

CANADA

**NATIONAL REPORT ON THE
IMPLEMENTATION OF THE 1970
CONVENTION ON THE MEANS OF
PROHIBITING AND PREVENTING THE
ILLICIT IMPORT, EXPORT AND TRANSFER
OF OWNERSHIP OF CULTURAL PROPERTY**

2011 - 2015

I – Information on the implementation of the 1970 UNESCO Convention

1. Ratification of the Convention

Canada became a State Party to the 1970 Convention on March 28, 1978.

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

- a) Canada's implementing legislation is the *Cultural Property Export and Import Act*, which came into force in 1977. Two regulatory instruments, *The Canadian Cultural Property Export Control List* and the *Cultural Property Export Regulations* support the legislation. The legislation and regulations are reviewed periodically. (Recommendation 2 of the Evaluation Report on the 1970 Convention)
- b) Canada has not adopted, in legislation or policy, a specific national definition of cultural property, but through the *Cultural Property Export and Import Act* has designated all objects contained in the Canadian Cultural Property Export Control List as being "of importance for archaeology, prehistory, history, literature, art or science" in compliance with Article 1 of the Convention. Canada does not use an overarching definition of cultural property for the purposes of import prohibition and obligations under the Convention to return illegally exported cultural property to a fellow State Party. This is due to the fact that the range of cultural property prohibited from import to Canada is in each individual case that which is defined by the export laws of the specific foreign state from which it has been exported.
- c) d) and e) With respect to import/export protection, the Department of Canadian Heritage, is responsible for the national administration of the *Cultural Property Export and Import Act*. The Canada Border Services Agency also has an administrative role in issuing export permits, as well as enforcement responsibilities with respect to export and import of cultural property. The Canadian Cultural Property Export Review Board, an arm's length administrative tribunal, is responsible for the review of refused export permits and may set an export delay period of up to six months to allow Canadian institutions to purchase cultural property that is subject to export delay. The Royal Canadian Mounted Police (Canada's national police force) investigate specific cases when appropriate. The Heritage Policy and Programs Directorate within the Department maintains regular communications with all partners to coordinate activities. (Recommendation 4 of the Evaluation Report on the 1970 Convention)

3. Inventories and identification

- a) Canadian museums, galleries and other heritage institutions continue to make advances in their use of collection inventories and their digitization. Over 500 Canadian institutions have also contributed collections data and images to the Artefacts Canada database of the Canadian Heritage Information Network (CHIN), an agency of the Government of Canada. This publicly accessible national database currently holds more than 4 million object records and nearly 1 million artefact images. As such, it makes the database a valuable tool to protect those collections from the risks of misappropriation or theft because it establishes a clear publicly-accessible record of ownership and provenance.
- b) “Cultural property” is defined as per Article 1 of the 1970 Convention, or for the purposes of implementing aspects of the 1954 Hague Convention and its Protocols, by the definition included therein.
- c) The Artefacts Canada database establishes a common data standard that pre-dates the development of, and is more detailed than, the Object ID standard. (Recommendation 6 of the Evaluation Report on the 1970 Convention)
- d) The Department of Canadian Heritage employs, for the purposes of eligibility of certain programs concerning the protection and preservation of cultural property, a system of designation that is based on stringent criteria that include security provisions.

A range of training opportunities exist at the national and provincial levels to strengthen the competency of Canada’s museum professionals to manage collections and combat theft, including courses offered by the Canadian Conservation Institute, an agency of the Government of Canada.

4. Archaeological excavations

- a) In Canada, the federal government has jurisdiction over archaeological resources on federal lands, and archaeological resources on non-federal lands fall under the jurisdiction of provincial governments. As a result of certain self-government and land claim agreements with individual First Nations, jurisdiction over archaeological resources on settlement lands rests with those First Nations governments.

All provinces and territories have enacted legislation and/or regulations protecting archaeological heritage. Characteristics that are common to most, and in some cases all, of these laws and regulations include the following:

- ownership and power of disposition is vested in the government;
- establishment of systems of designation, inventories and registers of sites and objects;

- prohibitions on damage, defacement, destruction, removal, buying/selling, export from province/territory without a government-issued permit;
 - all archaeological excavations require a government-issued permit;
 - all accidental discoveries must be reported to the government; and
 - fines and/or imprisonment for violations of legislation/regulations.
- b) Looting or illegal excavations do not occur consistently across Canada. Anecdotal evidence suggests that areas containing objects that are sought-after on the international market are significantly more prone to looting than those areas containing material that is of lesser interest to the market.

5. Monitoring of the export and import of cultural property

- a) and b) There is no evidence suggesting that illegal export of cultural property is a significant problem in Canada, though instances and prosecution have taken place. In addition, Canada is not known to be a major source country for illicit traffic, although the size of the country and the existence of vast, often uninhabited areas poses significant problems for monitoring archaeological sites and remains, and the desirability of Canadian Aboriginal cultural property and Canadian art on the international market elevates the risk of looting and of illicit export. Although Canada is also not considered a major market country for illicit traffic, such material does make its way to Canada, either as a final destination or en route to the larger U.S. market.

