

Annual Report 2017-2018

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
Minto Place, 344 Slater Street, 15th floor, Ottawa ON K1R 7Z1

The Honourable Pablo Rodriguez
Minister of Canadian Heritage
15 Eddy Street, Gatineau, QC K1A 0M5

Dear Minister Rodriguez,

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 2017-18.

In 2017-18, CCPERB reviewed 538 certification applications for more than 1,350 objects or collections acquired by some 91 organizations of all sizes across Canada. While the majority of certified cultural property was in the category of fine art, CCPERB also reviewed a wide assortment of other extraordinary objects, including applied and decorative art, archival materials, and scientific specimens. Our determinations regarding certification for these objects ensure that they will be preserved and made accessible in public Canadian collections.

CCPERB also considered seven requests to review refused applications for export permits for a range of cultural property in 2017-18. Among these were two sets of military medals, including two Victoria Crosses awarded to Canadians who served in the First and Second World Wars. Following export-delay periods set by CCPERB, both sets were acquired by the Canadian War Museum. The Board is immensely gratified to have played a role in the museum's acquisition of these national treasures and emblems of Canadian courage.

I also had the honour in 2017-18 to assist with the newly established open and merit-based selection process for Governor in Council appointments and re-appointments to the Board. I was deeply impressed by the commitment and capacities of the many applicants. I was delighted by the quality of the new appointments.

Although the terms of certain very distinguished members ended in the previous fiscal year, I know that CCPERB's mandate is in excellent hands with the current members and I look forward to the year ahead.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sharilyn J. Ingram'.

Sharilyn J. Ingram
Chair

Report of the Canadian Cultural Property Export Review Board

Introduction

Canadians across the country are fortunate to have access to many galleries, libraries, archives, and museums that collect and preserve a wide range of extraordinary cultural property, from works of art and historical records to technological innovations and scientific specimens. At the local, regional, and national levels, our memory institutions play a key role in Canadian culture and society: not only are they the guardians and stewards of important public collections, but they are also vital creative centers that can inform and inspire teachers, students, scholars, researchers, artists, makers, and the public more generally.

Given limited acquisitions budgets, these institutions rely on the generosity of Canadians to build their collections. When they lack the means or opportunity to acquire significant cultural property, there is a risk that it will be taken out of the country and permanently lost to Canada. Like many countries around the world, Canada has adopted measures to help mitigate this risk and preserve the national heritage.

The *Cultural Property Export and Import Act*

Since it was proclaimed into force in 1977, the *Cultural Property Export and Import Act* (Act) has been an important part of Canada's heritage-policy landscape. One of the underlying principles of this landmark federal legislation is that Canadians should have access to cultural property that is part of our national heritage, that reflects our many and diverse regions, traditions and identities, and that enriches our understanding of different cultures, civilizations, time periods, and our own place in history and the world. Put another way, the Act recognizes that we have a duty to current and future generations to preserve cultural property that is of outstanding significance and national importance.

As 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*, the Act also implements Canada's obligations to prevent illicit traffic in cultural property. At the same time, it introduced a complementary system of controls and incentives designed to help preserve significant cultural property that might otherwise leave the country.

The Minister of Canadian Heritage is accountable to Parliament for all operations under the Act and for overarching policy development. However, specific elements of the legislation are administered or enforced by different federal entities, including:

- the Department of Canadian Heritage
- the Canada Border Services Agency
- the Canadian Cultural Property Export Review Board
- the Administrative Tribunals Support Service of Canada
- the Canada Revenue Agency

The Canadian Cultural Property Export Review Board

The Canadian Cultural Property Export Review Board (CCPERB) is an independent administrative tribunal that was established by the *Cultural Property Export and Import Act* and that carries out specific duties in support of the Act's public-policy objectives. CCPERB reports to Parliament through the Minister of Canadian Heritage but operates at arm's length from its portfolio department so as to ensure the autonomy of its decision-making powers.

Broadly, CCPERB carries out its duties under the Act with a view to facilitating the movement of significant cultural property from private hands into public collections. In this way, the Board helps ensure that cultural property that is of outstanding significance and national importance will be preserved and made accessible for current and future generations of Canadians.

