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SUMMARY EVALUATION REPORT :

MOVABLE CULTURAL PROPERTY PROGRAM =

SEPTEMBER 1988

DEPARTMENT OF COMMUNICATIONS

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EXECUTIVE SUMMARY



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This document is a report on the evaluation of the Movable Cultural Property Program administered by the Department of Communications. This program was established in 1977 to administer the Cultural Property Export and Import Act. The evaluation considered the program rationale, the extent to which the objective of the program was being achieved, and other impacts and effects from its operation.

The evaluation addressed these issues with four major lines of evidence which included a study of the uses made of objects acquired under the program, a survey of collecting institutions which have received grants or certified objects under the program, a survey of exporters and delivery agents involved in the export control system, and a study of the accuracy of the appraised values submitted for the certification component of the program.

The evaluation results indicate that the rationale of this program, to retain significant cultural property in Canada, continues to be relevant. The need for the program still exists, and both the resources and mechanisms required to fulfill the rationale are available to the government.

The program was found to be successful in achieving its objective of assisting in the retention (or repatriation) of significant cultural property. The export control system and grants had halted the loss of significant cultural properties to foreign markets and the tax certification process had led to significant increases in the number and value of donations to public institutions. Judging from the frequent and varied use of cultural property acquired through the program, the objects are of significant interest.

A high degree of satisfaction was reported by users with regard to the operations of the Cultural Property Export Review Board and program staff in terms of the speed and quality of certification and grants services. Information requirements for submissions to the program were considered adequate although some applicants believe additional information would be required for informed decisions.

There was general support for the export permit system, even though the application process can be seen as slow and cumbersome, and even though there is a widespread feeling that the potential exists for the abuse or manipulation of the system. A significant minority of expert examiners wish for more information to be supplied by applicants, although most applicants feel that the amount demanded of them is appropriate.

The significance and importance criteria used to judge cultural property eligible under the program were, by and large, considered appropriate, consistently applied and interpreted in a manner sensitive to regional concerns.

Public awareness of the program's benefits and controls is suspected to be very low, although this cannot be demonstrated to have led to fewer donations and losses of cultural property through export. The donor population is likely well informed about the program although improvements in publicity efforts would be welcomed by the museums and archival communities.

Although it is difficult to make conclusive statements about the program's effect on market values or appraised values, most collecting institutions perceive the former effect

as non-existent or minimal. The study also found great support in principle for the conduct of appraisals at "arm's length" even though in practice this can be very difficult given the small appraiser community in Canada. The Cultural Property Export Review Board has no authority nor formal mechanism to review appraisal values submitted for certification; legal responsibility for these amounts rests with Revenue Canada. The evidence suggests that overvaluation is a problem. This conclusion is based on a number of lines of evidence, including an independent review of values submitted for some types of objects.

EVALUATION FINDINGS AND CONCLUSIONS

A. INTRODUCTION

An evaluation of the Movable Cultural Property Program was conducted as part of the regular DOC cycle of periodic program evaluations. The program had not been evaluated since its introduction in 1977. Other factors suggesting an evaluation would be timely included the ongoing review of federal policy on museums. The MCP program is also one of DOC's regulatory programs. Although the evaluation was well underway before the federal guidelines on the evaluation of regulations were developed, the Office of the Comptroller General will report to the Office of Privatization and Regulatory Affairs on the results of this study.

This report presents evaluation evidence with respect to such issues as the continued relevance of the program's rationale, extent to which program objectives have been achieved, degree of client satisfaction with program design and delivery, and awareness of the program among the target populations.

The evidence was collected by means of surveys of institutions designated as eligible for program benefits, dealers and institutions who have attempted to export cultural properties and were thus subject to program controls on exports, and an examination of uses made of artifacts acquired with program assistance.

