

REVIEW BOARD DECISION

November 14, 2024

REQUEST FOR REVIEW OF AN APPLICATION FOR CULTURAL PROPERTY EXPORT PERMIT

Application No.: 0495-24-06-07-001

Under the Well of the Great Wave Off Kanagawa, 1831, by Katsushika Hokusai

INTRODUCTION

1. On June 3, 2024, Heffel Gallery Limited (the Applicant) applied¹ to the Canada Border Services Agency (CBSA) for a permit to export the work *Under the Well of the Great Wave Off Kanagawa, 1831*, woodcut on paper (the Object), by Katsushika Hokusai (Hokusai).
2. On June 24, 2024, a permit officer employed by the CBSA sent to the Applicant a written notice of refusal with respect to the Object.² The refusal was based on the advice of a representative of the Royal Ontario Museum (the Expert Examiner), who determined that the Object is of outstanding significance, and meets the degree of national importance set out in the *Cultural Property Export and Import Act* (the Act).
3. On July 15, 2024, the Applicant requested a review of its application for an export permit³ (the Request for Review) by the Canadian Cultural Property Export Review Board (the Review Board).
4. On August 8 and 10, 2024, the Applicant submitted to the Review Board high quality images, a condition report, a written statement and two expert reports prepared by Sachiko Hori of Sachiko Hori Fine Art Ltd. (New York City) and by Anthony Wu of Anthony Wu Art Consultants (Toronto), respectively. The Applicant also advised that it would like to make oral submissions to the Review Board.
5. A hearing was held on October 30, 2024 and five members of the Review Board participated.
6. For the reasons that follow, the Review Board finds that the Object is included in the *Canadian Cultural Property Export Control List* (the Control List), is of outstanding significance by reason of its aesthetic qualities and value in the study of arts and is of such a degree of national importance that its loss to Canada would significantly diminish the national heritage. The Review Board also finds that an institution or public authority in Canada might make a fair offer to purchase the Object within six months of this decision. The Review Board therefore establishes a delay period of six months ending **May 14, 2025**, during which it will not direct that an export permit be issued in respect of the Object.

¹ Application #0495-24-06-07-001.

² Per subsection 13(1) of the *Cultural Property Export and Import Act* (the Act).

³ Per subsection 29(1) of the Act.

REVIEW BOARD DECISION

November 14, 2024

REQUEST FOR REVIEW OF AN APPLICATION FOR CULTURAL PROPERTY EXPORT PERMIT

Application No.: 0495-24-06-07-001

Under the Well of the Great Wave Off Kanagawa, 1831, by Katsushika Hokusai

PRELIMINARY ISSUE

7. In its submissions, the Applicant argues that the advice from the Expert Examiner is not relevant to this export review and that the Review Board is prohibited from considering or relying on that advice.
8. In essence, the Applicant argues that per section 29 of the Act, when an export permit has been refused by the CBSA, the Review Board is mandated with reviewing the application for an export permit only. Under the Act, the advice by the expert examiner is provided to the CBSA after an application for an export permit has been made. As a result, according to the Applicant, the advice from the Expert Examiner does not form part of the application that is under review.
9. In support of this interpretation, the Applicant notes that should the Review Board require expert advice, it may seek that advice pursuant to section 22 of the Act.
10. The Applicant also makes a procedural fairness argument, explaining that, were the Review Board to rely on the advice from the Expert Examiner, the Applicant “would have no means to contest that advice through cross examination or question.”
11. The Review Board disagrees with the Applicant and finds that it may rely on the advice from the Expert Examiner.
12. At subsection 13(1) of the Act, where a notice of refusal is to be sent to an applicant, the notice must include “the reasons given by the Expert Examiner for the refusal.” Subsection 13(2) then provides that CBSA must send a copy of the notice of refusal to the Review Board “forthwith.” The reasons of the Expert Examiner form part of the notice of refusal, and the Review Board is entitled to receive a copy of that notice. It is illogical to then conclude that the Review Board is prohibited from considering or relying on the advice that is included in that notice.
13. This interpretation is also consistent with the powers given to the Review Board. Per section 25 of the Act, the Review Board has broad authority to “receive any information [...] 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.” Moreover, the Review Board is also directed at section 28 to dispose of matters as informally and expeditiously as the circumstances of fairness will permit.
14. In light of the broad discretionary powers the Review Board has to receive evidence, and its mandate to dispose of matters as informally and expeditiously as the circumstances of