CCPERB's specific duties under the Act are as follows:

- to review applications for permits to permanently export cultural property that have been refused (section 29)
- to determine what would constitute a fair cash offer to purchase cultural property for which an export permit has been refused (section 30)
- to determine whether cultural property that is donated or sold to a designated Canadian institution or public authority is of outstanding significance and national importance, and, if so, to determine its fair market value for income tax purposes (section 32)

Membership

CCPERB members are appointed by the Governor in Council (GIC) on the recommendation of the Minister of Canadian Heritage following an open, transparent, and merit-based selection process. Members are generally appointed for three-year terms.

Under the *Cultural Property Export and Import Act*, membership is composed as follows:

- a chairperson and one other member chosen generally from among residents of Canada
- up to four other residents of Canada who are or have been officers, members, or employees of art galleries, museums, archives, libraries, or other collecting institutions in Canada
- up to four other residents of Canada who are or have been dealers in or collectors of art, antiques, or other objects that form part of the national heritage

Under the Act, decisions must be made by no fewer than three members, at least one of whom was appointed under the institutional category, and at least one of whom was appointed under the dealer/collector category.

For a complete list of individuals who sat on the Board in 2017-18, please refer to [Appendix 1-2](#).

Expert advice

Section 22 of the Act authorizes CCPERB to call on any person who has professional, technical or other special knowledge to assist it in any matter in an advisory capacity. For instance, CCPERB may seek a third-party appraisal in order to have a firm foundation for determining a given cultural property's fair market value for income tax purposes.

Meetings

CCPERB meets four times per year.

For a complete schedule of CCPERB meetings held in 2017-18, please refer to [Appendix 1-3](#).

Secretariat

CCPERB is supported by a secretariat within the Administrative Tribunals Support Service of Canada (ATSSC), a federal organization that provides support services and facilities to 11 different administrative tribunals.

The responsibilities of the CCPERB secretariat include:

- processing applications and preparing case files for review
- drafting and issuing decision letters
- developing rules, procedures, guidelines, and stakeholder communications
- providing strategic advice and supporting general operations

Duties

CCPERB's duties under the *Cultural Property Export and Import Act* fall into two main functional areas:

- determinations relating to income tax matters ("certification for income tax purposes")
- the review of applications for export permits ("export review")

Certification for income tax purposes

Background

Different governments around the world have created tax concessions to stimulate gifts to arts and heritage institutions. A vigorous charitable-gifting regime is not only in many ways the lifeblood of public collections, but it is also the first line of defence in preventing the permanent loss to Canada of significant cultural property that might otherwise leave the country.

In Canada, voluntary donations to registered charities and other qualified donees are generally eligible for charitable tax credits. However, individuals, companies, or estates that donate or sell cultural property to Canadian collecting institutions or public authorities that have been designated by the Minister of Canadian Heritage are eligible for additional tax benefits under the *Income Tax Act* if CCPERB determines that the property is of outstanding significance and national importance. These tax incentives thus improve the competitive position of Canadian organizations by helping them attract sales and donations of cultural property that might otherwise have been sold on the international market.

Overview

In order for cultural property to be considered for certification, a donor or vendor must either dispose of it to a collecting institution or public authority designated by the Minister of Canadian Heritage or else reach a tentative disposition agreement with such a designated organization. These organizations can then apply to have cultural property certified for income tax purposes on behalf of donors and vendors. In order to be designated, an organization must first demonstrate its capacity to preserve and make cultural property accessible to the public.

At the request of designated organizations, CCPERB will determine whether cultural property that has been (or will be) donated or sold to the organization meets the following criteria under the *Cultural Property Export and Import Act*:

- the 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
- the object is of such a degree of national importance that its loss to Canada would significantly diminish the national heritage.

If CCPERB determines that a given object meets these legislated criteria, it will also determine the object's fair market value for the purposes of issuing a Cultural Property Income Tax Certificate.

For a summary of certification applications reviewed by CCPERB in 2017-18, please refer to [Appendix 1-4](#).