The fifth issue explored concerns the accuracy of the appraisal values which are submitted when collectors donate objects to public collections in order to take advantage of tax exemptions. At present, no mechanism exists for the program or Review Board to validate submitted values. An assessment of accuracy of the appraisal values submitted for 77 objects or collections certified under the program was conducted by the Arts Advisory Panel of the American Internal Revenue Service. Legal responsibility for the level of these values rests with Revenue Canada; the Board certifies that the objects donated are significant to our cultural heritage. The American study sheds light on the degree to which overvaluation is a problem for four types of art donations.

B. PROGRAM DESCRIPTION

The program was introduced in order to stop the loss of objects deemed of great significance to the Canadian cultural heritage. Many important artifacts had been exported, in some cases leaving no equally significant examples in Canada. The loss was attributed to the lack of export controls on significant cultural artifacts, and the lack of resources in Canadian collecting institutions to purchase these objects when their export is threatened or to repatriate these artifacts when they are put up for sale abroad.

The program consists of a system of export controls and complementary incentives. These include grants and loans so that Canadian institutions can purchase objects in danger of export or repatriate significant properties which had previously left the country. In addition, tax advantages are available to encourage Canadian residents or corporations to donate or sell significant artifacts or collections to public institutions in Canada. The Cultural Property Export Review Board reviews the applications for these advantages in order to certify that the objects or collections are of "outstanding significance" and "national importance". The Board may also comment on the fair market value estimates submitted, although legal responsibility for accepting these is lodged with Revenue Canada.

In 1987-88, the program cost \$1.925 million. The majority of this went as grants or loans (\$1.6 million). The enabling legislation (the Cultural Property Export and Import Act) established a Board to administer the Act. This Board is served by a program secretariat of 4.5 persons. The bulk of program activity revolves around the certification of properties for tax advantages. In 1986-87, 1050 applications for certification were approved, with a total value of \$40.3 million.

C. PROGRAM RATIONALE

The problems which the program was designed to address still exist. Many of Canadian fine art and ethnographic artifacts have a strong international market appeal, and thus the continuation of some form of export control is necessary. As long as the export control system is maintained, and the acquisition budgets of collecting institutions are limited, it will continue to be necessary to provide grant assistance to help designated Canadian institutions in coming up with the funds to purchase the objects at a fair market price. These constraints on acquisitions by collecting institutions also demand the continuation of financial assistance for the repatriation of artifacts. As well, under the UNESCO Convention, signed by Canada in 1970, we are obliged to have a domestic program to protect indigenous cultural property.

In light of the extensive dependence by public institutions on donations to build the country's cultural holdings, the continued desirability of the tax certification component is obvious. The tax advantages give collecting institutions the leverage to attract donors. Without it, donations would not dry up completely, but representatives of collecting institutions tend to believe that many and particularly the major donations are attracted by the tax advantages.

The study findings with respect to the program's rationale lead to the conclusion that the program should be continued. Its elimination would mean the loss of significant examples of Canada's cultural heritage to international markets, the inability to reverse earlier losses, and the reduction in the number and value of donations to public collections. The development of public collections would be retarded and public access to some of the finest examples of the Canadian cultural and natural heritage constrained.

Our review of the program design and delivery system also suggests that the program is logically designed and has the resources and mechanisms required for successful operation.

D. OBJECTIVES ACHIEVEMENT

The overall objective of the program is to preserve in Canada significant examples of Canada's heritage in movable cultural property.

In the opinion of the majority of representatives of the designated collecting institutions surveyed, the program has been successful in preventing the loss of significant cultural property through export and has aided in the repatriation of significant cultural property offered for sale abroad.

Representatives of collecting institutions also believe that the tax incentives have been successful in encouraging donations of cultural property to Canadian museums and galleries.

Data collected on the uses made of objects acquired with program assistance supported these perceptual findings. These showed that the artifacts acquired with grant assistance or under the certification component were of significant interest to the public and museological community. The majority had been catalogued, exhibited and studied. Time series information supplied by collecting institutions also indicated that the number and value of donations made to these institutions had increased after the introduction of the program, and we argued that it was reasonable to attribute this increase to the program.

