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## Summative Evaluation of the Movable Cultural Property Program

Office of the Chief Audit and Evaluation Executive  
Evaluation Services Directorate

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# Table of Contents

<b>Executive Summary .....</b>	<b>1</b>
<b>1. Introduction and Context.....</b>	<b>11</b>
1.1 Program Objectives .....	11
1.2 Program Delivery .....	11
1.3 MCPP Intended Beneficiaries .....	15
1.4 Program Funding .....	16
<b>2. Evaluation Issues .....</b>	<b>16</b>
<b>3. Evaluation Methodology and Constraints .....</b>	<b>17</b>
3.1 Methodology .....	17
3.2 Constraints/Limitations.....	19
<b>4. Findings.....</b>	<b>22</b>
4.1 Relevance and Rationale .....	22
4.2 Success and Impacts .....	28
4.3 Effectiveness and Alternatives .....	36
4.4 Other - Official Languages .....	43
<b>5. Conclusions .....</b>	<b>44</b>
<b>6. Recommendations and Management Response .....</b>	<b>49</b>
<b>List of Annexes .....</b>	<b>53</b>





## Acronyms and Abbreviations

<i>Act</i>	<i>Cultural Property Export and Import Act</i>
CBSA	Canada Border Service Agency
CCI	Canadian Conservation Institute
CCPERB	Canadian Cultural Property Export Review Board
CRA	Canada Revenue Agency
DFAIT	Department of Foreign Affairs & International Trade
DoJ	Department of Justice
FTE	Full time equivalent
IM/IT	Information management/information technology
INAC	Indian & Northern Affairs Canada
KITS	Knowledge, Information and Technology Services
MCPP	Movable Cultural Property Program
OSNI	Outstanding significance and national importance
PCH	Canadian Heritage
RCMP	Royal Canadian Mounted Police
TBS	Treasury Board of Canada Secretariat
UNESCO	United Nations Educational, Scientific and Cultural Organization





# Executive Summary

This report presents the findings of the *Summative Evaluation of the Movable Cultural Property Program* (MCPPE). The report is based on research conducted for Canadian Heritage (PCH) by Hallux Consulting Inc.

## Program Description

In 1977, the *Cultural Property Export and Import Act* (the *Act*) came into force as part of Canada's response to the United Nations Educational, Scientific and Cultural Organization (UNESCO) *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*. The *Act* also was a response to an increasing loss of important cultural artefacts from Canada, due in part to a lack of mechanisms to facilitate the acquisition of objects of significance to Canada's cultural, historic and scientific heritage by Canadian institutions.

The *Act* is implemented through five inter-related activities, which also form the components of the Movable Cultural Property Program (MCPPE):

- ***Designation of collecting institutions and public authorities.*** Institutions and public authorities that acquire cultural property and apply to have it certified must be designated as meeting specified criteria for long-term preservation and access. The Deputy Minister of Canadian Heritage is responsible for designating institutions on behalf of the Minister.
- ***Certification of cultural property for income tax purposes.*** Canadian taxpayers may receive tax benefits for donating or selling cultural property of “outstanding significance and national importance” (OSNI) to designated institutions and public authorities. The Canadian Cultural Property Export Review Board<sup>1</sup> (CCPERB) is responsible for determining whether the property is OSNI and if so, establishing a fair market value for it.
- ***Grants.*** Designated collecting institutions and public authorities in Canada are eligible for grants to assist in the purchase of significant cultural property when it is for sale outside of Canada or at risk of being exported from Canada. The Minister of Canadian Heritage approves all grants.
- ***Export controls.*** The owners of cultural property that meet certain criteria (e.g., dollar value, age, link to Canada) must apply to the Canada Border Service Agency (CBSA) before the object can be exported. If the object does not meet the criteria for the automatic issuance of a permit, an expert examiner will be asked to assess whether the object meets the criteria of OSNI established by the *Act*. If the permit is denied, the applicant can appeal the decision to the CCPERB. The CCPERB can

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<sup>1</sup> The CCPERB was created as an independent administrative tribunal under Section 18 of the *Act*. Members are appointed by the Governor in Council and include representatives of the general public, Canadian collecting institutions and cultural property dealers/collectors.

establish a delay period for the export to allow time for the object to be offered to potential Canadian designated institutions.

- **Import controls.** The CBSA identifies a number of items each year at Canadian border entry points that are potentially illegal imports of protected cultural property from other countries that are state parties to the 1970 UNESCO Convention. MCPP then assesses these objects to determine if the file should be turned over to the Department of Justice or the Royal Canadian Mounted Police (RCMP) for further action and arranges for their return once the import is deemed illegal.

Canadian Heritage is responsible for the implementation of the Movable Cultural Property Program except as specifically tasked to the CCPERB and the CBSA. It also acts as the Secretariat to the CCPERB. Over the period April 1, 2005 to March 31, 2009, total salary and operating costs for MCPP including the CCPERB incurred by Canadian Heritage were \$5.4 million. A further \$4.6 million was paid out in grants.

The key objective of the Summative Evaluation of the Movable Cultural Property Program was to conduct an assessment of the program. The evaluation examined rationale and relevance, success/impacts of the program against its objectives, cost-effectiveness/alternatives, and official languages.

## Evaluation Objective and Methodology

The evaluation included the following research methodologies:

- **Document review.** This included documents setting out the government's policy direction, program related documentation, a literature review prepared by the Office of the Chief Audit and Evaluation Executive on the practices in other countries, websites detailing the practices of other countries, and newspaper articles.
- **Key informant (KI) interviews** with government officials involved with or familiar with MCPP, representatives of designated institutions, expert examiners, individuals who made a donation, art gallery owners, appraisers, buyers and their associations, and individuals from other countries who have significant knowledge of the practices associated with the control of movable cultural property in their own and other countries (n=50).
- **Surveys** of key stakeholders in the program. This included:
  - A web-based survey of CBSA Export Permit officers (n=19),
  - A telephone survey of donors/sellers of cultural property to designated institutions (n=108),
  - A web-based survey of expert examiners (n=60),
  - A combined telephone and web-based survey of export permit applicants (n=48), and
  - A web-based survey of designated institutions (n=69).



While there are limitations in specific lines of enquiry, other lines of enquiry that greater reliance could be placed upon offset them, or the responses obtained reflected the diversity of opinion one would expect to see and thus there was no reason to believe that the information obtained was not representative. Collectively, the consistent results from the three major lines of enquiry provided an internal validation to the results.

## **Evaluation Findings**

### ***Relevance***

***The relevance for MCPP continues—the need to preserve significant cultural property has not abated; MCPP supports Canada’s international commitments; and it is aligned with Government and Departmental priorities.***

There are no signs that the need to preserve significant cultural property in Canada so that it may be accessible for current and future generations and to stop illicit trade in movable cultural property, has abated. According to UNESCO, international illicit traffic is steadily growing. Major policing organizations such as INTERPOL and the FBI find that there is a significant and sustained illicit trade.

The federal government through MCPP is appropriately taking active measures to ensure that Canada respects its international commitments. The *Cultural Property Export and Import Act*, which describes the key elements of MCPP, was Canada’s mechanism for implementing its obligations associated with accepting effective March 28, 1978, the 1970 UNESCO *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*.

MCPP aligns with the priorities of Canadian Heritage and is an explicit element within the PCH Program Activity Architecture. It also has links to the government’s priorities. Through its budget measures since taking office in February 2006, the government has shown a willingness to utilize the tax system to support cultural institutions and has provided significant investments in arts and heritage.

### ***Success and Impacts***

***MCPP supports the preservation by designated institutions of significant cultural property so that it may be accessible for current and future generations. The subcomponents of the Program work in an integrated fashion to support this planned final outcome.***

MCPP creates a framework that encourages Canadians to keep their cultural property in Canada by donating or selling it to a designated Canadian institution and for Canadian institutions to acquire property of OSNI to Canada that is already owned by collectors outside the country or is threatened with export. How much of this happens in a given year is dependent on the owners wanting to dispose of their cultural property and designated institutions having sufficient funds to acquire it, when the items are put up for

sale. MCPP's level of activity from year to year is reflective of this framework. There is no specific target level or increase each year.

Planned immediate, intermediate and final outcomes as documented in the Program logic model were realized during the period April 1, 2005 to March 31, 2009. Planned immediate outcomes realized include the designation of a small number of institutions for the first time each year (most institutions likely to seek designation have already obtained it); the issuance of an average of \$125 million a year of tax certificates; the purchase of \$9.3 million worth of cultural property with the assistance of almost \$4.6 million in MCPP grants; the delayed export of 32 of the 38 applications for permanent export that came before the CCPERB; and the assessment of 34-35 potentially illegal import cases a year.

Planned intermediate outcomes realized include the donation or sale to designated Canadian collecting institutions of almost all of the \$125 million a year on average in cultural property certified; the patriation/repatriation of 30 OSNI items and the retention in Canada of 13 OSNI items with the assistance of the grants provided by PCH; the retention of 14 OSNI items in Canada with a value of \$2.7 million after the owners applied for an export permit and a delay was imposed by the CCPERB; and nine items were returned to the country of origin. MCPP was seen as a key factor enabling institutions to obtain objects it would not have otherwise been able to acquire. Some have been able to mount significant exhibitions with the property acquired while others found that they had insufficient funds to properly display the acquired items. For donors, the tax benefits associated with MCPP encouraged them to donate/sell more cultural objects to designated institutions than they would have otherwise.

Planned final outcomes have also been reached. Key informants who had an opinion were unanimous in their assessment that as a result of MCPP, there has been an increased retention in Canada of significant examples of its cultural history. Three-quarters of institutional respondents to the survey indicated that MCPP has been very successful or extremely successful in encouraging the preservation in Canada of significant examples of its movable cultural property while just over half of the expert examiners were of the same opinion. The immediate and intermediate results achieved support this perspective. Further, while controlled cultural objects probably leave Canada without permanent export permits at least some of the time, Canada is seen as neither a major source nor a major destination for illegally exported/imported material. It is respecting its international cultural property obligations.

The primary positive unintended consequence of MCPP is that it established de facto professional standards in programming, staffing and facility for institutions that were designated under the program. The most prevalent negative unintended consequence mentioned in interviews and survey responses was that cultural property was acquired by institutions as a result of pressure from donors that may not be consistent with the vision for the institution and for which it may not have the financial resources to adequately care and conserve. These may not be new challenges facing collecting institutions, however.

To varying degrees, many of the major collections now held by public institutions were amassed and donated by private collectors.

Export permit applicants also voiced concern about lost sales due to the need to obtain an export permit. The number of impacted sales, however, appears to be low, as the statistics for the period April 1, 2005 to March 31, 2009 show that only five percent or less of all applications for permanent export were subject to review by the CCPERB each year (68 applications reviewed out of 1480).

### *Effectiveness and Alternatives*

*The basic program structure and design is appropriate but there are opportunities for enhancing individual components.*

No evidence was found that suggests radical changes to MCPP are warranted. All signatories to the 1970 UNESCO *Convention* have some combination of controls on cultural property that are tailored to their tax regimes and cultures. Some rely more heavily on foundations to assist institutions acquire cultural property while others have an absolute prohibition on exports.

Specific elements of the program, however, may need to be adjusted. Value limits for at least some objects on the Control List appear to be too low causing unnecessary work; criteria for the certification of electronic records and objects need to be developed; and the Control List definition of Group I objects (those recovered from the soil and water of Canada) may be too limiting by not including other specimens that have been in the collections of Canadians for a lengthy period of time as is done for other classes of objects.

The delivery of MCPP could also be improved through more effective utilization of information technology. The systems used to manage the program and track information were developed many years ago and should be improved. Further, the web site needs to be structured more effectively to make information and documents available.

## **Recommendations and Management Response**

The following recommendations are based on the evaluation's research findings and conclusions.

