

Report on the application of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property

CANADA

I. Information on the implementation of the UNESCO Convention of 1970

1. Ratification of the Convention

Canada accepted the Convention on 28 March, 1978.

2. Implementation in the national legal system and in the organization of services

(a) References of the principal national regulations adopted in order to implement the 1970 Convention.

The 1977 *Cultural Property Export and Import Act* implements regulations of the 1970 Convention. Legislation is supported by *The Canadian Cultural Property Export List* and the *Cultural Property Export Regulations*.

(b) Definition of “cultural property” used by the national laws

No national definition exists as legislation is concerned, but Canada designates “cultural property” as those objects “of importance to archaeology, prehistory, history, literature, art, or science” in compliance with Article 1 of the Convention.

(c) Specialized units

The Department of Canadian Heritage administers the *Cultural Property Export and Import Act* at the national level. The Canada Border Services Agency issues permits and enforces responsibilities with respect to the export and import of cultural property. The Canadian Cultural Property Export Review Board allows for review of refused export permits and may set a delay period of six months for Canadian institutions to purchase cultural property subject to export delay.

(d) Administrative coordination
(e) Working meetings

The Department of Canadian Heritage coordinates with all partners, including the Royal Canadian Mounted Police, who may be asked to investigate cases when appropriate.

3. Inventories and identification

(a) Inventories

To combat the risk of misappropriation or theft, the Artefacts Canada database holds over 3.7 million object records and 700,000 images. Over 400 Canadian institutions contribute to the database.

(b) Definition of “cultural property” and “national treasures”

“Cultural property” is defined as per Article 1 of the 1970 Convention.

(c) Reference to the Object ID standard

The Artefacts Canada is a publicly-accessible record of ownership and provenance, a data standard that predates and provides more detail than the Object ID standard.

(d) Systems to combat theft and to train staff

To combat theft, the Department of Canadian Heritage uses a system of strict criteria and security provisions. Various opportunities, including courses offered by the Canadian Conservation Institute, exist to train professionals to manage collections.

4. Archaeological excavations

(a) Basic principles of the regulations on archaeological excavations and on the monitoring of excavations in force

Excavations conducted on federal land are regulated by the federal government, and those done on non-federal land are regulated by provincial or First Nations (settlement lands) governments.

The following principles on excavations are in force: Ownership and power of disposition are vested in the government, sites and objects must be registered and inventoried, all damage or sale or export is prohibited without a permit, all excavations require a permit, all accidental discoveries must be reported to the government, and fines or imprisonment may be a consequence to violations of these regulations.

(b) Illegal excavations

Illegal excavations do not occur consistently across Canada.

5. Monitoring of the export and import of cultural property

(a) Estimate of the scale of the illicit export or import of cultural property (statistics)

Given the size of the country, the abundance of uninhabited territories, and the desirability of Canadian Aboriginal cultural property, it is difficult to estimate the scale of illicit export and import of cultural property. Canada is not known to be a major source country for illicit traffic; however, such material does come to Canada, both as a final destination and en route to the U.S.

(b) Problem of the illicit export of cultural property

The illicit export of cultural property is not a recurring problem, as a range of cultural property (Canadian and non-Canadian, alike) is subject to export control under the *Cultural Property Export and Import Act*.

(c) Main rules for monitoring the export and import of cultural property

Any object on the *Canadian Cultural Property Export Control List* requires a permit for exportation. Violations of the provisions of the *Act* may be subject to fines or imprisonment. The public may access relevant information via workshops, published materials, and the Department of Canadian Heritage website.

(d) Rules provided for the restitution of illicitly imported cultural property

Property illegally imported into Canada is returned to a foreign state that is a co-signatory to the 1970 Convention under provisions of the *Cultural Property Export and Import Act*.

(e) Obstacles encountered in securing the restitution of illicitly exported cultural property

The return process includes civil action in a Canadian court. Foreign states may be asked about their cultural property legislation and to confirm that the object in question constitutes cultural property.

(f) Circumstances in securing the restitution of a stolen cultural object

Canada has returned over 350 objects to Bulgaria, China, Egypt, Mali, and Nigeria since 2007. They were detained by the Canada Border Services Agency and returned after the appropriate Canadian legal procedures.

6. System for trade-in, acquisition, ownership and transfer of cultural property

(a) Description of the cultural goods market in the country (financial volume of the market, number and turnover of auction houses including via the Internet).

Canada has a vibrant, licit cultural property market with auction houses, galleries, antique dealers, booksellers, etc.

(b) Rules governing trade in cultural goods, measures in place for such trade (maintenance of a police register), in particular through the Internet (reference to the basic measures proposed by UNESCO, INTERPOL and ICOM)

Apart from legislation on general property, additional rules apply to transactions of archaeological material under provincial and territorial laws.

(c) Existing Measures to control the acquisition of cultural property

Since the import of objects illegally exported from a fellow State Party to the 1970 Convention is prohibited, additional measures to control acquisition by institutions have been unnecessary.

(d) Existing legal system concerning ownership of cultural property:

The principle of inalienability is not applied to cultural items in national collections or objects originating in heritage sites. Legislation concerning artifacts found by chance and during organized excavation vests title of the objects in the government, but at the same time allows for disposition by the government of the objects and their ownership into private hands.

