

REVIEW BOARD DECISION

October 19, 2022

REQUEST FOR REVIEW OF A REFUSED APPLICATION FOR CULTURAL PROPERTY EXPORT PERMIT

Application No.: 1635-22-07-13-005

Pair of Presentation Silver Armbands with George III Engraved Crest and
One Copper Gilded George III Military Court Gorget, circa 1825

INTRODUCTION

1. Howard Roloff (the Applicant) applied¹ to the Canada Border Services Agency (CBSA) for an export permit to export a pair of presentation silver armbands with George III engraved crest and a copper gilded George III military court gorget, circa 1825 (the Objects).
2. On August 10, 2022, a permit officer employed by the CBSA sent to the Applicant a written notice of refusal with respect to the Objects.² The refusal was based on the advice of a representative of the Canadian Museum of History (the Expert Examiner), who determined that the Objects are on the *Canadian Cultural Property Export Control List* (the Control List), are of outstanding significance, and meet the degree of national importance set out in the *Cultural Property Export and Import Act* (the Act).
3. By letter dated August 14, 2022, the Applicant requested a review of his application for an export permit³ (the Request for Review) by the Canadian Cultural Property Export Review Board (the Review Board).
4. On September 1, 2022, the Applicant informed the Review Board that he did not wish to file an additional written statement in support of the Request for Review. The Applicant confirmed that he would instead require an oral hearing on an expedited basis. The Applicant asked the Review Board to consider the Request for Review on the basis of the information in his letter of August 14, 2022, the accompanying publication, *Sovereignty Gifts*, published by the Applicant, and his oral submissions to be made during the hearing.
5. The hearing was held on October 12, 2022, during which the Applicant made oral submissions.
6. For the reasons that follow, the Review Board finds that the Objects are included in the Control List, are of outstanding significance by reason of their close association with Canadian history, and are of such a degree of national importance that their loss to Canada would significantly diminish the national heritage. The Review Board also

¹ Application #1635-22-07-13-005.

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

³ Subsection 29(1) of the Act.

REVIEW BOARD DECISION

October 19, 2022

REQUEST FOR REVIEW OF A REFUSED APPLICATION FOR CULTURAL PROPERTY EXPORT PERMIT

Application No.: 1635-22-07-13-005

**Pair of Presentation Silver Armbands with George III Engraved Crest and
One Copper Gilded George III Military Court Gorget, circa 1825**

finds that an institution or public authority in Canada might make a fair offer to purchase the Objects within six months of this decision. The Review Board therefore establishes a delay period of three months ending **January 19, 2023**, during which it will not direct that an export permit be issued in respect of the Objects.

ISSUES TO BE DETERMINED BY THE REVIEW BOARD

7. The Review Board is created by legislation and, as such, it only has the powers granted to it by its governing statute, the Act.
8. In the review of a refused application for an export permit, the Act stipulates that the Review Board must determine whether the object:
 - (a) is included in the Control List;
 - (b) 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
 - (c) is of such a degree of national importance that its loss to Canada would significantly diminish the national heritage.⁴
9. If the Review Board determines that the object meets all the above criteria, the Review Board must 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. If so, 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.⁵ The purpose of the delay period is to provide an institution or public authority in Canada with an opportunity to purchase the object.
10. If the Review Board determines that the object fails to meet one of the above criteria, the Review Board must direct a CBSA permit officer to promptly issue an export permit for the object.⁶

⁴ Subsection 29(3) of the Act.

⁵ Subsection 29(5) of the Act.

⁶ Subsection 29(4) of the Act.

REVIEW BOARD DECISION

October 19, 2022

**REQUEST FOR REVIEW OF A REFUSED APPLICATION FOR CULTURAL
PROPERTY EXPORT PERMIT****Application No.: 1635-22-07-13-005****Pair of Presentation Silver Armbands with George III Engraved Crest and
One Copper Gilded George III Military Court Gorget, circa 1825**

