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CULTURAL PROPERTY EXPORT AND IMPORT ACT

**DESIGNATION OF INSTITUTIONS
AND PUBLIC AUTHORITIES
INFORMATION AND PROCEDURES**

Revised June 2000

Canada 

DESIGNATION OF INSTITUTIONS AND PUBLIC AUTHORITIES

Information and Procedures

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I. INTRODUCTION

This booklet has been prepared to assist institutions and public authorities with the preparation of applications for Category 'A' and Category 'B' designation, pursuant to section 2 and subsections 32. (2) and (3) of the *Cultural Property Export and Import Act (Act)*.

"Designation" of institutions and public authorities under the *Act* ensures that institutions wishing to apply for **Cultural Property Income Tax Certificates (T871s)** or for **Movable Cultural Property Grants and Loans** meet specific legal, collections management and environmental requirements to properly care for, preserve, and make publicly accessible, objects or collections that are of "outstanding significance and national importance" to the Canadian heritage. Designation is granted by the Minister of Canadian Heritage.

The Canadian Cultural Property Export Review Board certifies cultural property for income tax purposes and issues Cultural Property Income Tax Certificates in relation to donations and sales of cultural property made to **designated institutions and public authorities**. These tax certificates provide the donor or vendor with additional tax incentives beyond those available through regular charitable tax receipts.

The Minister of Canadian Heritage may award grants or loans to **designated institutions and public authorities** to assist with the patriation/repatriation of cultural property or the acquisition of cultural property for which a permanent export permit has been refused.

In other words...

- *In order for property to be certified as cultural property for income tax purposes by the Canadian Cultural Property Export Review Board, the recipient institution or public authority must be designated at the time the legal transfer of ownership takes place.*
- *Gifts or sales of property made prior to the effective date of designation are not eligible to be certified as cultural property by the Review Board.*
- *An institution or public authority must be designated at the time it makes an application for certification to the Canadian Cultural Property Export Review Board or an application for a Movable Cultural Property Grant or Loan.*

Application forms and further information about any of the procedures described in this booklet may be obtained by contacting:

**Movable Cultural Property Directorate
Department of Canadian Heritage**

**25 Eddy Street, 9th Floor (25-9-N)
Gatineau, Quebec K1A 0M5**

Telephone: (819) 997-7761

Toll free: 1-866-811-0055

Fax: (819) 997-7757

Email address: mcp-bcm@pch.gc.ca

II. THE CULTURAL PROPERTY EXPORT AND IMPORT ACT

The *Cultural Property Export and Import Act (Act)* came into force on September 6, 1977 to encourage and ensure the preservation in Canada of significant examples of its cultural, historic and scientific heritage. The *Act* regulates the import and export of movable cultural property and provides special tax incentives to encourage Canadians to donate or sell important objects to public institutions in Canada.

The *Act* features the following provisions:

1. Export Control

The export of cultural property is governed by the *Canadian Cultural Property Export Control List*, which describes the range of objects for which export permits are required. The departure from Canada of an object falling within the *Control List* can be postponed if, as the result of an appeal by an applicant who has had an export permit refused, the Canadian Cultural Property Export Review Board judges that a delay period should be established.

A delay period (between two and six months) provides an opportunity for **designated** institutions and public authorities in Canada to purchase property that has been denied an export permit. If the object is not purchased by the end of the delay period, an export permit may then be granted. The export control system is administered by the Canada Customs and Revenue Agency, acting on the advice of locally appointed Expert Examiners. For more information, refer to the Movable Cultural Property publication entitled Exporting Cultural Property from Canada.

2. Canadian Cultural Property Export Review Board and the Certification of Cultural Property for Income Tax Purposes

The Canadian Cultural Property Export Review Board is an arm's length administrative tribunal that reports directly to the Minister of Canadian Heritage. It was established pursuant to section 18 of the *Act*.

In addition to the establishment of delay periods in relation to appeals of refused export permits, the Board certifies cultural property for income tax purposes. In particular, it is responsible for making determinations with respect to the "outstanding significance and national importance" and the fair market value of objects or collections donated or sold to **designated** Canadian museums, art galleries, archives and libraries.

