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F I L E D	FEDERAL COURT COUR FÉDÉRALE		D É P O S É
March 25, 2021 25 mars 2021			
Wayne Sawtell			
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Court File No.

## FEDERAL COURT

BETWEEN:

**ATTORNEY GENERAL OF CANADA**

Plaintiff

and

**JAN KOESTEL**

Defendant

## STATEMENT OF CLAIM

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the Federal Courts Rules serve it on the plaintiff's solicitor or, where the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defence is sixty days.

Copies of the Federal Court Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

\_\_\_\_ day of \_\_\_\_\_, 2021

Issued by: \_\_\_\_\_

(Registry Officer)

Address of local office:      Registrar  
Federal Court  
90 Sparks Street, 5th Floor  
Ottawa, Ontario  
K1A 0H9

TO:    Jan Koestel  
84 Arlington Street,  
Winnipeg, Manitoba  
R3G 1Y4  
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1. The Plaintiff, the Attorney General of Canada, seeks:
  - a) an order pursuant to subsection 37(5) of the *Cultural Property Export and Import Act*, RSC 1985, c C-51 (“*Act*”) authorizing the Plaintiff to return the cultural property in issue, three religious reliquaries, to Italy;
  - b) that no direction of compensation be made pursuant to subsection 37(6) of the *Act*; and,
  - c) such further and other relief as this Honourable Court deems just.

***The parties***

2. The Attorney General of Canada brings this action on behalf of Her Majesty the Queen in right of Canada, as represented by the Department of Canadian Heritage (“Canadian Heritage”).
3. The Minister of Canadian Heritage is the Minister designated as responsible for administering the *Act* (SI/93-228 - Order Designating the Minister of Communications as Minister for Purposes of the *Act* - P.C. 1993-1980; Department of Canadian Heritage Act SC 1995, c 11 s. 46.)
4. The Defendant, Jan Koestel, is a Canadian citizen living in Winnipeg, Manitoba. Mr. Koestel bought the religious reliquaries on EBay.

***The cultural property in issue***

5. The cultural property at issue is comprised of three relics of St. Nicolas of Myra (“St. Nicolas”) containing bone fragments and encased in the following containers:
  - (a) Brass and glass medallion, approximately 2 cm in height and 11 cm in diameter;
  - (b) Cylinder glass tube, approximately 10 cm in height and 12 cm in length; and,
  - (c) Wood statuette, standing approximately 21 cm in height and 10 cm in width.

***Background of events relating to the first two reliquaries***

***i. The detention of the first two reliquaries***

6. On or about February 11, 2020, two of the religious reliquaries, described at paragraphs 5(a) and 5(b) above, arrive from Bitonto, Italy at James A. Richardson International Airport in Winnipeg Manitoba.
7. On or about January 19, 2020, Canada Border Services Agency (“CBSA”) refers the matter to Canadian Heritage officials as a possible illegal import of cultural property under the *Act*. There are no cultural property export permits issued by the Italian authorities for the goods in issue.
8. On or about February 20, 2020, Canadian Heritage formally requests that CBSA officials detain the items in order to evaluate the legality of the imports and

compliance with the *Act*. CBSA detains the two religious reliquaries, pursuant to section 101 of the *Customs Act*, RS 1985, c 1 (2<sup>nd</sup> supp.) and the *Act*.

9. On or about March 2, 2020, Canadian Heritage sends a letter to the Defendant informing him that the property at issue will be detained and seeking additional information in order to assess the origin of the property. The Defendant responds on the same day, stating that the items were religious reliquaries used as per Eastern Orthodox Church traditions. He also states he believed antiques dated after 1700 could be exported in accordance with Italian law.

*ii. An expert confirms that the two reliquaries are authentic*

10. On or about March 9, 2020, Canadian Heritage asks Dr. Emma Anderson, Professor of Classics and Religious Studies, Faculty of Arts, University of Ottawa, to examine photos of the two reliquaries in order to assess their authenticity.
11. On or about March 11, 2020, Dr. Anderson confirmed that the two reliquaries appear to have been conserved and treated in the manner that the Catholic Church generally treats bones or other remains that it considers to be authentically those of its canonized saints and martyrs, as well as those considered “blessed” or “venerable”.

