

## REVIEW BOARD DECISION

June 6, 2025

### REQUEST FOR REVIEW OF AN APPLICATION FOR CULTURAL PROPERTY EXPORT PERMIT

Application No.: 0495-25-01-10-002

*Haystacks (known as Haystacks1), 1909, by Piet Mondrian*

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#### INTRODUCTION

1. On January 9, 2025, PACART Inc. (the Applicant) applied<sup>1</sup> to the Canada Border Services Agency (CBSA) for a permit to export the work *Haystacks*, 1909, oil on canvas on board (the Object), by Piet Mondrian (Mondrian).
2. On January 27, 2025, a permit officer employed by the CBSA sent to the Applicant a written notice of refusal with respect to the Object.<sup>2</sup> The refusal was based on the advice of a representative of the Art Gallery of Ontario (the Expert Examiner), who determined that the Object is of outstanding significance, and meets the degree of national importance set out in the *Cultural Property Export and Import Act* (the Act).
3. On February 4, 2025, the Applicant requested a review of its application for an export permit<sup>3</sup> (the Request for Review) by the Canadian Cultural Property Export Review Board (the Review Board).
4. On February 18, 2025 and in response to a request by the Review Board, the Applicant, represented by James Finlay of James Finlay Fine Art Appraisals filed a written statement and images of the Object in support of its Request for Review (Written Statement).
5. A hearing was held on April 22, 2025 during which the Applicant's representative; the Owner of the Object; Jan Rudolph de Lorn, Director of Museum Singer Laren, Netherlands; and Wietse Coppes, Curator of the Mondrian & De Stijl-archives and documentation at the RKD – Netherlands Institute for Art History, in The Hague, made oral submissions on behalf of the Applicant before the Review Board.
6. For the reasons that follow, the Review Board finds that the Object is included in the Control List, is of outstanding significance by reason of its close association with Canadian history, its aesthetic qualities, its value in the study of the arts, and is of such a degree of national importance that its loss to Canada would significantly diminish the national heritage. The Review Board also finds that an institution or public authority in Canada might make a fair offer to purchase the Object within six months of this decision. The Review Board therefore establishes a delay period of six months ending

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<sup>1</sup> Application #0495-25-01-10-002.

<sup>2</sup> Subsection 13(1) of the *Cultural Property Export and Import Act* (the Act).

<sup>3</sup> Subsection 29(1) of the Act.

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**December 6, 2025**, during which it will not direct that an export permit be issued in respect of the Object.

#### LEGISLATIVE FRAMEWORK

7. The Review Board is established by the Act. Included in its duties are that it must, “on request...review applications for export permits.”<sup>4</sup>
8. The Act states that, in its review of an application for an export permit, the Review Board must determine whether the object:
  - a) is included in the Control List;
  - b) 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
  - c) is of such a degree of national importance that its loss to Canada would significantly diminish the national heritage.<sup>5</sup>
9. If the Review Board determines that the object meets all the above criteria, the Review Board must then form an opinion as to whether an institution or public authority in Canada might make a fair offer to purchase the object within six months after the date of its decision. If so, the Review Board must establish a delay period of not less than two months and not more than six months during which the Review Board will not direct that an export permit be issued in respect of the object.<sup>6</sup>
10. If the Review Board determines that the object fails to meet one of the above criteria, the Review Board must direct a CBSA permit officer to issue an export permit for the object forthwith.<sup>7</sup>

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<sup>4</sup> Subsection 20(a) of the Act.

<sup>5</sup> Subsection 29(3) of the Act.

<sup>6</sup> Subsection 29(5) of the Act.

<sup>7</sup> Subsection 29(4) of the Act.

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**THE APPLICANT'S SUBMISSIONS**

11. The Object, *Haystacks*, also known as *Haystacks1*, is an oil on canvas on cardboard, executed by Piet Mondrian (1872-1944) in 1909 (or circa 1909). It measures 34.9 x 43.8 cm. It is unsigned and was made in the Netherlands.
12. The Applicant states that the Object is included in the Control List under Group V, Objects of Fine Art, Section 4(b).<sup>8</sup>
13. The Applicant further submits that the Object arrived in Canada when the Ootmar family, the original owners of the Object, arrived in Kelowna, British Columbia around 1921 or 1922. The Ootmar family brought several paintings with them from their country of origin, the Netherlands.
14. The Applicant submits that the Object “is not of outstanding significance by reason of its close association with Canadian history or national life and has never been recognized as such”<sup>9</sup>, and the Object’s outstanding significance “is due to its notoriety and that of its author”.<sup>10</sup>
15. In regards to aesthetic qualities, the Applicant notes that “the aesthetic qualities [of the Object] relate to the use of colour and the use of an interpretative Pointillism” but Mondrian’s “technique however lacked the minutely incremental spots of tonal variation to render form, as practiced by Pointillism’s most notable proponents, George Seurat and Paul Signac (...) [t]he painting does however depict Mondrian’s use of blobs of colour to render form”<sup>11</sup> as a reference to Fauvism.
16. The Applicant further submits that the Object “is one of the three scenes, known as Haystacks1, Haystacks11, and Haystacks111, of similar subject matter painted at different times of the day in differing weather conditions by Mondrian c 1909 and exhibited as a triptych at the Stedelijk Museum, Amsterdam 6 – 31 January 1909.”<sup>12</sup> The Ootmar family originally owned the three scenes; however, *Haystacks11* has likely

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<sup>8</sup> Applicant’s cultural property export permit application, Part II, at p. 2.