The *Income Tax Act* provides for an exemption from the payment of capital gains taxes on certified cultural property that is donated or sold to **designated** institutions or public authorities in Canada. This exemption is a tax incentive to encourage donations of certified cultural property to **designated** institutions and does not apply to regular charitable donations.

Gifts of certified cultural property by individuals are also eligible for a tax credit whose calculation is not limited to a percentage of net income as in the case of a regular charitable tax receipt, where the tax credit is calculated on the fair market value up to 75% of net income in a given year. When certified cultural property is donated by a corporation, the corporation may deduct an amount up to the fair market value of the gift in computing taxable income. Any amounts not used in the year of donation or sale may be carried over for the five following years.

For further information, refer to Revenue Canada's publication entitled Gifts and Income Tax (PI 13) and the Review Board's publication, Applications for Certification of Cultural Property for Income Tax Purposes: Information and Procedures.

3. Grants and Loans

Funds are available through an annual parliamentary appropriation to assist designated Canadian institutions or public authorities in purchasing significant cultural property that is threatened by export, and for which the Canadian Cultural Property Export Review Board has established a delay period. Funds are also available to repatriate or patriate cultural property related to Canada's heritage that is being offered for sale on the international market.

4. International Cooperation

The *Cultural Property Export and Import Act* contains provisions prohibiting the import into Canada of cultural property illegally exported from foreign states. In 1978, 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*. This Convention, which contains measures to prevent the illicit import, export and transfer of cultural objects, places the onus on each country to develop its own rules for protecting and preserving its cultural heritage. Canada's *Act* includes procedures for the recovery and return of foreign cultural property which has been illegally exported from its country of origin.

III. ABOUT DESIGNATION

Subsection 32.(1) of the *Cultural Property Export and Import Act* states that an institution or public authority must be designated at the time that cultural property is certified by the Canadian Cultural Property Export Review Board and at the time that the legal disposition of the cultural property to the institution takes place. For this reason, an application for designation may not be made in relation to objects or collections for which the institution has already obtained legal title.

There are two categories of designation, depending upon the mandate of an institution or public authority and its ability to meet professional standards for the preservation of cultural property:

Category 'A' Designation is granted for an indefinite period of time and applies to the acquisition of any object that falls within the collecting mandate of the institution or public authority as defined at the time of designation.

Category 'B' Designation relates exclusively to the acquisition of a specific object or collection, and not to any other object which may be offered in the future.

What are the benefits of designation to an institution or public authority?

Only institutions and public authorities that have been designated by the Minister of Canadian Heritage are eligible to seek certification of cultural property for income tax purposes from the Canadian Cultural Property Export Review Board, and to apply for Movable Cultural Property Grants or Loans.

Remember...

An institution or public authority must be designated in order for a donor or vendor to receive a Cultural Property Income Tax Certificate (T871) from the Canadian Cultural Property Export Review Board and to enjoy the benefits contained therein.

If a charitable organization does not intend to have cultural property donations or sales certified by the Review Board, it need not be designated. In such cases, it may issue a regular charitable tax receipt to the donor or vendor, whose value is normally based on an independent fair market value appraisal.

The differences in the actual tax benefits between the two regimes would depend on the fair market value of the gift or sale, the capital gain realized and the donor's/vendor's financial portfolio. Such matters are best discussed with an accountant. For further information, refer to the Canada Customs and Revenue Agency's publication entitled *Gifts and Income Tax*.

How does an institution or public authority determine whether to apply for Category 'A' or Category 'B' designation?

