



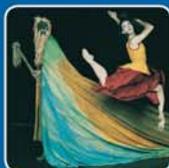
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Annual Report on the Administration of the
Cultural Property Export and Import Act
2014–2015



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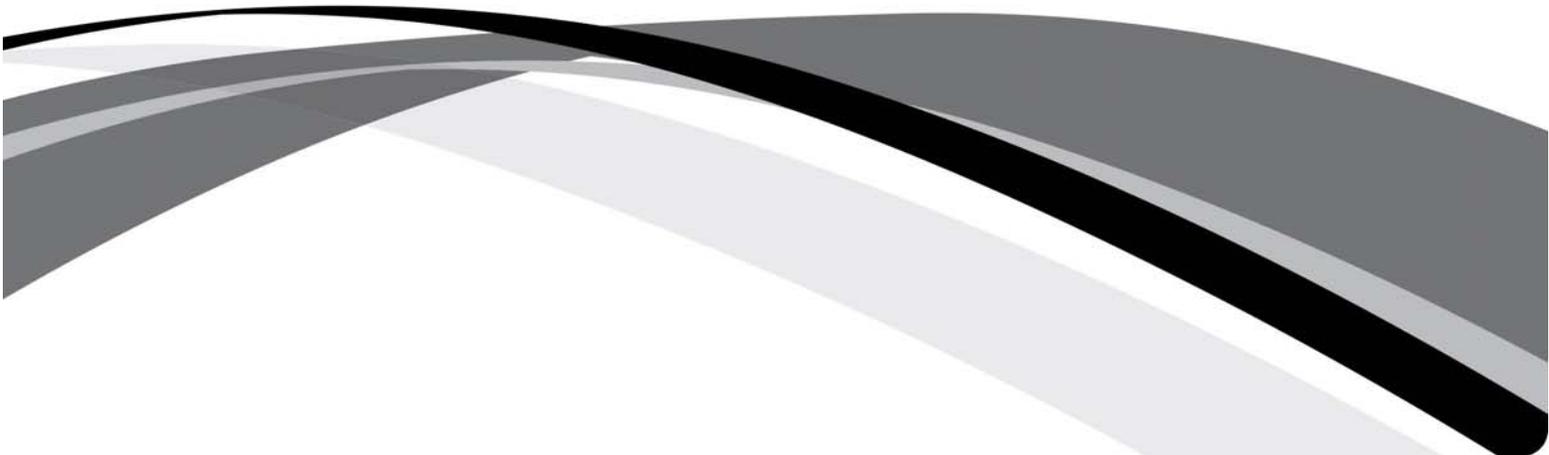


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Introduction

Since its adoption in 1977, the *Cultural Property Export and Import Act* (Act) has served to encourage and ensure the preservation in Canada of significant examples of our artistic, historic, and scientific heritage. The Act accomplishes this objective through the following five provisions:

- designation of organizations that have demonstrated the capacity to preserve cultural property and make it accessible to the public
- tax incentives to encourage Canadians to donate or sell significant cultural property to designated organizations
- grants to assist designated organizations with the purchase of cultural property
- export control
- import control

The responsibility for carrying out these provisions is shared by the Minister of Canadian Heritage and an independent tribunal established by the Act, the Canadian Cultural Property Export Review Board, together with other government organizations responsible for administering and enforcing specific elements of the legislation.

This report on the administration of the Act covers the period 1 April 2014 to 31 March 2015. It consists of the report from the Chair of the Review Board to the Minister of Canadian Heritage ([Part I](#)) and the report of the Minister concerning the activities of the Movable Cultural Property Directorate of Canadian Heritage ([Part II](#)).



As Minister of Canadian Heritage, I am pleased to present the *Annual Report on the Administration of the Cultural Property Export and Import Act* for 2014–2015.

As the report describes, the year brought some significant changes and achievements.

Most notable was the creation of the Administrative Tribunals Support Service of Canada (ATSSC) in November 2014. This resulted in the transfer of the Secretariat of the Canadian Cultural Property Export Review Board to the new organization. The ATSSC now provides support services and facilities to 11 federal administrative tribunals, including the Review Board.

However, the mandate of the Canadian Cultural Property Export Review Board has not changed. It continues to report to Parliament through the Minister of Canadian Heritage, and the Department of Canadian Heritage will continue to work closely with the Secretariat to ensure the efficient implementation of all aspects of the *Cultural Property Export and Import Act*.