REVIEW BOARD DECISION

November 14, 2024

REQUEST FOR REVIEW OF AN APPLICATION FOR CULTURAL PROPERTY EXPORT PERMIT

Application No.: 0495-24-06-07-001

Under the Well of the Great Wave Off Kanagawa, 1831, by Katsushika Hokusai

fairness will permit, the Review Board is of the view that it may consider the advice of the Expert Examiner which has already been provided to it, in accordance with the Act. Calling upon its own expert to provide advice, when the Review Board already has the advice of the Expert Examiner, would unnecessarily delay the Review Board's determination on this matter.

15. In response to the Applicant's procedural fairness argument, the Review Board notes that the Applicant was provided by the CBSA with a copy of the advice from the Expert Examiner well in advance of the hearing, and upon being given the opportunity, was able to provide written submissions on that advice when the Review Board advised the Applicant of its decision on this matter. The Expert Examiner was not called as a witness during the hearing, thus the Applicant has the same information before it that the Review Board has. It is the Review Board's view that its process has satisfied the requirements of natural justice.

LEGISLATIVE FRAMEWORK

16. The Review Board is established by the Act. Included in its duties are that it "shall, on request [...] review applications for export permits."⁴
17. In its review of an application for an export permit, the Act stipulates that the Review Board shall determine whether the object:
- a) is included in the Control List;
 - b) is of outstanding significance for one or more of the reasons set out in paragraph 11(1)(a), namely 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
 - c) meets the degree of national importance referred to in paragraph 11(1)(b), namely whether the object is of such a degree of national importance that its loss to Canada would significantly diminish the national heritage.⁵
18. If the Review Board determines that the object meets all the above criteria, the Review Board shall 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

⁴ Subsection 20(a) of the Act.

⁵ Subsection 29(3) of the Act.

REVIEW BOARD DECISION

November 14, 2024

REQUEST FOR REVIEW OF AN APPLICATION FOR CULTURAL PROPERTY EXPORT PERMIT

Application No.: 0495-24-06-07-001

Under the Well of the Great Wave Off Kanagawa, 1831, by Katsushika Hokusai

decision. If so, the Review Board shall 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.⁶

19. If the Review Board determines that the object fails to meet one of the above criteria, the Review Board shall direct a CBSA permit officer to issue an export permit for the object forthwith.⁷

THE APPLICANT'S SUBMISSIONS

20. The Object, *Under the Well of the Great Wave Off Kanagawa, 1831*, is an impression of a woodblock print created by Hokusai during the Edo period (1603-1868). It measures 24.1 x 37.1 cm. It was made outside the territory that is now Canada.
21. The Applicant does not dispute that the Object is included in the Control List under Group V, Objects of Fine Art, subsection 4(a).⁸
22. The Applicant also does not dispute that the Object is of outstanding significance by reason of its aesthetic qualities and its value in the study of the arts. The Applicant notes that "the print is an iconic print of an important Japanese artist."⁹
23. The Applicant, however, submits that the Object "can in no way be described as a national treasure, of the first order of importance and of high national significance in Canada."¹⁰ As a result, it is the Applicant's submission that the Object does not meet the test under paragraph 11(1)(b) of the Act, namely, "whether the object is of such a degree of national importance that its loss to Canada would significantly diminish the national heritage."
24. In terms of 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 determination, the Applicant submits it has no information on this matter.
25. Finally, the Applicant submits that in the event the Review Board establishes a delay period pursuant to paragraph 29(5)(a) of the Act, this delay should be at the lower end of the two to six month period. The Applicant argues that the Object has been in its possession since its sale in April 2022, and it has not received any enquires about the

⁶ Subsection 29(5) of the Act.

⁷ Subsection 29(4) of the Act.

⁸ Applicant's written statement, dated August 10, 2024, at p. 3.

⁹ Applicant's written statement, dated August 10, 2024, at p. 3.

¹⁰ Applicant's written statement, dated August 10, 2024, at p. 9.

