

REVIEW BOARD DECISION

July 28, 2021

REQUEST FOR REVIEW OF AN APPLICATION FOR CULTURAL PROPERTY EXPORT PERMIT

Application No.: 0495-20-10-23-003 *Tête de Marguerite* by Henri Matisse

INTRODUCTION

1. Sotheby's Canada Inc. (the Applicant) applied to the Canada Border Services Agency (CBSA) for an export permit to export the work *Tête de Marguerite*, 1905, pen and ink on paper, by Henri Matisse (the Object).
2. A permit officer employed by the CBSA sent to the Applicant a written notice of refusal with respect to the Object.¹ The refusal was based on the advice of a representative of the Montreal Museum of Fine Arts (the Expert Examiner), who determined that the Object is on the *Canadian Cultural Property Export Control List* (the Control List) and of outstanding significance and meets the degree of national importance set out in the *Cultural Property Export and Import Act* (the Act).
3. On May 26, 2021, the Applicant requested a review by the Canadian Cultural Property Export Review Board (the Review Board) of its application for an export permit.²
4. The Applicant made submissions in a written statement dated June 17, 2021, and did not request a hearing.
5. The Review Board met to consider the matter on July 21, 2021.
6. For the reasons that follow, the Review Board establishes a delay period of six months ending **January 28, 2022**, during which it will not direct that an export permit be issued in respect of the Object.

ISSUES TO BE DETERMINED BY THE REVIEW BOARD

7. In the review of an application for an export permit, the Review Board must determine whether the object:
 - is included in the Control List;
 - 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

¹ Subsection 13(1) of the *Cultural Property Export and Import Act* (the Act).

² Subsection 29(1) of the Act.

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- is of such a degree of national importance that its loss to Canada would significantly diminish the national heritage.³
8. If the Review Board determines that the Object meets all of the above criteria, the Review Board then forms an opinion as to whether an institution or public authority in Canada might make a fair offer to purchase the Object within six months after the date of its decision. If so, the Review Board establishes a delay period of not less than two months and not more than six months during which the Review Board will not direct that an export permit be issued in respect of the Object.⁴ The purpose of the delay period is to provide an institution or public authority in Canada with an opportunity to purchase the Object.
9. If the Review Board determines that the Object fails to meet one of the above criteria, the Review Board directs a CBSA permit officer to promptly issue an export permit for the object.⁵

ANALYSIS

Tête de Marguerite, 1905, by Henri Matisse

10. The Object, *Tête de Marguerite*, is a pen and ink on paper drawing, executed by Henri Matisse (1869-1954) in 1905. It measures 52.7 x 64.7 cm. It is signed *H Matisse* at the lower right.

Whether the Object is included in the Control List

11. An object that falls under one of the eight groups in the Control List cannot be exported from Canada without a permit if it:
- is more than 50 years old;
 - was made by a natural person who is no longer living; and,
 - meets the criteria, including age or a minimum dollar value, set out in the Control List.

³ Subsection 29(3) of the Act.

⁴ Subsection 29(5) of the Act.

⁵ Subsection 29(4) of the Act.

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12. In its application for an export permit (the Application), the Applicant expressed its understanding that the Object is included in Group V 4(a) of the Control List.
13. Group V 4(a) of the Control List includes drawings made outside the territory that is now Canada that have a fair market value in Canada of more than \$15,000.00 CAN.
14. The Object is a drawing that was made outside the territory that is now Canada more than 50 years ago by a person who is no longer living. The Object was made France in 1905 by Henri Matisse, who died in 1954.⁶
15. The Object's fair market value, as specified by the Applicant in the Application, exceeds \$15,000.00 CAN. The Review Board therefore concludes that the Object is included in the Control List.

Whether the Object is of outstanding significance

16. In reviewing an application for an export permit, the Review Board must determine whether 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.⁷
17. For the reasons that follow, the Review Board finds that the Object is of outstanding significance because of its aesthetic qualities and value in the study of the arts.
18. Henri Matisse is one of the most significant and influential artists of the twentieth century. Though his education in art was academic, Matisse became one of the foremost figures of Modernism in France. He was central to the creation and development of Fauvism, which would have a profound impact on the artists of his time and those who succeeded him. He was recognized for his skill as a draughtsman, producing works with fluidity and eventually, a minimalist use of line. The works by the artist are highly sought after by both private collectors and public institutions and have been the subject of innumerable exhibitions, both while he was alive and posthumously.

