



MODEL DIRECTIVE ON PROCEDURE IN THE REVIEW OF AN APPLICATION FOR AN EXPORT PERMIT

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MODEL DIRECTIVE ON PROCEDURE IN THE REVIEW OF AN APPLICATION FOR AN EXPORT PERMIT

ADOPTED BY THE CANADIAN CULTURAL PROPERTY EXPORT REVIEW BOARD ON DECEMBER 11, 2019

This model directive is intended to provide guidance on the Canadian Cultural Property Export Review Board (Review Board) practice and interpretation of relevant legislation. However, in the event of any inconsistency between this model directive and the applicable legislation, the legislation must be followed. The provisions of this model directive are general guidelines only, are not binding in any particular case and are subject to change.

This model directive outlines the procedure the Review Board will follow in considering a request for review of an application for an export permit (a request for review) made by a person (an applicant) pursuant to section 29 of the *Cultural Property Export and Import Act* (the Act), unless the circumstances of a particular case require otherwise.

The Review Board's objective in issuing this model directive is that a proceeding before the Review Board initiated by a request for review (a proceeding) be informal, expeditious, fair and transparent.

In any proceeding, the Review Board may vary, supplement or dispense with any requirement set out in this model directive as circumstances require.

GENERAL MATTERS

1 - COMMUNICATIONS (INCLUDING ATTACHED DOCUMENTS AND PHOTOGRAPHS)

1.1 Email filing of all communications

All communications to the Review Board must be filed by email using the following address:

ccperb@tribunal.gc.ca

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The Review Board may, upon request from an applicant, allow the applicant to submit a communication by a means other than email.

A communication is filed with the Review Board on the day on which it is received by the Review Board.

1.2 Format of attached document

A document filed as an attachment to an email must be in PDF format.

The Review Board may, upon request from the applicant, allow the applicant to file an attached document in another format.

1.3 Format of attached digital photograph

A digital photograph filed by an applicant in a proceeding must be in JPEG or TIFF format with a file size no less than 700 kilobytes and no more than 2 megabytes.

The Review Board may, upon request from an applicant, allow the applicant to file a digital photograph in another format.

1.4 Public record and confidentiality

Any communication filed with the Review Board in a proceeding - including an application for an export permit, a request for review, a written statement, an expert report and a photograph - will be placed on the public record unless the Review Board orders that the communication or part of the communication be treated as confidential.

An applicant that wishes a communication or part of a communication to be treated as confidential must, at the time the communication is filed, request that the Review Board treat the communication or part of the communication as confidential.

For each communication for which the applicant requests confidentiality, the applicant must file with the Review Board:

- (a) one public version of the communication from which the confidential information has been redacted; and
- (b) one confidential version of the communication that highlights the confidential information that has been redacted from the public version of the document and that includes, at the top of each page, the words "CONTAINS CONFIDENTIAL INFORMATION" in capital letters.
- (c) The confidential version of a document submitted in accordance with paragraph 1.2 must include, in the electronic file name, the word "CONFIDENTIAL" in capital letters.

For the Review Board to order a communication or part of a communication to be treated as confidential, the applicant must establish that a serious risk to an important interest could result from the disclosure of the confidential information. The applicant's request must therefore explain the

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serious risk to an important interest that could result from the disclosure of the confidential information.

The request for confidentiality and the public version of the communication from which the confidential information has been redacted will be placed on the public record pending a decision of the Review Board on the request for confidentiality.

1.5 Language of communication

An applicant may use either English or French in any communication with the Review Board, and any communication from the Review Board to the applicant will be in the language used by the applicant in the applicant's last communication.

Any communication filed by the applicant that is not in English or French must be accompanied by a translation into either English or French and be accompanied by a statement from the translator that the contents of the translation are a true translation and representation of the contents of the original document.

1.6 Representative for the applicant

An applicant may designate a representative to represent the applicant in a proceeding by sending a written notice to the Review Board setting out the representative's name, address and email address.

