

MEMORANDUM OF ARGUMENT OF THE CANADIAN ASSOCIATION FOR CONSERVATION OF CULTURAL PROPERTY

PART 1 – OVERVIEW AND FACTS

A. OVERVIEW

1. The Canadian Association for Conservation of Cultural Property / Association canadienne pour la conservation et la restauration des biens culturels (the “CAC”) seeks an order granting it leave to intervene in this appeal.
2. This appeal engages questions regarding the circumstances in which international jurisprudence may properly be considered by the courts in determining an appropriate sentencing range for offences involving the theft of cultural property. Such questions arise from the unique character and value of culturally or historically significant material, and from the distinct harms occasioned by its theft.
3. The CAC wishes to intervene in this appeal to make submissions in relation to two issues: (1) why a principled approach justifies sentencing judges treating the fact that stolen items have cultural or historic value as an aggravating factor, in comparison to the theft of other ordinary “property”; and (2) why, due to the unique characteristics of cultural or historic material, it is appropriate for the courts to take into account principles from international jurisprudence when determining an appropriate sentence for the theft of such items.
4. In making these submissions, the CAC will draw upon its over 40 years of knowledge and the expertise it has developed as one of the only organizations in Canada dedicated to the responsible preservation of cultural property.

B. FACTS

5. As set out in the affidavit of the CAC’s President, Tiffany Eng Moore, the CAC is a federally registered charitable not-for-profit organization that has a history dating to 1972, when the Canadian Chapter Group of the International Institute for Conservation of Historic and Artistic Works was established. The CAC obtained charitable status in 1981. The CAC’s overarching purpose is to promote responsible preservation of the cultural property that gives Canadians a sense of place, history, and artistic expression.¹ The CAC’s

¹ Affidavit #1 of Tiffany Eng Moore, affirmed August 21, 2026 [“**Moore Affidavit**”] at paras 2-3.

mandate is to promote the responsible preservation of Canadian cultural property and pursues several objectives in support of this mandate, including promoting scholarly research and facilitating the dissemination of knowledge regarding the conservation of cultural property, exchanging information in the field, holding periodic conferences and discussing problems of general interest relating to the study of conservation of historic and artistic works. In addition, the CAC works to promote ethical and working standards in the field.² The CAC's work is national in scope and its membership base spans across Canada.³

6. The CAC's unique mandate requires it to have in-depth familiarity with national and international issues relating to the conservation of cultural property, informed by conservators and academic research. As set out in Ms. Moore's affidavit, it does so by working through a number of standing committees focused on areas of particular interest and involvement, by publishing the peer-reviewed *Journal of the Canadian Association for Conservation* (now on its 49th volume) as well as an electronic newsletter, conducting various industry surveys, and recently, establishing a "Cultural Heritage Crime Working Group" within the context of CAC's Advocacy Committee.⁴ It offers two annual awards for conservators, including one aimed at supporting emerging conservators.⁵ The CAC also has relationships with a number of domestic and international organizations that are active in the field. With one of those partners, the CAC develops and publishes the Code of Ethics and Guidance for Practice, outlining the professional standards expected of conservators.⁶

PART 2 – QUESTION IN ISSUE

7. At issue in this motion is whether the CAC should be granted leave to intervene in this appeal.

PART 3 – ARGUMENT

A. The test for granting leave to intervene

8. The test for granting leave to intervene has two components. The first component concerns whether the applicant has an interest in the issues raised by the parties to the appeal.⁷ This element of the test is a flexible one, such that "any interest is sufficient, subject always to

² Moore Affidavit at para 5.

³ Moore Affidavit at para 3.

⁴ Moore Affidavit at paras 8-12.

⁵ Moore Affidavit at para 15.

⁶ Moore Affidavit at para 14.

⁷ *Reference re Workers' Compensation Act, 1983 (Nfld.) (Application to intervene)*, [1989] 2 SCR 335 at 339 ["*Reference re Workers' Compensation Act*"].

the discretion of the court.”⁸ The second component is concerned with whether the applicant’s submissions will “be useful and different from those of the other parties.”⁹ This element of the test will be “easily satisfied by an applicant who has a history of involvement in the issue giving the applicant an expertise which can shed fresh light or provide new information on the matter.”¹⁰ An intervention is welcomed if “the intervener will provide the Court with fresh information or a fresh perspective on an important constitutional or public issue.”¹¹

9. The CAC respectfully submits that it satisfies both components of the test.

B. The CAC has an interest in the appeal

10. The CAC’s long involvement in matters relating to the responsible preservation of cultural property, as set out in the affidavit of Ms. Moore, demonstrates that it has an interest in the appeal of a nature that is appropriate for an intervener.