THE APPLICANT'S SUBMISSIONS

11. In his Cultural Property Permit Application, the Applicant stated that the Objects were created outside the territory that is now Canada and that they are included in the Control List under Group III⁷, Military Objects.
12. In the Request for Review the Applicant acknowledged that the Objects are of national importance, however, did not address the Object's outstanding significance.⁸
13. In his oral submissions during the hearing of October 12, 2022, the Applicant confirmed that the objects are "national treasures" and he expressed agreement with the Expert Examiner's opinion.
14. The Applicant also stated in the Request for Review that: "the items in the export application were extensively advertised as to their availability for purchase, however not one party or Canadian institution stepped forward with inquiries as to the availability of the subject items."⁹ He stated further that: "this is largely due to the realities of funding available to provincial and federal cultural institutions."¹⁰
15. During the hearing, when asked by the Review Board what steps he took in advertising the Objects, the Applicant stated that he published two separate full-page advertisements in the *Canadian Antiques [and Vintage] Magazine*, over a one-year period, and contacted institutions he felt may be interested. The institutions, however, informed the Applicant that they lacked the funds to purchase the Objects. The Applicant did not recall the names of the institutions he had contacted.
16. The Applicant also stated that he purchased the Objects during a public auction in Canada, suggesting there were many opportunities for Canadian institutions to purchase the Objects at various stages before he applied for an export permit.

⁷ Part II B of the Application form shows that the Objects were first identified as being included in Group III of the Control List. Group III was later struck out and replaced with Group II.

⁸ Request for Review letter submitted by the Applicant, August 14, 2022, p. 1.

⁹ Request for Review letter submitted by the Applicant, August 14, 2022, p. 2.

¹⁰ *Ibid.*

REVIEW BOARD DECISION

October 19, 2022

**REQUEST FOR REVIEW OF A REFUSED APPLICATION FOR CULTURAL
PROPERTY EXPORT PERMIT****Application No.: 1635-22-07-13-005****Pair of Presentation Silver Armbands with George III Engraved Crest and
One Copper Gilded George III Military Court Gorget, circa 1825**

ANALYSIS**Pair of Presentation Silver Armbands with George III Engraved Crest and One Copper
Gilded George III Military Court Gorget, circa 1825**

17. The Objects are comprised of 3 individual items: a pair of presentation silver armbands with George III engraved crest and one copper gilded George III military court gorget, dated circa 1825. The armbands are respectively 27.9 x 5.9 cm and 27.5 x 6.2 cm. The gorget is 11.75 x 9.9 cm.
18. Both sterling silver armbands are engraved with the royal coat of arms of 1801-1816 and have hallmark dates of London 1825-1826 and the silversmith's touch mark H.B. of William Bateman from a famous London family of silversmiths.
19. The gilded copper crescent gorget is engraved on the front with the royal coat of arms of 1801-1816 and is the British Army regulation type dated between 1812-1832.
20. According to the publication titled *Sovereignty Gifts*, published by the Applicant, and written by Alan L. Hoover, former curator and manager at the Royal British Columbia Museum, and Ted Brassler, former curator at the National Museum of Ethnology in Leiden (Netherlands) and at the Canadian Museum of Civilization in Gatineau (now Canadian Museum of History), the Objects were "collected [...] from the Beausoliel [*sic*] Band which is located in Southern Georgian Bay, Lake Huron, Ontario, Canada"¹¹ and more precisely from a descendant of Chief John Aisance, an Ojibwa chief (born around 1790 – died in 1847).¹² The authors state that: "[i]nformation received from Robert Deveaux the field collector of the copper gilt gorget and the silver arm bands, recorded that they were obtained from a descendant of Chief John Aisance".¹³
21. The British practice was to present diplomatic gifts such as silver armbands, gorgets or commemorative medals to Indigenous war leaders in recognition of their support, for example during the War of 1812 between Great Britain and the United States.

¹¹ Alan L. Hoover and Ted Brassler, 2020, *Sovereignty Gifts*, published by Howard Roloff, British Columbia, p. 8.

¹² Alan L. Hoover and Ted Brassler, 2020, *Sovereignty Gifts*, published by Howard Roloff, British Columbia, p. 18.

¹³ *Ibid.*

REVIEW BOARD DECISION

October 19, 2022

**REQUEST FOR REVIEW OF A REFUSED APPLICATION FOR CULTURAL
PROPERTY EXPORT PERMIT****Application No.: 1635-22-07-13-005****Pair of Presentation Silver Armbands with George III Engraved Crest and
One Copper Gilded George III Military Court Gorget, circa 1825**

During this war, Chief John Aisance led members of his band on the Niagara Frontier and he was at the Battle of Queenston Heights when American soldiers were repulsed by British and Canadian troops with the help of their Indigenous allies.¹⁴