Another focus during the year was the launch of a comprehensive review of nearly 260 Category A designated organizations. This is the first such review since the coming into force of the Act in 1977. The review will continue into 2015–2016, but the high level of participation in the survey has been encouraging.

Finally, the most significant highlight involves one of those Category A designated organizations. A Movable Cultural Property Program grant was awarded to the Art Gallery of Ontario to help it purchase a Vilhelm Hammershøi painting. This work was declared to be of “outstanding significance and national importance” to Canada by the Canadian Cultural Property Export Review Board after it was threatened with export. The painting will now remain in Canada for the enjoyment of all Canadians.

I would like to thank the members of the Review Board and all those who work to preserve and protect our country’s artistic and cultural heritage.

The Honourable Mélanie Joly, P.C., M.P.

GlenA. Bloom
Acting Chair, Canadian Cultural Property Export Review Board
25 Eddy Street, 9th floor, Gatineau, QC K1A 0M5

The Honourable Mélanie Joly
Minister of Canadian Heritage
15 Eddy Street, Gatineau, QC K1A 0M5

Dear Minister Joly:

It is with pleasure that I forward to you the annual report of the operations of the Canadian Cultural Property Export Review Board for the fiscal year 2014–2015.

The report presents a statistical summary of the certification for tax purposes of over 14,700 objects or collections that the Review Board determined to be of outstanding significance and national importance. With a combined fair market value of some \$346 million, this cultural property will now be protected, preserved, and made accessible to the public in over 100 designated organizations across Canada.

The report also includes the results of the Review Board's consideration of three refused export permits for cultural property listed on the *Canadian Cultural Property Control List*.

On November 1, 2014, the Secretariat to the Review Board was transferred from the Department of Canadian Heritage to the Administrative Tribunals Support Service of Canada. However, the Secretariat continues to work closely with Canadian Heritage in jointly administering their respective responsibilities under the *Cultural Property Export and Import Act*.

As an example of the importance of this partnership, in 2014–15 the Review Board established an export delay for an outstanding oil painting by the noted Danish painter Vilhelm Hammershøi. Canadian Heritage then advised organizations designated by the Department of the availability of the painting for purchase. One of those organizations subsequently purchased the painting for its permanent collection with the assistance of a Movable Cultural Property grant, thus ensuring that it will remain in Canada.

In 2014–15, the Review Board also continued its commitment to timely and transparent decision-making and to streamlining the certification process for the benefit of applicant organizations and donors of cultural property. Among other things, this included measures to more effectively communicate decisions to applicants and continued improvements to the online application system.

In closing, I would like to acknowledge the skills and dedication of the staff of the Secretariat to the Review Board and the generous commitment of time and expertise of my fellow Review Board members.

Yours very truly,

Glen A. Bloom
Acting Chair

PART I: REPORT OF THE CANADIAN CULTURAL PROPERTY EXPORT REVIEW BOARD

Overview

Duties

Section 20 of the *Cultural Property Export and Import Act (Act)* stipulates that the duties of the Review Board are as follows:

- a) pursuant to Section 29, to review applications for export permits that have been refused, when requested
- b) pursuant to Section 30, with regard to objects for which the issuing of export permits has been delayed by the Review Board, to make determinations respecting fair cash offers to purchase cultural property, when requested
- c) pursuant to Section 32, to certify cultural property for income tax purposes by making determinations of outstanding significance and national importance and of fair market value.

The Review Board's main decision-making responsibility is the certification of cultural property for the purposes of issuing *Cultural Property Income Tax Certificates* (Canada Revenue Agency form T871) to individual or corporate donors and vendors. Designated organizations across Canada have enriched their collections through tax incentives available to Canadians under the *Income Tax Act*.¹

As the first line of defence in preventing the permanent export of cultural property that is of outstanding significance and national importance, a vigorous donations program also has the virtue of involving Canadian individuals and corporations in the important role of preserving the nation's heritage.

The second line of defence in keeping cultural property in Canada is the export-control system. The export control mechanisms established by the Act are instrumental in safeguarding significant cultural property that would otherwise be exported from Canada. The export control system is administered primarily by the Department of Canadian Heritage in collaboration with the Canada Border Services Agency (CBSA). The *Canadian Cultural Property Export Control List* (Control List) describes the classes of cultural property that require an export permit. (See [Appendix 1-1](#) for a summary of the eight groups on this list.)

