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Table of contents

- Introduction5
- Minister’s message6
- Report of the Movable Cultural Program8
 - Overview8
 - Designation of organizations8
 - Movable Cultural Property grants8
- Import control.....9
 - International cooperation under the 1970 UNESCO Convention.....9
 - International cooperation under the 1954 UNESCO Hague Convention.....9
 - Illegal imports.....10
- Export control11
 - Export permits.....12
 - General export permits.....12
 - Illegal exports.....12
- Litigation13
- Legislative amendments13
- Appendices.....15
 - Appendix 1-1: Canadian Cultural Property Export Control List15
 - Appendix 1-2: Export-permit applications.....15
 - Appendix 1-3: Movable Cultural Property grants issued17
 - Appendix 1-4: Category A and B designations.....18

List of figures

- Figure 1. Mr. Wang Wentian, Deputy Head of Mission and Chargé d’Affaires and Mr. Hubert Lussier, Assistant Deputy Minister, Citizenship Heritage and Regions, Canadian Heritage and others examine one of the fossils returned to the Government of the People’s Republic of China on January 18, 2017.10

Figure 2. Pottery, glass vials and other antiquities returned to the Hashemite Kingdom of Jordan on November 26, 2018.11

List of tables

Table 1. Export-permit applications, fiscal year 2016-17	15
Table 2. Export-permit applications, fiscal year 2017-18	16
Table 3. Export-permit applications, fiscal year 2018-19	16
Table 4. Movable Cultural Property grants, fiscal year 2016-17	17
Table 5. Movable Cultural Property grants, fiscal year 2017-18	17
Table 6. Movable Cultural Property grants, fiscal year 2018-19	17
Table 7. Category A and B designations, fiscal year 2016-17	18
Table 8. Category A and B designations, fiscal year 2017-18	19
Table 9. Category A and B designations, fiscal year 2018-19	19

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;
- Import control.

The responsibility for carrying out these provisions is shared by the Minister of Canadian Heritage and an independent 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 for three years, from April 1, 2016 to March 31, 2019. 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 2016-17 to 2018-19. 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 marks a significant departure from previous reports, as it refers only to the Department of Canadian Heritage's work to support the administration of the Act. The Canadian Cultural Property Export Review Board prepared a separate report on its work administering the Act. I am pleased to table both reports before Parliament and make them available to Canadians.

As part of 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, the department continues to help return illegally imported cultural property. Since 2016, Canada has returned fossils and carvings to China, a primitive ceramic figure to Mexico, antiquities to Jordan and two contemporary artworks to Iraq. This demonstrates how government departments and agencies cooperate to enforce the *Cultural Property Export and Import Act*.

To increase efficiency for high volume exporters, eight general permits were issued to museums, art galleries and businesses between 2016 and 2019. These permits reduce the paperwork and time needed to export cultural property from Canada while complying with the legislation.

I am pleased that the Movable Cultural Property Grants program supported the repatriation of two Victoria Cross medals, acquired by the Canadian War Museum in 2017-18. The Victoria Cross awarded to Lt. Col. Marcus Strachan in the First World War and the Victoria Cross awarded to Lt. Col. David Currie in the Second World War were refused cultural property export permits. The export control process of the Act allowed the Canadian War Museum to acquire these nationally important medals. Funding also helped the Royal Ontario Museum repatriate a piece of the Hagersville meteorite and helped the University British Columbia acquire a pioneer journal by Susannah Weynton.

By designating institutions and public authorities to acquire significant cultural property, the Act allows these organizations to be certified for cultural property by the Canadian Cultural Property Export Review Board, or

apply for a Movable Cultural Property Grant. Fourteen organizations were designated in the last three years, including the Avataq Cultural Institute in Quebec and the Audain Art Museum in British Columbia. Designation ensures that cultural organizations are able to preserve our important heritage for the long term and make it accessible to Canadians through research, exhibits, publications, or online.

Budget 2019 introduced changes to the *Income Tax Act* and the *Cultural Property Export and Import Act* proposing that the Canadian Cultural Property Export Review Board only consider “outstanding significance” when certifying cultural property for income tax purposes. These amendments were implemented through the *Budget Implementation Act*. The amendment does not affect exports of cultural property. Decisions on granting export permits are still based on the Act’s definition of “outstanding significance and national importance.”