Criteria for Category 'A' Designation

An organization would apply for Category 'A' designation if it is a well established custodial institution with exhibition and storage facilities and professional staff appropriate to the size and nature of the collection in place. To be considered for Category 'A' designation, an institution must:

1. meet the legal requirements for designation (refer to page 10);
2. have been in operation for at least one year;
3. have, as its primary mandate, the collection, preservation, and exhibition of certain classes of cultural property as set out in, but not limited to, the *Canadian Cultural Property Export Control List*, as follows:

<i>Group I</i>	<i>Objects Recovered from the Soil or Waters of Canada</i>
<i>Group II</i>	<i>Objects of Ethnographic Material Culture</i>
<i>Group III</i>	<i>Military Objects</i>
<i>Group IV</i>	<i>Objects of Applied and Decorative Art</i>
<i>Group V</i>	<i>Objects of Fine Art</i>
<i>Group VI</i>	<i>Scientific or Technological Objects</i>
<i>Group VII</i>	<i>Textual Records, Graphic Records and Sound Recording</i>
<i>Group VIII</i>	<i>Musical Instruments</i>

4. have a collection in place which it preserves and displays to the public;
5. be open to the public on a regular basis throughout the year;
6. have a full-time paid professional staff of an appropriate size and with appropriate qualifications;
7. actively acquire property that is likely to meet the criteria of "outstanding significance and national importance" established under section 11 of the *Cultural Property Export and Import Act*.
8. have comprehensive collections management, exhibition, conservation, acquisition, and deaccessioning policies that are revised every few years;
9. maintain appropriate standards of relative humidity and temperature control, air filtration and lighting in the areas in which the cultural property is displayed and stored;

10. have a security policy and a fire safety policy that are revised every few years;
11. demonstrate that appropriate security and fire protection measures are in place for the collection;
12. have a disaster plan that is updated annually;
13. demonstrate that appropriate measures have been taken to protect collections from the damaging effects of water, earthquakes, and other such emergencies.

Remember...

Category 'A' designation applies only to those classes of objects that are directly linked to the collecting mandate of the institution. If a Category 'A' institution wishes to apply to the Review Board for an income tax certificate for an acquisition that does not fall within the institution's normal collecting mandate, an application for Category 'B' is normally required.

Because many public authorities, universities and other publicly-funded educational facilities do not have as their principal mandate the collection, preservation and exhibition of cultural property, the entire facility would not normally be eligible for Category 'A' designation. However, collecting institutions that operate under the jurisdiction of a public authority, university or other publicly-funded educational facility may be considered for designation, even though they may not have a separate legal identity. In the case of an art gallery that operates under the jurisdiction of a university, for example, only the art gallery component and its exhibition and storage areas would normally be considered for designation.

Criteria for Category 'B' Designation

An institution or public authority would apply for Category 'B' designation if it does not meet all the criteria for Category 'A' designation yet wishes to apply to the Canadian Cultural Property Export Review Board to have specific proposed acquisitions certified or to apply for a Movable Cultural Property Grant or Loan for a specific object. An application for Category 'B' designation may only be made when a specific acquisition is in view and a preliminary agreement has been established between the institution and the donor or vendor.

In order to be considered for Category 'B' designation, an institution or public authority:

1. must meet the legal requirements for designation (refer to page 10);
2. must have been in operation for more than one year;
3. must meet those Category 'A' criteria that are deemed necessary for the adequate preservation of the proposed acquisition(s) in view;

4. (a) is not necessarily established primarily for the purpose of collecting, exhibiting and preserving cultural property but wishes to have cultural property certified by the Review Board on a one-time highly infrequent basis (often in the case of a public authority or educational institution); **or**
- (b) has been recently established (within the last two to five years) and does not yet meet all of the requirements for Category 'A' designation, but wishes to apply for Category 'B' status as a step towards becoming a Category 'A' institution; **or**
- (c) is in the process of upgrading its facilities or moving to a new building but does not yet meet all of the requirements for Category 'A' designation.

Applicants for Category 'B' designation are expected to demonstrate that they have appropriate professional expertise and technical measures in place to ensure the preservation of the proposed acquisition for which designation is being sought. Particular emphasis is placed on where the proposed acquisition will be exhibited and stored and how it will be preserved in terms of the environmental, fire protection and security measures in place.

Designation and Certification: Two Different Processes

It is important to keep in mind that, while interrelated, designation and certification are two completely separate processes for the purposes of the *Cultural Property Export and Import Act*.

