

National Archival Appraisal Board (NAAB)

Response to the
Canadian Cultural Property Export Review Board (CCPERB)
on the
Proposed Guide for Monetary Appraisals

Introduction

Thank you for this opportunity to respond to your recently updated “Guide to Monetary Appraisals.” We have reviewed the guide closely as it has a very significant impact on the certification of archival cultural property in its current iteration.

The National Archival Appraisal Board (NAAB) recognizes CCPERB’s central role in certifying Canadian cultural property, including Canada’s documentary heritage. Many archival institutions and donors have benefitted considerably from the certification process since the establishment of CCPERB. The multitude of users of archives such as students, artists, academics, journalists, filmmakers, architects, authors and the general public are certainly the most important benefactors. The benefits of certification have proven an effective incentive to encourage the preservation of archival material, as an integral part of the cultural and social underpinnings of our society.

The monetary appraisal process is key to many Canadian archives fulfilling their mandate to acquire, preserve and make available our national cultural heritage. For this reason, the National Archival Appraisal Board decided to circulate the proposed guide, to the archival community and asked them to respond to an accompanying survey. Archivists read the new guidelines thoroughly and articulated major concerns.

NAAB has had a long and established history with CCPERB and we think it is fair to say that, because of the complexity and nature of archival materials (in contrast to single items or smaller groupings of materials such as works of art, artifacts), this has often contributed to an underlying uneasiness between the two parties. The proposed guide brings these tensions to the surface and it is in this context that we wish to convey our concerns to provide you with feedback from the archival community.

NAAB’s formation and National Revenue

In the early 1970s, officials of the Public Archives of Canada (PAC) investigated the possibility of offering tax incentives for donations of archival documents. As a result of their discussions with officials of the Department of National Revenue (DNR), it was concluded that such donations would fall under the definition of donations-in-kind and that the most desirable method of appraisal would be an evaluation made by a team of historians and archivists. This led to the formation of the Documents Appraisal Committee (DAC), the precursor of the National Archival Appraisal Board (NAAB).

The former Head of the Manuscripts Division at the Public Archives of Canada (PAC), Robert S. Gordon, then worked closely with National Revenue to ensure that the integrity and procedures of the evaluation process were acceptable to them. With the establishment of the National Archival Appraisal Board in 1974, the composition of the evaluation team evolved to include an historian, an archivist and a dealer. This 'triangulation' of market, research and documentary heritage value was rooted in the premise that a consensus based on the combined expertise in these three areas would provide the best means to reach the true meaning of fair market value for archival cultural property.

The Department of National Revenue was a critical factor in shaping and supporting the foundational framework for archival appraisal that exists today. This model has been in effect since the 1970s and remains consistent with Revenue Canada's directive for non-cash gifts to the effect that "The person who determines the fair market value of the item should be competent and qualified to evaluate the particular property being donated."

When CCPERB was established in 1977, it included archival applications as part of their responsibility to preserve Canadian cultural property and prevent the loss of Canadian heritage. Since that time, CCPERB has continued to review and accept archival applications based on the above consensus approach. NAAB's long established appraisal framework has worked for several decades and has supported thousands of applications that were approved by both CRA and CCPERB.

In recognition of CCPERB's concerns over some appraisals of archival donations, NAAB has sought to strengthen the appraisal process especially in areas where market values are not readily available. This is an ongoing process intended to ensure that NAAB's appraisal methods provide the necessary rigour and analysis to justify the fair market value.

More recently NAAB has also established a number of masterclasses as part of a certification program to build and expand capacity across the country and further develop appraisal expertise for archival material. CCPERB's participation in these masterclass sessions played an important role in familiarizing the participants with the certification process and provided an opportunity for welcome discussion. Certainly, CCPERB's participation in these classes, combined with more frequent communications between NAAB and CCPERB suggested movement in a positive direction.

In light of these recent steps taken by NAAB and past efforts made by CCPERB to seek accommodation for archival cultural property within the fair market concept, NAAB was disappointed and surprised by the direction taken in the recent guidelines.

