

# **POLICING FAKES**

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## Introduction

Art fraud is a relatively new addition to the world of criminal fraud investigators here in Australia. There have been very few instances of art fraud being reported to the NSW Commercial Crime Agency, apart from the two currently under investigation, one involving the indigenous artist, Clifford Possum. There have been other cases, where criminal action has been taken interstate, primarily in Victoria.

There are no solid statistics on art fraud – internationally or nationally. However, the New York Times in an article in July this year cited that depending on the period and the artist, between 10 % and 40 % of paintings for sale at any one time are fraudulent, or so over-restored as to make them the equivalent of fakes. Thomas Hoving, a former director of the Metropolitan Museum of Art in New York, stated that during his tenure as director, forty percent of the artworks considered for purchase by the museum were fraudulent or over-restored. Other experts say that sixty percent of Swiss artist, Alberto Giacometti's paintings on the market are fraudulent, and forty percent of paintings from the Russian avant-garde era are almost certainly forgeries. The widows of Italian painter, Amedeo Modigliani and Russian/Frenchman Marc Chagall were accused of selling certificates of authentication on forged works of their respective husbands, and Salvadore Dali, on his deathbed in a stupor, is said to have signed thousands of blank sheets of paper for later fake lithographs to be made.

In comparison, we have had many instances of art theft reported in Australia, the most notable being the theft of the thirty Hans Heysen paintings from a South Australian gallery in 1995. These paintings were conservatively valued at \$600,000. This investigation has an interesting correlation to the Clifford Possum Tjapaltjarri inquiry in that both began in South Australia and both culminated in arrests and seizures of the artworks here in New South Wales.

The Hans Heysen theft is an interesting example of the crossover between the different types of criminal activity.

In December 1996, the New South Wales Police Drug Enforcement Agency had secured an undercover operative within a drug ring in Sydney. This group had acquired 200 kilograms of pseudo-ephedrine to manufacture amphetamine for distribution. The target in this operation, who we will call 'Fingers', wanted the undercover operative to assist in the manufacture of amphetamine and help distribute it. However, during his conversations with 'Fingers', the undercover became aware that 'Fingers' was in possession of stolen paintings. 'Fingers' asked the undercover operative if he could on-sell the paintings, which were later discovered to be the thirty stolen Hans Heysens. 'Fingers' stated that the person who was originally going to move them for him, an ex-associate of Alan Bond, was no longer in a position to assist, for various reasons. 'Fingers' was prepared to sell the 30 paintings to the undercover for \$60,000.

In accordance with procedures of most drug matters, the undercover operative asked to see a 'sample' of the paintings, to verify their authenticity. The exchange of one of the Hans Heysens occurred in the dead of night outside Strathfield Railway Station. The painting was later confirmed as one of the stolen Hans Heysens.

In subsequent conversations, 'Fingers' told the undercover that the paintings were 'extra hot' and would have to be moved off shore for sale. The undercover negotiated an exchange for the remaining 29 Hans Heysens for \$46,000 and the exchange was arranged for a hotel in Ermington in Sydney.

Again, the meeting was transferred from the hotel in Ermington at the last minute to the McDonalds Restaurant carpark at Auburn. The exchange took place, and all 30 Hans Heysens were recovered.

The original thief was never arrested. But when 'Fingers' was arrested, he told the Police that when the paintings were stolen, they were immediately removed from their frames, and the frames were thrown into the Murray River, en route to Sydney. They were then rolled and stored in a self storage garage in western Sydney for approximately two years. The target also told the arresting Police that if they had not sold them to the undercover, he was prepared to destroy the paintings because they were just 'too hot' for him to retain.

## **History of Art Fraud fakes**

### ***Internationally***

Reputedly history's master art forger was Dossena, an Italian artist who died in 1937. Dossena said of himself that he was "not a forger [or] a swindler", and that he never copied works. "I simply reconstructed them." Interestingly, a contemporary copier of noted artists works in Australia refers to himself as someone who paints 'innuendoes'. It is certainly a fact that both were particularly talented artists.

Other instances of international art fraud of note include:

*John Drewe, the art dealer and John Myatt, the art forger*

In April 1996, after a lengthy investigation, Scotland Yard detectives raided a house in London owned by John Drewe, where they found hundreds of documents from the Victoria and Albert Museum, the Tate Gallery and the Institute of Contemporary Art. On a table in the kitchen, was a bag containing two catalogues missing from the Victoria and Albert's National Art Library, still in the museum bag. The bag also contained rubber stamps bearing the authenticating seals of the Tate Gallery, receipts for the sale of paintings across continents and certificates of authentication from the estates of Jean Dubuffet and Alberto Giacometti. Although Myatt was later found to have been the master of forging artworks, John Drewe was the master of authenticating Myatt's work by creating fraudulent provenances. Provenances detail the history of the work of art from the point of creation through its exhibitions, sales and current ownership. Provenances can carry details of sales, even if the work is withdrawn prior to sale.