REVIEW BOARD DECISION

November 14, 2024

REQUEST FOR REVIEW OF AN APPLICATION FOR CULTURAL PROPERTY EXPORT PERMIT**Application No.: 0495-24-06-07-001*****Under the Well of the Great Wave Off Kanagawa, 1831, by Katsushika Hokusai***

availability of the print for sale or research purposes from any public institution in Canada in this time period. Moreover, it has been on the public record since June 2022 that the Object was denied an export permit by the CBSA.¹¹

THE EXPERT EXAMINER'S REASONS FOR REFUSAL

26. As previously explained, the Applicant submits that the Review Board is prohibited from relying on the advice of the Expert Examiner. The Review Board rejects this argument and finds it can rely on this advice.
27. In her advice, the Expert Examiner (Dr. Akiko Takesue) advised that, in her opinion, the Object is of outstanding significance and national importance. In her view, “letting this artwork out of Canada would be a great loss for Canadian cultural heritage, for the history of Canada-Japan cultural connection, and for the progress of the emerging study of collecting Japanese art in Canada.”¹²
28. Dr. Takesue acknowledged that other copies of the print exist at the Royal Ontario Museum (ROM) and the Montreal Museum of Fine Arts (MMFA), noting that “[w]hen it comes to collecting Japanese woodblock prints, it has to be noted that multiple impressions and editions of a print do exist, and that each print’s condition varies”.¹³
29. Dr. Takesue highlighted the value of having multiple copies of a woodcut print to examine:
- [O]nly because the ROM and MMFA have copies of *The Great Wave* does not mean its rarity reduces. Rather, ‘a copy of *The Great Wave* with better conditions’ IS highly rare and valuable, which could benefit the institutions who already have copies of different conditions, for in-depth, comparable study and examination. The significance of examining various editions and conditions cannot be overemphasized in the field of Japanese woodblock print study.¹⁴
30. Dr. Takesue also found that the condition of the Applicant’s print [the Object], which she had an opportunity to personally inspect in 2022, is much better than the copies at the ROM and the MMFA and is likely an earlier edition of the print.

¹¹ On July 20, 2022, the Review Board issued a decision in relation to this Object finding that it could not extend the time period to request a review of a refused export permit.

¹² Expert Examiner’s advice, dated June 21, 2024, at p. 3.

¹³ Expert Examiner’s advice, dated June 21, 2024, at pp. 1-2.

¹⁴ Expert Examiner’s advice, dated June 21, 2024, at p. 2.

REVIEW BOARD DECISION

November 14, 2024

**REQUEST FOR REVIEW OF AN APPLICATION FOR CULTURAL PROPERTY
EXPORT PERMIT****Application No.: 0495-24-06-07-001*****Under the Well of the Great Wave Off Kanagawa, 1831, by Katsushika Hokusai***

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31. In respect of the copy at the ROM, Dr. Takesue noted that while it is from the same period as the Object (circa 1830-1832), it has several condition issues, including signs of wear in the key block in the form of breaks in the black-printed lines, the sheet has been folded vertically, yellowing of the paper, and potential fading in some sections.
32. In respect of the MMFA copy, Dr. Takesue states the curator of Asian Arts at the museum confirmed that the condition of their copy “is undesirable to the degree that it is not displayable in the museum.”¹⁵

ANALYSIS**Whether the Object is included in the Control List**

33. An object that falls under one of the eight groups in the Control List cannot be exported from Canada without a permit if it:
- is more than 50 years old;
 - was made by a natural person who is no longer living; and,
 - meets the criteria, including age or a minimum dollar value, set out in the Control List.
34. The Applicant admits that the Object is included in the Control List under Group V, Objects of Fine Art, subsection 4(a).¹⁶ Subsection 4(a) applies to drawings or prints made outside the territory that is now Canada by a person who at the time was not ordinarily resident in the territory that is now Canada, and that have a fair market value in Canada of more than \$15,000.00 CAN.¹⁷
35. The Review Board agrees the Object is included in the Control List under Group V, Objects of Fine Art, subsection 4(a).

Whether the Object is of outstanding significance

36. In reviewing a refused application for an export permit, the Review Board shall determine whether the object is of outstanding significance by reason of its close association with

¹⁵ Expert Examiner’s advice, dated June 21, 2024, at p. 2.

¹⁶ Applicant’s written statement, dated August 10, 2024, at p. 3.

¹⁷ Control List, section 4.

REVIEW BOARD DECISION

November 14, 2024

**REQUEST FOR REVIEW OF AN APPLICATION FOR CULTURAL PROPERTY
EXPORT PERMIT****Application No.: 0495-24-06-07-001*****Under the Well of the Great Wave Off Kanagawa, 1831, by Katsushika Hokusai***

Canadian history or national life, its aesthetic qualities, or its value in the study of the arts or sciences.¹⁸

37. The Applicant admits that the Object is of outstanding significance by reason of its aesthetic qualities and its value in the study of the arts¹⁹ and the Review Board agrees.