C. The CAC will make useful and different submissions

11. If granted leave to intervene, the CAC will make arguments centered on two points:
 - a. First, there is a principled basis to treat the theft of cultural property as distinct from that of ordinary property, and it is appropriate to treat the fact that stolen property has cultural and historical significance as an aggravating factor on sentencing.
 - b. Second, and relatedly, the unique nature of such property makes it appropriate for courts to take principles from international jurisprudence and commentary into account when determining a suitable sentence for the theft of cultural or historic property.
12. With respect to the first point, the CAC will submit that crimes involving culturally or historically significant material have features that distinguish them from thefts of ordinary “property”, as elaborated below. A principled understanding of why that is so in turn supports treating the theft of cultural property as an aggravating factor on sentencing.
13. The CAC will argue that, as recognized by the trial judge and upheld by the Court of Appeal, cultural property has value beyond its market price.¹² Although the CAC adopts

⁸ *Reference re Workers’ Compensation Act* at [339-340](#).

⁹ *Reference re Workers’ Compensation Act* at [339](#).

¹⁰ *Reference re Workers’ Compensation Act* at [340](#).

¹¹ *Reference re Workers’ Compensation Act* at [340](#).

¹² *R v Wood*, [2025 ONCJ 285](#) [“*Wood ONCJ*”] at para [53](#); *R v Wood*, [2025 ONCA 746](#) [“*Wood ONCA*”] at para [15](#).

(as the trial judge did) the commonplace descriptor of such material as “cultural property” for ease of reference, the CAC notes a growing academic consensus that there are important principled distinctions which make it inappropriate to treat these objects, which engage considerations of public interest, the embodiment and enhancement of culture and a society’s story and sense of self, and collective memory, as equivalent to “property” or “assets” that can be “owned” exclusively by a private individual. Cultural property embodies historic, artistic, educational, scientific, and social values that connect communities to their collective past and permit the transmission of cultural knowledge to future generations.¹³ Accordingly, the theft of cultural property causes harm that cannot be fully captured by its monetary worth.

14. Canadian law already reflects this notion that the value of cultural property cannot be reduced to its replacement cost. Canada is a signatory to several international treaties regarding the protection of cultural property,¹⁴ including [UNESCO 1970](#): Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (the “**1970 UNESCO Convention**”). In response to its obligations under the 1970 UNESCO Convention, in 1977, Parliament enacted the *Cultural Property Export and Import Act*, [R.S.C. 1985, c. C-51](#) (the “**CPEIA**”). The purpose of the *CPEIA* is to satisfy Canada's role both as a market country (prone to receiving trafficked goods) and a source country (that loses its cultural heritage to trafficking) in controlling the traffic of heritage across its borders. The *CPEIA* does so through a system of export controls and tax incentives, ultimately designed to encourage Canadian cultural property to remain in Canada.¹⁵ The *CPEIA* does not appear to have been considered by either lower Court in this case. The CAC raises it not to suggest that this Court *should* consider it, but rather, simply to illustrate that these principles already exist, and are viewed as important, in the Canadian legal context.

15. In a similar vein, Parliament has also recognized in the context of environmental conservation that harm to certain natural resources cannot be measured simply by monetary value or remediation costs. The sentencing factors provided for in the *Canada National Parks Act*, [S.C. 2000, c. 32](#) (the “**Parks Act**”) include whether a resource is unique, rare,

¹³ Irina Olevska-Kairisa & Andris Kairiss, "Victims of Heritage Crimes: Aspects of Legal and Socio-Economic Justice" (2023) 9 *Open Archaeology* [**“Olevska-Kairisa 2023”**] at 1-2.

¹⁴ *Convention for the Protection of Cultural Property in the Event of an Armed Conflict*, [14 May 1954, Can TS No 54](#) (entered into force 7 August 1956) [**“1954 Hague Convention”**]; *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, [UNESCO, 14 November 1970, 823 UNTS 231](#) (entered into force 24 April 1972) [**“1970 UNESCO Convention”**].