Survey Results: Major Issues

A summary of the survey results from the larger archival community demonstrated a remarkable similarity of concerns. The survey was based on the seventeen components of the proposed CCPERB Guide for Monetary Appraisals with an additional question at the end to allow any additional comments.

We received 202 responses that included 177 in English and 25 in French. A further breakdown of respondents was as follows:

Practising NAAB Appraisers (PNAs)	20%
Non-PNA professional appraisers	3%
Archivists or representing an archival institution	65%
Representatives of other memory/heritage institutions	3%
Historians	3%
Other*	7%

**This category included representatives from professional associations, an MLIS student, and librarians.*

Although respondents provided input and feedback on the seventeen sections of the proposed guide, for the purposes of this submission, we have highlighted only those issues which have posed major challenges to appraisers and institutions. This is not to minimize the other sections as we hope to provide feedback on them in the near future.

These issues are identified as follows:

Guidelines are too restrictive

One of the predominant and consistent comments raised in the survey was that the guide is heavily predisposed to single or smaller objects such as fine art objects and artifacts. Its emphasis on sales precedents and market values overlook the issue of limited active markets for archival material. Like most countries, Canada does not have a strong active market for archival materials and the very restrictive nature of this guide will undoubtedly have a negative impact on acquisition of archival cultural property. This would be unfortunate when the archival community has made serious and concerted inroads in the acquisition of diverse collections that reflect a broad and representative Canadian experience. We need to be concerned about the adverse impact of the exclusion of archival fonds from the tax incentives conferred upon certified donations of documentary heritage.

In contrast to works of art and some other types of cultural property regularly available on commercial markets, archival fonds are never created for the primary purpose of being sold. It is the significance of their content and the activities of their creator, in addition to the scarcity of certain types of records to document important landmarks and events in Canada's history, that make them essential for heritage and historical research. For these reasons, their acquisition and preservation by archival institutions and other custodians of documentary heritage have always been highly desirable as sources of historical research in the fulfilment of their acquisition mandate.

Consequently, a strong 'institutional market' exists for these archival materials, which unlike works of art, warrant other approaches to assess their fair market value. While

some owners of an archival fonds may agree to donate without compensation, understandably, others need to be encouraged by monetary incentives.

Historical and research value are not included as determinants of fair market value.

While research value is the primary reason for acquisitions by archival institutions, historical and research potential are rejected in CCPERB's new guide as factors contributing to the determination of their fair market value.

As one respondent wrote: "A serious challenge for archival institutions is that archival materials contribute to the national cultural heritage through their historical research value but this value does not easily translate into a commercial market value. This means that if monetary appraisal is based solely on market value, the donors of archival materials are disadvantaged to the detriment of the long-term cultural policy goal."

Another respondent wrote: "Research values and historical values need to be recognized in determining fair market value - archival fonds support the output of masters theses and doctoral dissertations; creation of secondary sources and creative works; film and television productions; and research and development in all fields of enquiry - these endeavours all have a positive economic impact and can be quantified in monetary terms".

NAAB's existing framework for appraisal assigns a monetary value on the historical and research potential of archival records that comprises a reasoned justification when there is a limited market of sales comparisons.

Historical and research potential form a necessary part of the 'Reasoned Justification' which also considers other essential factors such as uniqueness, rarity, significance of subject matter, completeness and extent among other factors. It is not surprising that 'Reasoned Justification' has been used regularly as an approach for most archival appraisals. As in many appraisals, it is the basis for justifying the relevance and significance of the material within a specific context, but may also be used in conjunction with one or more approaches depending on the nature and type of the archival materials.

Appraisers carry out searches of sales data from various dealers and auction houses if applicable and available, but typically there are few or no established open public markets for certain archival materials because of the lack of interest by the collectors' market, daunted by the size of whole archival fonds. In cases where comparable sales do exist for certain types of documents, they will be included in the appraisal process.