Whether the Object is of such a degree of national importance that its loss to Canada would significantly diminish the national heritage

38. In assessing whether the Object is of such a degree of national importance that its loss to Canada would significantly diminish the national heritage, the Review Board considered three issues raised by the Applicant:

1. What findings can be made based on the evidence provided by the three experts;
2. Interpretation of the test for national importance set out at paragraph 11(1)(b) of the Act; and
3. Whether the Object meets the test for national importance set out at paragraph 11(1)(b) of the Act.

Issue 1: Findings based on the evidence provided by the three experts

39. The Review Board had evidence from three experts before it.

40. The first was from the Expert Examiner, Dr. Akiko Takesue. Dr. Takesue holds the position of Bishop White Committee Associate Curator of Japanese Art & Culture at the ROM. Her evidence is described above under “the expert examiner’s reasons for refusal.”

41. The second and third were from experts commissioned by the Applicant: Anthony Wu and Sachiko Hori.

42. Mr. Wu is the principle of Anthony Wu Art Consultants of Toronto. He self-identifies as a specialist in research and consulting of Asian Art for auction houses and private collectors in Canada and the United States and his specialization is Chinese art and antiques, but he says he is also able to appraise art of Japan.

¹⁸ Paragraphs 29(3)(b) and 11(1)(a) of the Act.

¹⁹ Applicant’s written statement, dated August 10, 2024, at p. 3.

REVIEW BOARD DECISION

November 14, 2024

**REQUEST FOR REVIEW OF AN APPLICATION FOR CULTURAL PROPERTY
EXPORT PERMIT****Application No.: 0495-24-06-07-001*****Under the Well of the Great Wave Off Kanagawa, 1831, by Katsushika Hokusai***

43. Mr. Wu was retained by the Applicant “in relation to the consignment and subsequent sale of [the Object] on April 28, 2022.”²⁰ In 2022, Mr. Wu stated the Object was authentic to the Edo era (1603-1868) and the print was in the Laidlaw family collection in Canada.
44. In an expert report provided to the Review Board by the Applicant, Mr. Wu provided more detail regarding the provenance of the Object, stating it was in the collection of Canadian art collector Robert A. Laidlaw since the early 1920s and at the time of consignment to auction was on display in Laidlaw’s granddaughter’s home in Kingston, Ontario.
45. Mr. Wu also undertook a thorough research of databases and collections in Canada to conclude that there were multiple copies of Hokusai’s *The Great Wave* in Canadian collections but only the works at the MMFA and the ROM were possible Edo era prints. The others found by Mr. Wu and examined via the databases of institutions or Artefacts Canada were deemed to be 20th century impressions.
46. Ms. Hori’s evidence was limited to what benefit if any, there would be in having the Object in Canada for an in-depth comparable examination and study of other Great Wave prints in existing Canadian collections and will be discussed in greater detail below.
47. Based on the expert reports of both Dr. Takesue and Mr. Wu, the Review Board finds that the Object is from the Edo period and its best comparables are therefore those held by the MMFA and the ROM, which are most likely from the same time period, or, for one of the prints at the ROM, possibly the slightly later Meiji period (1868-1912), according to Dr. Takesue.
48. Mr. Wu and Dr. Takesue have both concluded that the Object is in better condition than the prints held by the ROM and MMFA and the Review Board agrees with this conclusion.

Issue 2: Interpretation of the test for National Importance

49. In reviewing a refused application for an export permit, the Review Board must determine whether the object is of such a degree of national importance that its loss to Canada would significantly diminish the national heritage.²¹
50. The Applicant submitted, citing a previous Review Board decision,²² that in making this assessment, the Review Board must determine whether “the print is of high national

²⁰ Statement of Anthony Wu, signed on August 9, 2024, para. 4.

²¹ Paragraph 11(1)(b) of the Act.

²² Wassily Kandinsky, *Aufstieg*, 1924, Review Board export decision dated March 23, 2023.

