

Annual Report

2016-2017

Canadian Cultural Property Export
Review Board



Canadian Cultural Property
Export Review Board

Commission canadienne d'examen
des exportations de biens culturels

Canada

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Letter to the Minister from the Chair of the Canadian Cultural Property Export Review Board



Sharilyn J. Ingram
Chair, Canadian Cultural Property Export Review Board
25 Eddy Street, 9th floor, Gatineau, QC K1A 0M5

The Honourable Mélanie Joly
Minister of Canadian Heritage
15 Eddy Street, Gatineau, QC K1A 0M5

Dear Minister,

It is an honour to present the annual report of the operations of the Canadian Cultural Property Export Review Board (CCPERB) for the fiscal year 2016-17.

It has been forty years since the *Cultural Property Export and Import Act* was proclaimed into force in September 1977. Since that time, CCPERB has reviewed a vast and varied range of remarkable cultural property, both in the context of requests to review refused applications for export permits and requests to certify objects and collections that are donated or sold to designated Canadian collecting organizations. It is primarily by these two means that CCPERB carries out its mandate to help ensure that cultural property of outstanding significance and national importance is preserved and made accessible in public collections for current and future generations of Canadians and visitors to Canada.

In 2016-17, CCPERB saw nearly 500 certification applications for some 1,200 objects or collections consisting of thousands of items that were acquired by close to 100 organizations of all sizes across Canada – a noteworthy transfer of significant cultural property from private hands to public collections, where they can be enjoyed by all Canadians. Beyond encouraging this transfer, the tax benefits available through certification also improve the competitive position of Canadian collecting organizations with limited or no acquisition budgets by helping them attract donations that will enrich their collections and draw new audiences. As the volume of certification applications this year attests, a vigorous charitable-gifting regime remains the lifeblood of the museums, libraries, archives, and other collecting organizations that serve as the guardians and stewards of our national heritage.

In addition to its regular functions in 2016-17, CCPERB also completed a strategic plan identifying key priorities, goals, and objectives that it will pursue and implement over the next three years (2017-2020). These include the pursuit of excellence, the development of policies and standards, continued capacity building, and communications with stakeholders and the general public. I look forward to bringing this plan to fruition with my fellow board members and the support of the secretariat from within the Administrative Tribunals Support Service of Canada.

In reporting these accomplishments, I would like to acknowledge the leadership and continued support of Glen A. Bloom, who served as interim chair prior to my appointment in December 2016. I would also like to express my appreciation to my fellow Board members for their expertise and diligence in reviewing the many applications that come before us, and to the staff of the Secretariat for their ongoing commitment and support.

Sincerely,

A handwritten signature in dark ink, appearing to read "Sharilyn J. Ingram". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Sharilyn J. Ingram
Chair

Report of the Canadian Cultural Property Export Review Board

Overview

Duties

Section 20 of the *Cultural Property Export and Import Act* (Act) stipulates that the duties of the Review Board are as follows:

- pursuant to Section 29, to review applications for export permits that have been refused, when requested
- pursuant to Section 30, with regard to objects for which the issuing of export permits has been delayed by the Review Board, to make determinations respecting fair cash offers to purchase cultural property, when requested
- pursuant to Section 32, to certify cultural property for income-tax purposes by making determinations of outstanding significance and national importance and of fair market value.

The Review Board's main decision-making responsibility is the certification of cultural property for the purposes of issuing Cultural Property Income Tax Certificates (Canada Revenue Agency form T871) to individual or corporate donors and vendors. Designated organizations across Canada have enriched their collections through tax incentives available to Canadians under the Income Tax Act.¹

As the first line of defence in preventing the permanent export of cultural property that is of outstanding significance and national importance, a vigorous donations program also has the virtue of involving Canadian individuals and corporations in the important role of preserving the nation's heritage.

The second line of defence in keeping cultural property in Canada is the export-control system. The export-control mechanisms established by the Act are instrumental in safeguarding significant cultural property that would otherwise be exported from Canada. The export-control system is administered primarily by the Department of Canadian Heritage in collaboration with the Canada Border Services Agency (CBSA). The Canadian Cultural Property Export Control List (Control List) describes the classes of cultural property that require an export permit. (See [Appendix 1-1](#) for a summary of the eight groups on this list.)