¹⁵ *Canada (Attorney General) v Heffel Gallery Limited*, [2019 FCA 82](#) at para [11](#); *Art Gallery of Ontario v Canada (Cultural Property Export Review Board) (T.D.)*, [1994 CanLII 3506](#) (FCTTD).

particularly important, vulnerable, or irreparably damaged.¹⁶ In the CAC's submission, this can be analogized to sentencing of crimes involving cultural property: like the resources described in the *Parks Act*, cultural property has public, intangible value, which supports treating the loss or damage of such property as an aggravating factor on sentencing. This is further supported by the fact that natural history specimens (such as fossils) are also considered cultural heritage: EU Regulation [2019/880](#)¹⁷ specifically gives protection to flora, fauna, and "objects of palaeontological interest", and the *CPEIA* can apply to natural history specimens.

16. Further, the harms that result from the theft of cultural property are often diffusive and collective. They extend well beyond the owner of the property, affecting museums, galleries, researchers, members of the public, and arguably, society as a whole. Such harms may include the loss of public access, the frustration of conservation objectives, the erosion of cultural memory and identity, and risks to the preservation and transmission of cultural heritage to future generations. This is distinct from the theft of "ordinary" property, where typically the victims of such theft are limited to the owners of the stolen property. In contrast, heritage crimes have been described as "profound losses for humanity".¹⁸ As the 1954 Hague Convention recognizes, "damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world".¹⁹

17. Participation in cultural life is widely recognized as a fundamental aspect of human flourishing and is protected by several core international human rights instruments to which Canada is a signatory, including the *Universal Declaration of Human Rights*,²⁰ the *International Covenant on Civil and Political Rights*,²¹ and the *International Covenant on Economic, Social and Cultural Rights*.²² Unlike other countries, Canada has not yet

¹⁶ *Canada National Parks Act*, [SC 2000, c 32](#), ss [27.7\(2\)\(a\)–\(c\)](#), [\(4\)](#); damage includes loss of use value and non-use value.

¹⁷ Regulation (EU) 2019/880 of the European Parliament and of the Council of 17 April 2019 on the introduction and the import of cultural goods, [\[2019\] OJ, L 151/1](#) art 3(1) and annex, part A(a).

¹⁸ Irina Olevska-Kairisa, "Archaeological Crimes and Their Impact on Heritage Professionals: Recognizing the Scientific Community as a Victim in Criminal Proceedings" (2025) 26 *Archaeologia Litwana* 231 at 232.

¹⁹ Convention for the Protection of Cultural Property in the Event of Armed Conflict, 14 May 1954, [249 UNTS 240](#) preamble (entered into force 7 August 1956).

²⁰ *Universal Declaration of Human Rights*, 10 December 1948, [Resolution 217 \(III\)](#) art 27.

²¹ *International Covenant on Civil and Political Rights*, 10 December 1966, [999 UNTS 171](#) art 1.1 (entered into force 23 March 1976).

²² *International Covenant on Economic, Social and Cultural Rights*, 19 December 1966, [999 UNTS 171](#) art 15.1(a).

legislated in a way which recognizes theft of cultural property as a distinct criminal offence, with its own sentencing guidelines; the CAC will argue that, nevertheless, these international commitments support an approach to sentencing cultural heritage crimes even under the existing *Criminal Code* framework that meaningfully denounces and deters the theft of cultural property.

18. Treating the theft of cultural or historical property as an aggravating factor on sentencing promotes the foundational expressive values conferred by s. 2(b) of the *Charter*.²³ In *R v Keegstra*, [1990] 3 SCR 697, McLachlin J. (as she then was), writing for the dissent, held that “[f]reedom of expression protects certain values which we consider fundamental – democracy, a vital, vibrant and creative culture, the dignity of the individual”.²⁴ Cultural property, and in particular the public display of cultural property, gives practical effect to these values by enabling individuals to participate in cultural life and engage with forms of expression that contribute to a vibrant and creative culture, individual flourishing, and democratic discourse.
19. In this regard, the CAC will argue that there is a significant public interest not just in preserving cultural property within Canada, but in preserving meaningful public access to it. Keeping Canadian cultural property in Canada has been recognized as a benefit of the *CPEIA*.²⁵ Canadian sentencing law should similarly recognize and support the important public benefits associated with the public display of cultural property. Museums, galleries, archives, and other cultural institutions make heritage accessible to the public and thereby advance important educational, cultural, and democratic objectives.
20. At the same time, institutions that choose to display culturally significant objects publicly assume a heightened risk in doing so. This “public” dimension of cultural property means there is an element of trust at play every time an artist or holder of cultural property chooses to display it for the general good. The theft of cultural property is a breach of that confidence placed in all members of a society, collectively, to preserve property that is important to, and for the benefit of, the public as a whole. In turn, this weakens the overarching aim of creating a society where artists and property-holders are willing to take the risks inherent in displaying such works publicly, in exchange for the public benefits that flow from such generosity.