*iii. The first request from Italy to return its cultural property*

12. Canada and Italy are both parties to the 1970 United Nations Education, Scientific and Cultural Organization (“UNESCO”) *Convention on the Means of Prohibiting*

*and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* (“*Convention*”). Canada accepted the *Convention* on March 28, 1978 and Italy ratified the *Convention* on October 2, 1978.

13. The *Convention* provides that the State Parties to the *Convention* undertake to recover and return any cultural property illegally imported, at the request of the State Party of origin. This obligation is domestically implemented in Canadian law through section 37 of the *Act*.
14. On or about March 16, 2020, Canadian Heritage writes to the Embassy of Italy to bring to its attention the detention of the two reliquaries and to request its assistance in confirming whether the detained objects are covered under Italy’s cultural property legislation.
15. On or about July 9, 2020, the Embassy of Italy writes to Canadian Heritage, confirming that the religious reliquaries are considered cultural property of Italy, and officially requests Canada’s assistance in returning them to Italy, pursuant to its right under the *Convention*.
16. The Italian government states that the reliquaries fall within the protection provisions of article 10 paragraph 1 (*Cultural Heritage Subject to Protection*) of Legislative Decree no. 42 dated January 22, 2004 (the *Decree*). They are subject to the limitations on exit from the Italian national territory set out in article 65 paragraph 1 (*Definitive Exit*) and the absence of an export licence under article 174 (*Illegal Exportation*) of the *Decree* and therefore were exported illegally.

## ***Background of events related to the third reliquary***

### ***i. The detention of the third reliquary***

17. On or about June 16, 2020, CBSA Winnipeg intercepts a third religious reliquary imported by the Defendant from Matera, Italy.
18. On or about June 24, 2020, CBSA refers the matter to Canadian Heritage officials as a possible illegal import of cultural property under the *Act*. There is no cultural property export permit issued by the Italian authorities for the reliquary.
19. On or about June 29, 2020, Canadian Heritage formally requests that CBSA officials detain the item in order to evaluate the legality of the import and compliance with the *Act*. CBSA detains the third religious reliquary, pursuant to section 101 of the *Customs Act*, RS 1985, c 1 (2<sup>nd</sup> supp.) and the *Act*.
20. On or about July 14, 2020, Canadian Heritage sends a letter to the Defendant informing him that CBSA has detained a third reliquary imported by him. Canadian Heritage confirms that the Italian Republic has indicated the two first reliquaries are cultural property under Italy's legislation. Canadian Heritage requests that the Defendant provide copies or confirmation that cultural property export permits were issued for all three reliquaries.
21. On or about July 16, 2020, the Defendant confirms that he never received export permits nor did the seller ask him to apply to the Italian government for any export permits for each of the items.

***ii. An expert confirms that the third reliquary is authentic***

22. On or about June 29, 2020, Canadian Heritage asks Dr. Anderson to examine photos of the third reliquary to assess whether the third reliquary is authentic.
23. On or about June 30, 2020, Dr. Anderson confirms the third reliquary appears to be an authentic Catholic reliquary statue, containing what is likely recognized by the Catholic Church as an authentic relic of St. Nicolas.

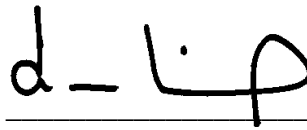
***iii. The second request from Italy to return its cultural property***

24. On or about July 29, 2020, Canadian Heritage sends a letter to the Embassy of Italy to Canada, indicating that a third reliquary has been intercepted. Canadian Heritage requests Italy's assistance in confirming whether the third reliquary is covered under the country's cultural property legislation, and provides Italy with an opportunity to request a formal return of the object if this is the case.
25. On or about October 17, 2020, Italy's Carabinieri Command for Cultural Heritage Protection sends a letter to Canadian Heritage to confirm that the third reliquary is also covered under Italy's cultural property legislation. Given the absence of an export permit, Italy requests its return.
26. The Plaintiff pleads and relies on the *Cultural Property Export and Import Act*, RSC 1985, c C-51, and the regulations promulgated; and the 1970 UNESCO *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*.



27. The Plaintiff proposes that the action be tried in Ottawa, Ontario.

Dated: March 23, 2021

A handwritten signature in black ink, appearing to read 'd - l p', positioned above a horizontal line.

**Attorney General of Canada**

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**Counsel for the Plaintiff**