

## REVIEW BOARD DECISION

September 16, 2021

### REQUEST TO EXTEND TIME TO FILE REQUEST FOR REVIEW OF REFUSED APPLICATION FOR CULTURAL PROPERTY EXPORT PERMIT

Application No.: 0495-20-10-01-006 *Chemin entre des murs à Avallon*  
by Félix Vallotton

---

#### INTRODUCTION

1. PACART (the Applicant) applied to the Canada Border Services Agency (the CBSA) for an export permit (the Permit Application) to export the work *Chemin entre des murs à Avallon*, 1923, by Félix Vallotton (the Object).
2. A permit officer employed by the CBSA sent to the Applicant a written notice of refusal (the Notice of Refusal) with respect to the Object. The refusal was based on the advice of an expert examiner, a representative of the Winnipeg Art Gallery, who determined that the Object is on the *Canadian Cultural Property Export Control List*, 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 June 28, 2021, the Applicant requested a review (the Request for Review) by the Canadian Cultural Property Export Review Board (the Review Board) of the refused application for an export permit. Accompanying the Request for Review were the Applicant's written submissions on the timeliness of the Request for Review. Specifically, the Applicant argued that the Request for Review was not late, but that if it was, that the Review Board should extend the filing deadline (the Request to Extend Time).
4. On July 26, 2021, at the request of the Review Board, the Applicant filed written submissions on the Review Board's authority to extend a deadline for requesting a review of a refused application for an export permit.
5. This decision addresses the merits of the Request to Extend Time.

#### ISSUES TO BE DETERMINED BY THE REVIEW BOARD

6. There are two issues to be determined by the Review Board:
  - (a) Whether the Applicant's Request for Review was filed outside the 30-day filing deadline stipulated in subsection 29(1) of the Act. If so,
  - (b) Whether the Review Board has the authority to extend the 30-day deadline.

## REVIEW BOARD DECISION

September 16, 2021

### REQUEST TO EXTEND TIME TO FILE REQUEST FOR REVIEW OF REFUSED APPLICATION FOR CULTURAL PROPERTY EXPORT PERMIT

Application No.: 0495-20-10-01-006 *Chemin entre des murs à Avallon*  
by Félix Vallotton

---

#### RELEVANT FACTS

7. Section D of Part II of the Permit Application completed by the CBSA permit officer indicates that the Notice of Refusal was sent on May 18, 2021, and that the Appeal Deadline expired on June 18, 2021.
8. A CBSA date stamp is superimposed onto the dates of May 18 and June 18, 2021, indicating a date of May 25, 2021.
9. The Notice of Refusal sent to the Applicant is dated May 25, 2021.

#### RELEVANT STATUTORY PROVISIONS

10. The relevant statutory provisions are as follows:

***Cultural Property Export and Import Act,*** R.S.C., 1985, c. C-51

***Loi sur l'exportation et l'importation de biens culturels,*** L.R.C. (1985), ch. C-51

**24.** The Review Board may make rules not inconsistent with this Act for the conduct of its proceedings and the performance of its duties and functions under this Act.

**24.** Dans le cadre de la présente loi, la Commission peut établir des règles pour assurer la conduite de ses travaux et l'exercice de ses fonctions.

**28.** 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

**28.** La Commission règle l'affaire dont elle est saisie avec aussi peu de formalisme et autant de célérité que le permettent, à son avis, l'équité et les circonstances.

**29(1)** Any person who receives a notice of refusal under section 13 or a notice under section 15 may, within thirty days after the date on which the notice was sent, by notice in writing given to the Review Board, request a

**29(1)** Dans les trente jours suivant l'envoi de l'avis de refus prévu à l'article 13 ou de l'avis prévu à l'article 15, son destinataire peut, par

**REVIEW BOARD DECISION**

September 16, 2021

**REQUEST TO EXTEND TIME TO FILE REQUEST FOR REVIEW OF REFUSED APPLICATION FOR CULTURAL PROPERTY EXPORT PERMIT****Application No.: 0495-20-10-01-006 *Chemin entre des murs à Avallon*  
by Félix Vallotton**

---

review of his application for an export permit by the Review Board. écrit, saisir la Commission d'une demande en révision.

**APPLICANT'S POSITION**

11. The Applicant acknowledges that the 30-day delay set out in subs. 29(1) of the Act begins to run from when the Notice of Refusal is "sent" by the CBSA. It argues, however, that there is no available information to confirm the date on which the Notice of Refusal was *actually* sent, and that the dates appearing in Section D of Part II of the permit application as well as on the Notice of Refusal are irrelevant for the purpose of calculating the appeal deadline. In any event, the Applicant contends that those dates conflict.
12. In addition, the Applicant submits that given the usual internal delays in processing correspondence as well as the additional delays caused by the COVID-19 pandemic and teleworking, it is reasonable to believe that the Notice of Refusal was not sent by the CBSA on May 25, 2021.
13. In the absence of any evidence pointing to when the Notice of Refusal was sent by the CBSA, the Applicant submits that the 30-day delay should begin to run from May 28, 2021, the date on which the Object's owner was made aware of the refused permit application.
14. In the event that the Review Board finds that the Notice of Refusal was sent on May 25, 2021, the Applicant submits that the 30 days would expire on June 28, 2021, because
  - (a) The 30th day fell on Thursday, June 24, 2021, a provincial statutory holiday in Quebec; and because
  - (b) Most of the Province was on holiday on Friday, June 25, 2021, and it was therefore impossible for the Applicant or owner of the Object to obtain legal advice that day.
15. Alternatively, should the Review Board find that the Request for Review was filed late, the Applicant asks that the Review Board extend the filing deadline. In short, the Applicant argues that the Review Board has the authority to extend time because of ss. 24 and 28 of the Act, and s. 12 of the *Interpretation Act*<sup>1</sup>. The Applicant also referred the Review Board to its *Model Directive on Procedure in the Review of an Application for an Export*

---

<sup>1</sup> R.S.C., 1985, c. 1-21.

