



Annual Report on the Administration of the *Cultural Property Export and Import Act* 2019-20

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Introduction

Since its adoption in 1977, the *Cultural Property Export and Import Act* (Act) has served to encourage and ensure the preservation in Canada of significant examples of our artistic, historic, and scientific heritage. The Act accomplishes this objective through the following five provisions:

- Designation of organizations that have demonstrated the capacity to preserve cultural property and make it accessible to the public;
- Tax incentives to encourage Canadians to donate or sell significant cultural property to designated organizations;
- Grants to assist designated organizations with the purchase of cultural property;
- Export control; and
- Import control.

The responsibility for carrying out these provisions is shared by the Minister of Canadian Heritage and an independent administrative tribunal established by the Act, the Canadian Cultural Property Export Review Board, together with other government organizations responsible for administering and enforcing specific elements of the legislation.

This report will cover the aspects of the Act that are the responsibility of the Minister of Canadian Heritage from April 1, 2019 to March 31, 2020. Activities under the Act that are the responsibility of the Board, including the certification of cultural property for income tax purposes and the review of refused export permits, are covered in a separate report, issued by the Board.

Minister's message



As Minister of Canadian Heritage, I am pleased to present the Annual Report on the Administration of the *Cultural Property Export and Import Act* for 2019-2020. Since its adoption in 1977, the Act has helped ensure the preservation of significant examples of Canada's artistic, historic and scientific heritage.

This report refers solely to the Department of Canadian Heritage's work to support the administration of the act. The Canadian Cultural Property Export Review Board has prepared a separate report detailing its work administering the Act. I am pleased to table both reports before Parliament and make them available to Canadians.

I am happy to announce that the Movable Cultural Property Grants program awarded four grants to help acquire and repatriate cultural property relating to our national heritage and to retain cultural property threatened with export. The grants program helped the Art Gallery of Ontario acquire the work of the French painter Gustave Caillebotte, *Iris bleus, jardin du Petit Gennevilliers*. It also helped the Public Archives of Nova Scotia acquire a letter by George Henry Wright, which was written aboard the RMS Titanic. Furthermore, the program helped the Musée national des beaux-arts du Québec repatriate the *Cheval d'enseigne*; a sculpture by Canadian artist Jean-Baptiste Côté. Finally, it assisted the Royal Ontario Museum repatriate the Bond Head Pipe and related objects and documents, on behalf of the Wiikwemkoong Unceded Territory.

The Department continues to fulfil Canada's obligations under the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. In keeping with these obligations, there was one conviction under the Act for an attempt to illegally export Canadian fossils without an export permit.

The Movable Cultural Property program continued its efforts to increase efficiency for high volume exporters, issuing three general permits to museums, art galleries and businesses in 2019-2020. Issuing these permits has reduced the paperwork and time needed to export cultural property from Canada while complying with the legislation.

I want to commend the Movable Cultural Property program for its accomplishments this year and thank all those who work to preserve and protect Canada's artistic and cultural heritage.

A handwritten signature in black ink, appearing to read "Steven Guilbeault". The signature is fluid and cursive, with a prominent initial "S" and a long, sweeping underline.

The Honourable Steven Guilbeault

Report of the Movable Cultural Program

Overview

The Movable Cultural Property Program (MCP) within the Department of Canadian Heritage is responsible for:

- assessing organizations for the purpose of designation;
- assessing applications for Movable Cultural Property grants;
- export control; and
- import control.

Designation of organizations

Organizations such as museums, art galleries, libraries, archives, municipalities, and public authorities must be designated in order to be eligible to apply for the certification of cultural property or for a Movable Cultural Property grant. Designation is a ministerial responsibility and a means of ensuring that cultural property certified by the Review Board or acquired with the assistance of a Movable Cultural Property grant is housed in organizations that have the capacity to ensure its long-term preservation and to make it accessible to the public through research, exhibitions, publications, and online.

Organizations may be designated as Category A or B. Under Category A, organizations are designated in relation to any cultural property that falls within their collecting mandate. Under Category B, organizations are designated only in relation to a specific cultural property or collection.

For an overview of organizations designated in 2019-20, please refer to [Appendix 1-4](#).

For a complete list of Category A organizations, please refer to the [corresponding page](#) of the Movable Cultural Property website.

Movable Cultural Property grants

Under Section 35 of the Act, the Minister may provide grants to designated organizations to assist with the purchase of cultural property that has been denied an export permit or that is outside of Canada but available for sale on the international market and related to the national heritage.

For an overview of the Movable Cultural Property grants issued in 2019-20, please refer to [Appendix 1-3](#).

Import control

International cooperation under the 1970 UNESCO Convention

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 places the onus on each signatory state to develop its own legislation to protect and preserve its cultural heritage and to establish measures to facilitate the return of illegally exported cultural property to its country of origin. The Act contains provisions making it an offence to import into Canada cultural property that has been illegally exported from a state that is a fellow signatory to an international cultural property agreement. Penalties upon conviction of an offence under the Act include a fine, imprisonment, or both.