1. The *Income Tax Act* provides for exemptions from the payment of capital-gains tax for cultural property that has been certified by the Review Board and sold or donated to designated organizations in Canada. Gifts of certified cultural property to such organizations are also eligible for a tax credit based on the fair market value of the property up to net income, after credits are claimed for any charitable donations and gifts.

The Review Board's role is to consider whether an export-delay period should be established for cultural property that comes before it as a result of a refused export permit. Export-delay periods provide Canadian collecting organizations with the opportunity to purchase cultural property of outstanding significance and national importance for their collections, potentially with the assistance of a Movable Cultural Property grant. Subject to certain restrictions, if a permit applicant has not received a purchase offer before the export-delay period expires, an export permit will be issued upon request.

Membership

Members of the Review Board are normally appointed for three-year terms by the Governor in Council on the recommendation of the Minister of Canadian Heritage. Section 18 of the Act requires that the Review Board include no more than ten residents of Canada composed as follows:

- the chairperson and one other member chosen from the general public
- up to four members who are or have been officers, members, or employees of art galleries, museums, archives, libraries, or other collecting institutions in Canada
- up to four members who are or have been dealers in or collectors of art, antiques, or other cultural property that forms a part of the national heritage.

Three members, at least one of whom belongs to the institutional category and one who belongs to the dealer/collector category, constitute a quorum.

For a complete list of Review Board members in 2016-17, please refer to [Appendix 1-2](#).

Meetings

The Review Board holds four meetings per year. In 2016-17, all meetings were held in Ottawa. For a complete schedule of Review Board meetings in 2016-17, please refer to [Appendix 1-3](#).

Expert advice

Section 22 of the Act enables the Review Board to call upon any person with professional, technical, or other specialized knowledge to assist in an advisory capacity. The Review Board may also seek expert appraisals in making determinations of fair market value for income tax purposes or to determine fair cash offers relating to refused export permits.

Secretariat to the Review Board

Since it was created in 1977 by the *Cultural Property Export and Import Act*, the Review Board has been supported by a secretariat that functions as its administrative arm, receiving and processing case files for review and determination by Board members, preparing and issuing decision letters, and working closely with Board members to develop guidelines and procedures.

On November 1, 2014, the *Administrative Tribunals Support Service of Canada Act* came into force. Under this legislation, the responsibility for providing secretariat services to the Review Board was transferred from the Department of Canadian Heritage to a federal organization in the Department of Justice portfolio, the Administrative Tribunals Support Service of Canada (ATSSC).

The ATSSC is responsible for providing the Review Board and ten other administrative tribunals with the support services and facilities they need to exercise their powers and perform their duties and functions in accordance with the rules that apply to their work.

Certification of cultural property for income tax purposes

The certification process

In order for cultural property to be considered for certification, a donor or vendor must either dispose of it to an organization designated by the Minister of Canadian Heritage or else reach a tentative disposition agreement with a designated organization. Designated organizations then apply to the Review Board for certification on behalf of donors and vendors.

Certification applicants are required to provide evidence and arguments that demonstrate to the satisfaction of the Review Board that the cultural property in question meets the criteria of outstanding significance and national importance.

Pursuant to Section 32 of the *Act*, in order to certify cultural property the Review Board must first determine:

- whether that object is of outstanding significance by reason of its close association with Canadian history or national life, its aesthetic qualities, or its value in the study of the arts or sciences; and
- whether the object is of such a degree of national importance that its loss to Canada would significantly diminish the national heritage.

In addition to making determinations with respect to outstanding significance and national importance, the Review Board must also determine the fair market value of cultural property for income-tax purposes. Where the Review Board concludes that a given cultural property does not meet the criteria of outstanding significance and national importance, it will not determine fair market value or issue a tax certificate.

For an overview of certification applications considered in 2016-17, please refer to [Appendix 1-4](#).

Redetermination requests

Where donors or vendors are not satisfied with determinations of fair market value, they may make a request for redetermination within 12 months of the day on which notice of the determination was given.

Where donors or vendors are not satisfied with a redetermination of fair market value made by the Review Board, they may file an appeal with the Tax Court of Canada within 90 days of the day on which the Cultural Property Income Tax Certificate was issued.