**REVIEW BOARD DECISION**

September 16, 2021

**REQUEST TO EXTEND TIME TO FILE REQUEST FOR REVIEW OF REFUSED APPLICATION FOR CULTURAL PROPERTY EXPORT PERMIT****Application No.: 0495-20-10-01-006 *Chemin entre des murs à Avallon* by Félix Vallotton**

---

*Permit* in which it is stated at para. 2.2 that the Review Board can extend any time limit set in a proceeding.

**ANALYSIS**

16. The Applicant rightly acknowledges that subs. 29(1) of the Act requires a request for review to be filed within 30 days after the date on which the notice of refusal was sent.
17. In determining when a notice of refusal is sent, the Review Board must rely on the information contained in the documentation before it. In this matter, the information before the Review consists of:
  - (a) The Permit Application, and in particular, the statement in Section D of Part II of the application made by the CBSA permit officer according to which the Notice of Refusal was sent on May 18, 2021;
  - (b) The Notice of Refusal itself which is signed by the CBSA permit officer and dated May 25, 2021; and
  - (c) A CBSA stamp dated May 25, 2021, which is superimposed onto the date of May 18, 2021, found in Section D of Part II of the Permit Application.
18. Ordinarily, the Review Board would find, based on this information, that the CBSA sent the Notice of Refusal to the Applicant on May 25, 2021, and that the statutorily-imposed deadline would have begun to run from that date. This would result in a finding that the Request for Review ought to have been filed on or before June 25, 2021<sup>2</sup>.
19. However, recent jurisprudence<sup>3</sup> seems to recognize that the courts, and arguably administrative tribunals, may take notice of the practical exigencies of the COVID-19 pandemic in deciding the matters before them. Accordingly, while the documentation suggests that the Notice of Refusal was sent on May 25, 2021, the Review Board finds it reasonable to conclude that the COVID-19 pandemic and its generalized impact on Government of Canada services likely resulted in minor delays in sending the Notice of Refusal.

---

<sup>2</sup> Thirty days after the Notice of Refusal was sent brings the deadline to June 24, 2021, but that date is a provincial statutory holiday in Quebec which ss. 26 and 35 of the *Interpretation Act* state cannot be used as the deadline. Rather, the deadline must fall on the following day, Friday, June 25, 2021.

<sup>3</sup> See *Canada (Citizenship and Immigration) v. Canadian Council for Refugees*, 2020 FCA 181, and *R. v. Baidwan*, 2020 ONSC 2349.

## REVIEW BOARD DECISION

September 16, 2021

### REQUEST TO EXTEND TIME TO FILE REQUEST FOR REVIEW OF REFUSED APPLICATION FOR CULTURAL PROPERTY EXPORT PERMIT

**Application No.: 0495-20-10-01-006 *Chemin entre des murs à Avallon* by Félix Vallotton**

---

20. The Review Board therefore finds that the Request for Review is not late.
21. It should nevertheless be noted that had the Review Board concluded that the Request for Review was filed outside the 30-day time period specified in the Act, it would also have found that it does not have the authority to extend the filing deadline.
22. The Act does not give the Review Board the explicit authority to extend the filing deadline, and in the absence of a legislative grant of authority, either express or implied, to extend time, it is unlikely that it has the authority to extend a time limit respecting the initiation of a proceeding.<sup>4</sup> This view is confirmed by the jurisprudence<sup>5</sup>.
23. Furthermore, because statutorily-imposed deadlines have been found by the courts to be substantive in nature as opposed to purely procedural<sup>6</sup>, the Review Board cannot rely on s. 24 of the Act to extend the statutory deadline. Rather, s. 24 is designed to allow the Review Board to make rules related to practice and procedure in order to facilitate the fair and timely resolution of the matters before it. Where a request for review is untimely, the Review Board is not seized of the matter, and as such, there is no process or proceeding to control.

### CONCLUSION

24. As the Review Board has found that the Request for Review is not late, the Request to Extend Time is denied as unnecessary.

---

<sup>4</sup> *Practice and Procedure Before Administrative Tribunals*, by MacAuley, Sprague and Sossin, 16:72.

<sup>5</sup> *MacNeil v. British Columbia (Superintendent of Motor Vehicles)*, 2012 BCCA 360.

<sup>6</sup> See *Decision No. 806/02*, 2002 ONWSIAT 1433, citing *Canada (Human Rights Commission) v. Canadian Broadcasting Corporation* (1996), 28 C.H.R.R.D/139, and *Tolofson v. Jensen* 1994 CanLII 44 (SCC), [1994] 3 S.C.R. 1022.

## REVIEW BOARD DECISION

September 16, 2021

### REQUEST TO EXTEND TIME TO FILE REQUEST FOR REVIEW OF REFUSED APPLICATION FOR CULTURAL PROPERTY EXPORT PERMIT

Application No.: 0495-20-10-01-006 *Chemin entre des murs à Avallon*  
by Félix Vallotton

---

#### For the Review Board

Sharilyn J. Ingram, Chair  
Glen A. Bloom  
Tzu-I Chung  
Laurie Dalton  
Patricia Feheley  
Madeleine Forcier  
Theresa Rowat  
Paul Whitney