Valuation methodologies

This section of the guide suggests that there is really only one methodology, that of sales comparison that is acceptable. The sales comparison method is more readily applicable to discrete objects in collections such as autographs, photographs, maps and architectural drawings, all of which can be found in collectors' markets. That being the case, the sales comparison method can only penalize more substantial archival fonds,

which are the very *raison d'être* of archives and other institutions that preserve Canada's documentary heritage.¹

Similarly, it is not clear why CCPERB will not accept previous appraisals or previous CCPERB determinations as components of a potential methodology. While it is rarely used as the sole approach to estimate fair market value, the use of previous appraisals not only provides a consistency for evaluating accruals of archival material but also creates a necessary foundation for future appraisals in the same way that precedents form the basis for monetary value of objects for sale. It also conveys more equity and fairness in appraisals of similar types of donations by various appraisers.

Suggesting that the cost method should only be used in "exceptional" cases will negatively affect the appraisal of many types of archival records, such as photographs, film and moving images. What then constitutes "exceptional cases?" The cost to reproduce audiovisual or photographic materials has often been used by appraisers and accepted by CCPERB, as part of the assessment of fair market value for these records.

Digital records as part of our documentary heritage

The guide makes no reference to digital records and yet more and more traditional paper-based records are being augmented, if not replaced, by born-digital records across all media. Instead of accessing files of correspondence, manuscripts, photographs, maps and plans, we are accessing data stored in digital repositories, hard drives and/or websites. Many born-digital records found in archival fonds are the only authentic historical evidence witnessing important facts or exchanges between individuals. Concerns were expressed by archivists processing electronic records about the need to resolve issues that these records pose for existing monetary appraisal methods. We need to develop a workable and mutually agreeable solution about how best to recognize the relevance and value of electronic records as cultural property.

As one respondent stated "The digital market needs to be articulated and defined. I do not think NAAB should feel alone in this task; there are communities thinking through what digital markets are, how they develop, etc., but it requires research and collaboration so that there is a common understanding of what is reasonable and fair."

Other jurisdictions, such as the United Kingdom, have already recognized the issues. The groundbreaking report produced for the National Archives of the United Kingdom by Rhian Addison in April 2019, entitled *Protecting digital cultural assets: a review of the export process and supporting mechanisms, A report on behalf of The National Archives* (see <https://www.nationalarchives.gov.uk/documents/protecting-digital-cultural-assets-report.pdf>) lays out in detail the issues concerning the valuing and protection of digital cultural assets, and should provide a model for the Canadian Cultural Property Export Review Board.

We invited NAAB's *Adhoc Committee on the Monetary Appraisal of Electronic Records* to submit a letter to identify their concerns and this has been attached as Appendix B.

¹ See "Appendix A" entitled "Markets for Archives" which explains how the saleable archival items of interest to collectors, differ significantly from the desirable fonds sought by archival and documentary heritage institutions.

Conclusion:

The certification of archival donations as cultural property is not only an incentive to donors but more importantly it has had a major impetus on the acquisition of 'outstanding' archival fonds that have become fundamental resources in the shaping of the social and political fabric of our country. Each of these certified archival fonds builds on our national cultural heritage and contributes to the framing of our past.

We must continue to work together to find processes that are fair and workable for all and that support archival institutions in acquiring these fonds. Archivists have expressed their concerns about the limitations of this approach but stress the importance of continuing to include approaches that can work for all players.

Summary Recommendations:

Recommendation 1:

Create either a separate set of instructions/requirements for appraisals of archival applications or create separate archival components within the existing guidelines. In the past archival applications have constituted approximately 20% to 25% of all applications submitted to CCPERB.

Recommendation 2:

We recommend that the valuation methodologies be expanded to include the following:

- a) Previous appraisals for the reasons stated earlier;
- b) A reasoned justification that accepts and incorporates historical and research potential as valid factors in calculating the fair market value of archival material. Historic and research values (as opposed to commercial market values) define the national cultural significance of archival material and drive its acquisition by institutions;
- c) The cost method as a valid methodology to be used whenever applicable in the appraisal of photographic, film and television records.