⁶ John Elderfield et al. *The Drawings of Henri Matisse*, exh. cat., (New York: Thames and Hudson, in association with the Museum of Modern Art and the Arts Council of Britain, 1985), pp. 253-254.

⁷ Paragraphs 29(3)(b) and 11(1)(a) of the Act.

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19. With respect to the Object's aesthetic qualities and value in the study of the arts, the Review Board notes that the work is a remarkable example of Matisse's ability as a draughtsman, executed at a pivotal moment in the artist's career – the same year as the first exhibition by a group of artists led by Matisse who would thereafter be termed "Fauves". It is also of particular significance due to its subject matter, as it is a portrait of the artist's daughter, Marguerite. In its submissions, the Applicant states that the Object "is devoid of that innovation and creativity of composition, concept, execution and style that are expected from drawings by Matisse", as it is not rendered in the Fauvist style typical of the artist at this time.⁸ However, the significance of the Object is underlined by the work's extensive exhibition history, having been featured in nine exhibitions, many of which were staged at multiple international venues, between 1955 and 2006. Marguerite was one of Matisse's most frequently used models and representations of her are a fundamentally important aspect of his oeuvre. In addition, that the drawing is Modernist in style, but distinctly outside of the Fauvist aesthetic, makes it of particular interest to Matisse's artistic practice around 1905. The 2002 exhibition catalogue *Matisse-Picasso* states that aesthetically, this drawing "represents an exceptional moment in Matisse's graphic work."⁹ Furthermore, it is related to two important works by the artist: the bronze *Tête de Marguerite* in the Baltimore Museum of Art and the oil painting, *Portrait of Marguerite* in the Marion Smooke Collection in Los Angeles. The Object is a sensitive and intimate portrayal of one of the artist's most important subjects, its outstanding significance highlighted by its impressive exhibition history.

20. The Review Board therefore concludes that the Object is of outstanding significance.

Whether the Object is of such a degree of national importance that its loss to Canada would significantly diminish the national heritage

21. In reviewing an application for an export permit, the Review Board must determine whether the object is of such a degree of national importance that its loss to Canada would significantly diminish the national heritage.¹⁰

22. In making that determination, the Review Board must measure the extent of the effect of the removal of the object from Canada by taking into consideration relevant factors

⁸ Written statement submitted by the Applicant, June 17, 2021, p. 5.

⁹ Elizabeth Cowling et al. *Matisse-Picasso*, exh. cat. (London: Tate Publishing, 2002), p. 66.

¹⁰ Paragraphs 29(3)(c) and 11(1)(b) of the Act.

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that speak to the degree of value and importance of the object to Canada, as well as its importance in the Canadian context.¹¹ An object can meet the degree of national importance set out in the Act even if the object or its creator have no direct connection to Canada.¹²

23. The Review Board is not confined to specific factors in its assessment of national importance. It has broad discretion to assess and determine whether a given object meets the degree of national importance set out in the Act. To this end, the Review Board is composed of members appointed for their expertise in the specialized context of cultural property, cultural heritage and cultural institutions.¹³
24. For the reasons that follow, the Review Board finds that the Object is of such a degree of national importance that its loss to Canada would significantly diminish the national heritage. In reaching that determination, the Review Board considered the importance of the creator, the Object's rarity, and provenance as relevant factors.

Rarity

25. The Review Board considers that an object's rarity is a relevant factor in its assessment of the object's national importance.
26. In its written submissions, the Applicant acknowledged that "drawings of Marguerite prior to 1906, and so fully resolved as this present work, are scarce."¹⁴ The Review Board acknowledges that, as stated by the Applicant, rarity does not always equal importance. However, as noted above, the Object has been described as "an exceptional moment in Matisse's graphic work,"¹⁵ a fact that this supported by its inclusion in nine exhibitions. The Review Board is therefore of the opinion that in the case of the Object, rarity does add to its importance. Its date of execution in combination with its aesthetic qualities, significant subject matter and extensive exhibition history, contribute to make the Object not only rare, but also important.
27. The Review Board notes that drawings by Matisse are very rare in Canada. The database Artefacts Canada indicates 12 drawings by the artist in Canadian public collections, only one of which dates from the same decade as the Object. There are

¹¹ *Canada (Attorney General) v. Heffel Gallery Limited*, 2019 FCA 82 at paragraphs 37 and 43.