1. Make investments in information technology to facilitate more effective capture and processing of program data.

The current systems utilized by MCPP were developed many years ago before departmental standards were in place. Since that time information technology has evolved making it easier to capture and report information and increasing the expectations of users. IT and web standards now exist and the department manages the funding and pace of implementation. The application form for grants is available on the

MCP website as a PDF and the application for certification of cultural property for income tax purposes is available in Microsoft Word. Neither can be completed on line. The form used for the export permit application must be obtained from MCP or a Canada Border Service Agency office. Finding the link to detailed information on exports on the CBSA website from the MCP site is not intuitive. From the MCP home page, one must navigate through three screens. The use of hyperlinks from the home page would make the navigation process easier.

This recommendation is not new. Similar recommendations were made in the October 2005 evaluation and the February 2009 internal audit. According to MCP, enhancements have been made to its database since 2005 to capture images of cultural property presented for certification, and to record more detailed and accurate information on the values certified by the Board each year and on the review of designation applications. Further, it has been working to enable the development and implementation of on-line access application capability. Nonetheless, the evaluation found that more should still be done.

**Management Response:** Accepted

MCP proactively seeks to participate in departmental IT improvements and has undertaken several steps to be ready once the departmental initiatives are ready to proceed.

The groundwork to achieve MCP's goal to deliver a comprehensive online application capability and integrated data management system has been prepared by:

- a. upgrading MCP's SUMMA database (2008-09 and 2009-10) to meet departmental SQL standards,

**Implementation date:** Complete

- b. completing comprehensive reports (2007-08), including business requirements, threat risk assessment and options analysis to fully understand MCP IT requirements,

**Implementation date:** Complete

- c. entering into Service Level Agreements with KITS (2008-09 and ongoing),

**Implementation date:** October 31, 2011

- d. developing a tracking system (2008-09 and ongoing) to capture designation information and to generate reports on the status of ongoing designation reviews.

**Implementation date:** September 30, 2010

MCP is next in line for the PCH G&C online project (January 2010) with an estimated timeline of 18-21 months.

**Implementation date:** October 31, 2011

The departmental Information Architecture is being phased-in with a target completion date of March 31, 2010 for Phase I. MCP is preparing and reworking its web content into a user-friendly format and will be ready to participate in the the next round of program website improvements tentatively scheduled for Summer 2010.

**Implementation date:** August 31, 2010

Two of the four program application forms (Grants and Certification) are currently available online. MCP will finalize the online application form for Designation and make it available online by March 31, 2010.

**Implementation date:** March 31, 2010

The current export application is a “schedule” of the *Cultural Property Export Regulations* and must be delinked by regulatory amendment before an online form can be designed. MCP is currently planning the regulatory review process and will put forward a recommendation to the Minister to proceed with the regulatory review.

**Implementation date:** June 30, 2010

**Responsibility:** MCP Director  
MCP Manager

2. Review the current value limits established by the *Canadian Cultural Property Export Control List*.

Values for objects included on the *Canadian Cultural Property Export Control List* fluctuate depending on the demand and availability of items in the marketplace. There is general consensus that many of the values currently used as the threshold to determine if the export of an object should be controlled are too low. When the items are examined to determine if they are of OSNI, the expert examiners consistently determine that they are not, creating unnecessary work and time delays.

**Management Response:** Accepted

MCP will launch an RFP in January 2010 for a study to provide recommendations on revising Control List values. These recommendations will be based on a review of program export data, and consultation with experts, dealers and stakeholders.

**Implementation date:** March 31, 2010

Upon completion of the study, MCP will assess the recommendations and requirements for revision to the Control List and seek stakeholder validation.

**Implementation date:** September 2010

Should program analysis support revisions to the Control List values, recommendations will be put forward to the Minister.

**Implementation date:** December 30, 2010

**Responsibility:** MCP Director

3. Develop criteria for the certification for tax purposes of electronic resources.

Archival material historically has had a physical form—letters, books, brochures, posters, etc. More and more, these types of resources are being produced and stored electronically changing significantly the whole concept of archival material and how it should be valued. The CCPERB has already initiated efforts to develop more detailed criteria for audiovisual material. This should be expanded to consider the consequences of changes in technology on all items in Group VII, Textual Records, Graphic Records and Sound Recordings.

**Management Response:** Accepted

Development of criteria for the certification of electronic resources is in progress. Pilot testing of the newly developed criteria is scheduled to begin in January 2010. Completion of the criteria and final implementation is scheduled for June 2010.

**Implementation date:** June 30, 2010

**Responsibility:** MCP Director  
MCP Manager

4. Consider broadening the definition of Group 1 objects on the *Canadian Cultural Property Export Control List*.

Many of the categories of objects defined by the *Canadian Cultural Property Export Control List* apply to any object whether made inside Canada or not, if it has been in Canada for a specified period of time and is of a minimum value (e.g., applied and decorative art, fine art, scientific or technological objects). The minimum value applicable increases if the object does not have a specific link to Canada (e.g., be identified with a prominent person, institution or memorable event that relates to the history or national life of Canada). Group 1 objects (mineral and palaeontological specimens, and archaeological objects) by definition must have been recovered from the soil of Canada, the territorial sea of Canada or the inland or other internal waters of Canada to be covered by the Control List. There may be significant and important

objects of non Canadian origin, however, which would otherwise fall into Group 1 that would be of value to Canadians if they remained in Canada.

**Management Response:** Accepted

MCP will review available data and consult target groups to assess both the feasibility and implications to stakeholders of including non-Canadian objects in Group I of the Control List. This question will be integrated into the Control List values review study (see Recommendation 2) to maximize efficiency, effectiveness and to minimize expenditure of financial resources.

**Implementation date:** March 31, 2010

Should program analysis support broadening Group I, recommendations will be put forward to the Minister.

**Implementation date:** December 30, 2010

**Responsibility:** MCP Director





# 1. Introduction and Context

## 1.1 Program Objectives

Canadian Heritage (PCH) is responsible for implementing Canada's response to the 1970 *UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* that Canada ratified in 1978. The purpose of the Convention is to deter illicit traffic in cultural property internationally.

In the years prior to the UNESCO Convention, Canada had experienced an increasing loss of important cultural artefacts due, in part, to a lack of mechanisms to facilitate the acquisition of objects of significance to Canada's heritage by Canadian heritage institutions. The public policy concern with the loss of important items of national heritage, combined with international obligations under the Convention, led to the coming into force of the *Cultural Property Export and Import Act* (the *Act*) in 1977. The *Act* regulates the export of important Canadian cultural property, controls the import of international cultural property and supports certain provisions of the *Income Tax Act* to provide tax incentives that encourage the donation or sale of important cultural property to designated Canadian institutions and public authorities. The *Act* thus serves a dual purpose: it provides a basis for the protection and preservation in Canada of significant Canadian cultural property, and is a key instrument to assist Canada in fulfilling its obligations to help protect world heritage.

The overall objectives of the *Act* are to ensure the preservation in Canada of significant examples of our cultural, historic and scientific heritage and to fulfill Canada's international treaty obligations with respect to cultural property. The Movable Cultural Property Program (MCP) was implemented to fulfill Canada's obligations under the *Act*. The preservation and protection of cultural property achieved through the MCP contributes to the departmental objective "Canadian artistic expressions and cultural content are created and accessible at home and abroad"<sup>2</sup>. Preservation is a necessary precondition to assure current and future accessibility.

The Program logic model, showing the link between MCP's activities and immediate, intermediate and long-term outcomes, is described in the following section, *Program Delivery*, as part of the description of the MCP's subcomponents.

## 1.2 Program Delivery

The Cultural Property Directorate within the Citizenship and Heritage Sector is responsible for delivering MCP and for coordinating Canadian Heritage's responsibilities under the *Act*.

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<sup>2</sup> Effective April 1, 2009 this objective replaced "Canadians express and share their diverse cultural experiences with each other and the rest of the world" in the Canadian Heritage Program Activity Architecture (PAA).

The *Act* is implemented through five inter-related activities, which also form the components of the MCPP:

- designation of heritage institutions and public authorities;
- certification of cultural property for income tax purposes;
- grants;
- export controls; and,
- import controls.

Each of these components is described in the balance of this section.

### **1.2.1 Designation of Collecting Institutions and Public Authorities**

Canadian institutions and public authorities that wish to acquire cultural property through donation or purchase and have it certified for income tax purposes must first be designated by the Minister of Canadian Heritage upon the recommendation of MCPP. This process ensures that only designated institutions that are publicly owned and have the appropriate collection management mechanisms and environmental controls are eligible to apply for Cultural Property Income Tax Certificates (T871) as well as Movable Cultural Property grants.

An application for designation is submitted to MCPP. The MCPP ensures that the eligibility criteria have been met and then proceeds with an in-depth analysis, in consultation with technical advisors at the Canadian Conservation Institute (CCI) with respect to facilities, to assess the applicant's capacity to preserve specific categories of cultural property and make it accessible to the public. If the applicant meets all criteria, the Deputy Minister of Canadian Heritage designates the institution on behalf of the Minister. Institutions are designated Category "A" or "B". Category "A" institutions are designated to acquire any object that falls within its collecting mandate at the time of designation while Category "B" institutions may be designated in relation to a specific object or collection that a person proposes to donate or sell to them, and not to any other object that may be offered in the future.

Certified cultural property usually remains in designated institutions indefinitely. If an institution disposes of certified cultural property to other than another designated institution within ten years of the date of certification, it must pay a tax equal to 30% of the value of the object at the time of disposition.

Documented assessments of institutions are an output of MCPP's activities and lead directly to the designation of heritage institutions for the purpose of establishing eligibility for certification and grants which are discussed in the following sections of this report. Building on other elements of the program, designated institutions are able to increase their collections of cultural property of "outstanding significance and national importance" (OSNI), and facilitate the movement of cultural property from private hands to public institutions. As a final outcome, designated institutions preserve significant cultural property so that it may be accessible for current and future generations.

### **1.2.2 Certification of Cultural Property for Income Tax Purposes**

As provided for in sections 32 and 33 of the *Act* and various sections of the *Income Tax Act*, Canadian taxpayers may receive tax benefits based on fair market values for donating or selling cultural property of OSNI to designated institutions and public authorities.

The Canadian Cultural Property Export Review Board<sup>3</sup> (CCPERB) is responsible for determining whether such property meets the criteria of "outstanding significance and national importance" as set out in section 11 of the *Act*, and, if so, it must establish the fair market value for income tax purposes. To assist the CCPERB in determining the fair market value of cultural property, applications for certification must include substantiated monetary appraisals. Every appraisal prepared for the CCPERB must include a reasoned justification. Reasoned justification is especially important when there is a limited or non-existent market for the property being appraised. Donors/sellers may request that the CCPERB "redetermine" the fair market value. Subsequently, donors/sellers may appeal the CCPERB's redetermination to the Tax Court of Canada. In rare cases, Tax Court decisions are appealed to the Federal Court of Appeal. The CCPERB's work is supported by the MCPP, and accounts for about half the full time equivalent (FTE) complement of the Cultural Property Directorate.

An analysis of the applications for certification is the output of the MCPP's activities. Immediate outcomes are the deeming of the cultural property as OSNI by the CCPERB and the issuing of a tax certificate. This in turn enables the institution to increase its collection of cultural property of OSNI, and facilitate the movement of cultural property from private hands to public institutions. The availability of the tax certificate also encourages philanthropists/vendors of cultural property to keep it in Canada as opposed to selling it to someone outside of Canada. As a final outcome, designated institutions preserve significant cultural property so that it may be accessible for current and future generations.

### **1.2.3 Grants**

Designated collecting institutions and public authorities in Canada are eligible for grants to assist in the purchase of significant cultural property when it is for sale outside of Canada or at risk of being exported from Canada. It is normally expected that the institution will make every effort to raise at least 50% to the purchase price, however, each case is considered on its own merits. After receiving the grant, institutions are required to present a proof of purchase for the object to the MCPP before the file is closed.

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<sup>3</sup> The CCPERB was created as an independent administrative tribunal under Section 18 of the *Act*. The Board, which reports to Parliament through the Minister of Canadian Heritage, is multi-sectoral in character and includes representatives of the general public, Canadian collecting institutions and cultural property dealers/collectors.