(e) Special rules on the transfer of title deeds in respect of cultural property

National institutions have policies that allow for the transfer of objects. Objects from national collections may be repatriated to Aboriginal First Nations within or outside the terms of a settlement.

7. Bilateral agreements

(a) Bilateral agreements concluded with other countries on the import, export and return of cultural property

(b) Conditions settled by the importing country with regard to the admissibility of requests for restitution from a country of origin

Canada does not require bilateral agreements separate from the provisions of the 1970 Convention, as prohibitions are already established for cultural property illegally exported from a fellow State Party.

(c) Administrative aid or any other type of cooperation with neighbouring countries, particularly in respect of police and customs services?

Canada has a range of Memoranda of Understanding with foreign states that encourage cooperation. Canada and the U.S. concluded a bilateral agreement for the return of cultural property in 1997, and, though it was not renewed, administrative cooperation and legal aid continue between the two countries.

II. Code of ethics, awareness raising and education

1. Ethical standards

(a) Application of the UNESCO International Code of Ethics for Dealers in Cultural Property and the ICOM for museums

The UNESCO Code of Ethics was first endorsed by the Canadian Cultural Property Export Review Board in 2001, with reiterated support in 2010. The Canadian Museum Association supports the ICOM Code of Ethics but has gone further to furnish the 1979 (updated 1999) CMA Ethical Behaviour of Museum Professionals.

2. Awareness raising and education

(b) Dissemination of the “One hundred missing objects” series and the ICOM Red Lists
(c) Description of activities carried out to raise the awareness of the authorities and educate the public, children in particular, regarding the serious damage that can be caused by illegal excavations, theft of cultural property and illegal export.

How far can UNESCO contribute to these activities?

Canadian Heritage offers training sessions to the Royal Canadian Mounted Police to raise awareness about illicit trafficking and has developed manuals for customs officials on obligations concerning cultural property. The government provides each recipient of a Canadian passport with a publication on cultural property protection and Canadian laws that implement the 1954 and 1970 Conventions. The Department of Foreign Affairs provides traveling advice online.

III. Cooperation with other international and regional agencies

Police

(a) State of national cooperation with INTERPOL. Specialized police services to whom the heritage officials can call on for enquiries, legal proceedings and punitive measures

INTERPOL has an established office in Canada. Heritage officials can contact the Royal Canadian Mounted Police or the Canada Border Services Agency for services required.

(b) Check on the INTERPOL database on stolen objects when a cultural object is stolen. Transmission of information on the persons implicated in the theft of cultural property

INTERPOL is consulted as required when suspected stolen cultural property is imported. Legal proceedings are managed by Canada’s Department of Justice and the Public Prosecution Service.

(c) Specific training program for members of police services

Royal Canadian Mounted Police receive training on the export and import of cultural property. Officers at the art crime unit in Quebec receive specialized training to investigate theft and fraud.

(d) Punishment of fraud and theft related to cultural property via criminal law provisions. Specialized judges in this field

Fraud and theft related to cultural property are punishable by the general provisions of Canada’s *Criminal Code*. Acts against cultural property committed by Canadians outside of Canada are further punishable pursuant to Canada’s obligations under the Second Protocol to the 1954 Convention.

(e) Cooperation with the United Nations Office on Drugs and Crime (UNODC)

There is presently no cooperation between Canada and the UNODC specific to cultural property; however, Canada is a State Party to the UN Convention against Transnational Organized Crime

(UNTOC) and applauds recent efforts to strengthen cooperation between UNESCO and the UNODC on the issue of pursuing transnational crime concerning cultural property.

Customs

(f) Status of cooperation with the World Customs Organization. Specialized customs services which could assist heritage officials in preventing the illicit export of cultural property

Canada frequently cooperates with the WCO, though not in ways specific to cultural property. Canada advocates the implementation of SAFE and the Kyoto Convention to adopt international trade standards.

(g) Specific training program for members of the customs administration

In addition to general training, customs officials receive documentation and customized training concerning cultural property.

(h) Reference to the UNESCO-WCO Model Export Certificate for Cultural Objects

Canada developed its export permit in 1977, which is similar to the UNESCO-WCO Model Certificate.

European Union - Application of the Council of the European Communities Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State

IV. Other legislative, legal and administrative measures taken by the State

1. Accession to the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects

Canada has not ratified the Convention but has indicated its support in principle. Canada has not experienced problems implementing the 1970 Convention and has implemented provisions that are consistent with aspects of the 1995 UNIDROIT Convention.

2. Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation

Canada has been an active participant in the ICPRCP, elected a Member in 1983, 1988, 1995, and 2003, and elected Chair in 1996, 1999, 2005, and 2007. When it has not been a Member, Canada has participated as an Observer with a comparatively objective perspective on the Committee's work.

3. UNESCO Database of National Cultural Heritage Laws – contribution and update

To date, Canada has contributed to the database solely with respect to statutes and regulations concerning illicit traffic of cultural property, but will contribute text of other heritage legislation in the future.