¹ The *Income Tax Act* provides for exemptions from the payment of capital-gains tax for cultural property that has been certified by the Review Board and sold or donated to designated organizations in Canada. Gifts of certified cultural property to such organizations are also eligible for a tax credit based on the fair market value of the property up to net income, after credits are claimed for any charitable donations and gifts.

The Review Board's role is to consider whether an export delay period should be established for cultural property that comes before it as a result of a refused export permit. Export delay periods provide Canadian collecting organizations with the opportunity to purchase cultural property of outstanding significance and national importance for their collections, potentially with the assistance of a Movable Cultural Property grant. Subject to certain restrictions, if a permit applicant has not received a purchase offer before the export delay period expires, an export permit will be issued upon request.

Membership

Members of the Review Board are normally appointed for three-year terms by the Governor in Council on the recommendation of the Minister of Canadian Heritage. Section 18 of the *Act* requires that the Review Board include no more than ten residents of Canada composed as follows:

- the chairperson and one other member chosen from the general public
- up to four members who are or have been officers, members, or employees of art galleries, museums, archives, libraries, or other collecting institutions in Canada
- up to four members who are or have been dealers in or collectors of art, antiques, or other cultural property that forms a part of the national heritage.

Three members, at least one of whom belongs to the institutional category and one who belongs to the dealer/collector category, constitute a quorum.

For a complete list of Review Board members in 2014–15, please refer to [Appendix 1-2](#).

Meetings

The Review Board holds four meetings per year. In 2014–15, all meetings were held in Ottawa. For a complete schedule of Review Board meetings in 2014–15, please refer to [Appendix 1-3](#).

Expert Advice

Section 22 of the *Act* enables the Review Board to call upon any person with professional, technical, or other specialized knowledge to assist in an advisory capacity. The Review Board may also seek expert appraisals in making determinations of fair market value for income tax purposes or to determine fair cash offers relating to refused export permits.

Secretariat to the Review Board

Since it was created in 1977 by the *Cultural Property Export and Import Act*, the Review Board has been supported by a secretariat that functions as its administrative arm, receiving and processing case files for review and determination by Board members, preparing and issuing decision letters, and working closely with Board members to develop guidelines and procedures.

On November 1, 2014, the *Administrative Tribunals Support Service of Canada Act* came into force. Under this legislation, the responsibility for providing secretariat services to the Review Board was transferred from the Department of Canadian Heritage to a newly established federal organization in the Department of Justice portfolio, the Administrative Tribunals Support Service of Canada (ATSSC).

The ATSSC is now responsible for providing the Review Board and ten other administrative tribunals with the support services and facilities they need to exercise their powers and perform their duties and functions in accordance with the rules that apply to their work.

This administrative change does not affect the mandate of CCPERB. Case matters will continue to be filed, managed, and safeguarded in accordance with existing CCPERB procedures.

Certification of Cultural Property for Income Tax Purposes

The Certification Process

In order for cultural property to be considered for certification, a donor or vendor must either dispose of it to an organization designated by the Minister of Canadian Heritage or else reach a tentative disposition agreement with a designated organization. Designated organizations then apply to the Review Board for certification on behalf of donors and vendors.

Certification applicants are required to provide evidence and arguments that demonstrate to the satisfaction of the Review Board that the cultural property in question meets the criteria of outstanding significance and national importance.

Pursuant to Section 32 of the *Act*, in order to certify cultural property the Review Board must first determine:

- a) whether that 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; and
- b) whether the object is of such a degree of national importance that its loss to Canada would significantly diminish the national heritage.

In addition to making determinations with respect to outstanding significance and national importance, the Review Board must also determine the fair market value of cultural property for income tax purposes. Where the Review Board concludes that a given cultural property does not meet the criteria of outstanding significance and national importance, it will not determine fair market value or issue a tax certificate.

For an overview of certification applications considered in 2014–15, please refer to [Appendix 1-4](#).

Redetermination Requests

Where donors or vendors are not satisfied with determinations of fair market value, they may make a request for redetermination within 12 months of the day on which notice of the determination was given.

Where donors or vendors are not satisfied with a redetermination of fair market value made by the Review Board, they may file an appeal with the Tax Court of Canada within 90 days of the day on which the Cultural Property Income Tax Certificate was issued.

In 2014–15, no new appeals were filed with the Tax Court of Canada. One appeal filed in 2013–14 remained active.

Finally, where donors or vendors are not satisfied that the review process has been conducted fairly, they may file an application for judicial review with the Federal Court of Canada.

In 2014–15, one application for judicial review was filed and subsequently discontinued.