The MCPP reviews grant applications to ensure that they meet program criteria before seeking Ministerial approval. To be approved for a grant, the applicant must provide satisfactory evidence that the object is of outstanding significance and the proposed purchase price is reasonable. In the case of private sales, an individual or dealer must demonstrate that the lowest possible price has been negotiated. Auction sales require that the estimated purchase price be justified in terms of the published pre-sale estimate and any available information about sales of comparable objects.

A recommendation to the Minister is the output of the MCPP's activities. The immediate outcome is that a designated institution acquires cultural property with the assistance of the Movable Cultural Property Grant, which in turn results in the repatriation or retention in Canada of cultural property of OSNI. The acquisition of this property enables designated Canadian institutions to increase their collection of cultural property of OSNI and to stimulate their programming and outreach activities. As a final outcome, designated institutions preserve significant cultural property so that it may be accessible for current and future generations.

#### **1.2.4 Export Controls**

The purpose of export controls is to ensure that, prior to the export of a nationally significant object, Canadian institutions are aware of the impending loss and have the opportunity to purchase it. An individual or corporation wishing to export an object on the Canadian Cultural Property Export Control List must file an application for an export permit.

A Permit Officer of the Canada Border Service Agency (CBSA) initially reviews the permit application. If the object is on the Control List, the application is evaluated to determine whether a permit may be issued automatically (i.e., the application is for a temporary permit, the object has been in the country for less than 35 years, or the object is being returned after a loan). If the permit cannot be issued automatically, then the Permit Officer will send the application to one of approximately 300 expert examiners designated by the Minister of Canadian Heritage to assess whether the object meets the criteria of "outstanding significance and national importance" established by the *Act*.

If the expert examiner determines that the object does not meet the criteria of "outstanding significance and national importance", an export permit will be issued. If the examiner indicates that the object meets the criteria, the permit will be denied and the applicant will have 30 days from the date of the issuance of the refusal notice to appeal the decision to the CCPERB. The CCPERB reviews only those applications for permanent export permits that have been denied and for which an appeal has been requested. It can establish a delay period of two to six months to allow time for objects to be offered to Canadian institutions before they can be exported. In such cases, a notice is sent to designated institutions with the mandate for that type of object informing them of the availability of the object and the possibility of receiving a grant.

The primary outcome of this process is the delay in the potential export of cultural property to provide designated institutions a chance to acquire significant cultural property. When designated institutions are able to raise sufficient funds and negotiate an acceptable price, significant cultural property is permanently retained in Canada and the designated institution's collection of cultural property of OSNI is increased. Cultural property passes from private hands to public institutions and programming and outreach activities by the recipient organization is stimulated by the cultural property acquired. As a final outcome, designated institutions preserve significant cultural property so that it may be accessible for current and future generations.

As part of export controls, MCPP also follows-up on between two to five possible illegal exports each year. When circumstances warrant, these investigations may be turned over to the RCMP for further investigation.

### **1.2.5 Import Controls**

Section 37 of the *Act* outlines the mechanisms Canada has put in place to honour its obligations under the 1970 UNESCO *Convention*, whose main objective is to prevent illicit trafficking of cultural property internationally. Under the *Act*, illegal export of any object identified as protected cultural property by any member state is deemed to be an illegal import into Canada. The MCPP works with the CBSA to administer the import controls by seeking expertise to authenticate potential imports and provides the Canadian public with information on the possibility of contravening these import controls through the provision of information materials (e.g., brochures, posters, on-line information). The MCPP also conducts approximately 40 assessments per year into the potential illegal import of cultural property into Canada. These assessments are usually launched as a result of CBSA examinations at Canadian border entry points.

As a result of the efforts of CBSA with support from MCPP, illegally imported cultural property is detained and a referral is made to the Department of Justice and/or the RCMP for further civil and/or criminal action. After a successful Action for Recovery, cultural property illegally imported into Canada is returned to the country of origin. The knowledge of the legal consequences associated with illegally importing cultural property acts a deterrent, reducing the likelihood that Canadians will illegally import cultural property into the country. Collectively these outcomes demonstrate Canada's respect for its international cultural property obligations.

## **1.3 MCPP Intended Beneficiaries**

The MCPP's beneficiaries include:

- collecting institutions and public authorities which become designated under the program, acquire cultural property of OSNI that has been certified for income tax purposes through donations or sale, and receive grants from PCH to assist in

acquiring significant cultural property that would otherwise be exported or to repatriate property already owned outside Canada;

- individuals, businesses or institutions wishing to export objects on the Canadian Cultural Property Export Control List;
- individuals, businesses or institutions wishing to donate cultural property to collecting institutions and public authorities for tax certification; and
- Canadians who can access cultural property of outstanding significance and national importance that was previously in private hands and not available to the public.

## **1.4 Program Funding**

Over the period 2005-06 to 2008-2009, Canadian Heritage's total salary and operating costs were \$5.4 million and \$4.6 million was paid out in 40 grants. The average annual expenditures were \$2.5 million.

## **2. Evaluation Issues**

Three main evaluation issues were established for this evaluation:

- To what extent does MCPP continue to be consistent with departmental and government-wide priorities and does it address an actual need?
- To what extent is MCPP meeting its objectives, within budget and without unintended impacts?
- To what extent are the most appropriate and efficient means being used to achieve objectives, relative to alternative design and delivery approaches?

Consideration was also given to the extent to which MCPP supported the objectives of the *Official Languages Act*.

## **3. Evaluation Methodology and Constraints**

### **3.1 Methodology**

During the period January to March 2009, the MCPP logic model was updated and potential indicators were identified to answer the evaluation questions. One of the key challenges with this program and the measurement of its success is that it is not designed and cannot be designed to achieve prescribed numerical targets each year. The other key challenge was the number of distinct groups of stakeholders involved directly in the delivery of the program (MCPP staff within PCH, CBSA officers, CCPERB, and experts that work for designated institutions or universities that examine items to determine if they are OSNI) and those who are directly impacted by the program (institutions that are designated, receive cultural property that has been designated, apply for grants, and export property temporarily or permanently; donors/sellers of cultural property; individuals/organizations that want to export cultural property; and individuals importing cultural property). Unless an individual/organization has had interaction with MCPP, it is a very costly exercise to try and identify them. As a result, lists maintained by MCPP were used as the source of contact information for most of the individuals interviewed and for anyone included as part of a survey.

A review of primarily government and program documentation coupled with input from interviews and surveys was considered to be the most cost effective means to obtain input on the extent MCPP continues to be consistent with departmental and government-wide priorities and whether it addresses an actual need. The surveys in particular, provided a low cost means of obtaining input from a wide range of stakeholders on need for the program.

MCPP has been in place for just over thirty years. The program design provided a balance between the rights of owners and the desire for public access in the longer term to cultural property deemed to be of outstanding significance and national importance. It was never the intent that all objects of OSNI available for sale over some period of time would move from private to public ownership but rather there would be an increase in public ownership. The extent to which the different elements of the program are achieving the expected immediate and intermediate outcomes can be ascertained in large measure by using the statistics maintained by MCPP. It is difficult to get at all of the intermediate outcomes and the final outcomes or unintended consequences without input from key stakeholders. Interviews and surveys were considered to be most cost effective means of obtaining this input. Consideration was given to case studies but it was ultimately concluded that additional interviews would be a more cost effective use of the funds available for the evaluation.

To determine the extent to which the most appropriate and efficient means being used to achieve objectives, relative to alternative design and delivery approaches, consideration was given to the practices in other countries. Most of the information on these practices was based on a literature review undertaken by PCH Evaluation Services Directorate in

the fall of 2008. This was supplemented by information obtained through an Internet search of government websites in other countries. Key informant interviews and surveys of stakeholder groups were also used to provide details on what was working well and what was not in the delivery of the different elements of the program.

A wide range of documents were reviewed as part of the evaluation. They included:

- Documents setting out the government's policy direction (Speech from the Throne, Budget speeches and supporting documentation, speeches and news releases from the Minister of Canadian Heritage);
- A wide range of program related documentation (enabling legislation, PCH planning documents, previous evaluation and audit of the Program, annual reports of Program activity<sup>4</sup>, etc.);
- Literature review prepared by Evaluation Services, Office of the Chief Audit and Evaluation Executive;
- Websites detailing the practices of other countries with respect to cultural property, perspective of major policing organizations (INTERPOL and the FBI) with respect to stolen works of art; and
- Newspaper articles.

Fifty key informants (KI) were interviewed during the evaluation. They included:

- PCH management responsible for MCPP;
- representatives of other government departments involved with the delivery of MCPP (Canada Border Service Agency) or with a direct interest in it (Canada Revenue Agency and the Department of Finance);
- representatives of Canadian museums, art galleries, archives and libraries designated under MCPP;
- art gallery owners, appraisers buyers and their associations who have an interest in the program;
- expert examiners who have recent experience in reviewing export permit applications;
- individuals who made at least one donation of cultural property under the program since 2005; and
- individuals from other countries who have significant knowledge of the practices associated with the control of movable cultural property in their own and other countries.

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<sup>4</sup> Annual reports of Program activity included information on the number of institutions designated, the value of cultural property certified, the number of export permits requested and denied, the number of delays imposed, the number of grants awarded and the value. This information was obtained from information systems maintained by MCPP.



Where practical, potential respondents were selected at random from names of individuals identified by MCPP as having involvement with the program since April 1, 2005. With expert examiners, the number of individuals who had recent experience with different categories of objects was quite limited and as a result, there was little latitude in identifying potential respondents. An expert advisor to the evaluation team provided input on potential interviewees from other countries.

Telephone and/or web-based surveys were also undertaken with CBSA Export Permit Officers (n=19), donors/sellers (n=108), expert examiners (n=60), export permit applicants (n=48), and institutions (n=69). In each case, contact information was provided by MCPP. Duplicate entries and those with insufficient contact information (e.g., no telephone number for donors, no email address for others) were removed from the list of potential participants. Web searches were undertaken to supplement the email address information provided. To increase potential participation by donors/sellers and export permit applicants, a joint letter was sent from Director of Evaluation Services and the Director Movable Cultural Property in advance of sending an email or making a telephone call inviting participation. The total population for each category of respondent, the number of complete responses, and the associated margins of error are summarized in Table 1. While the response rates were lower than for similar surveys undertaken as part of the 2005 Evaluation of MCPP, they are good for telephone and web-based surveys and reflect the significant interest in the program by its stakeholders.

Importers of cultural property were not explicitly contacted as part of this evaluation as there was no cost effective means of identifying this population.

### **3.2 Constraints/Limitations**

It is recognized that there are limitations associated with specific lines of enquiry that were employed for this evaluation. For example, MCPP program management and staff and those who work with organizations seeking funding from MCPP or who benefit from it have an interest in the Program that may compromise their independence and objectivity. One would expect them to be very positive about what the Program has and can achieve. This expectation played out. As a result, greater weight was given to information when it was available from other lines of enquiry, in particular from the document review or from key informants who had no vested interest in MCPP, such as the interviewees from other countries.

Telephone and web based surveys are a very cost effective tool for obtaining feedback. When the response rate is less than 90 per cent, there is a risk of self-selection. The low number of respondents who agree to participate in the survey may differ in important, but unknowable, ways from those who do not agree to participate, making it impossible to assure those who do respond are representative. To minimize this risk, respondents for the telephone survey were selected at random. When individuals declined to participate, the replacements were selected on a random basis. With the web-based surveys, two reminder notices were sent out for each survey to try and maximize participation and thus reduce the likelihood of significant differences between those who responded and those

who did not. While the margins of error were slightly higher than the target of plus or minus five percent for several of the surveys, it was not so large so as to obscure the trends in the results and as a result, the surveys provided a reliable measure of the perspective of each group of stakeholders included in the evaluation.