In February 1999, Drewe was convicted in a London court of two charges of forgery and one of conspiracy to defraud for the sale of fifteen forged paintings of nine modern masters. All were sold through Sotheby's, Christies and Phillips in London.

An example of Drewe's audacity is a story where one gallery complained to him that the de Stael painting sold to them by Drewe was a fake. Drewe offered to replace it with four Graham Sutherland paintings – all of which were later found to be forgeries as well.

Another of Drewe's victims was an American gallery owner who had paid 105,000 pounds for a Giacometti. The gallery owner even hired a specialist firm to verify its authenticity after the purchase. Unfortunately for the gallery, this firm was run by Drewe, who charged 1,140 pounds to authenticate a painting which he had faked originally. Drewe was able to continue with his fraudulent activities by fabricating provenances. One of his schemes involved introducing his forgeries into auction houses, and producing fake catalogues from defunct galleries. These fake catalogues contained his forgeries.

Van Meegren, *Supper at Emmaus 1937*

Another notable forger was Van Meegren, a Dutch forger, who specialised in Vermeer's paintings during the 1930s and 1940s. Vermeer was a 17<sup>th</sup> century Dutch master. Van Meegren did not copy Vermeer originals but created paintings in the artist's style such as 'Supper at Emmaus'. This painting was declared to be one of Vermeer's finest works by some art critics until discovered years later that it was a fake by Van Meegren. It was many years before Van Meegren's many other works were discovered to be fakes. Van Meegren was eventually convicted in 1947 for forgery.

### ***Australia***

Australia has had its fair share of art fraud history but less success in forgery conviction. Some notable instances are:

Tom Roberts, *Track to the Harbour, Cremorne, 1899*

Arthur Streeton, *Banksias bend over the Bay: Garden Island and the Harbour*

In early 1999, these two works were recalled from an auction after information was received that cast doubt over their authenticity. After scientific examination undertaken by the Ian Potter Art Conservation Centre these works were proved to be forgeries.

Russell Drysdale, *Boy Feeding the Dogs*

Removed from sale in February 1993 by auctioneers after staff from the Queensland Art Gallery questioned its authenticity.

Sidney Nolan, *Siege at Glenrowan*

Withdrawn from a Christies auction in 1993 as a result of conflicting reports concerning its provenance.

Brett Whiteley, *Lavender Bay*

In 1988, this painting was removed from sale at an auction after its authenticity was also in doubt. Fred Williams, eight works including *Green Landscape* and *Wild Dog Creek*

A private collector in Victoria discovered his collection of these paintings were forged in 1988. The forgeries were allegedly revealed to him by Williams' widow.

There is one significant instance of a conviction for forgery in Australia dating back to 1977. A Melbourne art dealer was convicted of five counts of dishonestly obtaining money by selling Russell Drysdale drawings he knew were fake. In an interesting spin, counsel for the defence in this instance argued that his client must have been innocent because his conduct “in openly displaying the drawings for the world to see were the actions of an innocent man, not one who thought they were fakes.”

Where are art collectors and buyers left with the law as it is at the moment? Does the criminal law really protect collectors and buyers from forgers or counterfeiters? In the 1977 case, Russell Drysdale had to give evidence himself that the drawings in question were not his own. What if the artist is unavailable to give evidence?

In 1857, in the English appeal case of *R v Closs*, the defendant was a picture dealer who had been convicted on a charge of uttering a forgery of a John Linnell painting. This forgery had the name John Linnell written upon it, intending for it to be a John Linnell original. The defence argued that merely because someone had written the name of the artist upon a painting, the painting did not amount to a forgery. One of the appeal judges seems to have agreed, stating that it would be more a situation of a trade mark issue. The defence continued by saying that, “the name put by a painter in the corner of a picture is not his signature. It is only a mark to show the picture was painted by him”. However, the Crown argued that the making of the artist’s name was in fact a marking of a certification, and therefore the forgery had been committed. But the court later found that there was no forgery. The judgement read that, “A forgery must be of some document or writing, and this was merely in the nature of a mark put upon the painting with a view of identifying it and was no more than if the painter put any other arbitrary mark as a recognition of the picture being his”.

