

*Government Orders*

export without a permit; second, the establishment of the Canadian Cultural Property Export Review Board to review applications for export permits and applications for the certification of cultural property for income tax purposes; third, the establishment of income tax incentives for gifts or sales of cultural property to designated Canadian institutions; and, fourth, procedures for the recovery and return of foreign cultural property that has been illegally exported from its country of origin.

In 1978 Canada became a signatory to the 1970 UNESCO convention on the means of prohibiting and preventing the illicit export and transfer of ownership of cultural property. The convention, which contains measures to prevent the illicit import, export and transfer or ownership of cultural objects, places the onus on each signatory country 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 Cultural Property Export and Import Act contains provisions whereby it is a criminal offence to import into Canada cultural property that has been illegally exported from a country that is a signatory to an international cultural property agreement.

Protection of another country's heritage is not sufficient if we do not protect our own. Canada therefore put into place export controls to regulate the export of cultural property from Canada. It is imperative that we discuss here today the control system. It should be noted that any object that is more than 50 years old and made by a person who is no longer living is subject to export control. For such objects, a cultural property export permit must be obtained before they can leave the country.

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The Canadian cultural property export control list provides a detailed description of the classes of objects that are subject to control. It divides cultural property into seven categories or groups of objects. The first is objects recovered from the soil or waters of Canada. The second class is ethnographic arts. The third is military objects. The fourth is decorative art. The fifth is fine art. Sixth is scientific and technological objects. The seventh is books, documents, photographs and sound recordings.

To apply for a cultural property export permit, the exporter submits an application to a permit issuing officer who determines if the object is included in the controlled list. If it is not, the permit is issued forthwith. If it is included in the list, the permit issuing officer refers the permit application to the appropriate expert examiner.

The expert examiner must then determine if the object meets the criteria of outstanding significance and national importance found in section 11 of the act which reads as follows: "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 and sciences; and whether that object is of such a degree of national importance that its loss to Canada would significantly diminish the national heritage".

It should be noted that if the expert examiner advises that the permit not be issued, the permit officer advises the applicant accordingly. The applicant either retains the object in Canada or appeals the expert examiner's decision to the Canadian Cultural Property Export Review Board.

The review board then hears the appeal and either overrules the expert examiner or affirms his recommendation. If the review board overrules the expert examiner, the permit is granted immediately. If the board agrees with him, a delay period of between two and six months is established.

There is an incentive system. The act establishes the Canadian Cultural Property Export Review Board which consists of nine members plus a chairman. It is composed of two representatives of the public at large, including the chairman, and four members each from the curatorial and dealer collector communities. As such, the board is an independent body of individuals with a recognized knowledge and interest in Canadian heritage.

The work that occupies most of the board's time is not export control. The certification for income tax purposes of cultural property donated to Canadian institutions is of primary concern.

At the time of passage of the Cultural Property Export and Import Act, the Income Tax Act was amended to provide an exemption from the payment of capital gains tax for gifts or sales of certified cultural property. In addition, the value of objects or collections that have been determined to be of outstanding significance and national importance is eligible as a tax credit up to 100 per cent of net income instead of up to 20 per cent of net income that may be claimed as an exemption for charitable donations.

Prior to these amendments, capital gains tax was payable for gifts in kind. Only federal and provincial government institutions could offer tax credits up to 100 per cent of net income.

From 1977 to 1990 the review board had only an informal advisory role in the determination of the fair market value of gifts of cultural property. In 1990 the responsibility for determining the fair market value of certified cultural property was transferred from Revenue Canada Taxation to the review board. This was confirmed by legislative amendments to both the Cultural Property Export and Import Act and the Income Tax Act in 1991.

No provision was made for appealing determinations of the review board. The right of appeal contained in the Income Tax Act was then lost. The need for an appeal process was identified and acknowledged in 1993. By establishing the right of appeal, potential donors will be assured that if they are dissatisfied with