**Table 1: Summary of Five Surveys Undertaken**

Survey	Survey Means	Period Survey Conducted	Population	# Full Responses	Response Rate	Margin of Error (with 95% CL)
CBSA Officers	Web-based	June 2-July 2, 2009	35	19 <sup>5</sup>	54.3%	+/- 8.0%
Donors/Sellers	Telephone	June 2-July 4, 2009	1970	108	5.5% <sup>6</sup>	+/-4.6%
Expert Examiners	Web-based	June 12-July 15, 2009	249	60	24.1%	+/- 5.55%
Export Permit Applicants	Web-based and telephone	June 9-July 10, 2009	171	48	28.1%	+/- 6.05%
Institutions	Web-based	May 28-July 13, 2009	192	69	35.9%	+/-4.7%

The mechanisms utilized by MCPP to capture contact information of stakeholders also had an impact on the surveys conducted. MCPP maintains a list of individuals who may be called upon to act as expert examiners. While it does track when individuals fulfill this role, it can only report this information on an individual basis. It has no ready mechanism for producing a list of all individuals who have acted as an expert examiner over a specific period of time (e.g., April 1, 2005 to March 31, 2009). As a result, many of the individuals invited to participate in the survey as part of this evaluation have never been called upon to act as an expert examiner which may have had an impact on the response rate achieved. This was undoubtedly reflected in the results where those who responded “don’t know” to questions were inevitably those who indicated that they examined less than one object a year or who indicated they could not recall how often they examined an object. By focusing on the number of responses that were something other than “don’t know”, the impact of input from those who had not had to actually act as an expert examiner was minimized.

The form that MCPP uses for export permit applications is prescribed in Schedule 1 of the *Cultural Property Export Regulations*. A contact name is not required when the applicant is a business or institution. This makes the task of finding the appropriate person to respond to a telephone or web-based survey much more difficult and

<sup>5</sup> Most of the non-respondents are alternates. Of the 18 identified permit officers, 15 completed the survey and another indicated there had been no involvement with MCPP. If only the responses from identified permit officers is considered, the margin of error is +/- 5.5%, with a confidence level of 95%. Of those who responded, 4 had never processed an application for an export permit in the last five years.

<sup>6</sup> The target was to have a sufficient response rate such that the margin of error was +/- 5% with a confidence level of 95%. Once that level was achieved, the survey was closed.

undoubtedly impacted the response rate achieved in the survey of export permit applicants. Nonetheless, the responses reflected a diversity of opinion that one would expect to see. As a result, there is no reason to believe that the responses to the survey are not representative of the perspective of export permit requestors.

The other major limitation to the methodology was that input was sought solely from those who had direct involvement with MCPP during the period April 1, 2005 to March 31, 2009. Individuals/organizations who donated cultural property to collecting institutions but did not have it certified for tax purposes, who exported cultural property without obtaining the required export permit, or who imported cultural property illegally, were not included because they could not be easily identified. Input from these individuals would have helped to better understand if there were significant design issues that were impacting the effectiveness of the program. The evaluation was informed on potential options at a macro level by looking at the practices of similar programs in other countries thereby reducing the likelihood that major design issues impacting program effectiveness would not be identified.

In summary, while there are limitations in specific lines of enquiry, other lines of enquiry that greater reliance could be placed upon offset them, or the responses obtained reflected the diversity of opinion one would expect to see and thus there was no reason to believe that the information obtained was not representative. Collectively, the consistent results from the three major lines of enquiry provided an internal validation to the results.

## 4. Findings

### 4.1 Relevance and Rationale

#### 4.1.1 Continuing Need

*Program stakeholders see a continuing need for the program.*

Key informants generally see the current program as a good starting point for addressing the need to preserve significant examples of our cultural property in Canada and to fulfill Canada's international treaty obligations to deter or prevent the illicit importation of cultural property. The tax incentives for donations in particular were seen as vital. One key informant noted that it would have been impossible to keep pace with the rising values through an expenditure program. Tools exist for import controls but it was noted other priorities exist that need to be dealt with at the border<sup>7</sup>.

Survey respondents as well generally agreed that there is a continuing need for the program when they had a perspective. Those survey respondents who suggested that elements be discontinued were few and far between (most of the comments were in relation to the export controls). Improvements that were suggested to the program were more in the nature of enhancements as opposed to wholesale changes and speak to some of the current challenges in administering the program and the challenges facing institutions (the specific changes suggested are discussed in Section 4.0, *Cost Effectiveness and Alternatives*).

*New conditions have arisen since the inception of MCPP that reinforce the importance and need for it.*

Since MCPP was first launched over thirty years ago, the environment impacting cultural property has changed. Key changes include:

- The increased international debate about the appropriate ownership of cultural property. Most developed countries now accept that significant cultural property should remain in the country in which it was created. Developing countries have also become more aware of the value of their cultural property and the importance of retaining it.
- A global market place for cultural objects has developed. Potential sellers and purchasers can now share information quite readily over the Internet.
- Acquisition budgets of Canadian cultural institutions have not kept up with inflation. Many can now only acquire objects through donations.

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<sup>7</sup> The Canada Border Service Agency provides integrated border services that support national security priorities and facilitate the free flow of people and goods. National security priorities have been at the forefront in recent years. Cultural property is less likely to be considered a priority than other types of goods.

- A growth in the number of wealthy collectors, increasing the market for most disciplines. At the same time, the availability of certain types of objects has decreased pushing prices up when something does come on the market.
- An increasing range of media that may be used to create cultural property (e.g., audio visual and electronic archival material).
- An increased interest in specific types of cultural property (e.g., aboriginal objects).

Some of these factors have resulted in MCPP's provisions becoming the principle vehicle by which Canadian institutions now acquire cultural property. Others have increased the importance of import and export controls.

***There are no signs that the need to preserve significant cultural property in Canada so that it may be accessible for current and future generations and to stop illicit trade in movable cultural property has abated.***

The United Nations Educational, Scientific and Cultural Organization (UNESCO) and other international bodies have been working for decades to prevent the illicit import, export and transfer of ownership of cultural property. To address the problem, a number of multilateral treaties have been developed:

- Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954) and its two protocols (1954 and 1999)
- UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and transfer of Ownership of Cultural Property (1970)
- UNIDROIT Convention on Stolen or Illegally Exported Cultural Property (1995)
- Convention on the Protection of the Underwater Cultural Heritage (2001)
- Convention for the Safeguarding of the Intangible Cultural Heritage (2003)
- Convention on the Protection and promotion of the Diversity of Cultural Expressions (2005)

UNESCO has developed the *International Code of Ethics for Dealers in Cultural Property* (1996) and the International Council of Museums has developed the *ICOM Code of Ethics for Museums* (1986 revised in 2004, published 2006).

Despite these agreements, as noted on the UNESCO's website, "international illicit traffic is steadily growing". INTERPOL states on its website: "The illicit trade in cultural objects is sustained by the demand from the art market, the opening of borders, the improvement in transport systems and the political instability of certain countries." They note that it is difficult to gauge the extent of the trade as statistics are not kept on this type of criminality and the loss may go undetected for some time. On a regular basis, however, there are reports in the media of objects subject to forced sales or looted during times of war, and of high profile pieces of art stolen from public and private collections. The FBI has estimated the losses associated with art and cultural property crime, which

includes theft, fraud, looting, and trafficking, as running as high as \$6 billion a year<sup>8</sup>. Many of the objects are quite portable and can be easily moved in and out of countries without detection.

In addition, conflict around the world, and the rise to power of ideologically driven governments, have also resulted in the destruction of movable cultural property that is deemed to be a great loss to all humanity (e.g., the destruction of all statues including ancient pre-Islamic figures in 2001 in Afghanistan<sup>9</sup>, and the destruction of artifacts during the China's cultural revolution (1966-1976)).

As noted by the key informants, Canada has a continuing obligation to respect international treaties unless it withdraws from the treaty. To withdraw would be very detrimental to Canada's reputation and international goodwill. Many noted how there continues to be a significant amount of illicit trade in cultural property and it is important for Canada to be seen as being diligent in trying to stop it. As a member of the global community it is essential to protect and respect the heritage of others through internationally agreed rules just as we want to protect and preserve our own. Several suggested that the federal government role should be even stronger than it is today. In the global marketplace, MCPP acts as a gatekeeper. Another suggested that if Canada did not support international treaties that seek to prevent illicit traffic in cultural property we would quickly see a return to the horror stories of illegal trafficking that occurred before the treaty or the building of collections with "liberated" materials.

#### **4.1.2 Justification for Federal Government Intervention**

*It is appropriate for the federal government to take active measures to ensure that Canada respects its international commitments.*

The *Cultural Property Export and Import Act* is Canada's means of formalizing its commitments to the 1970 UNESCO Convention which it accepted effective March 28, 1978. It sets out the key elements of the Movable Cultural Property Program:

- the establishment of a Canadian Cultural Property Export Control List,
- the issuance of export permits,
- the establishment and responsibilities of the Canadian Cultural Property Export Review Board,
- the issuance of income tax certificates for objects disposed of to a designated institution or public authority,
- the ability to make grants<sup>10</sup> to institutions and public authorities in Canada for the purchase of objects in respect of which export permits have been refused under the

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<sup>8</sup> [www.fbi.gov/hq/cid/arttheft/arttheft.htm](http://www.fbi.gov/hq/cid/arttheft/arttheft.htm), accessed March 26, 2009

<sup>9</sup> [www.rawa.org/statues.htm](http://www.rawa.org/statues.htm), accessed March 26, 2009

<sup>10</sup> The *Cultural Property Export and Import Act* gives the Minister of Canadian Heritage the legislative authority to also make loans. The government has not chosen as yet to operationalize this portion of the

*Act* or for the purchase of cultural property situated outside Canada that is related to the national heritage, and

- the recovery and return of any foreign cultural property that has been imported into Canada illegally.

As long as the *Act* is in force, Canada has a legislated obligation to continue with MCPP or something similar. To not continue would mean that it was renegeing on the commitment it made when it accepted the 1970 UNESCO Convention.

As this is an international commitment, it is appropriate for the federal government to be responsible for it and not some other level of government or another organization. Other countries and international bodies prefer to deal with the national government.

***The federal government is seen as being the only organization positioned to play the lead role needed to preserve in Canada significant examples of our cultural heritage.***

Key informants were unanimous in their perspective that there is a continued need for the federal government to support preserving significant examples of our cultural heritage in Canada. Reasons cited included:

- The federal government is the only jurisdiction in Canada that can take the required larger view to meet the needs of all of Canada's cultural groups.
- Every state (federal, provincial, regional, local) has a role in the preservation of heritage, to retransmit it to future generations. The greatest responsibility is that of the federal government.
- Canadian cultural institutions have very limited acquisition budgets if they have a budget at all. Without the program, significant cultural property will be sent out of the country for sale, with the original owners in many cases not realizing the value of what was being sold.
- It provides a signal that Canada's cultural patrimony is important. As Canadians travel more, they are more conscious of the efforts in other countries to preserve and highlight their history and culture. One respondent noted, "if you don't recognize your own history, you lose your place in the world".
- It ensures a collective memory.
- Canada has a small population without the private money necessary to preserve important examples of our diverse cultural heritage.

Few key informants or survey respondents were aware of other measures designed to preserve significant examples of Canada's movable cultural heritage in Canada, and to deter or prevent the illicit importation of cultural property. Examples cited included:

- Quebec has its own legislative program (Commission des biens culturels du Québec). It provides a tax credit of 125 percent of the appraised value for items donated to Québec museums.
- Provincial controls on the acquisition and removal of fossils and minerals.
- *Treasure Trove Act* (Nova Scotia) which requires anyone who discovers or recovers any precious stones or metals in a state other than their natural state or any treasure or treasure trove, to report it to the appropriate Ministry.
- *Ontario Heritage Act* which limits the removal of artifacts or other physical evidence of human use or activity from a site.
- Receipts that registered charities can give for donations. Most collecting institutions are registered charities or part of a level of government that can issue a receipt for tax purposes for a donation to the Crown.
- Grants from the Canada Council for acquiring contemporary art.
- National institutions, official residences, penitentiary museum are all involved in maintaining and preserving movable cultural property.

#### **4.1.3 Alignment with Government and Departmental Priorities**

*MCPP aligns with the priorities of Canadian Heritage.*

MCPP is an explicit element within the PCH Program Activity Architecture: it is shown at the program sub-activity level supporting the program activity *Access to Canada's Culture* which in turn supports the strategic outcome *Canadian artistic expressions and cultural content are created and accessible at home and abroad*. It is also identified in the *Report on Plans and Priorities (RPP)* as a program for which PCH plans to request renewal from the Treasury Board of Canada. As a well-established program, it is not surprising that there is not an extensive discussion of the program in the Department's 2008-2009 *RPP*.