²³ *Canadian Charter of Rights and Freedoms*, [Part I of The Constitution Act, 1982](#), Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*].

²⁴ *R v Keegstra*, [1990] 3 SCR 697.

²⁵ Sharon A Williams, "Protection of Cultural Property: The Canadian Approach" (1980) 22:3 *Arizona Law Review* 737 at 744.

21. In the CAC’s submission, as a consequence, thefts from public institutions should be adequately denounced and deterred; otherwise, custodians may become less willing to place culturally significant objects on public display. The result would be reduced public access to cultural heritage and a corresponding deprivation of the educational, cultural, and democratic benefits that such institutions provide. If cultural objects in some ways tell the story of a society, the absence of such objects, whether through theft or voluntary removal from public display, weakens a society’s ability to know its own story, and in turn to understand itself. Theft of cultural property from the public domain therefore causes a distinct form of public harm.
22. In addition, unlike ordinary property, the loss or damage resulting from the theft or destruction of cultural property is often irreversible. Even where a stolen object is ultimately recovered and restored, “restored” cultural property is qualitatively different from cultural property that has never been damaged; thus, no material or pecuniary measure can fully remedy damages.²⁶ This was the case for the Karsh portrait in the case at bar – while the portrait was ultimately recovered, it sustained permanent damage.²⁷
23. The CAC submits that this principled approach to the treatment of cultural heritage crimes is consistent with the expressive function of sentencing. As recognized by the Supreme Court of Canada, beyond punishing individual offenders, sentencing also communicates shared values; a sentence which expresses denunciation “positively instills the basic set of values shared by all Canadians as expressed by the *Criminal Code*”.²⁸ A sentencing regime that recognizes the unique harms associated with cultural property theft appropriately reflects the value Canadians place on preserving cultural heritage, promotes public access to culture, and safeguards cultural objects that contribute to collective memory and democratic participation.
24. Accordingly, for the reasons above and based on the unique value of cultural heritage and its public display, and the widespread harms occasioned by its theft, it is fitting and appropriate for courts to consider the fact that a stolen object is cultural property when sentencing an offender for the theft of same.
25. The CAC’s second proposed point follows from the first. In the CAC’s submission, the unique nature of cultural or historic property makes it appropriate for courts to take principles from international jurisprudence and commentary into account when determining a fit sentence for the theft of cultural property.

²⁶ Olevska-Kairisa 2023 at 9.

²⁷ *Wood ONCJ* at paras [12](#), [21](#), [52](#); *Wood ONCA* at paras [4](#), [15](#).

²⁸ *R v M (CA)*, [\[1996\] 1 SCR 500](#) at para [81](#).

26. As described above, Canada is a participant in several international cultural-property regimes, including instruments aimed at preventing the illicit trafficking of cultural property and promoting international cooperation in its protection and recovery.²⁹ Under the 1970 UNESCO Convention, Canada has “mutual obligations” to assist other signatories for the recover and return of cultural property illegally imported into Canada.³⁰
27. This is reflective of the fact that cultural property crimes are frequently international in nature: stolen works often cross borders, enter international art markets, and become subject to recovery efforts involving sometimes several jurisdictions.³¹ The facts in *R v Wood* offer a compelling illustration of this: the case at bar concerns a print of a photograph of a British political figure, taken by a Canadian photographer, displayed in a Canadian hotel, sent to England for auction, and ultimately purchased by an Italian collector. Clearly, the interests engaged by the theft of the Karsh print extend well beyond Canada.
28. The CAC will therefore submit that the theft of cultural property engages broad, international interests, demonstrated by (among other things) the evident international market for such property. Within the conservation and preservation context, international cooperation is important and engages principles not unique to Canada, but indeed to the world.³²
29. Against that backdrop, the CAC will submit that international jurisprudence, and the principles arising from it, provide a useful source of guidance regarding the unique harms associated with the theft of cultural property, and the rationale for robust denunciatory and deterrent sentences. The CAC does not propose that such foreign authorities are binding on this Court. Rather, it submits that the principles considered in international jurisprudence may provide valuable context in this context, given the unique considerations at play regarding the theft of cultural property, as well as the fact that such crimes are inherently international in character, and the reality that Canadian experience of such offences, and consequently Canadian jurisprudence regarding the sentencing of such offences, is limited. The CAC submits that this is aligned with this Court’s previous approaches to sentencing decisions; for example, this Court has recently considered Canada’s international commitments in the sentencing context in relation to evaluating whether life sentences without a realistic possibility of parole constituted “cruel and unusual punishment” under s. 12 of the *Charter*.³³

²⁹ 1954 Hague Convention; 1970 UNESCO Convention.