The Canada 150 celebrations provided an opportunity to showcase our rich cultural heritage. Our government has made our cultural legacy a key theme and an ongoing priority. We continue to help ensure that important aspects of Canada’s heritage are protected and preserved. The Movable Cultural Property Program supported this goal through its many achievements in the past three years.

The Honourable Steven Guilbeault

Minister of Canadian Heritage

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
- 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 2016-17, 2017–18, and 2018-19, 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 make 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 2016-17, 2017–18 and 2018-19, 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 made 25 cultural property returns to 14 different states since the 1970 UNESCO Convention came into force in Canada in 1978.

In 2016-17, 2017-18 and 2018-19, the Movable Cultural Property Program responded to approximately 102, 88 and 86 enquiries respectively, from the general public, the Canada Border Services Agency and other government departments concerning the import of cultural property into Canada. On average, ninety-six percent of these enquiries received a response within the five-day service standard. In addition, the Program reviewed 28 imports in 2016-17, 31 imports in 2017-18, and 26 imports in 2018-19, which were detained by the Canada Border Services Agency. On average ninety-two percent 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 the three years covered by this report, there were no convictions for offences committed by Canadians against cultural property outside of Canada.

Illegal imports

In the three years covered by this report, Canada returned cultural property to China, Mexico, Jordan and Iraq under the provisions of the 1970 Convention. On January 11, 2017, during her visit to China, Minister Joly announced the return of two fossils and a pair of 19th century wooden architectural carvings (roof supports) to the Government of the People's Republic of China. The transfer took place at the Canadian Conservation Institute in Ottawa on January 18, 2017.

Figure 1. Mr. Wang Wentian, Deputy Head of Mission and Chargé d'Affaires and Mr. Hubert Lussier, Assistant Deputy Minister, Citizenship Heritage and Regions, Canadian Heritage and others examine one of the fossils returned to the Government of the People's Republic of China on January 18, 2017.



On April 7, 2017 the Government of Canada returned a pre-Columbian ceramic to the Government of the United Mexican States at the Consulate General of Mexico in Montreal. The antiquity, the head of a primitive ceramic figure, was intercepted by Canada's customs officials in Montreal. The import was assessed by the Department of Canadian Heritage and a Federal Court determined that the antiquity was illegally imported into Canada. The event marked the second return of cultural property to Mexico.

On November 26, 2018 the Government of Canada, represented by Andy Fillmore, Parliamentary Secretary to the Minister of Canadian Heritage and Multiculturalism returned 58 antiquities including pottery, glass vials, sculptures and oil lamps, to the Hashemite Kingdom of Jordan. These objects were intercepted by Canada's customs officials in Toronto. The import was assessed by the Department of Canadian Heritage and a Federal Court determined that the antiquities were illegally imported into Canada. The event marked the first return of cultural property to Jordan.

Figure 2. Pottery, glass vials and other antiquities returned to the Hashemite Kingdom of Jordan on November 26, 2018.



On March 5, 2019, the Government of Canada returned two contemporary paintings by Iraqi artist Mahood Ahmad to the Republic of Iraq. The paintings were also intercepted by Canada's customs officials in Toronto. The import was assessed by the Department of Canadian Heritage and a Federal Court determined that the paintings were illegally imported into Canada. The event marked the first return of cultural property to Iraq.

Canada has made 25 cultural property returns to 14 different states since the 1970 UNESCO Convention came into force in Canada in 1978.

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 415 enquires in 2016-17, 400 enquiries in 2017-18, and 600 enquires in 2018-19, 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 permit officer will refuse the permit; otherwise, the permit 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 nine (9) 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 years of 2016-17, 2017-18 and 2018-19, 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 2016-17, 2017-18, and 2018-19, there were no convictions under the Act related to the illegal export of cultural property.

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.

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*.