Upon receipt of a written notice from the applicant designating a representative, the Review Board will communicate with the representative instead of communicating with the applicant, and any communication with the representative will have the same effect as a communication with the applicant.

2 – TIME LIMITS

2.1 Time limits outlined in directive

This directive outlines the time limits for steps to be taken in a proceeding that the Review Board will establish in each proceeding, unless the circumstances of a particular case require otherwise.

2.2 Extension of time limits

Upon request from an applicant, the Review Board may extend any time limit set in a proceeding either before or after the end of the time limit if the Review Board is satisfied that the applicant's reasons for requesting the extension of time are justified in the circumstances.

An extension of time granted by the Review Board may have an effect on the Review Board's ability to render a decision within four months after the request for review is received¹.

¹ Subsection 29(2) of the Act.

3 – EVIDENCE

The Review Board will consider facts and information it receives from an applicant in a proceeding without regard to whether these facts and information are presented in a manner that complies with legal or technical rules of evidence, so long as these facts and information are credible and relevant to the proceeding².

EXPORT PROCEEDING

4 – ISSUES TO BE DETERMINED IN A PROCEEDING

In a proceeding the Review Board will determine whether the object that is the subject of the request for review:

- is included in the *Canadian Cultural Property Export Control List* (the Control List);
- 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 or sciences; and
- is of such a degree of national importance that its loss to Canada would significantly diminish the national heritage.³

If the Review Board determines that the object meets all of the above criteria, the Review Board will then form an opinion as to whether an institution or public authority in Canada might make a fair offer to purchase the object within six months after the date of its decision in the proceeding⁴. If so, the Review Board will establish a delay period of not less than two months and not more than six months during which the Review Board will not direct that an export permit be issued in respect of the object.⁵ The purpose of the delay period is to provide an institution or public authority in Canada with an opportunity to purchase the object.

² Section 28 of the Act provides that the Review Board shall dispose of any matter before it as informally and expeditiously as, in its opinion, the circumstances and considerations of fairness will permit. Section 25 provides that the Review Board may receive any information presented to it orally or in writing that it considers to be relevant to any matter before it and in so doing it is not bound by any legal or technical rules of evidence.

³ Subsection 29(3) of the Act.

⁴ A fair offer to purchase an object is a just and reasonable offer, expressed in monetary value, that takes into account the object's fair market value, as well as other relevant circumstances of the specific case.

⁵ Subsection 29(5) of the Act.

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If the Review Board determines that an object fails to meet one of the above criteria, the Review Board will direct a Canada Border Services Agency permit officer (a permit officer) to promptly issue an export permit for the object.⁶

5 – ESTABLISHMENT OF REVIEW BOARD PANEL

The Chair of the Review Board may establish a panel to make a decision in a proceeding.

A panel established by the Chair of the Review Board will comprise at least three members of the Review Board.

A panel established by the Chair of the Review Board will comprise:

- at least one member who is or has been an officer, member or employee of an art gallery, museum, archive, library or other collecting institution in Canada; and
- at least one member who is or has been a dealer in or a collector of art, antiques or other objects that form part of the national heritage⁷.

The Review Board will advise an applicant of the names of the members of the Review Board who will take part in the decision in a proceeding.

6 – REQUEST FOR REVIEW

6.1 30-day time limit for filing a request for review

An applicant whose application for an export permit was refused by a permit officer may, within thirty days after the date on which the notice of refusal was sent, request a review of the applicant's application for an export permit by the Review Board⁸.

A request for review may only be filed after a permit officer has refused to issue an export permit for an object that appears to be included in the Control List.

A request for review may be filed either in respect of an object that is located in Canada, or in respect of an object that is temporarily located outside of Canada in accordance with a permit issued in accordance with subsection 7(a) of the Act.

⁶ Subsection 29(4) of the Act.

⁷ Subsection 18(4) of the Act.

⁸ Subsection 29(1) of the Act. The Review Board's role in a proceeding is not to determine whether the advice of an expert examiner on which a permit officer relied to refuse an export permit was in error. The role of the Review Board is to review the application for an export permit and make its own determination on the matter.