³⁰ *Canada (Attorney General) v Koestel*, [2023 FC 1663](#) at para 7.

³¹ Explanatory Report to the Council of Europe Convention on Offences relating to Cultural Property, [CETS No 221 \(2017\)](#) at para 3.

³² 1970 UNESCO Convention, preamble.

³³ *R v Bissonette*, [2022 SCC 23](#) at paras [101](#), [105](#).

30. The CAC's perspective on these matters is useful, unique and different from that of the parties to the appeal. While the Crown and the Appellant will respectively defend or challenge the sentence imposed by the trial judge in this case, the CAC intends to assist the Court by elaborating on the analytical framework to be applied and the principled basis for same, consistent with its mandate. Consistent with the recognized role and function of an intervener, the CAC will not take a position on the substantive issues in the appeal, but will discuss, with reference to the jurisprudence and academic commentary, the basis for treating theft of cultural property as an aggravating factor on sentencing, and why it is appropriate for courts to consider international law when determining an appropriate range of sentence.

PART 4 – SUBMISSIONS ON COSTS

31. The CAC will not seek costs and asks that it not be held liable for the costs of any other party or intervener.

PART 5 – ORDERS SOUGHT

32. The CAC respectfully asks for leave (a) to intervene in this appeal; (b) to file a factum not exceeding 10 pages; and (c) to make oral submissions not exceeding 5 minutes at the hearing of this appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED, this 21 day of August, 2026

Per:



Kevin Smith and Megan Walwyn
Counsel for the Canadian Association for Conservation of Cultural Property

PART 6 - TABLE OF AUTHORITIES

Case Law	Paragraph Reference
<i>Art Gallery of Ontario v Canada (Cultural Property Export Review Board) (T.D.)</i> , 1994 CanLII 3506 (FCTTD).	14
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<i>Canada (Attorney General) v Koestel</i> , 2023 FC 1663	26
<i>R v Bissonette</i> , 2022 SCC 23	29
<i>R v Keegstra</i> , [1990] 3 SCR 697	18
<i>R v M (CA)</i> , [1996] 1 SCR 500	23
<i>R v Wood</i> , 2025 ONCJ 285	13, 22
<i>R v Wood</i> , 2025 ONCA 746	13, 22
<i>Reference re Workers' Compensation Act, 1983 (Nfld.) (Application to intervene)</i> , [1989] 2 SCR 335	8

Statutes, Regulations, and Conventions	Paragraph Reference
<i>Canada National Parks Act</i> , SC 2000, c 32 <i>Loi sur les parcs nationaux du Canada</i> , L.C. 2000, ch. 32	15
<i>Canadian Charter of Rights and Freedoms</i> , Part I of The Constitution Act, 1982 , Schedule B to the <i>Canada Act 1982</i> (UK), 1982, c 11 <i>Charte canadienne des droits et libertés</i> , partie I de la Loi constitutionnelle de 1982 , constituant l'annexe B de la <i>Loi de 1982 sur le Canada</i> (R-U), 1982, c11	18
<i>Convention for the Protection of Cultural Property in the Event of an Armed Conflict</i> , 14 May 1954, Can TS No 54 (entered into force 7 August 1956)	14, 16, 26

<i>Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property</i> , UNESCO, 14 November 1970, 823 UNTS 231 (entered into force 24 April 1972)	14, 26, 28
<i>Cultural Property Export and Import Act</i> , R.S.C. 1985, c. C-51 <i>Loi sur l'exportation et l'importation de biens culturels</i> , L.R.C. (1985), ch. C-51	14, 15, 19
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<i>Universal Declaration of Human Rights</i> , 10 December 1948, Resolution 217 (III)	17

Secondary Sources	Paragraph Reference
Irina Olevska-Kairisa, "Archaeological Crimes and Their Impact on Heritage Professionals: Recognizing the Scientific Community as a Victim in Criminal Proceedings" (2025) 26 <i>Archaeologia Litwana</i> 231	16
Irina Olevska-Kairisa & Andris Kairiss, "Victims of Heritage Crimes: Aspects of Legal and Socio-Economic Justice" (2023) 9 <i>Open Archaeology</i>	13, 22, 26
Sharon A Williams, "Protection of Cultural Property: The Canadian Approach" (1980) 22:3 <i>Arizona Law Review</i> 737	19
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