Program management, CCPERB members, representatives of designated institutions and others noted that MCPP directly supports PCH priorities. By encouraging the movement of cultural objects from the private to the public domain and to remain in Canada, access to them is improved for both Canadians and visitors to this country. This directly supports the conservation of objects that articulate the Canadian identity by illustrating the diversity of Canadians and our history.



*MCCP has links with the government's priorities.*

The 26 January 2009 *Speech from the Throne* made no reference to the cultural sector. The 16 November 2008 *Speech from the Throne* indicated that the government's key priority in the area of culture was a modernization of Canada's copyright laws and a stronger protection for intellectual property. In *Budget 2009: Canada's Economic Action Plan*, however, the government affirmed its commitment to the cultural sector and the need to ensure fiscal stability in a time of economic shocks. On June 26, 2009 it announced a further \$504 million in investment in arts and heritage over five years. It has also shown a willingness to utilize the tax system to support cultural institutions. In *Budget Plan 2006: Focusing on Priorities*, capital gains taxes were eliminated on donations of publicly listed securities to public charities. It was expected that this change would provide significant benefits to the arts and culture community.

The Minister of Canadian Heritage noted in his appearance before the Parliamentary Standing Committee on Canadian Heritage February 9, 2009, that "we need to take a careful look at how we invest in culture. We need to re-examine our cultural policies because many of them are rooted in traditional approaches that may not fit anymore...I want to review our existing cultural policies with a view to modernizing them... our Government understands that support for arts and culture is not a want, but a need."<sup>11</sup> His key area of focus appeared to be the broadcasting and new media sectors which would be consistent with the priorities stated in the 16 November 2008 *Speech from the Throne*.

There is nothing in the government's priorities to suggest that substantial changes to the *Act* are among its legislative priorities. As long as the *Act* is in place, the government through the Department of Canadian Heritage has a legislated obligation to continue ensuring that the key activities and outputs associated with MCCP as described in the program logic model, are delivered.

As noted by PCH program management and CCPERB members, the government is currently focused on economic stimulus. Donations under MCCP were seen as a means to support local institutions and thereby their communities. They also relieve government from some of the cost of conserving art thereby strengthening government finances.

Others took the perspective that MCCP is very consistent with the government's longer-term commitments to arts and heritage as evidenced through its commitment to two national museums and its renewal of major funding for arts and heritage announced June 26, 2009. MCCP's efforts to control illicit imports and exports is also consistent with the government's focus on law and order and the grants program which requires institutions to provide at least 50 percent of the funds required to acquire cultural property is consistent with the government's emphasis on public/private partnerships.

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<sup>11</sup> [www.pch.gc.ca/pc-ch/minstr/moore/disc-spch/20090209-eng.cfm](http://www.pch.gc.ca/pc-ch/minstr/moore/disc-spch/20090209-eng.cfm), accessed March 26, 2009

## 4.2 Success and Impacts

### 4.2.1 Immediate/Intermediate Outcomes

#### *General*

*Activity occurs each year for each of the main subcomponents of MCPP.*

Success for MCPP is difficult to quantify in terms of a target level or increase each year. The final program outcomes as defined in the program logic model are:

- Significant cultural property is preserved by designated institutions so that they may be accessible for current and future generations; and
- Canada respects its international cultural property obligations.

In promoting the preservation of significant cultural property, MCPP creates a framework that encourages Canadians to keep their cultural property in Canada by donating or selling it to a designated Canadian institution and for Canadian institutions to acquire property of outstanding significance and national importance to Canada that is already owned by collectors outside the country. How much of this happens in a given year is dependent on the owners wanting to dispose of their cultural property and designated institutions having sufficient funds to acquire it, when the articles are put up for sale. Owners cannot be compelled to dispose of their assets and for property legally held outside of Canada, Canadian institutions compete with other collectors from around the world.

MCPP's level of activity from year to year, is reflective of this framework. As discussed more fully in the balance of this section, in some years program activity is up and other years, it is down. In each year, new institutions were designated, cultural property was certified and donated and sold to designated institutions, grants were provided to designated institutions to enable them to acquire cultural property of outstanding significance and national importance, and export permits were delayed and some of the items were subsequently acquired by designated institutions.

#### *Certification*

***Certification of cultural property and the provision of tax certificates to donors have had a positive impact on the amount of cultural property donated or sold to designated institutions.*** On average, \$125 million a year in cultural property deemed to be OSNI was certified by the CCPERB and tax certificates were issued to the owners. Almost all of the items certified (over 99 per cent) are ultimately donated or sold to designated institutions (see Table 2).

All of the key informants with an opinion on certification indicated that it has been a success either completely or partially. Institutional respondents to the survey were also

very positive about the success of the program with over 85 percent indicating that the tax benefits resulting from certification of cultural property donated or sold to designated institutions has been very or extremely successful. Over 70 percent indicated that MCPP was extremely important or very important in enabling the institution to obtain objects that it would not have otherwise been able to acquire. Over 80 percent of donors indicated that MCPP has encouraged them to donate/sell more cultural objects to designated institutions than they would have otherwise.

**Table 2: Number and Value of Items Donated or Sold, 2005-06 to 2008-09**

	2005-06	2006-07	2007-08	2008-09
# of Determinations and Re-determinations	769	840	849	852
Value of Determinations & Re-determinations	\$72,294,818	\$114,487,613	\$170,410,488	\$144,604,922
# of determinations/redeterminations resulting in donations or sales to designated institutions	765	835	841	848
% of determinations and redeterminations resulting in donations or sales	99.5%	99.4%	99.1%	99.5%

Some very significant collections are now available to the public as a result of the program. Archival material that might have been destroyed has been preserved. Several respondents noted that there is a very limited secondary market for archival material so the existence of the tax credits in particular have encouraged owners to donate the materials rather than destroying it. With the larger collection arising from the donations/sale of certified cultural property, more exhibitions can be held and educational programs mounted. As a number of key informant interviewees and survey respondents noted, institutions have become very dependent on the donations they receive this way to build their collections. Few institutions have a significant acquisition budget.

The primary complaint with certification was the process institutions had to go through to obtain it. Several interviewees noted that the program is extremely beneficial for well-to-do donors and while the institution does build up its collection, it also needs to find the funds to underwrite the ongoing costs of ownership (maintenance, insurance, storage, conservation, research so that the works can be properly exhibited, publication, etc.). No federal programs provide ongoing operating support for permanent collections. Provincial and territorial governments, however, have programs in place to contribute funds for some ongoing support.

The tax provision is of limited or no value to creators of the work or potential donors who may have a relatively low income. These individuals would rather receive cash rather than a tax credit. About two-thirds of donors who responded to the survey indicated that a significant financial benefit was generated from their donation/sale of objects to designated institutions while for over a quarter of respondents, it did not. Just over half

of donors indicated that they would have donated/sold the object(s) to a designated institution regardless of the tax incentives while a similar number indicated that the tax incentives for donations/sales were always or often an important factor in deciding to donate/sell cultural property. Over 90 percent of donors would recommend the MCPP's tax incentives to a friend, neighbour, business associate or family member.

***Designation of Institutions***

***The vast majority of institutions likely to seek designation have already obtained it.***

Over the past four years as shown in Table 3, there were less than five new Category “A” institutions designated each year and about twice as many Category “B” institutions. Roughly 275 institutions are designated Category “A”.

All key informants who expressed an opinion stated that they believe that the designation component has been a success, either completely or partially. Almost 80 percent of institutions that responded to the survey indicated that the designation of collecting institutions and public authorities wishing to acquire certified cultural property has been very or extremely successful. Key informants from a few institutions, however, expressed concerns about the designation process.

**Table 3: Number of Designations of Institutions, 2005-06 to 2008-09**

	2005-06	2006-07	2007-08	2008-09
New Category “A” Designations	3	4	3	2
Total Category “A” Designations	271	275	278	276 <sup>12</sup>
New Category “B” Designations	8	10	8	13

***Grants to Acquire Cultural Property Threatened with Export or Available for Purchase Outside Canada***

***Available grants have enabled some Canadian institutions to acquire cultural property threatened with export or available for purchase outside of Canada.*** As shown in Table 4 below, between six and nine objects were retained or repatriated most years included in the scope of this evaluation, with assistance of a grant from MCPP. Items with an approximate value of \$9.3 million were acquired with the assistance of almost \$4.6 million in MCPP grants.

Designated institutions acquired between 25 to 40 percent of the objects for which a permanent export permit was initially denied and a delay period imposed (see Table 5) over a three year period. Only one item threatened with export for which a grant was available was exported because Canadian institutions were unable to acquire the object. Five items were not patriated/repatriated back to Canada during this period because the institutions were unsuccessful at auction.

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<sup>12</sup> The new Designation Tracking instrument has identified cases where Category ‘A’ institutions were listed twice under different names, etc. As a result, the total number of institutions is not simply the sum of the number designated the previous year plus the number of new designations.

All key informants who expressed an opinion stated that they believe that the grant component has been a success, either completely or partially in enabling institutions to acquire cultural property that would otherwise leave the country or to acquire significant property that was already out of the country. Just over a quarter of institutional respondents to the survey indicated that providing grants was very or extremely successful. Slightly more did not know.

In the interviews and surveys, a significant number voiced concern about the total amount of funds available (\$1.2 million), and the extent to which applicants knew how much was available.

**Table 4: Number and Value of Grants and Their Use, 2005-06 to 2008-09**

	2005-06	2006-07	2007-08	2008-09
# of grants made	10	9	15	6
value of grants	\$1,163,680	\$1,486,337	\$1,714,913	\$221,734
Value of items obtained with the assistance of MCPP grants	\$1,942,047Cdn + \$120,000 US	\$2,721,007 Cdn	\$4,053,939 Cdn	\$424,248 Cdn
# of items delayed, acquired by institutions with grant assistance	4	3	6	0
# repatriations/patriations	6/0	9/0	9/0	2/4
# of items exported because Canadian institution was unable to acquire object	0	0	1	0
value of items exported	0	0	\$200,000 US	0
# of items not repatriated/patriated because a Canadian institution was unsuccessful at auction	1	0	1	2
value of items not repatriated/patriated because Canadian institution was unsuccessful at auction	\$750,000	\$0 (none at auction this year),	\$555,084	\$129,725 Cdn

## *Export Controls*

*Export controls have the intended impact at least some of the time.*

Thirty-two of the 38 (84.2%) appeals that came before the CCPERB during the period April 1, 2005 to March 31, 2009 were denied, resulting in a delay. The number of delays imposed by the CCPERB has been decreasing steadily over the past four years (see Table 5). In 2008-09, less than one percent of all objects for which a permanent export permit was requested had a delay imposed, while in 2004-05 8.2% of the requests had a delay imposed. Program management attributes this to fluctuations in the market place. The sale of a collection in 2004-2005 resulted in a large number of export permit delays.

**Table 5: Number of Applications for Export, Number of Delays and Value of Items Acquired, 2005-06 to 2008-09**

	2005-06	2006-07	2007-08	2008-09
# of applications for permanent export	237	342	267	293
# of applications reviewed by the Board	12	14	9	4
# of delays imposed by Board	10	13	8	1
% of delays imposed in relation to # of applications	4.2 %	3.8 %	3.0 %	0.3%
# of items for which an export permit was refused that are subsequently obtained by a designated institution	4	4	2	0
% of items delayed that were subsequently acquired by a designated institution	40.0%	30.8 %	25.0 %	0.0%
Value of items for which an export permit was refused that are subsequently obtained by a designated institution	\$1,332,300 Cdn + \$315,000 US	\$437,027.75 Cdn + \$140,000 US	\$390,000 Cdn + \$35,000 US	0
# of export permits issued after delay period expired	5	7	5	1

The next three years were seen as being more typical with roughly three to four per cent of all requests for permanent export permit delayed and 2008-2009 an anomaly.