"Designation" is a ministerial responsibility, while "certification" is the responsibility of the Canadian Cultural Property Export Review Board. For property that an institution or public authority wishes to have certified by the Review Board, the designation must be granted by the Minister of Canadian Heritage and be effective prior to the date that the property is legally transferred to the recipient institution or public authority.

Tax benefits realized from certified cultural property are applicable in the year in which the legal transfer of ownership to the institution takes place and the five following years. Even if the Review Board certifies the cultural property in the year following the year of donation, the tax benefits will still be applicable to the year of the donation.

For example:

- i) if an institution is granted Category 'B' status with an effective date of December 15, 2000; and
- ii) the legal transfer of the gift takes place on December 31, 2000; and
- iii) the Board certifies the gift as cultural property in March of 2001, the tax benefit will nonetheless be applicable to the 2000 tax year.

When should an application for certification of cultural property for income tax purposes be submitted in relation to an application for Category 'B' designation?

Category 'B' applicants should make every effort to complete one application for designation in relation to the total number of objects they wish to have certified as cultural property by the Review Board in a given year. This not only cuts down on the administration associated with processing a designation request but saves time in the long run for both the applicant and Movable Cultural Property staff.

While the applicant may submit its application(s) for certification at the time that the application for Category 'B' designation is submitted, it is advisable to wait until the designation has been granted. Either way, the designation must be approved before the Review Board Secretariat is in a position to review the application(s) for certification for income tax purposes.

IV. LEGAL REQUIREMENTS FOR DESIGNATION

Organizations that wish to apply for Category 'A' or Category 'B' designation status must have a legal jurisdiction that corresponds to one of the following two definitions as established in section 2 of the *Cultural Property Export and Import Act (Act)*:

"institution" means an institution that is publicly owned and is operated solely for the benefit of the public, that is established for educational or cultural purposes and that conserves objects and exhibits them or otherwise makes them available to the public;

"public authority" means Her Majesty in right of Canada or a province, an agent of Her Majesty in either such right, a municipality in Canada, a municipal or public body performing a function of government in Canada or a corporation performing a function or duty on behalf of Her Majesty in right of Canada or a province.

Institutions

Organizations that meet the definition of "institution" may be established in numerous ways and under various jurisdictions. The following are examples of the types of institutions that are potentially eligible for designation:

- museums, public art galleries, archives, and libraries;
- provincially or federally chartered non-profit corporations;
- institutions chartered as "societies" under provincial legislation;
- museums, public art galleries, archives and libraries affiliated with religious or ethno-cultural organizations, provided that membership or use of facilities is not restricted on religious or ethno-cultural grounds.

Government or University Institutions

Institutions that operate under the jurisdiction of a government (ie. a public authority), or university are normally considered to meet the legal criteria for designation by virtue of the public nature of their establishment. Specifically, such institutions:

1. operate under the direct control of a public authority, that is, the Government of Canada, a province, or a municipality; or

2. are non-profit publicly owned and established by acts of Parliament or a provincial legislature which report to Parliament or the legislature through a Board of Trustees (eg. National Gallery of Canada, National Archives of Canada); or
3. are under the direct control of publicly owned universities and colleges (eg. Museum of Anthropology, University of British Columbia).

It is important to note that public authorities or universities, as a whole, are not eligible for Category 'A' designation since they do not have the principle mandate to collect and preserve cultural property and to make such material available to the public. They may, however, be considered for a "one-time" Category 'B' designation in relation to a specific proposed acquisition. As an example, the Carleton University Archives, not Carleton University, is a Category 'A' institution. However, Carleton University could be considered for Category 'B' designation in relation, for example, to an outdoor sculpture to be displayed on campus grounds.