Canadian statistics on property theft do not distinguish between cultural property and other types of property.

- c) Under the *Cultural Property Export and Import Act*, a range of cultural property, both Canadian and non-Canadian in origin, is subject to export control, and is described in the *Canadian Cultural Property Export Control List*. Any cultural property contained in the list requires a permit to leave Canada, either temporarily or permanently. No cultural property is prohibited from export, but the export of cultural property deemed to be of “outstanding significance and national importance” may be delayed to provide public institutions with an opportunity to purchase it, so that it may remain in Canada, preserved and accessible to the public. Violations of the export permit provisions of the *Act* are subject to penalties in the form of fines and/or imprisonment.

Information regarding the protection of cultural property is available to the public in a variety of formats, including the website of the Department of Canadian Heritage, stakeholder workshops, and published materials.

- d) The *Cultural Property Export and Import Act* contains provisions to return cultural property that has been illegally imported into Canada where it has been illegally exported from a foreign state that is a State-Party to the 1970

Convention. When cultural property is detained, Canada contacts the foreign state and seeks their collaboration in the return process, which includes a civil action in a Canadian court. Foreign states are asked to provide information about their cultural property legislation, and provide confirmation that the object is cultural property according to that law. This process is effective for both documented cultural property and undocumented antiquities.

- e) and f) To date, Canada has not sought the return of cultural property from a foreign state, although there are numerous examples of successful negotiations leading to the return of human remains and cultural property to Canadian Aboriginal communities from foreign museum collections.

When Canada assesses the import of cultural property under the *Cultural Property Export and Import Act* with the aim of restitution to another state, there can be challenges to overcome. These challenges include obtaining access to English translations of foreign cultural property laws, cultural property legislation that is not clear about the types of cultural property controlled, and timely communication and cooperation from foreign governments.

Since Canada's last report in 2011, Canada has successfully returned over 21,000 objects to four states: Bulgaria, China, India and Lebanon. In each situation, the objects were detained by the Canada Border Services Agency at the time of import and were returned after following the appropriate procedures required by Canadian law. In total, Canada has made 19 returns to 11 different states.

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

- a) Canada has a vibrant, licit cultural property market which includes auction houses, galleries, antique dealers, booksellers and others.
- b) Apart from law governing transactions in property in general, some additional rules apply for transactions in archaeological material under provincial and territorial laws (see section 4 above).
- c) Canada's implementing legislation for the 1970 Convention prohibits the import of any cultural property illegally exported from a fellow State Party from the time when the Convention took effect in both countries. Since the import of such objects is prohibited, it is unnecessary to establish additional mechanisms to prevent their acquisition by museums and other institutions.
- d) The principle of inalienability is not applied to cultural items in national collections or to objects originating in heritage sites in Canada.

Most provincial and territorial legislation concerning archaeological material (whether discovered as a result of organized archaeological research or chance finds) vests title in such objects with the government, but at the same time often allows for the disposition by the government of those objects and their ownership into private hands on a case-by-case basis.

7. Bilateral Agreements

- a) Under Canada's implementing legislation for the 1970 Convention, import prohibitions are automatically established for any cultural property illegally exported from a fellow State Party, as defined by that state's export control law. As a result, Canada does not require the conclusion of separate bilateral agreements to extend the fullest possible protection to foreign cultural property.
- c) Canada has a range of cultural Memoranda of Understanding with foreign states that encourage cooperation and sharing of best practices, but they do not contain obligations for import or export control, or return of cultural property, in addition to those that already exist as a result of the Convention. In addition, Mutual Legal Assistance treaties can be used for police services.

II - Code of ethics, awareness-raising and education

Ethical standards

- a) The UNESCO International Code of Ethics for Dealers in Cultural Property was first endorsed by the Canadian Cultural Property Export Review Board in September 2001 and forwarded to the main dealers association in Canada. The Board reiterated its support for the Code of Ethics in November 2010. The Art Dealers Association of Canada includes ethical criteria among its membership requirements, but no specific reference is made to the UNESCO Code.

While the Canadian Museums Association (CMA) supports the guiding principles of the ICOM Code of Professional Ethics, it has created a Canadian statement which addresses contemporary conditions and national issues in Canada's museum community. The CMA Ethical Behaviour of Museum Professionals was adopted in 1979 and updated in 1999. The text of the Ethical Guidelines is available on the Association's website at:

<http://www.museums.ca/Publications/Ethics/?n=15-293>

Awareness-raising and education

- b) The ICOM Red Lists are referred to on a regular basis and are disseminated to customs officers as appropriate.
- c) Canadian Heritage officials offer periodic training sessions on the export and import of cultural property to customs officials and the Royal Canadian Mounted Police to increase awareness about illicit traffic of cultural property. Canadian Heritage also works closely with customs officials and to develop manuals to assist them in implementing their obligations concerning cultural property. Information concerning cultural property and its protection is available on the website of both the Department of Canadian Heritage and the Canada Border Services Agency. Information is also available on Government of Canada travel website that offers advice to Canadians travelling abroad.