REVIEW BOARD DECISION

November 14, 2024

REQUEST FOR REVIEW OF AN APPLICATION FOR CULTURAL PROPERTY EXPORT PERMIT**Application No.: 0495-24-06-07-001*****Under the Well of the Great Wave Off Kanagawa, 1831, by Katsushika Hokusai***

significance in Canada, a national treasure and of the first order of importance such that its loss to Canada would significantly diminish the national heritage.”²³

51. The Review Board agrees.
52. Guided by the modern view of statutory interpretation,²⁴ the Review Board takes into consideration Parliament’s intent that export controls should apply only to those objects that are of the first order of importance.²⁵
53. It is the opinion of the Review Board that it is particularly important to carefully find this balance when dealing with cultural property that is not of Canadian origin.²⁶
54. As such, the Review Board took into consideration whether the Object was of high national significance in Canada when making its determination on national importance.

Issue 3: Whether the Object meets the test for national importance

55. As indicated above, the Applicant submits that the Object should “not be considered to be of any outstanding importance to Canada’s National Heritage”.
56. For the reasons set out below, the Review Board disagrees, and concludes that the Object is of such a degree of national importance that its loss to Canada would significantly diminish the national heritage.

Analysis

57. In making the determination of whether an object is of such a degree of national importance that its loss to Canada would significantly diminish the national heritage, the Review Board must measure the extent of the effect of removing the object from Canada by taking into consideration relevant factors that speak to the degree of value and importance of the object to Canada, as well as its importance in the Canadian context.

²³ Applicant’s written statement, dated August 10, 2024, at p. 6.

²⁴ Recently explained by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at para. 117.

²⁵ *House of Commons Debates*, (7 February 1975) at pp. 3026-3027 [Faulkner in the House].

²⁶ *Senate*, Standing Committee on Health, Welfare and Science, (30 April 1975) at pp. 5-8 (Hon. James Hugh Faulkner) [Faulkner in the Senate].

REVIEW BOARD DECISION

November 14, 2024

**REQUEST FOR REVIEW OF AN APPLICATION FOR CULTURAL PROPERTY
EXPORT PERMIT****Application No.: 0495-24-06-07-001*****Under the Well of the Great Wave Off Kanagawa, 1831, by Katsushika Hokusai***

58. The factors that the Review Board considered when making its assessment that the Object is of national importance are rarity, contextual associations, provenance and research value.

Rarity

59. The Applicant argues that the Object is not rarer than similar Hokusai prints held in the ROM and the MMFA collections.

60. The Review Board disagrees and finds that the Object is rare, as the other prints from comparable time periods in the ROM and MMFA collections are not of as good quality as the Object subject to this review.

61. As noted by Dr. Takesue, the later ROM print is a reprint, printed on a modern, coarse paper and therefore not considered authentic and in her opinion, disclosed from further discussion. The Review Board agrees.

62. While the other copy of the print held by the ROM is available for study, it is faded, damaged, has a fold, surface dirt and is in overall bad condition.

63. The only other comparable, held at the MMFA, is according to Dr. Takesue also in bad condition to a degree that it is not exhibitable in the museum.

64. The Applicant argues that a 2019 application for export of another Hokusai Great Wave print was granted and according to Mr. Wu, this print was in better condition than the ROM and MMFA prints. The Applicant's argument seems to be that if the 2019 print, which was in better condition than the ROM and MMFA prints, was not subject to export delay, then similarly, the Object should also not be subject to an export delay.

65. The Review Board rejects this argument. As Dr. Takesue points out, she was able to review a copy of the 2019 print and determined that it was an inferior impression, even possibly identified as a reproduction. This likely explains why the expert examiner at the time concluded that it did not meet the criteria to be stopped and allowed the export. Therefore, the Review Board does not consider the 2019 application for consideration here.

66. Hokusai's *The Great Wave* is his most well-known and famous work. Experts estimate there were approximately 8000 prints made during the Edo period. At that time, these prints were not considered valuable, and many have been lost, destroyed or even thrown away. According to Mr. Wu's extensive research there are only a few known Edo period prints in Canadian institutions which solidifies the Object's rarity in Canada.

REVIEW BOARD DECISION

November 14, 2024

**REQUEST FOR REVIEW OF AN APPLICATION FOR CULTURAL PROPERTY
EXPORT PERMIT****Application No.: 0495-24-06-07-001*****Under the Well of the Great Wave Off Kanagawa, 1831, by Katsushika Hokusai***

67. Based on the Object's superior condition to any other Great Wave print in Canadian collections, in addition to the fact that the prints from this period are in general rare, the Review Board is of the view that the Object is rare.