Other Public Institutions

Most designated bodies are institutions that are provincially or federally chartered non-profit corporations or are chartered as "societies" under provincial legislation. Some such institutions are affiliated with religious or ethno-cultural organizations. Regardless, such institutions must meet the following legal criteria in order to be considered for designation:

The **charter or letters patent** must establish that:

- a) the institution is *non-profit* in nature and any proceeds arising from its activities will be used only to further its objectives;
- b) the aims and objectives of the institution are to collect and preserve cultural property and to make it available to the public;
- c) the institution is a registered charity;
- d) in the event of winding up or *dissolution* of the organization, its property shall be distributed only to other non-profit, publicly owned charitable organizations, and preferably to a designated institution or public authority with a similar mandate;
- e) *membership shall be open* to all individuals having passed the age of majority who support the aims and objectives of the institution;
- f) the majority of the *directors shall be elected* from the membership by the membership at an Annual General Meeting.

The **by-laws** of the institution must furthermore provide that:

- a) a quorum at meetings of voting members, especially at Annual General Meetings, shall reflect a reasonable proportion of the total membership, and
- b) a Board of Directors shall consist of no less than three voting members;
- c) a quorum at meetings of the Board of Directors shall be the majority of voting members sitting on the Board, but not less than three members;
- d) the number of active members shall be unlimited.

Exclusions...

- X Institutions that have few active members will not normally be considered for designation.
- X Institutions that have been in operation for less than one year will not be considered for designation.
- X Institutions affiliated with private foundations, although open to the public, are not eligible for designation unless they meet the criteria outlined above.

V. PREPARING AN APPLICATION

There are no deadlines for the submission of applications for designation. Applications are reviewed by Movable Cultural Property staff in the order that they are received. Depending on the thoroughness with which an application has been prepared, an in- depth review leading to a recommendation for approval by the Minister of Canadian Heritage may take from two months to a year. Applications for Category « A » designation typically require more time for analysis than do applications for Category 'B' designation.

When preparing an application for designation, applicants must first ensure that their institution meets the legal criteria (see pages 10-12) for designation. Institutions that do not meet the legal criteria are not eligible for designation.

To apply for designation, an institution or public authority must complete an Application for Designation form and attach the documents cited below. The application should be prepared by the employee(s) of the institution most knowledgeable about the legal status, collections management procedures, environmental controls and fire and security protection systems in place and any developments that are planned for the future. **Where any of the documents cited below are not available or do not exist, an explanation as to why is required.**

1. General Application Checklist

Each application for designation, regardless of whether Category 'A' or Category 'B' designation is being sought, must include the following documents:

- a completed Application for Designation form, signed and dated by an executive officer of the institution, for all collections-related buildings to be covered under the designation.

Legal Documents Required

- For PUBLIC AUTHORITIES:
 - no documents required
- For GOVERNMENT or UNIVERSITY INSTITUTIONS:
 - excerpts from the Constitution or act of Parliament that provides for the establishment of the institution.
 - If not already contained in the above, related legal documents that contain a dissolution clause, an explanation of the formation and structure of Boards and committees, and the terms and conditions associated with the operation of that portion of the educational facility for which designation is being requested.

- For OTHER PUBLIC INSTITUTIONS:
 - a copy of the Charter or Letters Patent and any related legal documents of the institution, signed and dated, with the following elements highlighted:
 - i) non-profit status;
 - ii) aims and objectives of the institution;
 - iii) dissolution clause;
 - iv) membership open to all individuals having passed the age of majority who support the aims and objectives of the institution;
 - v) election of directors at the Annual General Meeting;
 - vi) directors do not derive any personal benefit such as remuneration other than for Board-related expenses.

NOTE: Under no circumstances is it acceptable that an employee of the institution is also a voting Board member.
 - a copy of the signed and dated by-laws of the institution, with the following elements highlighted:
 - i) the number of active members shall be unlimited;
 - ii) frequency of Board meetings and the quorum for each;
 - iii) procedures for the Annual General Meeting, including the quorum.