In 2016-17, no appeals were filed with the Tax Court of Canada.

Finally, where donors or vendors are not satisfied that the review process has been conducted fairly, they may file an application for judicial review with the Federal Court of Canada.

In 2016-17, no applications for judicial review were filed.

Review of refused export permits

The review process

The export-control system is administered by the Minister of Canadian Heritage in collaboration with the Canada Border Services Agency (CBSA). The Review Board's role is to review applications for permanent export permits that have been refused.

The *Canadian Cultural Property Export Control List* describes the classes of cultural property that require an export permit. (See Appendix 1-1 for a summary of the eight groups on this list.) Export-permit applicants who receive a notice of refusal from a permit officer on the advice of an expert examiner may, within 30 days, appeal the expert examiner's decision to the Review Board.

Using the same criteria applied by the expert examiner, the Review Board must determine, pursuant to subsection 29(3) of the *Act*, whether the object in question is included on the *Control List* and, pursuant to paragraphs 11(1) (a) and (b):

- whether that object is of outstanding significance by reason of its close association with Canadian history or national life, its aesthetic qualities, or its value in the study of the arts or sciences; and
- whether the object is of such a degree of national importance that its loss to Canada would significantly diminish the national heritage.

If the Review Board determines that the cultural property fails to meet these criteria, it will direct Canada Border Services Agency to issue the permit. If the Review Board determines that the property does meet these criteria, and if it further determines that a designated Canadian organization might come forward with an offer to purchase the property, it establishes a delay period of two to six months, during which time the permit may not be issued.

When advised of the Review Board's decision, the Minister of Canadian Heritage makes the delay period known to designated organizations so that they may consider purchasing the property. Financial assistance is available from the Department of Canadian Heritage in the form of a Movable Cultural Property grant, which can facilitate the acquisition.

For a complete list of refused export permits that were reviewed by the Board in 2016-17, please refer to [Appendix 1-5](#).

Determinations of fair cash offers to purchase

If an offer to purchase cultural property during a delay period is refused, the applicant or the organization making the offer may request that the Review Board determine what would constitute a fair cash offer to purchase the property. This request must be made in writing at least 30 days before the end of the delay period.

When the Review Board receives such a request, it determines the fair cash offer after considering relevant information and then advises the applicant and the organization of its decision. If no organization offers to purchase the property for an amount equal to or greater than that determined by the Review Board, the permit applicant may request the export permit, at which point the Review Board will direct the permit officer to issue the permit at the end of the delay period.

If an organization offers to purchase the property for an amount equal to or greater than that determined by the Review Board but the offer is rejected by the applicant, the export permit will not be issued. In such cases, an export permit may not be sought for a period of two years from the date that the notice of refusal was first issued by the permit officer. Once that period has elapsed, a new permit application must be submitted and the process begins again.

In 2016-17, there were no requests for determinations of fair cash offers.

Appendices

Appendix 1-1: Canadian cultural property export control list

The following list describes the groups of cultural property controlled under the *Cultural Property Export and Import Act*.

Group I	Objects recovered from the soil or waters of Canada	Group V	Objects of fine art
Group II	Objects of ethnographic material culture	Group VI	Scientific or technological objects
Group III	Military objects	Group VII	Textual records, graphic records, and sound recordings
Group IV	Objects of applied and decorative art	Group VIII	Musical instruments

Appendix 1-2: Review Board membership

Type of representative	Board members in 2016-2017	Term duration
Representatives of the public at large	Ms. Sharilyn J. Ingram , Chair Retired academic and museum professional Grimsby, ON	December 21, 2016 – December 20, 2019
Representatives of the public at large	Mr. Glen A. Bloom , Acting Chair* Retired partner at Osler, Hoskin & Harcourt LLP Ottawa, Ontario *From July 7, 2015, to December 20, 2016	February 7, 2017 – February 6, 2020
Representatives of collecting institutions	Dr. Clarence Epstein Senior Director, Urban and Cultural Affairs, Concordia University, Montréal, QC	November 27, 2014 – November 26, 2017