Contextual association

68. Dr. Takesue, the ROM expert examiner, states that the export of this print would be a great loss for Canadian cultural heritage, for the history of Canada-Japan cultural connections, and for the progress of the emerging study of collecting and studying Japanese art in Canada.

69. The Review Board recognizes that since the public apology issued to Japanese Canadians in 1988 for the wartime internment of the Second World War, there has been an increased interest in Japanese art collecting in Canada. Noting increased interest in Japanese art, exhibitions and curating collections in public institutions and the rarity of the Object, it would be potentially of interest for several collecting public institutions in Canada for research and exhibition.

70. Over the last two decades, several exhibitions, programs and events organized by Canadian museums, galleries, and cultural centres have focused on the history and impact of the treatment and internment of Japanese Canadians during and following the Second World War. The ROM exhibition *Being Japanese Canadian: Reflections on a Broken World* (2019) presented artworks and cultural documents that provide personal perspectives on the exile, dispossession, and internment of Japanese Canadians during the 1940s through a series of artworks interspersed throughout the Sigmund Samuel Gallery of Canada. This exhibition is a testament to the improvement of relations and recognition of Japanese Canadians in Canada.

71. Given the significance of the historical relationship of Canada to Japan and to Japanese Canadians as noted above and in the opinion of Dr. Takesue, the contextual association of this valuable work to Canada is clear. Recognizing the Object's national importance represents care and consideration to preserve Japanese Canadians' cultural interests and a willingness to build on an understanding of their distinct culture and respectful place in an inclusive Canadian society.

REVIEW BOARD DECISION

November 14, 2024

**REQUEST FOR REVIEW OF AN APPLICATION FOR CULTURAL PROPERTY
EXPORT PERMIT****Application No.: 0495-24-06-07-001*****Under the Well of the Great Wave Off Kanagawa, 1831, by Katsushika Hokusai***

Provenance

72. The Applicant has argued that the Object's provenance is not a factor that materially increases its significance.²⁷ The Review Board disagrees.
73. Provenance is the history of an object from its creation to the present day. With provenance research, curators and historians attempt to provide as much of this historical chronology as possible, listing the collections, sales, and transfers related to that object since its production. Aside from the physical movement (transfer from one collection or collector to another) of the object over the course of its lifetime, the identity of the owner(s) is also a significant part of the provenance. Often the information about who owned the artwork (e.g., royal collections, important collectors, or institutions) adds to the overall value and prestige of an object.
74. The Object has been in one collection – the R.A. Laidlaw collection (and by descent within his family) – for the last century. This extended ownership period alone is an important character of the artwork's provenance. However, equally impressive is the actual collection, the Laidlaw Collection, which is an important private Canadian collection. Both Mr. Wu and the Heffel auction catalogue speak to the profile and prestige of the Laidlaw collection in Canada.
75. R.A. Laidlaw, a prominent Ontario businessman and philanthropist, was born in Barrie, Ontario and raised and educated in Toronto. He joined his father's firm the R.A. Lumber Company Ltd. in 1908, and during a long and successful business career served it and other important Canadian corporations. Laidlaw is best remembered for his philanthropic work. He made major contributions to leading health care, education, and cultural institutions, including the Hospital for Sick Children, Upper Canada College, the University of Toronto, the National Ballet School and the National Ballet of Canada, and was revered for his generosity. R.A. Laidlaw was Chair of the Board at the ROM in the 1950s. In 1949, Laidlaw helped establish the Laidlaw Foundation thus ensuring the continuation of his philanthropic efforts.
76. Mr. Wu confirmed that the print was consigned by the granddaughter of Robert A. Laidlaw (1886-1976) and had been in the Laidlaw family collection since the early 1920s.
77. The provenance of the Object is tied to a pre-eminent Canadian collector who is well known in Canadian art history and philanthropic circles. The Review Board recognizes

²⁷ Applicant's written statement, dated August 10, 2024, at p. 7.

REVIEW BOARD DECISION

November 14, 2024

**REQUEST FOR REVIEW OF AN APPLICATION FOR CULTURAL PROPERTY
EXPORT PERMIT****Application No.: 0495-24-06-07-001*****Under the Well of the Great Wave Off Kanagawa, 1831, by Katsushika Hokusai***

the known provenance as an indication of how the work came to be held in a private collection in Canada and how long the work has been held with its original commissioner.

