

*Canadians for Justice and Peace
in the Middle East*

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June 4, 2009

Mr. William Thorsell
Trustee, Royal Ontario Museum
Board Office
100 Queen's Park
Toronto, ON M5S 2C6

Dear Mr. Thorsell,

I am writing to alert you to serious ethical and legal concerns relating to an upcoming exhibit at the Royal Ontario Museum (ROM.) I write to you because, as a member of the Board of Trustees, you are personally liable for illegal and unethical actions taken by the ROM which violate international and Canadian law on the import and export of cultural heritage. I am speaking of the Dead Sea Scrolls (DSS) exhibit, scheduled to begin on June 27, 2009 at the ROM – a six-month exhibition centered on cultural heritage which has been militarily seized from its legal caretakers.

Like many Canadians, I was surprised and disappointed when I learned earlier this Spring that the ROM was planning to host a six-month Exhibition of the DSS in conjunction with the Israel Antiquities Authority. I had assumed that, as a highly professional institution, the ROM would maintain the highest of ethical standards. Thus, with great sadness at the lack of professional and ethical conduct of the authorities at the ROM, I call your attention to these issues in the hopes that – as a Trustee of the ROM, and responsible for the values and policies of the ROM – you will address them squarely.

Hopefully, there is no disagreement on the modern origins of the DSS. As I'm sure you know, they were discovered between 1947 and 1956 in eleven caves in the vicinity of Wadi Qumran on the northwest shore of the Dead Sea (see Exhibit 1, attached.) In 1947, the UN General Assembly voted to partition Mandate Palestine, with the area to the west of the Dead Sea – including Wadi Qumran – being designated as part of a future Palestinian state. War broke out with the creation of Israel in 1948, and with the Armistice for peace signed later that year, the area west of the Dead Sea remained destined to become part of a future Palestinian State. Eventually, this area of land became known as the “West Bank” (see Exhibit 2, attached.) The West Bank was administered by Jordan between 1948 and 1967, and the DSS were housed in the Rockefeller Museum (known at that time as the Palestine Archaeological Museum) in East Jerusalem after their excavation.

After Israel militarily invaded and occupied the West Bank, East Jerusalem and other territories in 1967, they seized possession of the Scrolls and moved them to Shrine of the Book, at the Israel Museum in West Jerusalem. Despite numerous laws against such seizure and removal of cultural heritage during occupation, the Scrolls have remained in Israel since 1967, and are now administered unlawfully by the Israel Antiquities Authority.

The ROM is a member of the Canadian Museums Association (CMA). The CMA sets out in its Ethics Guidelines that museums “must avoid even the remotest suspicion of compliance in any illegal activity,” and that “museums must guard against any direct or indirect participation in the illicit traffic in cultural and natural objects; this may include natural or cultural objects that are: stolen; illegally imported or exported from another state, including those that are occupied or war-stricken; illegally or unscientifically excavated or collected in the field.” The artefacts slated to be shown at the DSS exhibit have undisputedly been illegally exported from the West Bank into Israel. Under the CMA guidelines, therefore, the ROM would be obliged to refuse any role in the exhibition of these artefacts. I would think this would be of grave concern to you.

I will also point out that Canada is a signatory to the UNESCO First and Second Protocols of the Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954). The First Protocol would oblige Canada to take custody of the Scrolls when they enter Canada, and hold them until such time as the Israeli and Palestinians can negotiate a peace. This prescription is specified in Articles 2 and 3 of the First protocol as follows:

2. Each High Contracting Party [i.e. for example, Canada] undertakes to take into its custody cultural property imported into its territory either directly or indirectly from any occupied territory. This shall either be effected automatically upon the importation of the property or, failing this, at the request of the authorities of that territory.
3. Each High Contracting Party undertakes to return, at the close of hostilities, to the competent authorities of the territory previously occupied, cultural property which is in its territory, if such property has been exported in contravention of the principle laid down in the first paragraph. Such property shall never be retained as war reparations.

Canada has incorporated the key elements of the UNESCO conventions into its own Cultural Property Export and Import Act. In Section 36.1 (2) of Canada’s Act, the removal of cultural property “from an occupied territory” is specifically prohibited. In addition, the Act gives the Attorney General of Canada the authorization to commence legal action to take possession of the stolen property from “any person, institution or public authority.” Under this Act, such action on the part of the Attorney General of Canada would be triggered by receipt of a written request by the owner (i.e. the Palestinian Authority) of the cultural property. Presumably, the Palestinian Authority commenced this action with the letter sent to the Canadian government earlier this Spring.

I assume a Trustee of the ROM would be concerned that the laws of Canada would specifically authorize the government of Canada to seize the artefacts of an exhibit. In addition to the damning legal implications of such action, the ROM would suffer devastating international embarrassment as an institution were the government to seize its exhibit. I would also point out that, even if the current government promises not to take such action, there is the very real possibility of an election in Canada in the Fall of 2009, and the ROM is not guaranteed that a different Canadian government might not take such action.

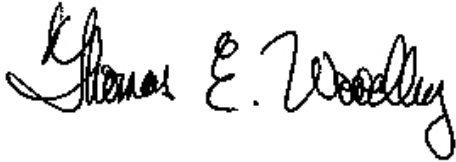
While legal staff advising the museum may wish to suggest that there are legal loopholes available to protect the ROM (e.g. that the Palestinian Authority may not be recognized as a “State Party” under Canada’s Cultural Property Export and Import Act), I would point out that international law is a normative system. That is, no law – international law or otherwise – can hope to cite all the possible ways in which the spirit or norm represented by the law can be

violated. Instead, legal analysis must focus on the norm itself – or principle – embodied in the UNESCO conventions on cultural property: that cultural heritage should not be stolen or seized under a military occupation. Authorities at the ROM have received a letter from officials from the Palestinian Authority – they are fully aware of the true caretakers of this cultural heritage, and cannot claim ignorance of the realities. Both for your personal protection, and for the good of the ROM, I would advise you as a Trustee to remember the norm and eventual legalities represented by the UNESCO Conventions.