Benefits

Under the *Income Tax Act*, the tax benefits available through the certification are as follows:

- donations of certified cultural property to designated organizations can be claimed up to 100% of net income (any unused portion can be carried forward over the next five years)
- donations and sales of certified cultural property are exempt from capital-gains tax (i.e., no tax on any profits arising from the sale or deemed sale of the property)
- donations of certified cultural property are exempt from the Canada Revenue Agency's deemed fair market value rule (unless the property was donated through a tax-shelter gifting arrangement)

These benefits are designed to encourage the transfer of significant cultural property from private hands to public collections, thus helping Canadian institutions with limited acquisitions budgets attract donations and sales that will enrich their collections.

Fair market value

CCPERB makes determinations with respect to fair market value in the context of certification requests. If CCPERB determines that a given object meets the legislated criteria for outstanding significance and national importance, it must then determine its fair market value for tax purposes.

CCPERB has adopted the following definition of fair market value from the Canada Revenue Agency:

The highest price, expressed in terms of money that a property would bring, in an open and unrestricted market, between a willing buyer and a willing seller who are both knowledgeable, informed, and prudent, and who are acting independently of each other.

All certification applicants must submit arm's-length appraisal reports that provide a credible valuation opinion based on relevant sales evidence and market conditions at the time of the sale or donation. This helps ensure that CCPERB has a firm foundation for determining fair market value. CCPERB determinations of fair market value become the basis for determining the eligible amount for calculating the tax benefit.

Redeterminations

Donors or vendors who are dissatisfied with a CCPERB determination of fair market value may request a redetermination within 12 months of the date of the original decision letter.

Donors or vendors who are dissatisfied with a redetermination of fair market value may appeal the decision to the Tax Court of Canada within 90 days after the day on which the Cultural Property Income Tax Certificate is issued.

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 2017-18, one appeal was filed with the Tax Court of Canada.

Export review

Background

The *Cultural Property Export and Import Act* establishes a system of controls designed to provide Canada with an opportunity to preserve significant cultural property that is facing permanent export. These export controls balance the rights of owners to take their property out of the country with the public interest in preserving the national heritage.

As a regulation made under the Act, the *Canadian Cultural Property Export Control List* describes in detail the categories of cultural property that are subject to export control. (See [Appendix 1-1](#) for a summary of the general groups.) A permit is required to export any object included on the list unless it is less than 50 years old or its creator is still living.

The export-control system is overseen and administered by the Department of Canadian Heritage in collaboration with the Canada Border Services Agency (CBSA) and a network of collecting institutions across Canada that have been designated by the Minister as expert examiners.

Overview

CCPERB's role within the export-control system is limited and specific: if an application for an export permit is refused by the CBSA on the advice of an expert examiner, the permit applicant may then request CCPERB to review the application.

Expert examiners will advise the CBSA to refuse a permit application if they conclude that the cultural property in question meets the following criteria under the *Cultural Property Export and Import Act*:

- the 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
- the object is of such a degree of national importance that its loss to Canada would significantly diminish the national heritage.

For a summary of the refused applications for export permits that CCPERB reviewed in 2017-18, please refer to [Appendix 1-5](#).

Export-delay periods

If CCPERB determines that a given cultural property is subject to export control and meets the legislated criteria for outstanding significance and national importance, and is of the opinion that a fair offer to purchase might be made by an institution or public authority in Canada within six months after the date of its determination, it will establish a temporary export-delay period of two to six months when it is of the opinion that a fair offer to purchase the object might be made by an institution or public authority in Canada.

These temporary export-delay periods provide Canadian institutions with an opportunity to acquire significant cultural property before it is lost to Canada. If the export-delay period expires without a purchase offer, CCPERB will direct the Canada Border Services Agency to issue the permit immediately upon the request of the permit applicant.

When advised of CCPERB's decision to establish an export-delay period, the Minister of Canadian Heritage will advise designated institutions and public authorities so that they may consider purchasing the property. Financial assistance is also available from the Department of Canadian Heritage in the form of a Movable Cultural Property grant.

If an owner decides to sell the cultural property to a designated Canadian organization, that organization can apply to CCPERB to have the object certified for income tax purposes. In this way, even though the owner might be able to achieve a higher selling price internationally, the additional tax benefits of certification provide an incentive to sell the property in Canada.

In 2017-18, two applications for judicial review were filed with the Federal Court.