III – Cooperation with other international and regional agencies

Police

- a) Canadian Heritage officials can contact the Royal Canadian Mounted Police or Canada Border Services Agency officials when enforcement services are required in connection with the export or import of cultural property. INTERPOL has an established office in Canada.
- b) The INTERPOL office in Canada is consulted as required when suspected stolen cultural property is imported into Canada.
- c) Royal Canadian Mounted Police officers receive training on the export and import of cultural property, and specialized information sessions are available. In 2008, an art crime unit was established in the Province of Quebec to investigate cultural property theft and fraud. These officers receive additional specialized training. (Recommendation 5 and 8 of the Evaluation Report on the 1970 Convention)
- d) Canada's *Criminal Code* contains provisions for the punishment of fraud and theft of cultural property when committed in Canada within the *Code's* general provisions for fraud and theft of property. Pursuant to Canada's obligations under the Second Protocol to the 1954 Hague Convention, the Code was amended to add specific provisions for the punishment of a range of acts against cultural property when committed outside Canada by Canadians. Those acts include fraud and theft, and while this extraterritorial jurisdiction is not confined to states which are Parties to the Second Protocol, they apply only in instances where the cultural property in question falls under the definition contained in Article 1 of the Hague Convention.
- e) Canada's participation in UNODC with respect to cultural property has increased in recent years. Canada participated in the development of the International

Guidelines for Crime Prevention and Criminal Justice with respect to Trafficking in Cultural Property and Other Related Offences, adopted by the UN General Assembly in December 2014. Canada is a State Party to the UNTOC, and the maximum penalties under the *Cultural Property Export and Import Act* for illegal export or import of cultural property are consistent with the criteria that define “serious crimes” for the purposes of the UN Convention. As a result, Canada would be in a position to use the mechanisms provided for in the UN Convention for the pursuit of transnational organized criminal activities concerning cultural property.

Customs

- f) Although not specific to cultural property, Canada’s interaction with the WCO is frequent and takes place at many levels, from discussions with technical experts to high-level dialogue between the heads of administrations. Canada is a key participant in the work of the WCO and is actively engaged in developing and advocating the wide implementation of the WCO Framework of Standards to Secure and Facilitate Global Trade (SAFE) and the WCO Revised Kyoto Convention, to promote the development and adoption of international standards rendering rules on international trade more predictable, and is also protecting Canadian interests in the application of trade-related conventions through active participation in the WCO’s trade-related technical committees.
- g) In addition to general training concerning import/export control aspect of Canadian law, Customs officials are provided with documentation and receive customized training from Canadian Heritage officials concerning cultural property. (Recommendation 8 of the Evaluation Report on the 1970 Convention)
- h) Canada developed its cultural property export permit in 1977 when the *Cultural Property Export and Import Act* came into effect. The information contained in a Canadian permit is similar to that contained in the WCO Model Export Certificate for Cultural Objects.

European Union

Not applicable.

IV. Emergency situations and heritage at risk

- a) Most individual museums have disaster plans in place. In addition, the Canadian Conservation Institute, which is a special operating agency of the Department of Canadian Heritage offers emergency advice to Canada’s heritage community in the aftermath of a fire, flood, earthquake or other catastrophe to help with the salvage and recovery of their collections. In some circumstances, Institute

officials will travel across Canada to provide on-site conservation services in case of natural disaster.

- b) Canada has not required any additional measures to implement UNSC Resolution 2199 for the protection of Syrian and Iraqi cultural heritage. The *Cultural Property Export and Import Act* already prohibits the import into Canada of cultural property illicitly trafficked from these states. Furthermore, as a signatory to the 1954 Hague Convention and its two Protocols, Canada has additional measures in place with respect to the protection of cultural property in conflict and occupation situations. The Canada Border Services Agency have taken additional and appropriate measures to raise awareness about cultural property from Syria and Iraq and the actions required, including the preparation of specific documentation in order to increase vigilance by customs officials.

V. 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 is not a State Party to the 1995 UNIDROIT Convention, although it has formally indicated its support for the Convention in principle. The Convention was developed, in part, to assist states who could not join, or were experiencing problems implementing, the 1970 UNESCO Convention, and neither is the case for Canada. It should also be noted that Canada's implementing legislation for the 1970 UNESCO Convention contains provisions that are consistent with certain aspects of the 1995 UNIDROIT Convention, such as that which allows for compensation of *bona fide* purchasers who have unwittingly acquired illegally exported cultural objects which have, as a result, been confiscated by the Canadian government for return to their country of origin.

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

Canada has been an active participant in the ICPRCP. Canada was last elected to the Committee in 2003 and last served as Chair of the Committee in 2007. During periods when it has not been a Member of the Committee, Canada has continued to participate in Committee sessions as an Observer, and in meetings that have arisen as a result of the Committee's activities, such as those concerning principles related to WWII-displaced cultural property and guidelines for mediation and conciliation of disputes by the Committee.

3. UNESCO Database of National Cultural Heritage Laws

Canada participates in the database with respect solely to statutes and regulations directly related to illicit traffic in cultural property and provides all material in both English and French. (Recommendation 16 of the Evaluation Report on the 1970 Convention)

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