Whether the Objects are included in the Control List

22. 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;¹⁵
 - was made by a natural person who is no longer living;¹⁶ and
 - meets the criteria, including age or a minimum dollar value, set out in the Control List.
23. In his Cultural Property Permit Application, the Applicant stated that the Objects are included in the Group III of the Control List.
24. Group III Military Objects of the Control List includes “military objects made within or out of the territory that is now Canada if they relate to military activities that took place in the territory or if they relate to a person who at any time ordinarily resided in the territory and who participated in military activities that took place out of the territory.”¹⁷ More precisely, Group III 2(a) includes “an order, decoration, medal, insignia, including a ribbon, collar or sash normally associated with such order, decoration, medal or insignia, that has a fair market value in Canada of more than \$3,000 CAN.”¹⁸
25. The Objects are silver ornaments offered as diplomatic gifts or rewards to Indigenous Chiefs who were allies of the British troops during the War of 1812. The Objects were made more than 50 years ago outside the territory that is now Canada by a person who is no longer living. The Objects’ fair market value, as specified by the Applicant

¹⁴ Alan L. Hoover and Ted Brasser, 2020, *Sovereignty Gifts*, published by Howard Roloff, British Columbia, p. 18.

¹⁵ Section 2 of the *Canadian Cultural Property Export Control List* (Control List).

¹⁶ *Ibid.*

¹⁷ *Ibid.*, at section 2 Group 3.

¹⁸ *Ibid.*, at section 2(a).

REVIEW BOARD DECISION

October 19, 2022

**REQUEST FOR REVIEW OF A REFUSED APPLICATION FOR CULTURAL
PROPERTY EXPORT PERMIT****Application No.: 1635-22-07-13-005****Pair of Presentation Silver Armbands with George III Engraved Crest and
One Copper Gilded George III Military Court Gorget, circa 1825**

in his Cultural Property Export Permit Application, exceeds \$3,000.00 CAN. The Review Board therefore concludes that the Objects are included in the Control List.

Whether the Objects are of outstanding significance

26. In reviewing a refused application for an export permit, the Review Board must determine whether 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 sciences.¹⁹
27. The Applicant does not dispute that the Objects are of outstanding significance.
28. With respect to the Objects' close association with Canadian history, the Review Board notes that the Objects are outstanding historical artefacts with a direct connection with Canadian history and British Colonial history. The Objects, and the pair of arm bands specifically, are also outstanding examples of early 19th Century British silverware by a famous London family of silversmiths.
29. For the above reasons, the Review Board concludes that the Objects are of outstanding significance for their close association with Canadian history.

Whether the Objects are of such a degree of national importance that their loss to Canada would significantly diminish the national heritage

30. 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.²⁰
31. In making that determination, the Review Board must measure the extent of the effect of the removal of 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.²¹

¹⁹ Paragraphs 29(3)(b) and 11(1)(a) of the Act.

²⁰ Paragraphs 29(3)(c) and 11(1)(b) of the Act.

²¹ *Canada (Attorney General) v. Heffel Gallery Limited*, 2019 FCA 82 at paragraphs 37 and 43.

REVIEW BOARD DECISION

October 19, 2022

**REQUEST FOR REVIEW OF A REFUSED APPLICATION FOR CULTURAL
PROPERTY EXPORT PERMIT****Application No.: 1635-22-07-13-005****Pair of Presentation Silver Armbands with George III Engraved Crest and
One Copper Gilded George III Military Court Gorget, circa 1825**

32. The Review Board is not confined to specific factors in its assessment of national importance. It has broad discretion to assess and determine whether a given object meets the degree of national importance set out in the Act.
33. The Applicant acknowledged that the Objects are of national importance in his Request for Review.
34. The evidence²² shows that there is a limited number (64) of silverware pieces by William Bateman or the Bateman family held in Canadian public institutions however, most of the items are silver forks, teaspoons, and spoons. The *Sovereignty Gifts* publication indicates that: “[t]he Canadian Museum of History has a pair of arm bands by Peter, Ann and William Bateman. The Royal Ontario Museum has a single arm band by Peter and William Bateman and the Alabama Archives a silver gorget by Hester Bateman”.²³ During the hearing, the Applicant referred to three sets of armbands in Canadian institutions, including one set from the Huron community in Quebec now housed in a national museum. If the Objects were to be acquired by a public institution in Canada, they would be rare additions to a public collection.
35. Furthermore, the Review Board must consider the degree to which the Objects have a relationship with a group or community in Canada, or with other objects, or an emotive impact. The Review Board must also consider if the provenance of the Objects is a relevant factor that should be taken in consideration in determining whether the loss of the Objects would significantly diminish the national heritage. The association of the Objects with Chief John Aisance is based on several considerations well supported in the *Sovereignty Gifts* publication. Despite not being demonstrated by formal evidence, the acquisition directly from a descendant of Chief John Aisance makes a strong case for the importance of the Objects’ provenance. Such items were given to Indigenous Leaders who provided support during the War of 1812. The Objects therefore have a strong connection with the Ojibwa community and an important provenance.
36. In view of the historical importance of the Objects, and their rarity in Canada, contextual association with the Ojibwa community, and provenance, the Review

²² Data retrieved from the Artefacts Canada database, available at https://app.pch.gc.ca/application/artefacts_hum/re_as.app?lang=en

²³ Alan L. Hoover and Ted Brassler, 2020, *Sovereignty Gifts*, published by Howard Roloff, British Columbia, p. 12.