Type of representative	Board members in 2016-2017	Term duration
Representatives of collecting institutions	Mr. Alain Lacoursière Art Consultant Montréal, QC	July 13, 2014 – July 12, 2017
Representatives of collecting institutions	Dr. Katharine A. Lochnan Senior Curator, International Exhibitions Art Gallery of Ontario Toronto, ON	May 3, 2015 – May 2, 2018
Representatives of collecting institutions	Ms. Theresa Rowat Director, The Archive of the Jesuits in Canada Montréal, QC	February 26, 2015 – February 25, 2018
Dealers/collectors of cultural property	Mr. Rudy Buttignol President and CEO, Knowledge Network Corporation President, BBC Kids Vancouver, BC	November 24, 2014 – November 26, 2017
Dealers/collectors of cultural property	Mr. Monte Clark Owner/Director, Monte Clark Gallery Vancouver, BC	June 1, 2016 – May 31, 2017
Dealers/collectors of cultural property	Ms. Patricia Feheley Director, Feheley Fine Arts Toronto, ON	May 3, 2015 – May 2, 2018
Dealers/collectors of cultural property	Mr. William Forrestall Artist Director, Yellow Box Gallery at St. Thomas University Teacher, Fine Arts Program, St. Thomas University Fredericton, NB	February 3, 2014 – February 2, 2017

Appendix 1-3: Review Board meetings

Date	Location
June 21 – 23, 2016	Ottawa
September 21 – 23, 2016	Ottawa
December 14 – 16, 2016	Ottawa
March 14 – 17, 2017	Ottawa

Appendix 1-4: Overview of applications for certification

Applications for certification reviewed by CCPERB (excludes files seen more than once)	Number	Percentage
Total applications reviewed	490	
Total new applications	430	88%
Total holds (brought forward from a previous meeting)	52	11%
Total requests for redetermination	8	1%
Total applicant organizations	104	

Certification applications by type (excludes files seen more than once during the fiscal year; note that applications may contain objects from more than one cultural property group)	Number	Percentage
Objects recovered from the soil or waters of Canada	4	1%
Objects of ethnographic material culture	8	2%
Military objects	1	0%
Objects of applied and decorative art	27	5%
Objects of fine art	387	78%
Scientific or technological objects	3	1%
Textual records, graphic records, and sound recordings	69	14%
Musical instruments	0	0%
TOTAL	499	

Applications reviewed per province (excludes files seen more than once)	Number	Percentage
Alberta	26	5%
British Columbia	36	7%
Manitoba	16	3%
New Brunswick	37	8%
Newfoundland and Labrador	1	0%
Northwest Territories	0	0%
Nova Scotia	12	2%
Nunavut	0	0%
Ontario	176	36%
Prince Edward Island	4	1%
Quebec	166	34%
Saskatchewan	16	3%
Yukon	0	0%
TOTAL	490	

Certification Decisions by type	Number / Percentage	Total fair market value	Estimated federal forgone tax revenue ²
Approved at the proposed value ³	308 (63%)	\$ 57M	\$ 17M
Approved at a lower value	86 (18%)	\$ 26M	\$ 8M
Approved at a higher value	25 (5%)	\$ 39 M	\$ 12 M
Put on hold ⁴	35 (7%)	n/a	n/a
Refused ⁵	31 (6%)	n/a	n/a
Inadmissible ⁶	5 (1%)	n/a	n/a
Total	490	\$ 122M	\$ 37M

Appendix 1-5: Refused export permits reviewed by the Board

Permit application #	Cultural Property	Control Group	Decision	Delay Period	Outcome
107900	Henry Moore, Helmet Head 1, 1950 (cast 1960), ed. 7/9, bronze, 13 ½" h.	IV	Delay period established	6 months	Delay period expired August 3, 2017. Review Board directed the issuance of an export permit on August 21, 2017.

2. The federal charitable tax credit rate is 15% on the first \$200 and 29% on the remaining amount. (Provincial tax credit rates vary by province.)
3. Where there are multiple proposed values, the average is taken as the fair market value.
4. If CCPERB needs additional information before making a decision, it will put the application on hold.
5. If CCPERB concludes that a given property does not meet the criteria of outstanding significance and national importance, it will refuse the application.
6. Applications deemed not to have met essential requirements.