Designated institutions acquired ten of the 32 objects (31.25 per cent) for which a permanent export permit was initially denied and a delay period imposed, 12.5 per cent of the objects stayed in Canada, and permanent export permits were issued for the balance after the delay period ended.

Over 90 percent of key informants with an opinion stated that they believe that the export control component has been a success, either completely or partially. A number of key

informants and survey respondents, however, commented about the need to increase the values for a number of items on the control list. Export controls are tightly linked with the grants component of the program, which provides institutions with time and financial assistance in acquiring the objects.

Almost two-thirds of key informants with an opinion stated that significant cultural property is not being illegally exported from Canada. Almost half of export permit applicants who responded to the survey think, however, that controlled cultural objects leave Canada without permanent export permits some of the time. Almost another quarter think this occurs most of the time or all of the time.

According to the 2005 Evaluation “The actual volume of cultural objects exported illegally is unknown but several stakeholders indicated that significant numbers of exports bypass the export controls and that some institutions ignore the temporary export controls for travelling exhibitions.”

***Import Controls***

***Potential illegal imports are retained each year at ports of entry and a limited number have been returned to the country of origin.***

On average, each year there are 34-35 detentions at the port of entry by CBSA Border Service Officers and of these, less than ten percent result in a referral to the RCMP or the Department of Justice (see Table 6 below). Nine items have been returned over the past four years to five different countries. There is no basis for determining whether this is a reflection of the enforcement effort or of the low number of attempts to bring cultural property into the country illegally. As one respondent noted, “if we cannot control the smuggling of illegal cigarettes, how are we ever hoping to deal with cultural property”.

**Table 6: Number of Items Detained as Potentially Imported Illegally, Cases Referred and Items Returned**

	2005-06	2006-07	2007-08	2008-09
# of cases reviewed by MCPP after referral by CBSA	43	34	39	22
# of referrals to RCMP and/or DoJ	3	1	2	5
# of items returned after a successful Action for Recovery	3	0	0	6

Over 90 percent of key informants with an opinion indicated that they believe that the import control component has been a success, either completely or partially and that Canada is not a major destination for illegally imported significant cultural property. Many of the respondents have limited experience with import controls and expressed no opinion on them. In the survey, over half of institutional respondents didn’t know how successful the MCPP has been in deterring or preventing the illicit importation of cultural property. Just over a quarter indicated that it had been very successful or extremely

successful in this regard. Expert examiners responded in a similar manner as institutional respondents to the survey.

#### **4.2.2 Final Outcomes**

All key informants stated that they believe that the program has improved Canadians' access to significant cultural property objects and collections, a planned final outcome of MCPP, because:

- The tax incentives encouraged donations and facilitated the transfer of cultural property from private to public ownership;
- It led to the growth of institutions' collections of cultural property;
- It has made material available for research purposes;
- The program components of certification, designation, grants and export controls worked as designed.

The statistics collected by MCPP confirm that a significant amount of cultural property was transferred from private to public ownership during the period April 1, 2005 to March 31, 2009. Over \$500 million worth of cultural property was certified for tax purposes during this period and only a negligible amount was not ultimately transferred. Statistics are not available on the total growth of institutions' collections of cultural property but there is no reason to believe that they would have disposed of a significant portion of their collections causing them to shrink in size<sup>13</sup>. As a result, one can conclude that institutions' collections of cultural property grew as a result of the tax incentives available under MCPP. The responses from donors to the survey indicate that some of the items would have been donated without the tax incentives but the amount was higher than it would have been otherwise.

Some institutions are known to have mounted significant exhibitions of the property acquired through MCPP. Other institutions indicated in their responses to the survey that they have insufficient funds to undertake the necessary research and to properly display the acquired works. As a result, there is a risk that the donated items will remain in storage.

The 2005 Evaluation noted: "The certification, designation and grants components are contributing to the achievement of the MCPP's preservation objective, although the absolute impact of their contribution is unknown." Based on the information gathered from the current evaluation, this continues to be the case.

Most Canadian key informants with an opinion stated that they believe that Canada is seen as a leader or plays a significant role in protecting cultural property and that it is

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<sup>13</sup> The Canadian Museum Association in its definition of a museum indicates "Museums acquire, preserve, research, interpret and exhibit the tangible and intangible evidence of society and nature. As educational institutions, museums provide a physical forum for critical inquiry and investigation." ([http://25538.vws.magma.ca/en/info\\_resources/reports\\_guidelines/museum\\_definition/index.php](http://25538.vws.magma.ca/en/info_resources/reports_guidelines/museum_definition/index.php))



respecting its international cultural property obligations, which is the other planned final outcome of MCPP. International respondents, if they had a perspective on Canada, saw it sitting in the middle. It is not seen as a major destination or major source for illegally exported/imported material.

### **4.2.3 Unintended Impacts**

Key informants and survey respondents identified a wide variety of perceived<sup>14</sup> unintended impacts, both positive and negative, of the program.

Examples of perceived positive benefits cited included:

- It established the quality of the designated institution's professional standards in programming, staffing and facility. Further, it ensures a high level of ongoing care of the collection, and the institution's operations. These features confer a status of best professional practice that can be levered to reassure donors of the credibility and standards of the receiving institution; to persuade both private and institutional collectors to lend works to exhibitions; to establish positive relations with donors and potential donors; and for grant applications. (This was identified by 20 percent of institutional respondents who cited positive benefits and by several of the key informants.)
- Generated national and international awareness of the breadth and quality of the collection and facilitated the loan of important works from abroad and/or generated interested for temporary loans from abroad.
- The institution was better informed of current issues and legislation regarding cultural heritage property.
- Enables Canadian researchers to have ready access to cultural property in other countries for research without suspicion that the cultural property from those countries will be illicitly imported to Canada.
- Improved financial performance of the institution.
- Increased institutional profile as a result of the cultural property donated which lead to increased donor and government funding and/or encouraged donations from others.
- Greater scrutiny now of non-cultural property gifts as a result of the requirements for accepting certified cultural property.

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<sup>14</sup> Respondents' perspectives may reflect conditions that have been prevalent for centuries, and/or a misunderstanding of what is actually occurring. The study was not designed to follow up with respondents to explore more fully why they were of a particular perspective and to seek clarification where their perspective was inconsistent with other information.

Examples of perceived unintended negative impacts that were identified include:

- Difficulty in acquiring cultural property consistent with the vision of the institution. Institutions are acquiring donated objects which may or may not be consistent with its own vision. Just over a third of institutional respondents to the survey indicated that they had felt inappropriate pressure at times from a potential donor/seller to apply for certification of objects that they might not otherwise wish to have in the collection.
- Lost sales by export permit applicants. Reasons included potential buyers found something else to buy in the intervening period and cancelled the sale, and reluctance on the part of international buyers to purchase cultural property in Canada as they may not be able to export it from Canada.
- The growing burden on institutions for the care and conservation of donated materials, and the lack of financial support available for this.
- Individuals acquiring cultural property solely for the tax benefits that would be available if they donated it.
- Inflated valuations of cultural property. However, most respondents did not share this perspective. In responses to the surveys, almost 80 percent of donors indicated that they disagreed or strongly disagreed that fair market values determined by the CCPERB are sometimes too high. Approximately a third agreed or strongly agreed that the fair market values are sometime too low while almost half disagreed. Three quarters of institutional respondents to the survey indicated that fair market values determined by the CCPERB are usually about right. Less than five percent thought that the values were occasionally too high.

## **4.3 Effectiveness and Alternatives**

### **4.3.1 Comparison with Other Countries<sup>15</sup>**

*Other countries have developed frameworks for protecting movable cultural property based on their priorities and objectives. Australia and the United Kingdom have frameworks most similar to that in Canada.*

Countries that are State Parties to the 1970 UNESCO Convention are required to have certain elements in place to fulfill their obligations. A review of a number of them show that Australia and the United Kingdom have systems that are most common with Canada's MCPP. Elements in common include:

- Cultural property tax benefits,
- Designation,
- A review committee structure, and

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<sup>15</sup> The documentary information on other countries was drawn from *Summative Evaluation of the Movable Cultural Property Program: Literature Review* prepared by Evaluation Services, Office of the Chief Audit and Evaluation Executive, Canadian Heritage, September 24, 2008 and supplemented by web searches.

- Grants to enable the purchase of cultural property by national heritage institutions.

France only provides tax concessions in relation to estate and succession taxes, Germany only limits the import of objects that have been specifically identified, and the United States only limits import of cultural property stolen from a public collection or monument or from a country with which it has concluded a bilateral agreement (only 13 have been concluded). MCPP has a broader definition of illegal imports than the framework in place in Germany and the United States. It has also resulted in a greater value of items donated on an annual basis through its tax incentives in comparison to the program in place in France.

Few of the key informants from Canada were familiar with the practices in other countries. Those who were familiar with the practices in other countries indicated that all of the major signatories to the UNESCO *Convention* have some combination of controls on cultural property. In each case they have tailored the provisions to their tax regimes and cultures. Countries with a strong philanthropic culture rely more heavily on foundations than grants to assist institutions in acquiring cultural property. As already noted, some countries such as France, Greece, Italy and Turkey have absolute prohibitions on the export of certain cultural property.

#### **4.3.2 Program Delivery Alternatives**

*MCPP's basic structure is generally seen as appropriate. Many, however, would like to see enhancements and improvements to its different components.*

Most key informants and survey respondents were generally in concurrence that the basic structure of MCPP is appropriate and cost effective, providing a reasonable balance between private property rights and the public interest. The tax incentives in particular were seen as being very effective and less expensive than a cash expenditure program, which would be the other most likely way of structuring the program. Another suggestion was that legislation be enacted to prohibit the export of culturally important property. France, Greece, Italy and Turkey were identified as countries having legislation like this. A number of institutional representatives and donors responding to the survey suggested that funding provided to institutions should be improved so that they can acquire and directly pay for their collections. This would be of greater value to the artists than the tax incentives. Others recognized that in an era of fiscal restraint, enhanced funding for a new expenditure program such as this was unlikely.

While provincial governments could implement their own program, it would require a bureaucracy to support it and to interpret the rules. The existing structure at the federal level was seen as more cost effective and necessary to provide consistency across the country. The federal government by necessity must administer certain elements of the program (import and export controls) as it impacts Canada's relationship with other countries. The private sector was generally seen as not being practical given the current structure of the program (tax incentives for donors) and the need to interface with international organizations that are expecting to deal with a government. The only other possible structure would be a para-governmental agency.

Key informants and respondents to the surveys made numerous suggestions for improvements to the day-to-day workings of the program. Key opportunities for improvement identified included:

- Ensure that the composition of the CCPERB is representative of the nature of the objects that are coming before it. It is seen as being heavily weighted towards the fine arts and lacking in expertise in the area of archival material and the natural sciences<sup>16</sup>.
- Develop measures to address the loss, disappearance or destruction of electronic records<sup>17</sup>.
- Reconsider the wording of the *Act* with respect to Group I objects (those recovered from the soil and waters of Canada) to broaden it to include other specimens residing in the collections of Canadians. It was noted that there are collections of meteorites and minerals that have important scientific and aesthetic value and are of cultural significance to Canada and similar restrictions do not exist for other objects such as artwork.
- Utilize information management/information technology (IM/IT) to more effectively deliver the program. This should reduce the time and effort required by both applicants and MCPP. For example, almost 90 percent of export permit applicants who responded to the survey indicated that if they could apply for an export permit on-line, they would. This would also make it easier for potential exporters to comply with the requirements. Greater use of IM/IT should also eliminate the need to provide the same information multiple times for export permit/grant request/certification. The website should be updated and include applications, up-to-date requirements, photo examples of cultural property, etc.
- Increase the value limits of items on the Control List as they are too low and create unnecessary paperwork for objects that are not of outstanding significance and national importance. Some noted that the establishment of appropriate values is challenging as they can be quite volatile due to market fluctuations. If the value is set too high, important objects can be missed.

Other suggestions included an increase in the funding available for grants and fewer conditions associated with the grant.