Recommendation 3:

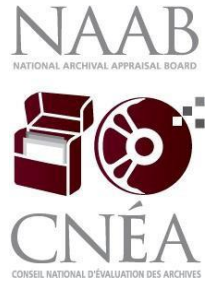
Establish a sub-committee of representatives from CCPERB, NAAB and the CCA to explore all possible acceptable requirements for archival applications. We recommend that this be done within 60 days.

Recommendation 4:

Create a framework and requirements for monetary appraisal to address the ever-growing volume of digital cultural assets to ensure the preservation and retention of these important and cultural records for future generations of Canadians.

APPENDIX A - Markets for Archives

When working to establish the fair market value of archival records as cultural property, it is crucial to take into account factors like the nature of archives, their main attributes and their likely users. Recent sales of discrete items are not generally a useful basis for appraising a whole archival fonds.



The nature of the archives acquired by archival and other documentary heritage institutions

Private archival fonds are records created and held by individuals or institutions during the normal course of their activities. Their authenticity is paramount to ensure that they reflect the activities of their creator to inform historical research about all aspects of the activities of these individuals and institutions.

In contrast to works of art and other types of cultural property available on commercial markets, **archival fonds are not produced to be sold.** Nevertheless, the importance of their content and the activities of their creator, in addition to the scarcity of some types of records to document important facts make them essential for historical research. For these reasons, their acquisition by archival institutions and other custodians of documentary heritage is highly desirable as sources of historical research in the fulfilment of their acquisition mandate. Depending on the circumstances, the owner of an archival fonds may agree to donate it or choose to seek monetary compensation for their documents.

Characteristics of an archival fonds

Unlike most cultural property on offer in public markets, archival fonds are made up of variable quantities of many different types of records, often amounting to only a few metres of textual materials, but every so often tens or hundreds of linear metres of records of various kinds. Once processed, the whole is usually arranged and presented in hierarchical order or series and files; on that basis, the records are described in finding aids that also provide information that facilitates access to the records. Taken as discrete items, most documents do not necessarily have any great monetary value; it is the whole and sum of its parts that produce significance as authentic documentation essential for serious historical research; it is therefore very important that institutions acquire them to make them available to researchers of all disciplines. The market for archival fonds is usually a national market, and such records are almost always appraised within their national context.

Characteristics of a collection

Collections are less frequently acquired by archival institutions. A collection is a group of documents of any provenance that is intentionally assembled based on subject, form, geographic scope, or some other common characteristic. Some such items, such as letters from famous people, can be of interest to local or international collectors, and archival institutions must compete with such collectors.

Purpose of archival fonds and collections

Archival fonds are preserved for consultation by researchers from various disciplines as primary evidentiary sources of information to document research on specific topics.

Both archival records and collection items are also an important component of many different kinds of exhibitions and public programs intended for various audiences. Archival records are also the major source for many types of studies, requiring authentic documentation, books, government reports, theses, film and television productions.

Monetary Appraisal of archival records in Canada

Since the 1970s, Revenue Canada, now called the Canada Revenue Agency (CRA), has treated donations of archival fonds to registered charitable organizations as gifts in kind. Further to consultations with the Public Archives of Canada², Revenue Canada determined that an appraisal by a team of historians and archivists, e.g. a committee of the Canadian Historical Association, would be the best way of assigning value to archival records.³ The resulting committee, called the Document Appraisal Committee (DAC) operated for four years and eventually led to the establishment of the National Archival Appraisal Board (NAAB), a separate organization whose sole role is the monetary appraisal of archival records. For practical and financial reasons, NAAB was established as a decentralized organization with a presence, in the form of regional appraisal committees in every region of Canada⁴.

CCPERB, established in 1977, was among other things assigned delegated authority from Revenue Canada to certify appraisals of cultural property for income tax purposes. Ever since, CCPERB has commendably performed its role as a tribunal with respect to archival records, though with an emphasis on methodologies based either on recent sales of comparable cultural property or the cost approach, with due regard to property submitted and accompanying appraisal reports, whether prepared by NAAB or private appraisers. Whereas early NAAB reports were very straightforward, often consisting of no more than a brief description of the materials and the appraised amount, they have become increasingly detailed over the years, with explanations given for the values assigned disregard to the various components of the fonds being appraised, and a rationale (or reasoned justification) for the methodology.

