

## CANADA

### LEGAL BASIS

1. **Is your State a party to international legal instruments guaranteeing the immunity of State owned cultural property on loan (including bilateral agreements) such as the *United Nations Convention on Jurisdictional Immunity of States and Their Property* (2004)?**

No, Canada is not a party to the UN convention.

2. **Does your State recognise the customary international law nature of Part IV of the *United Nations Convention on Jurisdictional Immunity of States and Their Property* (2004)? More specifically, does your State consider that, pursuant to a rule of customary international law, cultural property owned by a foreign State while on temporary loan is not considered as property specifically in use or intended for use by the State for other than government noncommercial purposes?**

Customary international law applies in Canada to the extent it has not been displaced by statute. Canada has passed the *State Immunity Act* (R.S.C., 1985, c. S-18 / *Loi sur l'immunité des États*, L.R.C. (1985), ch. S-18), which Canada's Supreme Court has held is the complete code for the application of state immunity in Canada. Customary international law is therefore not relevant to state immunity in Canadian courts. The *State Immunity Act* contains protections for state property that are essentially the same in effect as the provisions of Part IV of the Convention. Canada also has certain exceptions to these provisions as a result of amendments to the Act passed in 2012, although they do not apply to cultural property of a foreign state.

3. **Has your State adopted a national legislation on immunity concerning:**

- a. **Specifically cultural objects of foreign States; or**
- b. **more generally, property of foreign States intended for official/public use;**  
**or**
- c. **more generally, cultural objects either owned by foreign States or by private individuals?**

**If so, please provide information concerning national legislations (in particular title, source and content; if possible, please provide official translations in French or in English and/or references to online sources).**

Yes. Under section 12 (1)(d) of the *State Immunity Act*, property of a foreign state that is located in Canada is immune from attachment and execution, and in the case of an action *in rem*, is immune from arrest, detention, seizure and forfeiture.

Although under the *State Immunity Act* there is an exception to this immunity for a judgment rendered in an action brought against a foreign state for its support of terrorism or its terrorist activity, this exception does not apply to property that has cultural or historical value. Thus, cultural or historic property that is owned by a foreign state and located in Canada enjoys protection.

A copy of this legislation may be found in both French and English at: <http://laws-lois.justice.gc.ca/PDF/S-18.pdf>

**4. Does your State consider that there are limitations to the rule of immunity of State owned cultural property on loan, in particular in the event of an armed conflict or when there are return obligations deriving from international or European law?**

In setting out the protections for cultural or historic property owned by a foreign state that is located in Canada, the *State Immunity Act* does not contemplate exemptions to that protection in the instance of armed conflict or return obligations under international law. As noted above, the Supreme Court of Canada has found that the *State Immunity Act* is the complete code for the application of state immunity in Canada. Any exception to state immunity must find its basis in the Act.

**5. Does your State consider that the rule of immunity of cultural property extends to other categories of property other than those owned by a State, i.e. property in possession or control of a State (such as property belonging to a State museum)?**

The *State Immunity Act* provides for immunity of “a foreign state” and of “property of a foreign state”. The term “property of a foreign state” is not defined in the Act and has not been considered by a Canadian court. We are not in a position to say whether “property in the possession or control of a State” would be considered as “property of a foreign state” within the meaning of the Act. Having said that, there is no reason to believe that property belonging to a State museum would *a priori* be excluded from the Act.

The *State Immunity Act* does have a special provision for the property of an “agency of foreign state”, defined as “any legal entity that is an organ of the foreign state but that is separate from the foreign state”. Under s. 12(2) of the Act, the property of an agency of a foreign state has no immunity from execution for the purposes of satisfying the judgment of a court in any proceedings in respect of which the agency is not immune from the jurisdiction of the court. In other words, if the agency is not immune from the proceedings of the court by reason of any provision of the Act, its property will not be immune for the purposes of satisfying any judgment in those proceedings. It should be noted in this context that the general rule in the Act is that an agency of a foreign state has the same immunity from jurisdiction as the foreign state itself.

## **NATIONAL PRACTICE AND PROCEDURE**

**6. Is there national case-law in the field of immunity of State owned cultural property on loan? If so, please provide information on these decisions (date of the judgment, authority that issued the judgment, name of the parties, main points of law, French or English translation of the judgment or summary of the judgment in English or in French).**

In the case of *Kazemi Estate v. Islamic Republic of Iran*, 2014 SCC 62, the Supreme Court of Canada found that the *State Immunity Act* is a complete codification of Canadian law as it relates to state immunity from civil proceedings, and provides an exhaustive list of exceptions to state immunity. The protection of cultural or historic property owned by foreign states is set out in this act. However, the immunity specific to cultural or historic property has not been tested in Canadian courts. A full text of the judgement in both French and English may be found at: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/14384/1/document.do>

**7. Does your State resort to “letters of comfort” or other practice guaranteeing the recognition of the immunity from seizure of State owned cultural property on loan?**

The State Immunity Act allows the Minister of Foreign Affairs or (currently) his delegate to certify that, inter alia, a particular country is a foreign state for the purposes of the Act. Section 3(2) of the Act requires Canadian courts to give effect to state immunity even if a state has failed to take any step in the proceedings. Furthermore, s. 4(3) provides that any step taken

in the proceedings by a foreign state for the purpose of asserting its immunity shall not be taken as a waiver of that immunity.

**8. Is the immunity granted automatically to State owned cultural property on loan or is it subject to approval by a State authority?**

In setting out the protections for cultural or historic property owned by a foreign state that is located in Canada, the State Immunity Act does not contemplate these protections being subject to approval by a state authority. These protections are granted by operation of law.