¹² *Ibid.*, at paragraph 39.

¹³ *Ibid.*, at paragraph 33.

¹⁴ Written statement submitted by the Applicant, June 17, 2021, p. 5.

¹⁵ Elizabeth Cowling et al., *op. cit.* note 9, p. 66.

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no depictions of the artist's daughter Marguerite in any media in any public collection in Canada.

28. The Review Board is of the view that although other drawings by Matisse exist in Canadian public institutions, there do not appear to be any representations of Marguerite in these collections. In addition, as the Applicant noted, the Object is not only rare in Canada, but within the artist's oeuvre as a whole. The rarity of the work therefore increases the degree of value and importance of the Object to Canada.

Provenance

29. The Review Board is of the opinion that an object's provenance is a relevant factor in determining whether the object is of such a degree of national importance that its loss would significantly diminish the national heritage.
30. With its submissions, the Applicant provided the Review Board with an image of the Object's verso. On the verso of the Object is a label that indicates the artist personally agreed to loan the drawing to the 1952 Fauve exhibition at the Museum of Modern Art in New York, organized by John Rewald. At that time, the artist had refused to sell it to Rewald. In 1953, the artist, though agreeing to sell it to Rewald, stated that "he had long hesitated to separate himself from it."¹⁶ The Review Board considers this reluctance to indicate the Object had particular significance for the artist.
31. The provenance of the Object is also important due to the fact that it was purchased directly from the artist by John Rewald, a prominent art historian and authority in French late nineteenth and early twentieth century art. Having once been in the collection of such a high profile scholar and contributor to the field of art history also increases the value of the Object with regards to its national importance. In addition, eight years after the artist's sale of the work to Rewald in 1953, the Object was purchased by a private collector and then passed by descent to the current owner. Therefore, not only is the provenance of the Object significant, but it is also unbroken from the time of its creation to the present.
32. The Review Board is therefore of the view that due to the importance of the Object to the artist and its solid ownership history, the provenance of the work contributes to the value and importance of the Object to Canada.

¹⁶ "J'ai longuement hésité à m'en séparer.." Label on verso of the Object.

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33. The Review Board therefore concludes that the Object is of such a degree of national importance that its loss to Canada would significantly diminish the national heritage.

Whether an institution or public authority in Canada might make a fair offer to purchase the Object within six months after the date of the determination

34. If the Review Board determines that an object is on the Control List and is of outstanding significance and of national importance, it must form an opinion as to whether an institution or public authority in Canada might make a fair offer to purchase the object within six months after the date of the determination.¹⁷

35. Considering the importance of the artist in general and of the Object in particular, the Review Board is of the view that this drawing might be of interest to the major public art institutions in Canada who have a mandate that would allow them to collect works by Henri Matisse.

36. Based on its own expertise, the Review Board is of the opinion that an institution or public authority in Canada might make a fair offer to purchase the Object within six months after the date of this decision.

Delay period during which the Review Board will not direct that an export permit be issued in respect of the Object

37. When the Review Board is of the opinion that an institution or public authority in Canada might make a fair offer to purchase an object within six months after the date of the determination, the Review Board must establish a delay period of not less than two months and not more than six months during which the Review Board will not direct that an export permit be issued in respect of the object.¹⁸

38. The Review Board establishes a delay period of **six months**, ending **January 28, 2022**, during which it will not direct that an export permit be issued in respect of the Object. The Review Board is of the view that that this delay period is necessary to provide institutions and public authorities with sufficient time to consider the possibility of making an offer to purchase the Object and potentially acquire the appropriate funds to do so.

¹⁷ Subsection 29(5) of the Act.

¹⁸ Paragraph 29(5)(a) of the Act.

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CONCLUSION

39. In conclusion, the Review Board determines that the Object is on the Control List, that it is of outstanding significance, and that it is of such a degree of national importance that its loss to Canada would significantly diminish the national heritage. Furthermore, the Review Board is of the opinion that a fair offer to purchase the Object might be made by an institution or public authority in Canada within six months after the date of this decision. The Review Board therefore establishes a delay period of six months ending **January 28, 2022**, during which it will not direct that an export permit be issued in respect of the Object.

For the Review Board

Sharilyn J. Ingram, Chair
Tzu-I Chung
Laurie Dalton
Madeleine Forcier
Theresa Rowat
Paul Whitney