For reasons not mentioned in the *Cultural Property Export and Import Act*, the Guide for Monetary Appraisals being proposed by CCPERB would restrict appraisals of all cultural property to comparable sales (preferably recent), with additional justification required for “exceptional” cases that use the cost approach. This requirement, which excludes all other appraisal methods, even the “professional standards and practices of appraisers for certain types of cultural property [that] may permit the use of various valuation methodologies.”

This restriction directly disregards the approaches needed to appraise archival records and totally discards the past 50 years during which the Commission demonstrated an understanding of the nature of archival fonds. At the same time, this refusal to adapt the appraisal process perverts the application “fair market value” for Class 7 material, the main type of donation to major archives and other institutions (like museums and universities) that preserve Canada’s documentary heritage. Indeed, the sales comparison method is more readily applicable to

² The National Archives of Canada, which was called the Public Archives of Canada until 1987, merged with the National Library of Canada in 2004 to become Library and Archives Canada (LAC). The two institutions, both founded in 1872, continue their operations as part of the merged organization.

³ K.D. Smith to W.I. Smith, 19 May 1970. Correspondence with National Revenue. National Archival Appraisal Board.

⁴ See article by R.S. Gordon, “Appraisals for Tax Credit by the National Archival Appraisal Board”, in *Archivaria* no 1 (winter 1975/76), pp 74-79.

discrete objects in collections put together via purchases from various markets for individual items like autographs, photographs, maps and architectural drawings, all of which can be found in collectors' markets. That being the case, the sales comparison method penalizes more substantial archival fonds, which are the very *raison d'être* of archives and other institutions that preserve Canada's documentary heritage; concomitantly, it discards an effective incentive to the acquisition of archival fonds from those who are the first direct eyewitnesses of Canada's history as it happened.

APPENDIX B - Letter from the NAAB Ad Hoc Committee on the Monetary Appraisal of Electronic Records

RE: Updated CCPERB Guidelines for Monetary Appraisals

Dear NAAB Executive,

Thank you for the opportunity to consider the proposed Guidelines document. As the members of the NAAB ad hoc Committee on the Monetary Appraisal of Electronic Records we wanted to take this opportunity to raise a few concerns we see regarding the application of the proposed guidelines specifically to electronic records. This is supplementary to our mandate to produce a report in 2021 regarding a more fulsome account of the monetary appraisal of electronic records in Canada. At present we see several key areas of concern:

Difficulties of applying market values to archival materials

We trust that many of our colleagues will speak to the difficulties in applying the concept of market value to archival materials at more length, and some committee members will touch on this more directly in their own institutional or individual responses. Here we just focus on the digital aspect. The concept of "fair market value" does not map well to a digital landscape. It is a model well-suited to individual, physically tangible pieces of art or collectible items, but begins to fall apart when considering data sets, linked or interdependent digital materials. To take one example, there is a long history of sales at market for correspondence, especially individual letters, but none that we are aware of for their modern digital counterpart, email archives.

Further, whatever market does exist is effectively closed and secretive. Sales of digital records to institutions such as Emory University or the Harry Ransom Centre are known through press releases, but privacy built into the donation contracts does not allow for the actual sales amounts to be known. Even if we had access to these values, chances are high that individual values assigned to categories of records would not be available, as purchases would have been negotiated for the bulk of the records.

Historical or research value should be central to monetary appraisal of archival materials, supplemented by sales history comparisons for collectible items or whole fonds when known.