Fair cash offers

If a permit applicant rejects an offer to purchase cultural property that is subject to an export-delay period, either the permit applicant or the organization wishing to purchase the object may call upon CCPERB to determine what would constitute a fair cash offer.

Fair-cash-offer determinations are intended to facilitate an exchange where negotiations have stalled, but property owners are under no obligation to accept any purchase offer. However, if the owner rejects an offer that is equal to or greater than the fair-cash-offer amount determined by CCPERB, then no export permit will be issued for a period of two years from the date of the original notice of refusal. (At the end of the two-year moratorium, the permit applicant may submit a new application.)

In 2017-18, there was one request for a fair-cash-offer determination.

Appendices

Appendix 1-1: The Canadian Cultural Property Export Control List

The following list describes the groups of cultural property that are subject to export control 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: CCPERB membership

Category	Board members in 2017-2018	Term duration
Public at large	Sharilyn J. Ingram Chair Retired academic and museum professional Grimsby, ON	December 2016 – December 2019
Public at large	Glen A. Bloom Retired partner at Osler, Hoskin & Harcourt LLP Ottawa, ON	February 2017 – February 2020
Collecting institution	Laurie Dalton Director/curator, Acadia University Art Gallery, Adjunct professor, Dept. of History and Classics, Acadia University Wolfville, NS	January 2018 – January 2021
Collecting institution	Clarence Epstein Senior Director, Urban and Cultural Affairs, Concordia University, Montréal, QC	November 2014 – November 2017

Category	Board members in 2017-2018	Term duration
Collecting institution	Katharine A. Lochnan Senior Curator, International Exhibitions Art Gallery of Ontario Toronto, ON	May 2015 – May 2018
Collecting institution	Theresa Rowat Director, The Archive of the Jesuits in Canada Montréal, QC	February 2015 – February 2018 February 2018 – February 2021 (renewed)
Collecting institution	Paul Whitney Library and policy consultant, writer, book and art collector Vancouver, BC	January 2018 – January 2021
Dealer/collector	Rudy Buttignol President and CEO, Knowledge Network Corporation President, BBC Kids Vancouver, BC	November 2014 – November 2017
Dealer/collector	Monte Clark Owner/Director, Monte Clark Gallery Vancouver, BC	June 2016 – May 2017 February 2018 – February 2021 (re-appointed)
Dealer/collector	Patricia Feheley Director, Feheley Fine Arts Toronto, ON	May 2015 – May 2018 May 2018 – May 2021 (renewed)
Dealer/collector	Alain Lacoursière Art Consultant Montréal, QC	June 2014 – June 2017
Dealer/collector	Pierre-François Ouellette Director, Pierre-François Ouellette art contemporain Montréal, QC	January 2018 – January 2021

Appendix 1-3: CCPERB meetings

Date	Location
June 7 – 9, 2017	Ottawa
September 6 – 8, 2017	Ottawa
December 13 – 15, 2017	Ottawa
March 20 – 23, 2018	Ottawa

Appendix 1-4: Overview of applications for certification

Applications for Certification reviewed by CCPERB (excludes files seen more than once during the fiscal year)	Number	Percentage
Total applications reviewed	538	
Total new applications	480	89%
Total holds (brought forward from a previous meeting)	49	9%
Total requests for redetermination	9	2%
Total applicant organizations	JFÁ	

Applications reviewed per province and territory (excludes files seen more than once during the fiscal year)	Number	Percentage
Alberta	45	8%
British Columbia	44	8%
Manitoba	8	1%
New Brunswick	28	5%
Newfoundland and Labrador	4	1%
Northwest Territories	0	€Á Á
Nova Scotia	13	2%
Nunavut	0	€Á Á
Ontario	170	32%
Prince Edward Island	2	0%
Quebec	207	38%
Saskatchewan	17	3%
Yukon	0	€Á Á
TOTAL	538	

Applications by cultural property group (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
I.	Objects recovered from the soil or waters of Canada	5	1%
II.	Objects of ethnographic material culture	5	1%
III.	Military objects	1	0%
IV.	Objects of applied and decorative art	23	4%
V.	Objects of fine art	437	80%
VI.	Scientific or technological objects	3	1%
VII.	Textual records, graphic records, and sound recordings	69	13%
VIII.	Musical instruments	0	0 %
	TOTAL	543	