The two propositions that arose from this case are:

1. A picture is not a document; and
2. The addition of the painter’s name makes no difference – a name inscribed on a thing that is not itself a document does not turn it into a document.

So while we might assume that a signature is an act of authentication - or proof of its originality - this is unlikely to be the case in legal terms. *Closs* is effectively the most significant case dealing with forging and counterfeiting of artworks and it would appear that no cases have arisen in Australia to challenge its soundness. The case also creates concerns for the laying of forgery charges as the forged item must be a document.

## **Difficulties with art fraud investigations**

### ***Lack of complainants to initiate charges***

Matters are usually only investigated after an aggrieved party has complained to a law enforcement agency. Police services generally do not pro-actively investigate matters, but rather depend on complaints received. The exception to this is obviously drug investigation.

Fraud investigation relies upon complainants. Many instances of fraud are occasions where individuals have lost their savings to unscrupulous brokers in fraudulent investment schemes, or solicitors or accountants who have misappropriated funds from their trust accounts. Police will only ever investigate matters, when defrauded individuals approach the Police with their complaint. This is the same for art fraud matters. Law enforcement agencies will not investigate matters where an individual suspects that a person is distributing fraudulent artworks. The complainant in this regard will more than likely be referred to the relevant Department of Fair Trading.

### ***Qualified experts able to identify counterfeits***

One significant problem with art fraud, is the difficulty in identifying people who could corroborate the allegations of forgery in court. The establishment of a national art forensic unit, and/or register could be one way to solve the problem. The register would record artists' styles. This unit would forensically examine suspect works and make comparison with their records. Investigators could liaise with this unit and be referred to experts who could give evidence in subsequent prosecutions.

### ***Preparedness of experts or buyers of art to give evidence***

Individuals can be reluctant to state in an affidavit and then give evidence that they were duped by a counterfeiter. It is apparent that art dealers and collectors operate almost solely by their reputation, and knowledge of their chosen fields of art. Many are simply not prepared to lower their guard and admit they have been defrauded by counterfeiters. They believe that their business may suffer because of this perceived lapse in their credibility.

### ***Faked provenances***

The ease in which provenances can be 'created' for artworks is also problematic. Faked provenances can be constructed by the offenders, placing the counterfeit works in catalogues, then withdrawing it from sale at the last minute. Having an artwork as an entry in a catalogue can then be included in the provenance as proof of authenticity. A more advanced method is the exchange of counterfeit works amongst criminal groups between cities (or countries), to construct the provenance. An extraordinary example can be found in the John Drewe case. He created entire catalogues containing his own forgeries, thus creating outstanding provenances.

### *Appropriate charges in the respective Crimes Acts/Criminal Codes*

Another problem is the appropriateness of the various Crime Acts and Criminal Codes around Australia. In New South Wales, there are distinct sections within the Crimes Act relating to stealing motor vehicles; stealing trees; stealing cattle/sheep/llamas (commonly known as rustling), stealing dogs and even stealing dead wood. There are no sections relating to stealing works of art. The fraud sections are even worse and do not account for art fraud. The Victorian, Northern Territory, South Australia and Western Australia Acts contain only general stealing or theft sections. Tasmania has a general theft section and one section relating specifically to the theft of electricity. The Commonwealth Crimes Act has a general stealing section and one relating to stealing mail. None of the states or territories crimes' acts consider fraud charges relating to counterfeiting or distributing counterfeit artworks. Legal researchers advise me that there is very little in the way of case history or precedent in art fraud apart from the Closs case.

### *Jurisdiction*

Because Australia has nine criminal jurisdictions – with the six states, two territories and the Commonwealth, many investigations are restricted to their respective jurisdictions. In instances where more than one jurisdiction is involved, problems can occur over authority. Cross border trading, therefore, remains problematic.

### **Specific difficulties with indigenous art fraud investigations**

#### *Authentication by artists photographed holding their works*

Many buyers and collectors of indigenous art rely not only on the provenance for the painting, but on a photograph of the artist holding the work as if this authenticates authorship. It is apparent that photographs cannot authenticate authorship.

#### *Indigenous authorship*

There are a number of examples of acceptable authorship within Aboriginal traditions. This ranges from restricted authority in the painting of certain symbols and stories, to a few individuals within a family, to extended family members being authorised to paint the symbols and stories. Some authorisations are based on gender. A number of buyers and collectors of indigenous art consider that the concept of extended family members contributing to the artworks as unacceptable, rejecting indigenous collaborative art. It will probably be the courts who ultimately make a decision defining indigenous authorship.