Historical or research value should be central to the monetary appraisal of archival materials, supplemented by sales history comparisons for collectible items or whole fonds when known. Few fonds as a whole are bought and sold in the market in Canada or abroad, and when they are, few details are publicly available due to confidentiality. Individual items may exceptionally have a value on the collectibles market, but it is artificial to reduce the monetary value of a fonds to the sum of its collectibles. This was true of analog and paper records, it is even more the case with digital materials (e.g. databases, email, digital manuscript drafts). Here no markets have been established, there are no brokers or sellers, no clear analogy to the book market or the art auction, no transferable skill set. Unfortunately, there is also little hope of establishing free and open markets for digital records due to their inherent instability; that is to say, creators and custodians have traditionally negotiated the transfer of digital records directly with institutions, and this model best serves the preservation of the record in its original form. There are few, if any, intermediary sellers of digital archival material, because the steps required to preserve these files and guarantee their authenticity is far too onerous. The current creator-

archival institution model works because archives understand these digital preservation issues and have established procedures based on recognized international standards to transfer and maintain these records. The revised CCPERB Guidelines diminish the ability of institutions to apply to certify electronic records as important as celebrated authors or politicians, up to and including the records of any Prime Minister in the 21st century. There is no doubt that such records are immensely important, and in any tangible format (on paper or other physical media) these would easily be certified as Canadian Cultural Property.

The reason archival institutions acquire fonds and the reason they contribute to the national cultural heritage is their historical and research value. What we need is an agreed-upon framework for translating research value of electronic records into monetary value in a way that is reasonable, transparent and fair to all donors. We would encourage CCPERB to work with stakeholders in the field, including the archival community, NAAB, and the CRA.

Difficulty of applying cost method to digital materials

Attempts to apply the cost method to digital materials seem highly problematic. They typically take the form of applying a cost formula based on digital file format (1 tiff = \$x, 1 wav = \$y), formulas derived by finding analogies with paper or analog records and adapting cost models that have become established for the latter. But how much does it cost to produce or replace an email archive or a set of Word documents? CCPERB's guidelines instruct applicants to use the cost method only in "exceptional circumstances." For digital materials what would those exceptional circumstances look like? We suggest that more relevant costs for electronic records are the costs of transfer, processing, long-term preservation, and access. But in general, the cost approach seems secondary to the historical or research value that is the reason an archives acquired a fonds in the first place.

Past appraisals based on research value should be accepted as precedents.

The new CCPERB Guidelines no longer accept the use of past CCPERB appraisals as precedents for the assessment of monetary value. But past appraisals based on research value will provide an essential baseline for archival materials. This is especially true for digital records, given the arbitrariness of the cost approach, the absence of a collectibles market at the item level, and the paucity of information about sales at the fonds level. For the few sales of fonds that do occur, it is not usually possible to determine the contribution of the digital materials to the overall price of what are typically hybrid fonds, combining analog and digital records. If the goal of the guidelines is to support long-term consistency and transparency in the assessment of monetary value of digital records, past appraisals-based research value provides important data which should not be dismissed. Precedent values establish a continuity and dialogue with the community to determine fair values for archival records in the emerging digital context. The committee has spent a great deal of time working with precedents in order to identify the ground rules for dealing with digital archival properties, and while we are not beholden to these strategies, it would be a shame to lose this foundation.

Acceptable "images" of digital records

Finally, we note a practical difficulty relating to the requirement to include digital images of the materials assessed on the application form. This may make sense for analog materials, but what does it mean for born-digital records? In some cases, it may be unproblematic to provide thumbnails and screen captures, but in others there will be more uncertainty (e.g. databases, sound files, emails). Identifying the various digital cases and the acceptable formats for submission would be useful for institutions and appraisers. It is something that our own

committee is looking at, and we would be happy to provide CCPERB with input and suggestions along these lines in the future.

Our goal here was to focus on the digital. We trust that other voices in the archival community will and have addressed other aspects of the guidelines. We support a comprehensive review of these guidelines and further consultation with the archival community to ensure the ongoing preservation and retention of these important historical and cultural records for future generations of Canadians.

Sincerely,

*NAAB Ad Hoc Committee on the Monetary Appraisal of Electronic Records
Richard Dancy (Co-Chair), Jeremy Heil (Co-Chair), Yves Lapointe, Simon Rogers, Sarah Romkey, Jess Whyte*

September 20, 2020