REVIEW BOARD DECISION

October 19, 2022

**REQUEST FOR REVIEW OF A REFUSED APPLICATION FOR CULTURAL
PROPERTY EXPORT PERMIT****Application No.: 1635-22-07-13-005****Pair of Presentation Silver Armbands with George III Engraved Crest and
One Copper Gilded George III Military Court Gorget, circa 1825**

Board concludes that the Objects are of such a degree of national importance that their loss to Canada would significantly diminish the national heritage.

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

37. 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) 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.²⁴
38. 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.
39. In support of its contention that no institution or public authority in Canada might make a fair offer to purchase the Object, the Applicant stated that the Objects were extensively advertised as to their availability for purchase but nonetheless received no expressions of interest or offers to purchase from any Canadian institution “due to the realities of funding available to provincial and federal cultural institutions”. The Applicant indicated orally that there were many opportunities for Canadian institutions to purchase the Objects at various stages before it applied for an export permit.
40. The Review Board accepts the Applicant’s submission that the Objects did not attract interest during that period. However, two advertisements in a magazine over a one-year period and contacting a number of unidentified institutions may demonstrate that the Objects were advertised but not to such a degree that would justify that the Objects were extensively advertised to the institutions or public authorities in Canada that might make a fair offer to purchase the Objects

²⁴ Subsection 29(5) of the Act.

REVIEW BOARD DECISION

October 19, 2022

**REQUEST FOR REVIEW OF A REFUSED APPLICATION FOR CULTURAL
PROPERTY EXPORT PERMIT****Application No.: 1635-22-07-13-005****Pair of Presentation Silver Armbands with George III Engraved Crest and
One Copper Gilded George III Military Court Gorget, circa 1825**

41. In the Review Board's decision in *Heffel*, the painting *Iris bleus* was sold at a public auction in Canada and the purchaser was not a public institution or public authority.²⁵ However, once the Review Board established a delay period for the issuance of an export permit in respect of the work, the Art Gallery of Ontario made an offer to purchase the work and was able to raise sufficient funding, including through a grant from the Department of Canadian Heritage.²⁶ It is possible that something similar would arise in relation to the Objects, and the Applicant has not provided sufficient evidence or rationale to negate such a possibility.
42. Considering the historical importance of the Objects and the fact that institutions in Canada collect similar objects, and having regard to the low threshold, the Review Board is of the view that an institution or public authority might make a fair offer to purchase the Objects within six months of the Review Board's determination in this matter.

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

43. 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.²⁷
44. The Review Board establishes a delay period of **three months**, ending **January 19, 2023**, during which it will not direct that an export permit be issued in respect of the Objects. The Review Board is of the view that this delay period is necessary to provide institutions and public authorities with sufficient time to consider the possibility of making an offer to purchase the Objects and potentially acquire the appropriate funds to do so.

²⁵ *Supra* note 21.

²⁶ See <https://ago.ca/collection/object/2019/2268>.

²⁷ Paragraph 29(5)(a) of the Act.

REVIEW BOARD DECISION

October 19, 2022

REQUEST FOR REVIEW OF A REFUSED APPLICATION FOR CULTURAL PROPERTY EXPORT PERMIT

Application No.: 1635-22-07-13-005

Pair of Presentation Silver Armbands with George III Engraved Crest and
One Copper Gilded George III Military Court Gorget, circa 1825

CONCLUSION

45. In conclusion, the Review Board determines that the Objects are on the Control List, that they are of outstanding significance, and that they are of such a degree of national importance that their loss to Canada would significantly diminish the national heritage. Furthermore, the Review Board is of the opinion that a fair offer to purchase the Objects might be made by an institution or public authority in Canada within six months after the date of this decision. The Review Board therefore establishes a delay period of three months ending **January 19, 2023**, during which it will not direct that an export permit be issued in respect of the Objects.

For the Review Board

Sharilyn J. Ingram, Chair
Glen A. Bloom
Tzu-I Chung
Jo-Ann Kane
Paul Whitney