E. OTHER PROGRAM IMPACTS

1. Client Satisfaction

The attitudes of individual and institutional exporters towards the export control system were explored in some detail.

The majority of institutions and individuals who have applied for an export permit over the past few years approve of the current export control system because it protects the Canadian patrimony without infringing on the right to dispose of personal property. At the same time, one third of institutional applicants and half of individual exporters consider the application process to be cumbersome, causing delays for sellers and dealers, or involving an excessive amount of paperwork.

While the majority of regulatees perceive the regulatory aspect of the program as fair, the data suggest that the burdens it imposes on regulatees may vary with the size and resources of the regulatee. Institutions are less likely than individual dealers to find the application as cumbersome. These latter complained primarily of the time involved in the process, rather than of any financial loss occasioned by the operation of the program. There are too few cases to warrant any attempt to analyse these perceptual data by region.

We have no objective measures of the cost of the regulations to institutions or individuals, nor any ability to model how these might vary according to the characteristics of the exporter. Our findings as to the distribution of the regulatory burden are therefore suggestive rather than confirmatory.

Representatives of institutions which have received grants or loans tend to hold positive attitudes towards the program and its delivery. The vast majority favour a flexible scheme that ensures that institutions contribute to the purchase price of properties for which financial assistance is sought. These are both characteristics of the program. Given that speed of processing these applications is of the essence, it is also very encouraging to note that the vast majority were satisfied with the speed of processing.

The majority of respondents are also content with the certification process, the criteria used to determine the worthiness of artifacts, and their interpretation by

the Board. A minority expressed concern over whether the criteria were sufficiently sensitive to the regional or local importance of artifacts (as opposed to their national significance). As institutions are responsible for making the case for the certification of artifacts, we concluded that greater clarification of the policy and its interpretation could be of benefit.

2. Awareness of the Program

Representatives of the museums, art galleries, archives and libraries surveyed tend to agree that the general public is unaware of the benefits and regulations of the program. Although few members of the general public may participate in it, one could argue that the public should be informed of the role played by the program in helping retain and build national heritage collections.

These program clients also rated the familiarity of financial advisors with the certification component as poor. On the other hand, survey respondents tend to believe that arts donors or philanthropists in Canada are generally aware of the tax advantages. Support for this contention is provided by program data which show an increasing number of certification applications over time.

No objective information is available on the extent to which potential exporters are aware of the control system, although other evidence suggests that the target population is familiar with the program. For one thing, representatives of the collecting institutions were unable to name any significant losses through export. The number of applications for export permits has also increased over time, and this might stem from a growing awareness of the control system.

3. Market Values

The final evaluation issue concerned the program's impacts on market values for movable cultural property. In theory, the availability of government grants could increase values in the market-place for objects of national significance. It is difficult to measure whether such increases have taken place which could be attributed to the program. Representatives of the collecting institutions tend to believe that the grants have had no or little upward pressure on prices. Due to low acquisitions budgets, collecting institutions are reluctant to pay more than they believe the artifact to be worth, even with program assistance.

No formal mechanism exists to verify the appraised fair market values submitted with applications for certification, although the Board does comment on values which they believe are inappropriate. Revenue Canada has legal responsibility for the values. We investigated the accuracy of appraisal values submitted under the certification component with the assistance of the Art Advisory Panel of the U.S. Internal Revenue Service. The experience of other jurisdictions, and some of the comments made by representatives of collecting institutions suggested that overvaluation is likely occurring.

The Art Advisory Panel is composed of 25 distinguished museum directors and curators, art historians and scholars, and prominent dealers, who advise the IRS on the authenticity and fair market value of works of art donated for income tax

breaks. The Panel was asked to estimate the fair market value for a selection of objects or collections donated under the certification component.