Canada has returned over 22,000 objects on 25 occasions to 14 different states in Africa, Asia, Europe, the Middle East as well as South and Central America since the 1970 UNESCO Convention came into force in Canada in 1978.

In 2019-20, the Movable Cultural Property Program responded to approximately 66 enquiries from the general public, the Canada Border Services Agency and other government departments concerning the import of cultural property into Canada. On average, 91 per cent of these enquiries received a response within the five-day service standard. In addition, the Program reviewed 25 imports in 2019-20, which were detained by the Canada Border Services Agency. On average 80 per cent of these cases were resolved in less than 90 days.

International cooperation under the 1954 UNESCO Hague Convention

The UNESCO Convention for the Protection of Cultural Property in the Event of Armed Conflict, known as the 1954 Hague Convention, was developed in response to concerns over the destruction of cultural property, including monuments, museums, libraries and archives, during the Second World War. The Convention is regarded as one of the most important components of the international effort to protect cultural heritage.

The two Protocols to the Convention make it illegal to export cultural property from occupied territories as well and provide for the return of any illegally exported property. They also impose obligations on the prosecution of violations of the Convention.

Canadians who participate in the deliberate destruction or illegal export of cultural property, either during peace time or during conflict, may be committing an offence under the Criminal Code or the *Cultural Property Export and Import Act*.

Since 2005, it is also an offence under the Criminal Code for Canadians to damage or destroy cultural property anywhere outside Canada at any time.

In 2019-20, there were no convictions for offences committed by Canadians against cultural property outside of Canada.

Illegal imports

There were no returns of illegally imported cultural property in 2019-20.

Export control

Archaeological, ethnographic, historical, cultural, artistic, and scientific objects are all considered movable cultural property, but only certain types of cultural property are subject to export control under the Act. The *Canadian Cultural Property Export Control List* defines classes of property that are subject to export control based on age and value (see [appendix 1-1](#) for a summary of the groups on this list).

If cultural property is included on the Control List, an export permit is required for its temporary or permanent removal from the country. The Movable Cultural Property Program liaises with and responds to questions from Canada Border Services Agency permit-issuing offices, expert examiners, and members of the public to ensure that the export-control system works effectively. Movable Cultural Property also interprets the *Control List* for these stakeholders.

The Movable Cultural Property program responded to approximately 398 enquires in 2019-20 from stakeholders with respect to the export of cultural property from Canada. All enquiries were answered within the service standard of five business days.

Export permits

Temporary and permanent export permits are issued by permit officers in 16 Canada Border Services Agency permit offices located across Canada. Applications for temporary export, for objects that have been in Canada less than 35 years or which are being returned after a loan to a Canadian institution by a non-resident will all be issued automatically by the Canada Border Services Agency. All other applications for permanent export will be reviewed by an expert examiner (i.e., for sale on an international market, delivery to foreign buyers, or moving abroad). More than 80 institutions are designated to act as expert examiners. These include museums, art galleries, archives, libraries and universities across Canada. The role of expert examiners is to advise Canada Border Services Agency as to whether cultural property faced with export meets the criteria of outstanding significance and national importance as set out in the Act.

If the permit officer determines that an object subject to permanent export is included on the *Control List* and has been in the country for more than 35 years, the officer must forward a copy of the application to an expert examiner for a recommendation as to whether that object is of outstanding significance and national importance. If the expert examiner deems this to be the case, the officer will refuse the permit; otherwise, it will be issued.

Information regarding reviews of refused permit applications is available in the report of the activities of the Canadian Cultural Property Export Review Board.

General export permits

A general permit may be issued to any resident of Canada who regularly exports cultural property that falls under the Control List. General permits may be granted to organizations whose core business is unduly inconvenienced by the necessity of applying for individual permits or to organizations which have a large volume of cultural property exports.

A general permit will be issued when it can be demonstrated that the property to be exported would routinely be approved for export. Routinely approved permits include temporary permits, permits for objects that have been in Canada less than 35 years or permits for objects returned after loan to a Canadian institution or public authority. Cultural property that must be reviewed by an Expert Examiner under the permanent export permit process would not normally be considered eligible for a general permit.

To date, a total of 12 General Permits have been issued, which accounts for the general decrease in the overall number of individual permits issued each year. For an overview of export-permit applications covering the 2019-20 fiscal year, please refer to [appendix 1-2](#).

