldur von Schirach, the Nazi *Gauleiter* (Governor) of Vienna. By the early 1950s, it was held by a New York dealer, E. & A. Silberman Galleries, who sold it to an unsuspecting George and Marianne Khuner of Beverly Hills, California. Upon Mrs. Khuner's death in 1984, the Cranach painting was bequeathed to the Museum. Until contacted by the Holocaust Claims Processing Office, the Museum knew nothing

⁴ The Museum did not assert defenses to the claim such as the statute of limitations, although the work had been in the collection since 1949.

⁵ The North Carolina Museum of Art is an agency of the Department of Cultural Resources of the State of North Carolina.

of the painting's wartime history. Once the looting of the painting had been confirmed, the Museum on February 3, 2000 formally relinquished possession – without litigation. The Museum then immediately entered into negotiations with the owners to re-acquire the painting. The owners agreed to allow the Museum to buy the painting for half of its appraised value because as they indicated in correspondence to the Museum “the public should know that the heirs of Philipp von Gomperz appreciate the sense of justice shown by [the Museum's] decision to reconstitute the painting.”¹

In another case that shows how fact specific each one of these cases can be, the Kimbell Art Museum in Fort Worth² both de-accessioned, restituted, and then reacquired what its director, Timothy Potts, described as its most important British work. The painting *Glauco and Scylla* by J. M. W. Turner was acquired in 1902 by John Jaffé, a British subject, from a gallery in Paris. Jaffé lived in Nice, France at the time of his death in 1933 and he left the painting to his wife. Mrs. Jaffé was trapped in France and died in 1942 leaving all of her property, including the painting, to three nieces and a nephew. The Vichy government seized her estate and arrested the nephew, who subsequently died in Auschwitz. The painting disappeared until 1956 when it resurfaced in Paris, was purchased by a London gallery, then by a New York gallery and then, in 1966, by the Kimbell. Approached by a representative of the family, the Kimbell confirmed these facts and restituted the painting, which was then placed for auction at Christie's. At auction, the Kimbell purchased the painting for USD 5.7 million, placing this important work back in the collection of the Kimbell.³

¹ The Museum did not assert defenses to the claim such as the statute of limitations, although the work had been in the collection since 1984.

² The Kimbell Art Museum is a private museum located in Fort Worth, Texas.

³ The Museum did not assert defenses to the claim such as the statute of limitations,

These examples, as well as others, demonstrate the efforts by American museums to comply not only with the *1998 Report* and the *AAM Guidelines*, but also with the Washington Principles.⁴

Disputed Claims

There have been situations where museums have faced claims that, after painstaking historical investigation and full public disclosure of all the relevant evidence, prove not to be valid. These present a difficult situation for museums. US museums are fully committed to responding to all claims carefully and in good faith. Museums hold their collections in trust for the public and they have a legal and fiduciary duty not to transfer objects from the collection to private ownership except for good cause. For a museum to transfer an object to a claimant, the evidence must demonstrate that: (1) the object was confiscated by the Nazis or was the subject of a forced sale; (2) the object was not restituted, nor was fair compensation ever paid; and (3) the claimants constitute the universe of those who could bring a claim. Until evidence can be developed that would persuade a reasonable observer that these three tests have been met, a US museum cannot consider restitution to resolve a claim.

The obligation of museums not to reconstitute works in response to non-meritorious claims should not be mischaracterized. Museums are placed in a difficult position when there is a claim that they have in good faith determined to be unsubstantiated because they have limited choices in their response to the claim consistent with their fiduciary duties. Should

although the work had been in the collection since 1966.

⁴ See Washington Principles in annex p. 1249 – specifically # I, II, III, IV, V, VII and VIII.

they transfer a work to a claimant on the basis of highly ambiguous evidence of ownership and a subsequent claimant appears with incontrovertible evidence of ownership, the museum could be liable to the second claimant. Likewise, if a museum transfers a work held in public trust, that a government regulator, like a State Attorney General, subsequently decides was inappropriately removed from the public trust, the museum again could be held responsible for inappropriately disposing of its assets.

Given this background, museums can continue to discuss the absence of persuasive evidence with the claimants and their representatives, but this can become a never-ending process without resolution. They can wait to be sued by a claimant, at which point they will have to decide whether to defend the case on the merits which can be extraordinarily expensive and time consuming or interpose defenses, such as the statute of limitations. If they have already determined that the claim is invalid based on the documented historical record, there is a significant argument that they have a fiduciary duty to interpose those defenses rather than expend time and money defending a meritless claim on the merits. Finally, a US museum can elect to present the facts to a court and ask the court to decide if the claim is invalid. At least in the United States, this is a time honored approach to the resolution of title disputes, as well as other litigable disagreements, and it has many advantages, not the least of which is litigating the case when witnesses are still alive and documents still available.

Access to Records

While there have been a number of restitutions or settlements, museums do have a fiduciary duty to only deaccession objects

and transfer them out of the collection based on facts that merit such a decision. These facts are challenging to develop and US museums are often hampered by the legal systems in foreign jurisdictions. Some jurisdictions prohibit third party access to estate documents or archives – sources that are generally available to claimants.