Many of these opportunities for improvement have been identified previously. Areas identified for improvement in a February 2009 audit report included the development of service delivery standards; improving the currency of information on the website and the availability of forms; implementing formal risk based management processes; keeping

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<sup>16</sup> According to MCPP management, 75% of applications reviewed are for fine art, 20% are archival material, and 5% other. Four individuals with expertise in fine arts and two individuals with expertise in library and archival science are currently members of the CCPERB.

<sup>17</sup> MCPP's role is to help institutions retain and make objects available. Developing measures to address the loss, disappearance or destruction of electronic records is beyond its mandate.

program information in corporate systems up-to-date; and reviewing the timeliness with which Category A institutions are periodically reassessed.

Several respondents voiced concerns about perceived misuse of the program:

- Would be exporters claiming that they have an offer from a foreign buyer and use this to pressure Canadian institutions to acquire the object at that price.
- Limited discriminating analysis to assess whether all that is being donated is in fact of outstanding significance and national importance. This is particularly the case with audio-visual archival material where out-takes, and extra negatives are also donated. Production houses may be cleaning out their shelves to obtain a tax credit for material that was already paid for by grants, contributions or tax credits.

These concerns were voiced despite mechanisms that are in place, either through program guidelines or within the legislation, to mitigate against potential misuse. For example, the fair cash offer process defined in the legislation is intended to ensure that a fair price is offered and received when Canadian institutions seek to acquire objects threatened with export from Canada.

#### **4.3.3 Roles and Responsibilities**

*Roles and responsibilities are well established and generally understood.*

The *Act* sets out the roles and responsibilities of Canadian Heritage, the CCPERB and the Canadian Border Services Agency with respect to movable cultural property.

- Minister of Canadian Heritage
  - Recommends establishment of Canadian Cultural Property Export Control List after consultation with the Minister of Foreign Affairs
  - Advise institutions of objects for which an export permit delay has been imposed
  - Designate institutions either indefinitely or for a specific period or purpose
  - Designates expert examiners
  - Make grants to institutions and public authorities in Canada for the purchase of objects in respect of which export permits have been refused under the *Act* or for the purchase of cultural property situated outside Canada that is related to the national heritage.
  - Request the Attorney General of Canada institute an action in Federal Court or in a superior court of a province to recover cultural property that was illegally exported from a reciprocating State and the government of the reciprocating State has requested in writing that the property be recovered and returned
  - Request the Attorney General of Canada institute an action in Federal Court or in a superior court of a province to recover cultural property that was exported from

- an occupied territory of another State Party to the 2005 Convention and that State Party has requested in writing that the property be recovered and returned
- Provides administrative services to the Review Board
  - Canadian Border Services Agency
    - Receives applications for and issues export permits
    - Before permitting the export or import of any object that the officer has reason to suspect is being exported or imported in contravention of any of the provisions of the *Act* or the regulations, shall satisfy himself that the exporter or importer has not contravened any of the provisions of the *Act* or the regulations and that all requirements thereof have been complied with in respect of that object.
  - Canadian Cultural Property Export Control Board
    - Reviews applications for export permits that were denied by the CBSA
    - Makes determinations respective fair cash offers to purchase for items for which a export permit delay has been issued and an designated institution has made an offer to purchase that was not accepted
    - Makes determinations on whether an object is of outstanding significance and national importance and if it is, determines the fair market value
    - Issue tax certificates for objects of outstanding significance and national importance based on the fair market value where the object has been irrevocably disposed of to a designated institution or public authority

Other key stakeholders in MCPP are institutions, donors and expert examiners. Institutions are the primary interface between donors and the certification process. The institutions make the initial determination as to whether an object is of outstanding significance and national importance. Once the determination has been made, institutions will generally arrange for the required appraisals to support fair market determination although sometimes the donor will make the arrangements. Expert examiners who generally work for a designated institution or a university, will examine objects at the request of CBSA export permit officers to determine if an object is of outstanding significance and national importance, before a decision is made on a request for an permanent export permit.

Key informants were generally satisfied that roles and responsibilities of the various stakeholders were clear. When there is doubt, the MCPP staff were seen as helpful in providing clarification. According to key informants, the area of greatest confusion is for the general public who do not work with MCPP on a regular basis. People who find fossils or meteorites or who have inherited artwork or family heirlooms often know nothing about export controls or that there may be applicable tax incentives for donations.

Approximately three-quarters of CBSA officers reported that they are using the May 2008 Permit Officer Manual and of those, just over 80 percent are finding it to be very or extremely useful. Memorandum D-19-4-1, *Export of Controlled Cultural Property*, is

used by a similar number but is generally not found to be as useful as the Manual. Nonetheless, two thirds of CBSA officers reported that they were dissatisfied or very dissatisfied with the amount of training they had received on Movable Cultural Property export controls even though on several different questions in the survey, roughly half reported being satisfied or very satisfied with the tools/information they have been provided with to carry out their duties. Suggestions for improving their level of knowledge included having a course with actual illustrated examples of different types of cultural property, more liaison with expert examiners, field visits, on-line training, and standard operating procedures. Additional support from PCH would also be welcome in the form of updates on regulations, policy and expert examiner contact changes; updated manual and simple checklists; and information on stolen or missing cultural property for which they should be on the lookout. Export permit applicants noted in their response to the survey that airport customs personnel are not very knowledgeable and don't seem to be familiar with MCPP and temporary export permit forms.

Export permit applicants identified Canadian Heritage and the Canadian Border Services Agency as the parts of the federal government as being in the best position to work with exporters of cultural property<sup>18</sup>. Roughly 60 percent of respondents identified PCH and roughly 40 percent CBSA. Neither PCH nor CBSA is currently considering any changes to the status quo.

A number of expert examiners would also welcome further guidance on their roles and responsibilities. Almost 60 percent report that they were satisfied or very satisfied with the extent to which MCPP/CCPERB has provided them with a clear explanation of their role. Just over 40 percent were satisfied or very satisfied with the extent to which MCPP/CCPERB has provided them with the necessary tools/information they need to carry out their duties as an expert examiner.

#### **4.3.4 Sufficiency of Resources and Priority to Each Component of the Program**

*There is a general consensus that PCH's resources dedicated to administering the program and supporting the CCPERB are stretched. Resources are not available to improve and streamline the administrative processes.*

MCPP budget requirements are met through the approved transfer of resources from within the Branch and Citizenship and Heritage Sector. MCPP's annual expenditures for salary, O&M and grants over the past four fiscal years have generally ranged from \$2.5 million to \$3.0 million. While salaries and O&M costs were under budget for some years, it should be noted the O&M actual does not cover expenditures which are paid through internal transfers, such as corporate legal costs, staff training and Knowledge, Information and Technology Services (KITS).

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<sup>18</sup> Respondents were asked to identify all departments/agencies as being in the best position to work with exporters.

In 2006-07 and again in 2007-08, MCPP utilized its total grant budget and accessed its increased spending authority to meet application demand. However, in 2008-09, demand was much lower and \$900,000 was not expended. Total expenditures were always, however, within the approved spending authorities for MCPP . During the four years included in the scope of this evaluation, the value of certified property donated or sold to Canadian institutions was approximately \$500 million. Key informants were generally in agreement the program provides good value for the money and program administration was quite lean.

CCPERB members are paid at the low end for Government in Council (GIC) appointees<sup>19</sup> and expert examiners are not paid if they work for a federal, provincial or municipal institution. According to interviewees, if an institution has a good collection, it can have quite a multiplier effect in a local economy. Taxpayers can receive education, research and inspiration for years to come as a result of the foregone tax revenues associated with the donations. There were few dissenting voices. Concerns revolved around some of the program's perceived unintended consequences or the fact that some institutions did not have sufficient resources to properly maintain and/or utilize the objects donated.

Key informants, in particular PCH management and most members of the CCPERB, identified a number of different areas where additional resources could be used to streamline the operation, improve turnaround times, and improve efficiency. Areas that were identified as needed attention included:

- The designation review of institutions
- Outreach on their accomplishments, what the requirements are for the different MCPP subcomponents, control list values, the very existence of MCPP
- Improvement of the databases used to support MCPP administrative processes
- The MCPP website. It is seen as a vehicle for improved communication and the means for on-line applications

Many respondents commented on how MCPP staff have a heavy workload and that the amount available for grants should be increased.

One key informant suggested that perhaps a two-stage process should be used whereby the Secretariat would do a first assessment. Only those applications that meet certain criteria would then be brought before the CCPERB for decision.

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<sup>19</sup> According to information published by the Privy Council Office ([www.appointments-nominations.gc.ca/prflOrg.asp?OrgID=PER&type-ty=1&lang=eng](http://www.appointments-nominations.gc.ca/prflOrg.asp?OrgID=PER&type-ty=1&lang=eng)), the Chair of the CCPERB is paid a per diem of between \$475 and \$550, and members are paid a per diem of between \$350 and \$400. Travel and living expenses for meetings are also reimbursed.



*CBSA does not appear to give a high priority to the export permit process.*

PCH supports CBSA in its delivery of the export permit component of the program. Based on the input received from CBSA export permit officers who responded to the survey associated with this evaluation, almost two-thirds disagreed that there were sufficient resources to enforce the export controls for cultural property of outstanding significance and national importance. Almost half did not think that enforcing export controls for cultural property was a priority for CBSA.

#### **4.4 Other - Official Languages**

MCPD applies to any object that is on the Control List. There is no specific targeting of objects created by members of an official language minority group in terms of deeming an object to be of outstanding significance and national importance but it is a factor taken into consideration in arriving at this determination. The requirements of the Official Languages Act explicitly apply to the provision of services to the public that must be available in both official languages. All information when it is posted on the Canadian Heritage website is made available in both languages.

## 5. Conclusions

The following conclusions can be drawn from the summative evaluation of the MCPP:

### Rationale and Relevance

- There are no signs that the need to preserve significant cultural property in Canada so that it may be accessible for current and future generations and to stop illicit trade in movable cultural property, has abated. A global marketplace, in which information can be readily shared, exists for many objects. The availability of many objects has decreased due to a wider acceptance that significant cultural property should remain in the country in which it was created and an increase in the number of collectors, pushing up prices. According to UNESCO, the international illicit traffic is steadily growing. Major policing organizations such as INTERPOL and the FBI find that there is a significant and sustained illicit trade.
- The federal government through MCPP is appropriately taking active measures to ensure that Canada respects its international commitments. Canada became a signatory to the 1970 UNESCO *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and transfer of Ownership of Cultural Property* effective March 28, 1978. Since this is an international commitment, it is appropriate for the federal government to be responsible for Canada's response to it rather than some other level of government or another organization. The *Cultural Property Export and Import Act*, which describes the key elements of MCPP, was Canada's mechanism for implementing its obligations associated with accepting the 1970 UNESCO Convention.
- MCPP aligns with the priorities of Canadian Heritage and is an explicit element with the PCH Program Activity Architecture. It is also identified in the 2008-2009 *Report on Plans and Priorities* as a program for which PCH plans to request renewal from the Treasury Board of Canada. MCPP also has links to the government's priorities. Through its budget measures since taking office in February 2006, the government has shown a willingness to utilize the tax system to support cultural institutions and has provided significant investments in arts and heritage.

### Success and Impacts

- MCPP creates a framework that encourages Canadians to keep cultural property of OSNI in Canada by donating or selling it to a designated Canadian institution and for Canadian institutions to acquire property of OSNI to Canada that is already owned by collectors outside the country or is threatened with export. How much of this happens in a given year is dependent on the owners wanting to dispose of their cultural property and designated institutions having sufficient funds to acquire it, when the items are put up for sale. MCPP's level of activity from year to year is reflective of this framework. There is no specific target level or increase each year.

Key informants and survey respondents were generally very positive about the success of MCPP in achieving its objective of retaining movable cultural property in Canada.