#### *Predatory nature of many of the wholesalers of the artworks*

A number of the art wholesalers and dealers who control the indigenous artists in Alice Springs, also operate the equivalent of Aboriginal art 'sweat shops' in suburbs of the city. Groups of Aboriginal people are supplied the materials required to paint and they work in backyards of ramshackle houses. The works are then routinely collected and posted to Sydney, Melbourne or even directly overseas.

## **Methods of investigation**

### ***Traditional***

Traditional investigating methods - interviewing witnesses, identifying suspects and obtaining statements - are almost ineffective in the investigation of art fraud. This is because the investigative trail tends to lack documentary evidence, which conventional fraud inquiries rely upon. And merely because a victim is prepared to report art fraud to the Police, it does not mean they are prepared to sign a statement or an affidavit.

### ***Forensic examination***

The forensic side of art fraud is still under-utilised. The University of Melbourne is attempting to establish an art register which will support future investigations into art fraud. However, forensic evidence is only a segment of evidence that will be required for a successful investigation and prosecution.

### ***Electronic***

The inclusion of 'organised fraud' in the Telecommunications (Interception) Act some years ago allows Police to obtain crucial electronic evidence in fraud matters. This was particularly true in the Clifford Possum matter. When undertaking art fraud investigations, it is an effective investigative tool. Evidence can be obtained that would never have been obtained normally.

## **What can be done to avoid counterfeits**

### ***Seek professional and expert advice and guidance***

Counterfeits can be of such high quality that many of the experts are fooled themselves. Unfortunately, it is impractical to carry your personal art expert around with you in readiness to purchase that once-in-a-lifetime painting.

### ***Be mindful of bargains or artworks that can be obtained too cheaply***

The great drawcard to Australian aboriginal art has been the ability to obtain the art at relatively low prices closer to the source (namely Northern Territory). Obviously, poorer quality work will always be cheaper, so bargain prices may not always indicate counterfeits. But like all consumer purchases, if the deal sounds too good to be true, it probably is.

### ***Check on authenticity of provenances***

False provenances are quite easy to construct. Astute art buyers should make the time to trace and authenticate a painting's provenance if they are at all concerned about authentication. But be mindful that the people you are inquiring with may well be part of the scam. And if the deal is legitimate, the dealer will not mind you taking that extra time.



### ***Seek restitution and criminal action, if artworks are found to be counterfeit***

In a recent article in the Australian Financial Review, it was reported that a painting for sale at an auction house was found to be a fake. It was returned to the vendor by the auction house but three months later, another prospective buyer contacted the auction house wanting their opinion on the same work. It would seem the vendor had tried to sell the same work again. Too many matters are not being reported to the Police where necessary.

This may be overcome by the establishment of an art register, which would house details of items identified as counterfeits. It's going to require a cultural change within the industry, with counterfeits and fake art being openly declared and recorded. Too many people are treating it like counterfeit cash that is on realising its fake merely passing it on at the next shop. No one likes losing money. If a buyer or collector discovers their purchase is a counterfeit, take action. Jump up and down, and demand restitution. Have the piece suitably marked by the owner

### **Future of art fraud investigation**

#### ***Increased criminal investigation***

The whole issue of art fraud has received a great deal of publicity lately, and a greater degree of interest in pursuing art fraud as an area of criminal investigation is resulting. Artists are now coming forward to declare some of their works as forgeries. Currently, there are two other investigations in two other states being investigated – one indigenous and the other non-indigenous.

#### ***Research into the incidence of art crime***

There are very few statistics relating to art fraud. Collection of data can only result by matters being reported to law enforcement agencies. Perhaps studies being undertaken by people such as Sergeant Brian Hanley from the Queensland Police Department will give us some indication of the art fraud and crime problem existing in Australia.

#### ***Authentication labels***

The National Indigenous Arts Advocacy Association (NIAAA) has developed a label of authenticity for indigenous artworks. The label will be comprised of a stick on motif with a bar code. Buyers of the artworks will be able to check on this bar code through a website to be established by the NIAAA. The only drawback to this is that some indigenous artists deal directly with wholesalers and galleries rather than through co-operatives. Convincing the artists of the value of the authentication label may prove to be difficult part.

There is a great deal of research and investigation to be done in the field of art crime and art fraud. Overseas experience indicates that art crime is significant internationally, third only to drug trafficking and arms trafficking. The state and Federal Police services have to recognise the extent of the problem, and be more fully prepared to investigate this area of crime. Perhaps its time our legislators assist law enforcement by including art theft and art fraud into the respective Crimes Acts.