78. Given the clear ties to Canada with the provenance of this work moving through the Laidlaw collection over many years, the connection of provenance to Canada is clear and reflects another positive factor in finding the Object is of national importance.

Research value

79. The Applicant has argued, based on expert Sachiko Hori, that there is little research benefit in having the Object in Canada for in-depth comparable examination and study of other Great Wave prints in Canadian collections. The Review Board disagrees.
80. The Review Board agrees with Dr. Takesue's opinion that "when it comes to collecting Japanese woodblock prints it has to be noted that multiple impressions and editions of a print do exist, and each print's condition varies greatly. Therefore, for cultural institutions, holding different versions would be beneficial for an in-depth study of the print."
81. Dr. Takesue makes it clear that while multiple impressions from different states of the print have been identified in Canada within public collections, each print's condition varies greatly, and with the exception of the prints at the ROM and the single print at the MMFA the others are contemporary impressions. As noted in the section on Rarity, according to Dr. Takesue, the Object is very likely from the Edo period, one of the earliest states, and in the finest condition when compared to other impressions in Canadian public collections. This alone makes it the most or one of the rarest Great Wave impressions in Canada.
82. The Review Board finds there is considerable research value in studying the influence of Japanese woodblock printing on the development of modern art, an area of study that is already well documented.²⁸ There has also been substantial research on the connection between modern Art in Europe and its influence on Canadian artists. Printmaking influenced Canadian artists including the Group of Seven.
83. The Review Board also does not agree with the Applicant's submission that the physical print is not necessary for study in art history because it could be substituted by digital photographs. This argument could be attempted of all works of art and dates back to early

²⁸ Colta Feller Ives, *The Great Wave: The Influence of Japanese Woodcuts on French Prints* (New York: Metropolitan Museum of Art, 1974).

REVIEW BOARD DECISION

November 14, 2024

**REQUEST FOR REVIEW OF AN APPLICATION FOR CULTURAL PROPERTY
EXPORT PERMIT****Application No.: 0495-24-06-07-001*****Under the Well of the Great Wave Off Kanagawa, 1831, by Katsushika Hokusai***

mechanical reproduction technology. Walter Benjamin's conclusion in the 1930s still holds today: the reproduction does not serve as a replacement for the real object.²⁹

84. The Review Board does not accept that high-resolution digital photographs would be more than adequate for such an examination. It is impossible to carry out the same level of focused and controlled research, connoisseurship, or even general viewing of a related group of art objects (in this instance, a group of sequential impressions of the same print) when relying on a group of photographs in place of the original artworks. Unless all of the photographic images are of the same quality and consistency, using the same photographic means to produce the image, it is not possible to carry out a systematic study of the various prints from the different states using high-resolution images. It is the Review Board's opinion that even if these high standards were met, there is no substitution for an examination of the original work.

Conclusion on national importance

85. To summarize, in finding that the Object meets the test for national importance, the Review Board considered four key components: rarity, provenance, contextual association, and research value. The Object addresses all four of these components, underlining the significant value in seeing this artwork remain in Canada within a public collection.
86. Firstly, the complex creation and production process, circulation mechanism, and value formation of impressions of Japanese woodblock prints made over subsequent states in the Edo period (1603-1868) situates the Object firmly within the rarity category. This work would be the finest known impression – in both quality and period of production and overall condition – of the Great Wave prints in Canada.
87. This finding on rarity directly supports the research use and application of the piece and raises significantly the research value of the artwork.
88. Adding to the rarity and research element of the Object, is its impressive provenance, defined by its connection to the celebrated and well documented Robert A. Laidlaw collection in Canada for over a century.
89. Finally, the permanent presence of, and access to, this artwork in Canada contributes in a meaningful way to the rapidly developing research and collecting field of Japanese

²⁹ Walter Benjamin, "The Work of Art in the Age of Mechanical Reproduction" in Hannah Arendt, ed, *Illuminations* (London: Fontana, 1968).

REVIEW BOARD DECISION

November 14, 2024

REQUEST FOR REVIEW OF AN APPLICATION FOR CULTURAL PROPERTY EXPORT PERMIT**Application No.: 0495-24-06-07-001*****Under the Well of the Great Wave Off Kanagawa, 1831, by Katsushika Hokusai***

culture and history in Canada, particularly during the period leading up to, during, and following World War II.