- Evidence was found showing that most of the planned immediate, intermediate and final outcomes as documented in the Program logic model were realized during the period April 1, 2005 to March 31, 2009. Specifically:

### *Immediate*

- While the vast majority of institutions likely to seek designation have already obtained it, each year two to four Category “A” and about ten Category “B” institutions are designated for the first time.
- On average, \$125 million a year of cultural property deemed to be OSNI was certified by the CCPERB and tax certificates were issued to the owners.
- Canadian collecting institutions purchased cultural property with a value of approximately \$9.3 million with the assistance of almost \$4.6 million in MCPP grants.
- The CCPERB delayed export on 32 of the 38 (84.2 percent) applications for permanent export that came before it for review.
- On average, CBSA detained potentially illegally imported items 34-35 times a year. Less than a tenth (2.75/year) were referred to the Department of Justice and/or the RCMP for further action.

### *Intermediate*

- Almost all of the \$125 million a year on average of cultural property certified by the CCPERB was donated or sold to designated Canadian collecting institutions.
- With the 40 grants made, 30 items were repatriated/repatriated and 13 items that would otherwise have been permanently exported were permanently retained in Canada. Both key informants and export permit applicants who responded to the survey believe that controlled cultural objects leave Canada without permanent export permits some of the time. The individuals from other countries who were consulted during the course of the evaluation do not see Canada, however, as a significant source of illegally exported items.
- Fourteen items with a value of approximately \$2.7 million were retained in Canada after the owners applied for an export permit and a delay was imposed by the CCPERB and of these, a designated institution acquired ten.
- Nine items were returned to the country of origin. There is no basis for determining whether this is a reflection of the level of enforcement or of a small number of attempts to bring cultural property into the country illegally.
- Over 70 percent of institutional respondents to the survey indicated that MCPP was extremely important or very important in enabling the institution to obtain objects that it would not have otherwise been able to acquire.
- Over 80 percent of donors to the survey indicated that MCPP has encouraged them to donate/sell more cultural objects to designated institutions than they would have otherwise.

- Some recipient organizations have been able to mount significant exhibitions with the cultural property acquired through MCPP while others may have had insufficient funds available to undertake the necessary research and to properly display the acquired works.

### ***Final***

- Key informants who had an opinion were unanimous in their assessment that as a result of MCPP, there has been an increased retention in Canada of significant examples of its cultural history. Three-quarters of institutional respondents to the survey indicated that MCPP has been very successful or extremely successful in encouraging the preservation in Canada of significant examples of its movable cultural property while just over half of the expert examiners were of the same opinion. The immediate and intermediate program outcomes support these opinions.
- Canada is seen as neither a major source nor a major destination for illegally exported/imported material. It is respecting its international cultural property obligations.
- Unintended consequences of MCPP include:
  - The establishment of a perceived high standard of professional standards in programming, staffing and facility for institutions that were designated under MCPP.
  - Acquisition of cultural property that may not be consistent with the vision for the institution. This may not be a new challenge facing collecting institutions, however. To varying degrees, many of the major collections now held by public institutions were amassed and donated at some point in time by private collectors.
- MCPP provides an appropriate balance between the public interest and private rights of the owners in cultural property of outstanding significance and national importance to Canada. While many export permit applicants are concerned about lost sales because of the process, the statistics for the period April 1, 2005 to March 31, 2009 show that five percent or less of all applications for permanent export were subject to review by the CCPERB each year.

### **Cost Effectiveness and Alternatives**

- All of the major signatories to the UNESCO Convention have some combination of controls on cultural property that are tailored to their tax regimes and cultures. Countries with a strong philanthropic culture (e.g., United States of America) rely more heavily on foundations than grants to assist institutions. Other countries (e.g., France, Greece, Italy and Turkey) have an absolute prohibition on the export of certain cultural property.
- MCPP's basic structure is appropriate and cost effective but individual components need to be enhanced. Key areas that warrant attention include:

- Fine-tuning the requirements associated with some elements of the program. Specifically:
  - Criteria need to be developed for the certification of electronic records for tax purposes.
  - Review the value limits for the *Canadian Cultural Property Export Control List*. They were last adjusted in 2005 and some may now be too low.
  - Consideration should be given to broadening the definition of Group I objects (those recovered from the soil and water of Canada) to broaden it to include other specimens residing in the collections of Canadians to bring it in line with the definition of other classes of objects on the *Canadian Cultural Property Export Control List*.
  - More effective utilization of information technology to deliver the program. The systems used by MCPP to manage the program and track information were developed many years ago. Redesigned systems using current software also need to take into account how the information will be used. Basic contact information required to evaluate the program's effectiveness was not readily available for all categories of stakeholders. MCPP's web site should also become an increasingly important vehicle for making information and documents available. Finding information on the export permit process requires navigation through several screens rather than through the use of hyperlinks. The export permit application is also not available on either MCPP's or CBSA's website.

Many other suggestions for improving MCPP were made by those who provided input during the evaluation. Not unexpectedly, many wanted more funding available for grants and fewer conditions associated with the grant. The low number of items for which an export permit is initially denied and then subsequently leave the country does not suggest that a lack of funding is having a serious impact on the achievement of the desired program outcomes. It was never intended that no objects of OSNI would permanently leave the country or that all objects of OSNI outside the country and available would be patriated.

Concerns were also voiced about the composition of the CCPERB. The Governor in Council appoints the members on the recommendation of the Minister of Canadian Heritage following the framework established by the *Act*. The Minister receives input on potential candidates from a variety of sources. This is consistent with the standard process followed government wide for all Governor in Council appointments.

- Roles and responsibilities of the key stakeholders in MCPP are established by the *Act*. While some would like changes, there is no compelling reason to do so at this time.
- The value of the cultural property certified each year during the period April 1, 2005 to March 31, 2009 was roughly 50 times the amount spent on MCPP (salaries, O&M and grants). Depending on the tax bracket the donors were in, there were also foregone tax revenues to federal, provincial and territorial governments.

- MCPP has limited resources dedicated to administering the program and has little capacity at this time to make the investments required to improve and streamline its administrative processes.

### **Official Languages**

- MCPP is being delivered in compliance with the requirements of the *Official Languages Act*.

## 6. Recommendations and Management Response

The following recommendations are based on the evaluation's research findings and conclusions.

1. Make investments in information technology to facilitate more effective capture and processing of program data.

The current systems utilized by MCPP were developed many years ago before departmental standards were in place. Since that time information technology has evolved making it easier to capture and report information and increasing the expectations of users. IT and web standards now exist and the department manages the funding and pace of implementation. The application form for grants is available on the MCPP website as a PDF and the application for certification of cultural property for income tax purposes is available in Microsoft Word. Neither can be completed on line. The form used for the export permit application must be obtained from MCPP or a Canada Border Service Agency office. Finding the link to detailed information on exports on the CBSA website from the MCPP site is not intuitive. From the MCPP home page, one must navigate through three screens. The use of hyperlinks from the home page would make the navigation process easier.

This recommendation is not new. Similar recommendations were made in the October 2005 evaluation and the February 2009 internal audit. According to MCPP, enhancements have been made to its database since 2005 to capture images of cultural property presented for certification, and to record more detailed and accurate information on the values certified by the Board each year and on the review of designation applications. Further, it has been working to enable the development and implementation of on-line access application capability. Nonetheless, the evaluation found that more should still be done.

**Management Response:** Accepted

MCP proactively seeks to participate in departmental IT improvements and has undertaken several steps to be ready once the departmental initiatives are ready to proceed.

The groundwork to achieve MCP's goal to deliver a comprehensive online application capability and integrated data management system has been prepared by:

- a. upgrading MCP's SUMMA database (2008-09 and 2009-10) to meet departmental SQL standards,

**Implementation date:** Complete

- b. completing comprehensive reports (2007-08), including business requirements, threat risk assessment and options analysis to fully understand MCP IT requirements,

**Implementation date:** Complete

- c. entering into Service Level Agreements with KITS (2008-09 and ongoing),

**Implementation date:** October 31, 2011

- d. developing a tracking system (2008-09 and ongoing) to capture designation information and to generate reports on the status of ongoing designation reviews.

**Implementation date:** September 30, 2010

MCP is next in line for the PCH G&C online project (January 2010) with an estimated timeline of 18-21 months.

**Implementation date:** October 31, 2011

The departmental Information Architecture is being phased-in with a target completion date of March 31, 2010 for Phase I. MCP is preparing and reworking its web content into a user-friendly format and will be ready to participate in the the next round of program website improvements tentatively scheduled for Summer 2010.

**Implementation date:** August 31, 2010

Two of the four program application forms (Grants and Certification) are currently available online. MCP will finalize the online application form for Designation and make it available online by March 31, 2010.

**Implementation date:** March 31, 2010

The current export application is a “schedule” of the *Cultural Property Export Regulations* and must be delinked by regulatory amendment before an online form can be designed. MCP is currently planning the regulatory review process and will put forward a recommendation to the Minister to proceed with the regulatory review.

**Implementation date:** June 30, 2010

**Responsibility:** MCP Director  
MCP Manager



2. Review the current value limits established by the *Canadian Cultural Property Export Control List*.

Values for objects included on the *Canadian Cultural Property Export Control List* fluctuate depending on the demand and availability of items in the marketplace. There is general consensus that many of the values currently used as the threshold to determine if the export of an object should be controlled are too low. When the items are examined to determine if they are of OSNI, the expert examiners consistently determine that they are not, creating unnecessary work and time delays.

**Management Response:** Accepted

MCP will launch an RFP in January 2010 for a study to provide recommendations on revising Control List values. These recommendations will be based on a review of program export data, and consultation with experts, dealers and stakeholders.

**Implementation date:** March 31, 2010

Upon completion of the study, MCP will assess the recommendations and requirements for revision to the Control List and seek stakeholder validation.

**Implementation date:** September 2010

Should program analysis support revisions to the Control List values, recommendations will be put forward to the Minister.

**Implementation date:** December 30, 2010

**Responsibility:** MCP Director

3. Develop criteria for the certification for tax purposes of electronic resources.

Archival material historically has had a physical form—letters, books, brochures, posters, etc. More and more, these types of resources are being produced and stored electronically changing significantly the whole concept of archival material and how it should be valued. The CCPERB has already initiated efforts to develop more detailed criteria for audiovisual material. This should be expanded to consider the consequences of changes in technology on all items in Group VII, Textual Records, Graphic Records and Sound Recordings.

**Management Response:** Accepted

Development of criteria for the certification of electronic resources is in progress. Pilot testing of the newly developed criteria is scheduled to begin in January 2010. Completion of the criteria and final implementation is scheduled for June 2010.

**Implementation date:** June 30, 2010

**Responsibility:** MCP Director  
MCP Manager

4. Consider broadening the definition of Group 1 objects on the *Canadian Cultural Property Export Control List*.

Many of the categories of objects defined by the *Canadian Cultural Property Export Control List* apply to any object whether made inside Canada or not, if it has been in Canada for a specified period of time and is of a minimum value (e.g., applied and decorative art, fine art, scientific or technological objects). The minimum value applicable increases if the object does not have a specific link to Canada (e.g., be identified with a prominent person, institution or memorable event that relates to the history or national life of Canada). Group 1 objects (mineral and palaeontological specimens, and archaeological objects) by definition must have been recovered from the soil of Canada, the territorial sea of Canada or the inland or other internal waters of Canada to be covered by the Control List. There may be significant and important objects of non Canadian origin, however, which would otherwise fall into Group 1 that would be of value to Canadians if they remained in Canada.

**Management Response:** Accepted

MCP will review available data and consult target groups to assess both the feasibility and implications to stakeholders of including non-Canadian objects in Group I of the Control List. This question will be integrated into the Control List values review study (see Recommendation 2) to maximize efficiency, effectiveness and to minimize expenditure of financial resources.

**Implementation date:** March 31, 2010

Should program analysis support broadening Group I, recommendations will be put forward to the Minister.

**Implementation date:** December 30, 2010

**Responsibility:** MCP Director

## List of Annexes

The following annexes are available upon request.

Annex A: Logic Model for the Movable Cultural Property Program

Annex B: Movable Cultural Property Program Financial Resources

Annex C: Evaluation Issues/Questions/Indicators

Annex D: Documents Reviewed

Annex E: Key Informants

Annex F: MCPP Performance Indicators, 2004-2005 to 2008-2009

Annex G: Summary of Practices in Other Countries

Annex H: Suggestions for Improvement from Key Informants and Survey Respondents

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