Review of Refused Export Permits

The Review Process

The export control system is administered by the Minister of Canadian Heritage in collaboration with the Canada Border Services Agency (CBSA). The Review Board's role is to review applications for permanent export permits that have been refused.

The *Canadian Cultural Property Export Control List* describes the classes of cultural property that require an export permit. (See [Appendix 1-1](#) for a summary of the eight groups on this list.) Export permit applicants who receive a notice of refusal from a permit officer on the advice of an expert examiner may, within 30 days, appeal the expert examiner's decision to the Review Board.

Using the same criteria applied by the expert examiner, the Review Board must determine, pursuant to subsection 29(3) of the *Act*, whether the object in question is included on the *Control List* and, pursuant to paragraphs 11(1)(a) and (b):

- a) whether that 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; and
- b) whether the object is of such a degree of national importance that its loss to Canada would significantly diminish the national heritage.

If the Review Board determines that the cultural property fails to meet these criteria, it will direct CBSA to issue the permit. If the Review Board determines that the property does meet these criteria, and if it further determines that a designated Canadian organization might come forward

with an offer to purchase the property, it establishes a delay period of two to six months, during which time the permit may not be issued.

When advised of the Review Board's decision, the Minister of Canadian Heritage makes the delay period known to designated organizations so that they may consider purchasing the property. Financial assistance is available from the Department of Canadian Heritage in the form of a Movable Cultural Property grant, which can facilitate the acquisition.

For a complete list of refused export permits that were reviewed by the Board in 2014–15, please refer to [Appendix 1-5](#).

Determinations of Fair Cash Offers to Purchase

If an offer to purchase cultural property during a delay period is refused, the applicant or the organization making the offer may request that the Review Board determine what would constitute a fair cash offer to purchase the property. This request must be made in writing at least 30 days before the end of the delay period.

When the Review Board receives such a request, it determines the fair cash offer after considering relevant information and then advises the applicant and the organization of its decision. If no organization offers to purchase the property for an amount equal to or greater than that determined by the Review Board, the permit applicant may request the export permit, at which point the Review Board will direct the permit officer to issue the permit at the end of the delay period.

If an organization offers to purchase the property for an amount equal to or greater than that determined by the Review Board but the offer is rejected by the applicant, the export permit will not be issued. In such cases, an export permit may not be sought for a period of two years from the date that the notice of refusal was first issued by the permit officer. Once that period has elapsed, a new permit application must be submitted and the process begins again.

In 2014–15, there were no requests for determinations of fair cash offers.

PART II: REPORT OF THE MOVABLE CULTURAL PROPERTY PROGRAM

Overview

The Movable Cultural Property Program (MCP) within the Department of Canadian Heritage is responsible for:

- assessing organizations for the purpose of designation
- assessing applications for Movable Cultural Property grants
- export control
- import control

Designation of Organizations

Organizations such as museums, art galleries, libraries, archives, municipalities, and public authorities must be designated in order to be eligible to apply for the certification of cultural property or for a Movable Cultural Property grant. Designation is a ministerial responsibility and a means of ensuring that cultural property certified by the Review Board or acquired with the assistance of a Movable Cultural Property grant is housed in organizations that have the capacity to ensure its long-term preservation and to make it accessible to the public through research, exhibitions, publications, and the Internet.

Organizations may be designated as Category A or B. Under Category A, organizations are designated in relation to any cultural property that falls within their collecting mandate. Under Category B, organizations are designated only in relation to a specific cultural property or collection for which a preservation strategy has been provided.

For an overview of organizations designated in 2014–15, please refer to [Appendix 2-3](#).

For a complete list of Category A organizations, please refer to the [corresponding page](#) of the MCP website.

Review of Category A Designated Organizations

In September 2013, MCP undertook a survey of all organizations designated as Category A by the Minister to ensure that they continue to have the capacity to collect, preserve, exhibit, and make cultural property accessible to the public over the long term. By December 31, 2014, 100% of all Category A organizations had been contacted and responses were received from 95% of those surveyed. The compilation of the findings and necessary follow-up with identified institutions is scheduled to take place in 2015-2016.

Movable Cultural Property Grants

Under Section 35 of the *Act*, the Minister may make grants to designated organizations to assist with the purchase of cultural property that has been denied an export permit or that is outside of Canada but available on the international market and related to the national heritage.

For an overview of the Movable Cultural Property Grants issued in 2014–15, please refer to [Appendix 2-2](#).