The problem with access to records is multifaceted and often involves claimants, governments, and, sometimes, private entities. While admittedly there is no universal solution, claimants should be required to provide all information they have with respect to their claims, but also provide access to records where their consent is required, whether governmental or private. There are generally two threshold issues in connection with a provenance claim – whether the object was confiscated and not restituted and whether the claimants, if they are not the original owners, have standing to bring the claim. Museums, in the exercise of their fiduciary duty, have an obligation to assure that if an object is being transferred, it is one which was confiscated or the subject of a forced sale and not restituted or some form of settlement reached, but also that the claimants represent the universe of those who could bring an action against the museum. This latter point often requires significant research into inheritance records, copies of wills, etc., which in many countries are not available to researchers without the consent of the family. The more complete and accurate the information presented to museums by claimants, the more expeditiously a claim can be considered and resolved.

While high value works often attract support for claimants from lawyers, researchers and advocacy groups, works which do not have the same monetary value often do not garner the same attention. Nevertheless, the diligence that a museum must

undertake before deaccessioning an object is not simply a question of value. Museums hold all of their works in trust for the public and that standard is not based on a hierarchy of monetary worth, even though there are broad practical considerations appropriate to the relevant inquiries.

Government Assistance to Claimants

The creation of government funded agencies to assist claimants in the identification of property, the research of relevant facts and the preparation and presentation of evidence to possessors like museums would be of great value. In the United States, there is an excellent example of such a group, the Holocaust Claims Processing Office of the New York State Banking Department. This organization, created by the Governor of the State of New York in 1997, has highly qualified staff of independent researchers who are there to evaluate claims for restitution of property confiscated during the Holocaust, perform research into the claim, and prepare materials for presentation to the possessors. They also act as an intermediary between the claimants and the possessors in seeking the amicable resolution of the claim. Their work has been wide reaching and extremely beneficial to the claimant community and they have assisted museums, both in and out of the State of New York, in the resolution of claims. They are not an arbitral panel or an advisory panel; rather they are an independent group that assists claimants in the research, preparation, and presentation of their claims. Their research can often help claimants determine that their claim is valid or equally, when evidence does not support the claim, convince claimants that the claim should not be pursued.

The AAMD believes that creating an agency similar to the Holocaust Claims Processing Office is needed, provided there are

sufficient safeguards built in for both parties. Such an agency is important at this time in light of the need for prompt and effective resolution of claims for the benefit in the first instance of the survivors of the Holocaust whose numbers are diminishing every day. Governments should be encouraged to create entities like the Holocaust Claims Processing Office. Of course, the distinctions of national law and practice will affect how such an organization is formed and funded, but we recommend the basic model of the Holocaust Claims Processing Office as one that has a proven track record and can at least form the basis for discussion of similar efforts.

Deaccession, Delivery and Export of Restituted Works

While not an issue for US museums, there is a disparity in the treatment of restitution claims in the United States as opposed to some other countries. Generally, there is no legal prohibition against a US museum returning a work of art to a claimant. This is not the case in some other countries. Furthermore, in the United States, art is freely exportable by its owners, which is also not the situation either legally or bureaucratically, in some other countries.¹ American museums are proud of their leadership role in efforts to address Nazi era confiscations and they are very willing to assist other nations in evaluating the benefits of allowing restitution of works rather than simple monetary settlements. While there have been few direct restitutions in the United States, they have been well publicized and these cases can be examples for other countries that might consider changing their laws or practices that prohibit a complete resolution of claims. Further, United States law does not prohibit a foreign claimant from removing an awarded work of art from

¹ An export declaration is usually required.

the territory of the United States. Simply put, if a claim is valid a work of art can be returned to the heirs after which it is saleable and freely transferable.

Conclusion

Every day, survivors of the Holocaust pass away. Without diminishing the rights of their heirs to seek restitution of property confiscated by the Nazis, the group that has the highest claim on our collective conscience is those who directly suffered during the Holocaust. Time left to them is limited and while progress has certainly been made since the Washington Conference, there is the danger of "Holocaust fatigue." All involved, whether claimants, non-governmental organizations dedicated to the support of Holocaust victims and survivors, national governments, and museums, both state owned and private, need to redouble their efforts in the relatively short period of time left to those survivors to bring to resolution any of their claims. This is admittedly difficult in tough economic times when funding available for museums in general is diminished, much less that which is available for research, claims consideration, restitution or settlement. Nevertheless, the Prague Conference should act as a catalyst to reinvigorate all those involved in the process and there is every reason to believe that the American museum community will assist in these efforts, as it has in the past.

► **Norman Palmer**

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INTEGRITY, TRANSPARENCY AND PERTINACITY IN THE TREATMENT OF HOLOCAUST-RELATED ART CLAIMS

Every lawyer in this room will know that it frequently falls to us, the lawyers, to be the harbingers of unwelcome news. Someone once said to me that if there is one thing more galling than paying money to be told what you cannot do, it is paying money to be told what you should not have done. And that is a role that, regrettably, does fall to us very often indeed. There can be no doubt, moreover, that the law is an extremely substantial barrier to the ethical and equitable resolution of claims in this field, and, as I may say, in many others. I will say more about that in due course.

But let me just say at this stage that I think the United Kingdom government has, for at least the past decade and a half, been acutely aware of the shortcomings of law as a mode of dispute resolution, particularly in cases of significant imbalance of power and significant disadvantage on the part of one party. It has manifested this concern in two different ways.

First, by general procedural reforms: We have now had, since 1998, new civil procedure rules, which attach very significant case management sanctions to parties who could reasonably have gone to alternative dispute resolution and did not. And among those case management sanctions would be a refusal to make a cost order in favour of the successful party in the litigation, even though they had won, if they had previously declined a reasonable offer, reasonable invitation to mediate, or go to other dispute resolution. So, we are moving towards a policy