Illegal exports

Pursuant to Article 1 of the 1970 UNESCO Convention, Section 38 of the Act states that any cultural property included on the *Control List* is designated by Canada to be of importance for archaeology, ethnography, history, culture, art, or science. The Act contains provisions making it a criminal offence to export or attempt to export from Canada any property included on the Control List except under the authority of and in accordance with a temporary or permanent permit issued under the Act. Penalties upon conviction of an offence under the Act include a fine, imprisonment, or both. Under the terms of the 1970 UNESCO Convention, if illegally exported cultural property is imported into a fellow signatory state, Canada may be afforded the opportunity to request its return.

In 2019-20 there was one conviction under the Act for an attempt to illegally export Canadian fossils without an export permit. The exporter was convicted in May 2019 of attempting to export cultural property without a permit, and for providing false or misleading information, and was fined \$2,500.

Litigation

In December 2016, Heffel Fine Art Auction House (Heffel) applied for an export permit for the 1892 French painting “Iris bleu, jardin du Petit Gennevilliers,” by Gustave Caillebotte. After review by an expert examiner, the Canada Border Services Agency refused to issue the permit. Heffel requested a review of the refusal by the Canadian Cultural Property Export Review Board, but the Board upheld the refusal and set a delay period of six months in July 2017. Heffel then sought a judicial review of the Board’s decision and related issues in Federal Court.

As the department responsible for the administration of the legislation, Canadian Heritage worked closely with the Department of Justice throughout the judicial review process. On June 12, 2018, the Federal Court ruled that Board used an unreasonable interpretation of “national importance” in its determination, and that its decision that the Caillebotte was of “national importance” to Canada was also unreasonable. The Court quashed the Board’s decision and referred the matter back to the Board for reconsideration.

The Attorney General appealed the Federal Court decision. The hearing was held on February 7, 2019 in the Federal Court of Appeal. The Canadian museum community sought to intervene in the case because a change to the definition of “outstanding significance and national importance” could affect their ability to attract donors and offer them the enhanced tax incentive available under the Act. In its [decision of April 16, 2019](#), the Federal Court of Appeal overturned the Federal Court ruling and restored the Board’s original decision. The interpretation of national importance remains unchanged with respect to export permit applications.

Legislative amendments

Budget 2019 introduced changes to the *Income Tax Act* and the *Cultural Property Export and Import Act* to mitigate the potential impact of the June 2018 Federal Court judgement on donations of cultural property. The amendment proposed that the Canadian Cultural Property Export Review Board only consider the “outstanding significance” criteria when certifying cultural property for income tax purposes. The amendment was made through the *Budget Implementation Act* and came into effect during the 2019-2020 fiscal year.

The amendment does not affect exports of cultural property. Decisions to allow or refuse an export permit will still be based on the concept of “outstanding significance and national importance” as defined in the Act.

For more information, consult the Canadian Cultural Property Export Review Board and the [Movable Cultural Property Program](#) web page.

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 II : Objects of ethnographic material culture.

Group III : Military objects.

Group IV : Objects of applied and decorative art.

Group V : Objects of fine art.

Group VI : Scientific or technological objects.

Group VII : Textual records, graphic records, and sound recordings.

Group VIII : Musical instruments.

Appendix 1-2: Export-permit applications

Table 1. Export-permit applications, fiscal year 2019-20

Export-permit applications	Number of applications
Number of applications for temporary permits (i.e., for exhibition, conservation, or research).	49
Number of applications for permanent export. Includes permits issued automatically and reviewed by an expert examiner.	228
Total number of applications received.	277
Number of applications refused (To access the complete list of refused applications, please refer to the report on the activities of the Board).	1
Number of general permits issued or renewed.	3

Appendix 1-3: Movable Cultural Property grants issued

Table 2. Movable Cultural Property grants, fiscal year 2019-20

Grant no.	Description	Grant value (CAD)
819	Art Gallery of Ontario: to assist the gallery with the purchase of a painting entitled Iris bleus, jardin du Petit Gennevilliers by Gustave Caillebotte, 1892 (export appeal #103096).	\$540,000.00
820	Public Archives of Nova Scotia: to assist the archives with the purchase of a letter by George Henry Wright written aboard the RMS Titanic, 1912 (export appeal #495-18-09-12-002).	\$26,442.00
821	Musée national des beaux-arts du Québec: to assist the museum with the purchase of a sculpture entitled Cheval d'enseigne by Jean-Baptiste Côté, c.1880 (repatriation).	\$6,525.00
822	Royal Ontario Museum: to assist the museum with the purchase of the Bond Head Pipe, c. 1836, and related objects and documents, on behalf of the Wiikwemkoong Unceded Territory (repatriation).	82,935.00
Total		\$655,902.00

Appendix 1-4: Category A and B designations

Table 3. Category A and B designations, fiscal year 2019-20

Category	Organization	Effective Date
A	Audain Art Museum, Whistler, British Columbia	July 15, 2019
B	Town of Halton Hills - Helson Gallery, Georgetown, Ontario	December 17, 2019

For a complete list of Category A organizations, please refer to the [corresponding page](#) of the Movable Cultural Property website.