Certification decisions by type (excludes files seen more than once)	Number / Percentage	Total fair market value	Approximate federal forgone tax revenue ¹
Approved at the proposed value ²	359 (67%)	\$ 46M	\$ 14M
Approved at a lower value	87 (16%)	\$ 42M	\$ 13M
Approved at a higher value	24 (4%)	\$ 44M	\$ 13M
Put on hold ³	38 (7%)	n/a	n/a
Refused ⁴	27 (5%)	n/a	n/a
Inadmissible ⁵	3 (1%)	n/a	n/a
TOTAL	538	\$ 132M	\$ 40M

1. 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.)
2. Where there are multiple proposed values, the average is taken as the fair market value.
3. If CCPERB needs additional information before making a decision, it will put the application on hold.
4. If CCPERB concludes that a given property does not meet the criteria of outstanding significance and national importance, it will refuse the application.
5. If CCPERB is not satisfied that the donor was the owner of the object at the time of the donation, the Review Board has no jurisdiction to proceed with making a determination; consequently the application is deemed inadmissible.

Appendix 1-5: Refused applications for export permits reviewed by CCPERB

Permit application #	Cultural property	Notice of decision	Decision	Delay period	Outcome
103095	Lawren Stewart Harris Mount Robson from Berg Lake, ca. 1929 Oil on board 12 x 15 in. (30.5 x 38.1 cm)	July 13, 2017	Delay period established	3 months	Delay period expired on October 13, 2017. CCPERB directed the issuance of an export permit on October 19, 2017.
103096	Gustave Caillebotte Blue Irises, Garden at Petit Gennevilliers, 1892 Oil on canvas 21 ¾ x 18 ¼ in. (55.2 x 46.3 cm)	July 13, 2017	Delay period established	6 months	Request for a fair cash offer determination made on November 1, 2017.
110458	Great War Medals Group, Lieutenant-Colonel Marcus Strachan: <ol style="list-style-type: none"> 1. Great War 1917 Victoria Cross 2. Military Cross (G.V.R.) 3. 1914-15 Star 4. British War medal 5. Victory medal 6. Canadian Volunteer Service medal 7. War medal 1939-1945 8. 1937 Coronation medal 9. 1953 Coronation medal 10. 1967 Centennial medal 	Sept. 22, 2017	Delay period established	6 months	Acquisition by the Canadian War Museum announced on November 20, 2017 with the assistance of a Movable Cultural Property grant.
109853	Max Ernst La Parisienne Conceived in 1950 and cast in 1959 Bronze Height: 31 inches (78.8 cm)	Jan. 17, 2018	Delay period established	6 months	Delay period expires on July 17, 2018

Permit application #	Cultural property	Notice of decision	Decision	Delay period	Outcome
109853	Pablo Picasso Tête de femme (Dora Maar), 1941 Charcoal on paper 12 x 9 ½ inches (30.5 x 23.5 cm)	Jan. 17, 2018	Delay period established	6 months	Delay period expires on July 17, 2018
109841	Barbara Hepworth Meridian, 1958 Numbered 1/6 Bronze Height: 63.8 inches (162 cm)	Jan. 17, 2018	Delay period established	6 months	Delay period expires on July 17, 2018
110459	Group of Second World War Medals awarded to Lt. Col. David Vivian Currie: <ol style="list-style-type: none"> 1. Victoria Cross 2. 1939-1945 Star 3. France Germany Star 4. Defence medal 5. Canadian Volunteer Service medal and bar 6. War medal 1939-1945 7. 1953 Coronation medal 8. 1967 Centennial medal 9. 1977 Jubilee medal 	Feb. 5, 2018	Delay period established	6 months	Acquisition by the Canadian War Museum announced on May 1, 2018 with the assistance of a Movable Cultural Property grant
110202	Le Corbusier Deux Figures Au Tronc D'Arbre, 1937 Signed Le Corbusier Oil on Canvas 130 x 162 cm	March 2, 2018	Delay period established	6 months	Delay period expires on Sept. 2, 2018