Slides and background material were sent on 77 objects or collections of "international reputation" which had been donated to 13 Canadian museums or art galleries. The objects did not represent the universe of artifacts certified under the program, but rather were a purposive sample of items with four categories corresponding to the areas of expertise of the Panel (paintings and sculpture, and decorative art objects with a market beyond Canadian borders; Far Eastern and Asian art; and primitive and pre-Columbian art). As a result, one cannot extrapolate from the findings of this comparative analysis to all donations. The findings pertain only to the subset of artifacts examined.

The results of the comparative analysis showed that a substantial proportion of the 77 objects had been overvalued. This was particularly problematic with fine art objects (63 per cent were overvalued), followed by decorative art objects (58 per cent were overvalued). In terms of dollar figures, the difference in the two valuations was most pronounced for paintings and sculpture, followed by Far Eastern and Asian art.

F. CONCLUSIONS

We concluded that the rationale of this program, to retain significant cultural property in Canada, continues to be relevant. The need for it still exists, and both the resources and mechanisms required to fulfil the rationale are available to the government.

The program was found to be successful in assisting in the retention of significant cultural property. The export control system and grants had halted the loss of significant cultural properties to foreign markets and assisted with the repatriation of important pieces from abroad. The tax certification process was also considered to have lead to significant increases in the number and value of donations to public institutions. Judging from the frequent and varied use of the cultural properties acquired through the program, the objects are of significant interest.

There is also a widespread belief that the export control system could be manipulated or abused, although it is not considered to happen with any frequency.

A high degree of satisfaction was reported with regard to the operations of the Board and program staff in terms of professionalism and quality of service. Information requirements for submissions to the program were considered adequate although some applicants believe additional information would be required for informed decisions.

There was general support for the export permit system, even though the application process can be seen as slow and is often seen as cumbersome. A significant minority of expert examiners wish for more information to be supplied by applicants, although most applicants are feel that the amount demanded of them is appropriate.

There is some confusion about the degree of flexibility with regard to contribution amounts for cultural property grants. Some institutions believe that there is a minimum 30 per cent contribution rate and this belief may inhibit participation in the program.

The contribution requirement itself may also inhibit the participation of smaller or less well endowed institutions, however we cannot demonstrate that this has had any negative repercussions. In fact, this aspect of the program is strongly supported by collecting institutions and should be maintained as it likely helps ensure that prices paid are reasonable and that the objects acquired will be put to good use by the institutions.

The significance and importance criteria used to judge cultural property were, by and large, considered appropriate and consistently applied. Most collecting institutions surveyed also consider their interpretation to be sensitive to regional concerns, however a substantial minority would like to see the Act altered to specifically include local and regional importance as a facet of national significance. Reference to the concept of "best examples" of cultural property was considered inappropriate and inconsistent with existing significance criteria.

Public awareness of the program's benefits and controls is suspected to be very low, although this cannot be demonstrated to have led to fewer donations and losses of cultural property through export. The donor population is likely well informed about the certification component although improvements in publicity efforts would be welcomed by the museums and archival communities. Dealers and other exporters are likely aware of the export control system judging by the program's success in halting the export of significant artifacts. Future evaluations should further explore these topics by considering to what extent the relevant donor and exporter populations are aware of the program.

Although it is difficult to make conclusive statements about the effect of the grants on market values, a minority of collecting institutions believe that the program has increased purchase prices in the market-place. This may be the result of government interest in certain classes of artifacts, the willingness of institutions to pay higher prices because of their ability to leverage government funds, or abuse of the export control/grant system.

While most respondents agree that maintaining an "arm's length" relationship when arranging for appraisals is important, in practice it is very difficult given the small appraiser community in Canada. The degree of rigour with which appraisals are conducted and reviewed appears to be variable.

No mechanism exists to determine the validity of the fair market values set for donations certified under the program. An independent review suggested that overvaluation is a problem. This finding is consistent with remarks made by survey respondents who cited factors which can lead to non-arm's length and overly generous appraisals. It is also consistent with the U.S. experience: at a minimum, 60 per cent of audited appraisal values are adjusted by the IRS.