90. The export of the Object would be a great loss for Canadian cultural heritage, but also for the history of Canada-Japan cultural connections, and the related research, collecting, and exhibition activities of Japanese art.

Whether an institution or public authority in Canada might make a fair offer to purchase the Object within six months after the date of the determination

91. If the Review Board determines that an object is on the Control List and is of outstanding significance and of national importance, subsection 29(5)(a) of the Act requires that the Review Board 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 the determination.
92. The threshold under the Act for determining whether an institution or public authority might make a fair offer to purchase an object is very low. Paragraph 29(5)(a) uses the word “might”. The threshold is therefore just a possibility – far less than a probability or a certainty. The Review Board therefore concludes that only limited evidence or information is required for the Review Board to be satisfied that an institution or public authority might make a fair offer to purchase.
93. The Applicant asserted that one of the public institutions that collects historical Japanese art, the ROM, had the opportunity to bid on the Object in April 2022. The Applicant further argues that the possibility is “remote” that the ROM or another public institution would offer to purchase.
94. The Review Board disagrees with this assertion and is aware that there are outstanding collections of historical, modern and contemporary Japanese art at several major museums in Canada, including the ROM, the MMFA, and the Art Gallery of Greater Victoria. As well, the Review Board is also aware that there are several prominent collectors of Japanese art who have supported the development of different public collections, and who would be able to support the acquisition of the Hokusai print by an interested museum or museums.
95. Noting the increased interest in Japanese art, exhibitions and curating collections in public institutions and the rarity of the Object, the Review Board is of the view that there may be interest from a number of collecting public institutions in Canada to obtain the Object for research and exhibition.

REVIEW BOARD DECISION

November 14, 2024

**REQUEST FOR REVIEW OF AN APPLICATION FOR CULTURAL PROPERTY
EXPORT PERMIT****Application No.: 0495-24-06-07-001*****Under the Well of the Great Wave Off Kanagawa, 1831, by Katsushika Hokusai***

96. Since it was auctioned in 2022, there is now much more information on the rarity, quality, and value of the Object. This new information, along with the prospect of a grant to purchase the object from Canadian Heritage, would be a significant draw for public institutions with limited acquisition funds. Moreover, there may be donors who might now be interested in helping with a purchase, and there is also the option for two institutions to co-purchase the work.
97. As noted above, the threshold to determine whether an institution might make a fair offer to purchase the work is far less than a probability or a certainty. The Review Board's view is that in these circumstances, an institution might make such an offer. Institutions should therefore at least be given a fair opportunity to make a fair offer on the Object.

Delay period during which the Review Board will not direct that an export permit be issued in respect of the Object

98. When the Review Board is of the opinion that an institution or public authority in Canada might make a fair offer to purchase an object within six months after the date of the determination, the Review Board must 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.
99. The Review Board establishes a delay period of six months, ending May 14, 2025, during which it will not direct that an export permit be issued in respect of the Object.
100. With regards to the six-month delay period, if a museum or gallery is interested in purchasing the work, this will take some time to coordinate (initial curatorial discussions, due diligence with institutional research and study, provenance research, acquisition committee presentations and board approval). The Review Board recognizes a two-month period for this research work and coordination would likely not be sufficient. Furthermore, if two institutions are considering co-purchasing the Object (joint ownership), given its high purchase price, this will take even more time to coordinate. As well, it's likely that the museum(s) will need to secure private support, and this process also takes time.
101. The Applicant has asserted the appropriate delay period should be two months in the event a delay period is established. The Review Board does not find this assertion reasonable as this may not be sufficient time for an institution to secure the necessary funding and approval for the purchase, especially when the acquisition may require private support and the possibility of a joint acquisition between two or more institutions.

REVIEW BOARD DECISION

November 14, 2024

REQUEST FOR REVIEW OF AN APPLICATION FOR CULTURAL PROPERTY EXPORT PERMIT

Application No.: 0495-24-06-07-001

Under the Well of the Great Wave Off Kanagawa, 1831, by Katsushika Hokusai

102. The Review Board finds that it may take some time to coordinate an acquisition at this level, and is of the view that a six month delay period, ending **May 14, 2025**, is appropriate.

For the Review Board

Joanne Stober, Chair
Stephen Borys
Daniel Chouinard
Jo-Ann Kane
Susan Mackenzie