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6.2 Content of a request for review

A request for review filed with the Review Board must include:

- (a) the name, address and email address of the applicant;
- (b) a copy of the application that is the subject of the request for review;
- (c) a copy of the written notice of refusal sent to the applicant by the permit officer in respect of the application⁹; and
- (d) a digital photograph of the object that is the subject of the request for review.

6.3 Acknowledgment of receipt

Upon receipt of a request for review, the Review Board will send to the applicant an acknowledgment of receipt of the request for review.

6.4 Posting of information with respect to request for review

The Review Board will post on its website the following information with respect to each request for review:

- a description of the object that is the subject of the request for review; and
- the date on which the request for review was filed with the Review Board.

7 – WRITTEN STATEMENT

7.1 Time limit for filing a written statement

The Review Board will require an applicant to file with the Review Board a written statement within 15 days after the date of the acknowledgment of receipt of the request for review, unless the circumstances of a particular case require otherwise.

7.2 Content of a written statement

An applicant's written statement must contain:

- (a) a complete description of the object that is the subject of the request for review including, as applicable, the materials or medium, the date of creation, dimensions, size and number of edition, and identifying features such as title, signature, date or inscription;
- (b) if applicable, an indication whether the object was made within or outside the territory that is now Canada;

⁹ Subsection 13(1) of the Act.

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- (c) if applicable, a brief biography of the creator including the creator's date of birth and death, nationality and ordinary country of residence¹⁰;
- (d) the date on which the owner acquired the object and other known information relating to provenance;
- (e) an identification of the condition of the object;
- (f) the object's exhibition and publication history;
- (g) digital photographs of the object, which depict the object from all relevant angles;
- (h) the fair market value of the object and the rationale for specifying that amount;
- (i) a clear and concise statement, including reasons, whether:
 - (i) the object is included in the Control List¹¹;
 - (ii) 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 or sciences¹²;
 - (iii) the object is of such a degree of national importance that its loss to Canada would significantly diminish the national heritage¹³; and
- (j) any information that the applicant may have whether a fair offer to purchase the object might be made by an institution or public authority in Canada within six months after the date of the Review Board's decision in the proceeding.
- (k) A clear and concise statement, including reasons, whether a delay period should be established by the Review Board with respect to the object and, if applicable, the appropriate length of any such delay period.

8 – APPLICANT EXPERT REPORT

8.1 Expert report filed with written statement

An applicant may file with the Review Board together with its written statement one or more expert reports. An expert report may express an opinion on any fact at issue in the proceeding.

¹⁰ For a manufactured object, provide the name of the manufacturer and the country in which the object was manufactured. Not all objects have a creator or manufacturer (e.g. mineral specimens, paleontological specimens and some archeological objects).

¹¹ The Control List can be found on the [Justice Laws Website](#).

¹² More information on outstanding significance [here](#).

¹³ More information on national importance [here](#).

8.2 Content of expert report

An expert report must include the expert's qualifications to provide the opinions expressed in the expert report.

9 – REVIEW BOARD ADVISER REPORT

9.1 Written report from adviser to the Review Board

The Review Board may, at any time, request in writing the advice of an independent adviser on any fact at issue in a proceeding.

Any advice from an adviser will be given in the form of a written report.

9.2 Opportunity for applicant to comment on the adviser's written report

The Review Board will send a copy of an adviser's written report to an applicant, together with the Review Board's written request for advice.

The Review Board will provide an applicant with 15 days to file comments on the written report, unless the circumstances of a particular case require otherwise.

10 – REQUEST FOR ADDITIONAL INFORMATION FROM THE APPLICANT

The Review Board may, at any time before making its decision in a proceeding, request from the applicant additional information that the Review Board may require in order to make its decision.

11 – MAKING THE OBJECT AVAILABLE IN CANADA

11.1 Request to make the object available in Canada

The Review Board may, at any time before making its decision in a proceeding, request the applicant to make the object that is the subject of the request for review available in Canada for examination by one or more members of the Review Board or by an adviser whose advice was requested by the Review Board in accordance with paragraph 8 of this directive.