I would also point out to you that the CMA ethical guidelines are also based on norms. As stated in section B.1. of the CMA norms, “Museum ethics represent more than the avoidance of contractual or legal liability or the particulars of a code of conduct; they are a framework of personal and institutional obligations and standards which govern the conduct of all members of the museum community at all times.”

It is truly my hope that the sterling reputation of the ROM remain untarnished. It would be sad indeed to see the ROM and its authorities enmeshed in a lengthy and onerous ethical and legal debacle, whether begun by the Canadian government, a different government, or citizens groups like CJPME. May you and the other authorities at the ROM take the above norms and legalities to heart, acknowledge the realities of the DSS artefacts and exhibit, and modify your plans for the exhibition accordingly.

Sincerely,



Thomas E. Woodley
President
Canadians for Justice and Peace in the Middle East

Attachments:

- Exhibit 1: Map of West Bank
- Exhibit 2: Map of Wadi Qumran

cc: Shuka Dorfman, Director, Israel Antiquities Authority
cc: B.Z. Kedar, Chairman of the Board, Israel Antiquities Authority
cc: William Thorsell, Director & CEO
cc: Glenn Dobbin, Deputy Director, Operations
cc: Mark Engstrom, Deputy Director, Collections & Research
cc: Kelvin Browne, Vice President, Marketing & Sales
cc: Bill Graesser, Vice President & Chief Financial Officer
cc: Anthony Hushion, Vice President, Museum Services
cc: Julian Siggers, Vice President, Programs & Content Communication
cc: Marie Bountrogianni, President & Executive Director, ROM Governors



Exhibit 1: Map of West Bank, clearly identifying the location of Qumran, the site at which the Dead Sea Scrolls were found.

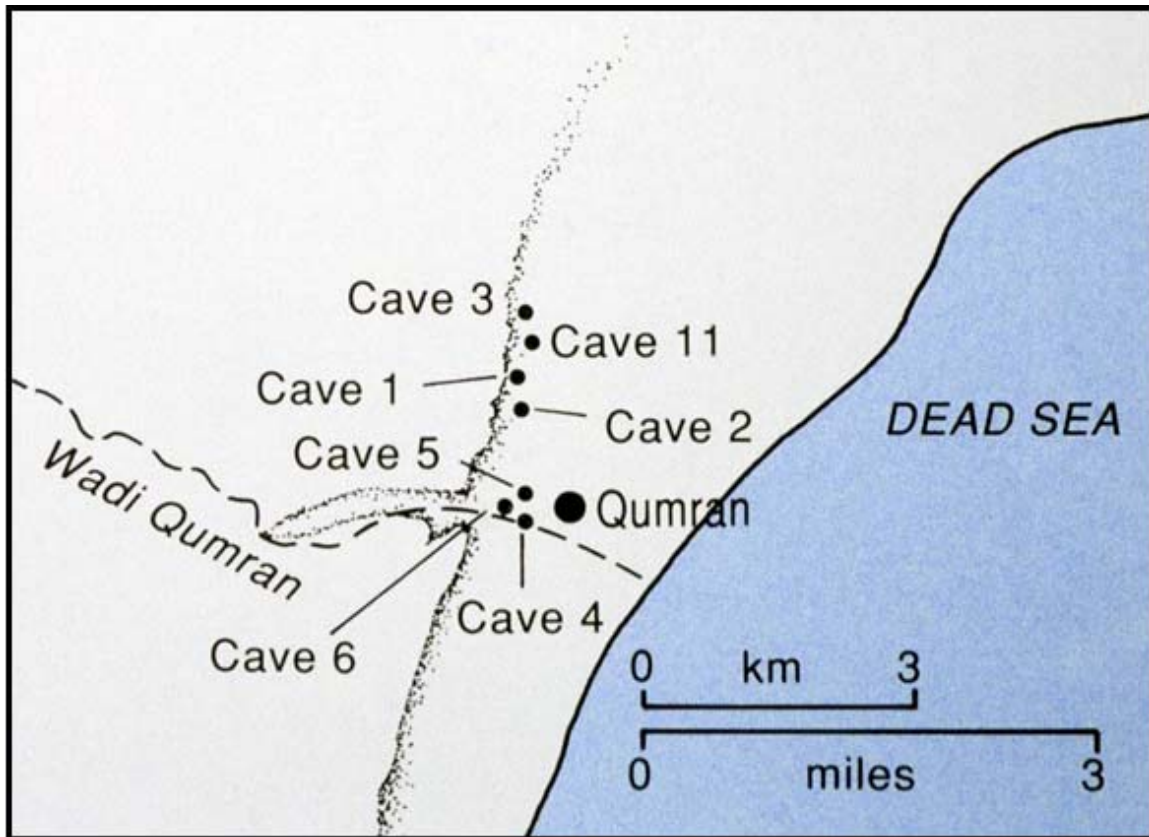


Exhibit 2: A more detailed map of the location of the 11 caves in which the Dead Sea Scrolls were found. All of them, clearly, are in the specific vicinity of Wadi Qumran, squarely in the West Bank.