As a result, institutions will be able to seek certification for the same range of cultural property that was eligible prior to the June 2018 Federal Court ruling, regardless of the outcome of the 2019 appeal. 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 2016-17

Export-permit applications	Number of applications
Number of applications for temporary permits (i.e., for exhibition, conservation, or research).	100
Number of applications for permanent export. Includes permits issued automatically and reviewed by an expert examiner.	301
Total number of applications received.	401
Number of applications refused (To access the complete list of refused applications, please refer to the report on the activities of the Board).	3
Number of general permits issued or renewed.	6

Table 2. Export-permit applications, fiscal year 2017-18

Export-permit applications	Number of applications
Number of applications for temporary permits (i.e., for exhibition, conservation, or research).	86
Number of applications for permanent export. Includes permits issued automatically and reviewed by an expert examiner.	281
Total number of applications received.	367
Number of applications refused (To access the complete list of refused applications, please refer to the report on the activities of the Board).	9
Number of general permits issued or renewed.	2

Table 3. Export-permit applications, fiscal year 2018-19

Export-permit applications	Number of applications
Number of applications for temporary permits (i.e., for exhibition, conservation, or research)	42
Number of applications for permanent export. Includes permits issued automatically and reviewed by an expert examiner.	261
Total number of applications received.	303
Number of applications refused (To access the complete list of refused applications, please refer to the report on the activities of the Board).	4
Number of general permits issued or renewed.	0

Appendix 1-3: Movable Cultural Property grants issued

Table 4. Movable Cultural Property grants, fiscal year 2016-17

Grant no.	Description	Grant value (CAD)
N/A	No grants were issued in 2016-2017.	\$0
Total		\$0

Table 5. Movable Cultural Property grants, fiscal year 2017-18

Grant no.	Description	Grant value (CAD)
811	University of British Columbia, Rare Books and Special Collections (Vancouver, BC): to assist with the purchase of a journal written by Susannah Weynton from August 1849 to March 1851 (repatriation).	\$39,760.00
813	Canadian War Museum (Ottawa, ON): to assist in purchasing the Victoria Cross Medal of Lt-Colonel Strachan (export delay 1140458).	\$160,000.00
814	Royal Ontario Museum (Toronto, ON): to assist in purchasing Hagersville 1AB Iron-Nickel Meteorite (repatriation).	\$35,000.00
815	Canadian War Museum (Ottawa, ON): to assist in purchasing the Victoria Cross Medal of Lt-Colonel David Currie (export delay 110459).	\$220,000.00
Total		\$454,760.00

Table 6. Movable Cultural Property grants, fiscal year 2018-19

Grant no.	Description	Grant value (CAD)
N/A	No grants were issued in 2018-2019.	\$0
Total		\$0

Appendix 1-4: Category A and B designations

Table 7. Category A and B designations, fiscal year 2016-17

Category	Organization	Effective Date
A	Nipissing University and Canadore College Archives and Special Collections, North Bay, Ontario	9 January 2017
A	Société historique du Saguenay, Saguenay, Quebec	8 September 2016
B	City of Orillia, Culture Division, Ontario	12 January 2017
B	Film Reference Library, Toronto International Film Festival, Toronto, Ontario	30 November 2016
B	Musée acadien du Québec, Bonaventure, Quebec	16 December 2016
B	Pointe-du-Buisson, Musée québécois d'archéologie, Beauharnois, Quebec	1 November 2016
B	Ryerson Image Centre, Ryerson University, Toronto, Ontario	30 June 2016
B	Trent University Art Collection, Peterborough, Ontario	24 January 2017
B	Ville de Montréal, Service de la culture, Bureau d'art public, Quebec	18 April 2016
B	Ville de Montréal, Service de la culture, Collections artistiques municipales, Quebec	16 December 2016

Table 8. Category A and B designations, fiscal year 2017-18

Category	Organization	Effective Date
A	Doris McCarthy Gallery, University of Toronto Scarborough, Toronto, Ontario	26 May 2017
A	Ryerson Image Centre, Ryerson University, Toronto, Ontario	31 July 2017
B	Audain Art Museum, Whistler, British-Columbia	24 November 2017
B	Centre d'exposition de l'Université de Montréal, Montreal, Quebec	31 July 2017
B	Ville de Rigaud, Services récréatifs et communautaires, Rigaud, Quebec	8 August 2017

Table 9. Category A and B designations, fiscal year 2018-19

Category	Organization	Effective Date
B	Archives of the Roman Catholic Episcopal Corporation for the Diocese of Toronto, Toronto, Ontario	April 6, 2018
B	MacLaren Art Centre, Barrie, Ontario	May 18, 2018
B	Burnaby Art Gallery, Burnaby, British Columbia	August 14, 2018
B	Guelph Civic Museum, Guelph, Ontario	December 10, 2018
B	Centre d'exposition de l'Université de Montréal, Montreal, Quebec	March 6, 2019

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