Upon receipt of a request, the applicant must make the object available in Canada at a time that is convenient for both the applicant and the Review Board or an adviser.

11.2 Written report and applicant opportunity to comment

The Review Board will require all members of the Review Board or an advisor who examined the object to provide the Review Board with a written report setting out observations and conclusions reached about the object based on the examination.

The Review Board will send to an applicant any written report prepared by a member of the Review Board or by an adviser who examined the object.

The Review Board will provide an applicant with 15 days to comment on any written report, unless the circumstances of a particular case require otherwise.

12 – HEARING

12.1 Pre-hearing notice and request for a hearing

Before making a decision in a proceeding, the Review Board will send to the applicant a written notice informing the applicant that the Review Board considers the file to be complete.

The written notice will provide the applicant with the opportunity of making a request in writing for a hearing of the proceeding. The Review Board will provide the applicant with 10 days to make the request, unless the circumstances of a particular case require otherwise.

A hearing will generally be conducted by the Review Board by teleconference, unless the circumstances justify otherwise. If an applicant wishes to have a hearing in person before the Review Board, the applicant's written request must include the circumstances as to why a hearing in person is required.

If the Review Board does not receive a written request for a hearing from an applicant, the Review Board may make its decision in the proceeding without conducting a hearing or may on its own initiative schedule a hearing.

12.2 Notice of hearing

If applicable the Review Board will send to the applicant a notice in writing setting out the time, date and any other information necessary to enable the applicant to participate in the hearing. The notice will indicate whether the hearing will be by teleconference or in person.

12.3 Conduct of the hearing

The purpose of a hearing is to give the applicant the opportunity to make oral submissions to highlight specific facts or issues related to the proceeding.

At the hearing the Review Board may ask the applicant questions about the proceeding.

13 – DECISION

13.1 Decision generally rendered within four months

The Review Board will render its decision in a proceeding within four months after the request for review is received, unless the circumstances of a particular case require otherwise¹⁴.

13.2 The Review Board may direct a permit officer to issue an export permit

If the Review Board determines that an object is not on the Control List, is not of outstanding significance, is not of national importance, or if the Review Board is of the opinion that no fair offer to purchase might be made by an institution or public authority in Canada within six months, the Review Board will direct the permit officer to promptly issue an export permit for the object¹⁵.

13.3 The Review Board may establish an export delay

If the Review Board determines that an object is on the Control List, is of outstanding significance and is of national importance, and if the Review Board is of the opinion that a fair offer to purchase might be made by an institution or public authority in Canada within six months, the Review Board will establish an export delay of between two and six months¹⁶. During the delay period, the object cannot be exported from Canada.

13.4 Decision in writing with reasons

The Review Board will send to an applicant a copy of its decision in a proceeding in writing together with the Review Board's reasons for the decision.

If the Review Board establishes an export delay, the delay period will begin on the date of the Review Board's written decision.

If the Review Board establishes an export delay, the Review Board will give written notice of the delay period to the Minister of Canadian Heritage¹⁷.

13.5 Posting of decision

Every decision of the Review Board in a proceeding will be posted on the Review Board's website together with the Review Board's reasons for decision in both official languages.

¹⁴ Subsection 29(2) of the Act.

¹⁵ Subsection 29(4) of the Act.

¹⁶ Paragraph 29(5)(a) of the Act.

¹⁷ Subsection 29(6) of the Act.

13.6 Expiry of delay period

After the expiration of a delay period and upon request by an applicant, the Review Board will direct a permit officer to promptly issue an export permit for an object, unless the Review Board has received a request for the determination of a fair cash offer to purchase the object¹⁸.

14 – BOARD WILL ACT IN ACCORDANCE WITH FINAL COURT DECISION

In case of judicial review of a Review Board decision in a proceeding, the Review Board will act in accordance with the final court decision rendered in the matter, upon expiration of any deadline to appeal the court decision.

¹⁸ Subsection 30(4) of the Act.