Import Control

International Cooperation under the 1970 UNESCO Convention

In 1978, Canada became a signatory to the 1970 UNESCO *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*. This Convention places the onus on each signatory state to develop its own legislation to protect and preserve its cultural heritage and to establish measures to facilitate the return of illegally exported cultural property to its country of origin. The *Act* contains provisions making it a criminal offence to import into Canada cultural property that has been illegally exported from a state that is a fellow signatory to an international cultural property agreement. Penalties upon conviction of an offence under the *Act* include a fine, imprisonment, or both.

Illegal Imports

In 2014–2015, there were no returns of cultural property to another state.

Canada has made 18 cultural property returns to ten different states since the 1970 UNESCO Convention came into force in Canada in 1978.

Export Control

Archaeological, ethnographic, historical, cultural, artistic, and scientific objects are all considered movable cultural property, but only certain types of cultural property are subject to export control under the *Act*. The *Canadian Cultural Property Export Control List* defines classes of property that are subject to export control based on age and value (see [Appendix 1-1](#) for a summary of the groups on this list).

If cultural property is included on the Control List, an export permit is required for its temporary or permanent removal from the country. The Movable Cultural Property Program liaises with and responds to questions from CBSA permit-issuing offices, expert examiners, and members of the public to ensure that the export-control system works effectively. MCP also interprets the *Control List* for stakeholders and supports the Review Board in its consideration of export appeals.

Export Permits

Export permits are issued by permit officers in 16 CBSA permit offices located throughout Canada. There are more than 350 academics, curators, archivists, and librarians who work in organizations across the country that have been named expert examiners by the Minister of Canadian Heritage. The role of expert examiners is to advise CBSA as to whether cultural property faced with export meets the criteria of outstanding significance and national importance as set out in the *Act*.

If the permit officer determines that an object faced with permanent export is included on the *Control List* and has been in the country for more than 35 years, the officer must forward a copy of the application to an expert examiner for a recommendation as to whether that object is of outstanding significance and national importance. If the expert examiner deems this to be the case, the permit officer will refuse the permit; otherwise, the permit will be issued.

For an overview of export-permit applications in 2014–15, please refer to [Appendix 2-1](#).

Illegal Exports

Pursuant to Article 1 of the 1970 UNESCO Convention, Section 38 of the *Act* states that any cultural property included on the *Control List* is designated by Canada to be of importance for archaeology, ethnography, history, culture, art, or science. The *Act* contains provisions making it a criminal offence to export or attempt to export from Canada any property included on the Control List except under the authority of and in accordance with a temporary or permanent permit issued under the *Act*. Penalties upon conviction of an offence under the *Act* include a fine, imprisonment, or both. Under the terms of the 1970 UNESCO Convention, if illegally exported cultural property is imported into a fellow signatory state, Canada may be afforded the opportunity to request its return.

In 2014–15, there were no convictions under the *Act* related to the illegal export of cultural property.

More information on the Canadian Cultural Property Export Review Board and the Movable Cultural Property Program may be found online at http://www.pch.gc.ca/mcp

APPENDICES

Appendix 1-1: *Canadian Cultural Property Export Control List*

The following list describes the groups of cultural property controlled under the *Cultural Property Export and Import Act*.

- Group I** objects recovered from the soil or waters of Canada
- Group II** objects of ethnographic material culture
- Group III** military objects
- Group IV** objects of applied and decorative art
- Group V** objects of fine art
- Group VI** scientific or technological objects
- Group VII** textual records, graphic records, and sound recordings
- Group VIII** musical instruments

Appendix 1-2: Review Board Membership

Representatives of the public at large	Current Appointment
Mr. Marcel Brisebois, Chair Montréal, QC	27 June 2013 – 26 June 2015
Mr. Glen A. Bloom Senior Counsel, Osler, Hoskin & Harcourt LLP Ottawa, Ontario	7 February 2013 – 6 February 2017
Representatives of collecting institutions	
Dr. Clarence Epstein Senior Director, Urban and Cultural Affairs, Concordia University Montréal, QC	27 November 2014 – 26 November 2017
Ms. Madeleine Forcier Director, Galerie Graff Montréal, QC	30 April 2010 – 29 April 2014*
Mr. Alain Lacoursière Art Consultant Montréal, QC	13 July 2014 – 12 July 2017
Dr. Katharine A. Lochnan Senior Curator, International Exhibitions Art Gallery of Ontario Toronto, ON	3 May 2015 – 2 May 2018
Ms. Theresa Rowat Director, The Archive of the Jesuits in Canada Montréal, QC	26 February 2015 – 25 February 2018
Mr. Ralph J. Stanton Administrative Librarian Emeritus University of British Columbia Library Vancouver, BC	29 September 2011 – 28 September 2014*