Other Documents Required

- photographs depicting the exterior of the building(s) in which certified cultural property will be exhibited and/or stored;
- photographs and floor plans of all interior areas where certified cultural property will be housed, exhibited and stored;
- relevant brochures and publicity documents;
- most recent **audited** financial statements, signed and dated;
- most recent annual report;
- dated Acquisition/Exhibitions/Conservation/De-accessioning Policies that include:
 - collections mandate;
 - criteria for acquisition, including provenance considerations;
 - acquisition committee structure and criteria for appointment of members;
 - with whom authority rests to recommend acquisitions;
 - with whom authority rests to approve acquisitions;
 - criteria for exhibiting artifacts in the collection;
 - conservation procedures;
 - criteria and procedures for loans and traveling exhibitions;
 - criteria for de-accessioning and identification of any restrictions;
 - with whom the responsibility rests to recommend that an object or collection be de-accessioned;

- with whom the authority rests to approve recommendations to de-accession;
 - ethical considerations;
- Collections Management Policy that includes:
 - the method of recording the collection;
 - attach a hard copy sample of a few existing records as examples;
- Conflict of Interest Guidelines for the Board of Directors and staff;
- a copy of the exhibition and loan agreement forms used by the institution;
- a description of the insurance for the collection against theft, damage, and loss:
- a summary of all funding applications made within the past five years, identifying those which were successful and those which were not;
- a completed Collections Preservation Assessment Form for all buildings or facilities to be covered under the designation, including the name, title and telephone number of the person who filled it out;
- a copy of hygrothermograph charts covering a one year period;
- a completed Fire Protection Assessment Form for all buildings or facilities to be covered under the designation, including the name, title and telephone number of the person who filled it out;
- a copy of the most recent fire safety policy;
- a completed Security Protection Assessment Form for all buildings or facilities to be covered under the designation, including the name, title and telephone number of the person who filled it out;
- a copy of the most recent security policy;
- a copy of the most recent Disaster Plan;
- a copy of the deed of gift form used by the institution or public authority to accept gifts in kind.

2. Additional Checklist for Category 'B' Applications

In addition to as many of the documents listed above as possible, each applicant for Category 'B' designation must also provide:

- a written attestation that the acquisition for which certification or a Movable Cultural Property Grant or Loan is being requested is a **proposed acquisition** and that the legal transfer will not take place until the effective date of designation, if granted;

- a signed and dated statement identifying each physical area where the proposed acquisition will be exhibited and stored. All documents submitted with the application for designation must refer to these identified areas;
- a photograph depicting the property for which certification or a Movable Cultural Property Grant is being requested;
- a full description of the proposed acquisition(s), including:
 - creator name, birth and death dates, and nationality;
 - title;
 - date(s) of creation;
 - medium/material(s) used to create the property;
 - comprehensive condition report(s), indicating who prepared it/them and the date;
 - estimated fair market value (appraisal not required at this time).

VI. CONCLUSION

Designation is granted to institutions and public authorities that have demonstrated their ability to meet specific legal, collections management and environmental criteria for the proper preservation of cultural property that is of "outstanding significance and national importance" to the Canadian heritage. Only designated organizations are eligible to seek certification of cultural property for income tax purposes, and to apply for Movable Cultural Property Grants and Loans.

Applicants for designation are strongly encouraged to consult with Movable Cultural Property staff before submitting an application for Category 'A' or Category 'B' status. The address, phone and fax numbers, and e-mail address may be found on page 2 of this publication.

Post Designation Considerations

If, for any reason, it comes to the attention of the Minister of Canadian Heritage that a designated institution or public authority no longer meets the same standards as it did at the time of designation, the designation may be subject to review and possibly revoked, pursuant to subsection 32.(3) of the *Cultural Property Export and Import Act*.

As indicated on the Application for Designation form, the Director or Chief Executive Officer of each designated institution or public authority must agree to inform Movable Cultural Property of any significant changes that take place to the legal, collections management, employee, and/or environmental status following the effective date of designation. In cases where an institution changes its physical location, acquires additional buildings or facilities, or builds an extension onto the existing structure, a new application for designation will normally be required to ensure that the environmental controls in place are comparable or better than those in place when the designation was granted.

In order to ensure that the legal status of a designated institution continually conforms with that required for designation, and that appropriate standards are being adhered to in relation to an institution's or public authority's collection, Movable Cultural Property reserves the right to engage in periodic reviews.