Dealers/collectors of cultural property**Current Appointment**

Mr. Stephen Bulger
Stephen Bulger Gallery
Toronto, ON

26 November 2012 – 25 November 2015

Mr. Rudy Buttignol
President and CEO, Knowledge Network Corporation
President, BBC Kids
Vancouver, BC

27 November 2014 – 26 November 2017

Ms. Patricia Feheley
Director, Feheley Fine Arts
Toronto, ON

3 May 2015 – 2 May 2018

Mr. William Forrestall
Artist
Director, Yellow Box Gallery at St. Thomas University
Teacher, Fine Arts Program, St. Thomas University
Fredericton, NB

3 February 2014 – 2 February 2017

*Term expired in 2014–2015

Appendix 1-3: Review Board Meetings

Date	Location
June 18-20, 2014	Ottawa
September 17-19, 2014	Ottawa
December 10-12, 2014	Ottawa
March 24-27, 2015	Ottawa

Appendix 1-4: Overview of Applications for Certification

Total applications considered by the Review Board²	530	
Donations	519	98%
Sales	5	1%
Split receipts	6	1%
New applications submitted electronically	322	68%

Decision Type	Number	% of total	Proposed FMV	FMV determined by CCPERB
Approved at the proposed fair market value (FMV) ³	374	71%	\$ 76,418,779	\$ 76,374,329
Approved at a higher FMV	11	2%	\$ 2,731,652	\$ 3,080,730
Approved at a lower FMV	75	14%	\$ 12,541,598	\$ 10,299,609
Sub Total	460	87%	\$91,692,029	\$89,754,668
Redetermined ⁴	11	2%	\$ 276,449,203	\$ 256,307,587
Refused ⁵	12	2%	\$ 23,281,092	-
On hold ⁶	47	9%	\$ 53,786,033	-
Grand Total	530	100%	\$ 445,208,357	\$ 346,062,255

² Including redeterminations of fair market value.

³ Includes 3 applications with partial holds.

⁴ Includes applications re-determined from a previous fiscal year. In such cases, the original tax credit is annulled and replaced.

⁵ Applications are refused if the Review Board is not satisfied that the cultural property meets the criteria of outstanding significance and national importance (OS/NI).

⁶ Applications are put on hold when the Review Board concludes that it needs additional information before it can determine OS/NI and/or fair market value.

Appendix 1-5: Review of Appeals of Refused Export Permits

Appeal #	Cultural Property	Control Group	Decision	Delay Period	Outcome
103500	<i>North American Pilot</i> , Vol. 1, folio (London: Laurie and Whittle, 1798)	VII	Appeal denied	6 months	Delay period expired December 19, 2014, but no request made for issuance of a permit.
108449	<i>Interior with Four Etchings</i> , oil painting by Vilhelm Hammershøi	V	Appeal denied	6 months	Purchased by the Art Gallery of Ontario with the assistance of a Movable Cultural Property grant
104677	Rod and Helen Tyson collection of 24 gold Specimens	I	Appeal denied	6 months	Delay period expires June 11, 2015.

Appendix 2-1: Export-Permit Applications

Number of applications for temporary permits (i.e., for exhibition, conservation, or research)	122
Number of applications for permanent permits (i.e., for sale on an international market, delivery to foreign buyers, or moving abroad)	368
Total number of applications received	490
Number of applications refused (see Appendix 1-5)	4

Appendix 2-2: Movable Cultural Property Grants Issued

Grant no.	Description	Grant value (CAD)
802	Saskatoon Art Gallery & Conservatory Corporation, Mendel Art Gallery (Saskatoon, SK) to assist with the purchase of a 15 paintings by Saskatchewan Artists Sheldon-Williams, Kenderdine & Henderson (repatriation)	\$15,000
804	Art Gallery of Ontario (Toronto, ON): to assist with the purchase of Vilhelm Hammershøi <i>Interior with Four Etchings</i> , 1905, oil on canvas (export appeal 108449)	\$976,578
Total expenditure		\$991,578

Appendix 2-3: Category A and B Designations

Category	Organization	Effective Date
B	Doris McCarthy Gallery, University of Toronto, Scarborough, Ontario	February 4, 2015

For a complete list of Category A organizations, please refer to the [corresponding page](#) of the MCP website.