<sup>9</sup> Applicant’s written statement, dated February 18, 2025, at p. 3.

<sup>10</sup> *Ibid.*

<sup>11</sup> Applicant’s written statement, dated February 18, 2025, at p. 5.

<sup>12</sup> Applicant’s written statement, dated February 18, 2025, at p. 6.

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been in a private collection in Switzerland since 1975, while *Haystacks111* has been in the collection of the Musée d'Orsay, Paris since 2018.<sup>13</sup>

17. With regard to value in the study of arts, the Applicant does note that “[t]aken as a grouping all three paintings demonstrate Mondrian’s commitment to engaging with important stylistic developments of the period.”<sup>14</sup>
18. With respect to national importance, the Applicant submits that the Object “is not of national importance and its loss to Canada would not significantly diminish the national heritage by reason of the fact that it has little to do with Canadian cultural heritage. Its research value is limited, its contextual associations are tenuous, its rarity disputable although its provenance is excellent.”<sup>15</sup>
19. With respect to contextual associations, the Applicant submits that, to suggest that the Object, “framed by the celebrity status of its author signifies a close cultural relationship between Canada and the Netherlands is disingenuous and tenuous at best.”
20. With respect to research value, the Applicant submits that having the Object without its triptych, “severely handicaps the researcher, because the conceptual premise used in the creation of all three works would be disrupted”.
21. With respect to provenance, the Applicant submits the Object has significant provenance in the context of Dutch art in the early 20<sup>th</sup> Century. It has remained in the same family in Canada for over 100 years.
22. With respect to rarity, the Applicant submits that the Object does not contribute to the register of similar works by Mondrian in public museums of Canada and its loss would not affect the national collection. While its rarity is “significant”, that attribute does not necessarily confer upon it the status of being important.
23. With respect to whether an institution or public authority in Canada might make a fair offer to purchase the Object, the Applicant notes that the Object has an exhibition history with the Art Gallery of Toronto (now Ontario) and that this institution may make an offer to purchase<sup>16</sup>. In response to questions from the Review Board during the oral

<sup>13</sup> The Expert Examiner’s advice dated January 24, 2025, at p. 3 states “the other two paintings [*Haystacks II* and *Haystacks III*] are both in prominent collections in New York and Paris.”

<sup>14</sup> Applicant’s written statement, dated February 18, 2025, at p.6.

<sup>15</sup> *Ibid.*

<sup>16</sup> Applicant’s written statement, dated February 18, 2025, at p.9.

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hearing, the Applicant's representative stated that, in his role as an appraiser seeking to find a purchaser for the Object, he did not approach any museums in Canada to inform them that the Object might be available for sale.

24. The applicant submits that a delay period should not be established because an acceptable offer to purchase has been made by the Singer Laren museum in the Netherlands.

**THE EXPERT EXAMINER'S REASONS FOR REFUSAL**

25. In his reasons for recommending refusal, the Expert Examiner indicates that the Object is of outstanding significance and national importance.
26. The Expert Examiner states that the Object is of outstanding significance by reason of its close association with Canadian history, aesthetic qualities, and value in the study of the arts.
27. With respect to its close association with Canadian history, he notes that the Object has an "extraordinary provenance" of being in Canada likely as early as the 1910's or 1920's and certainly before 1945. The family were early collectors of Mondrian and brought several works by the Dutch artist to Canada. He underlines the Object came to Canada during the first significant wave of Dutch immigration between 1890 and 1914 while the greatest wave of immigration was after the Second World War. He notes the close bilateral relationship between Canada and The Netherlands – largely owing to Canada's role in liberating The Netherlands.
28. He further notes the role played by Professor Robert Welsh, at the Art History department of the University of Toronto, a leading scholar of Mondrian's naturalistic works. The expert examiner explains that Professor Welsh situated the Dutch artist as a major influence on global art history. The expert examiner also noted the exhibition history of the object and that it was shown in a retrospective at the Art Gallery of Toronto (now the Art Gallery of Ontario) in 1966 curated by Professor Welsh.
29. With respect to aesthetic qualities and value in the study of the arts, he states that the Object "is of exceptional aesthetic quality, highly original in terms of its composition, execution and style."<sup>17</sup> He notes the influence of works by French painter Claude

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<sup>17</sup> Expert Examiner's advice, dated January 24, 2025, at p. 2.

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Monet on Mondrian and that the three *Haystacks* paintings “anticipate the artist’s adoption of a pointillist style by early 1909.”<sup>18</sup> He states that the two other *Haystacks* painting are now in important collections outside Canada and have been widely exhibited and published. He states, “these paintings together help us to understand Mondrian’s engagement with pointillism, the influence of Claude Monet, and, not least, his own artistic development”.<sup>19</sup>

30. The Expert Examiner indicates that the Object is of national importance by reason of its rarity, representativeness, contextual association, provenance, and research value.
31. With regards to rarity and representativeness, he notes that Mondrian’s works are “exceptionally rare” in Canada citing just four in public collections; two paintings and two works on paper. The two works on paper are both from Mondrian’s naturalistic period.
32. With regards to contextual association, he refers to the close bilateral relationship between The Netherlands and Canada and notes the Object “enriches our understanding of the links between our two countries over the twentieth century”.
33. With regards to provenance, he notes that the Object was brought to Canada likely in the 1910s or 20s and carries an unusually important provenance.
34. With regards to research value, he notes that the reappearance of the Object brings potential for new research, especially since two related paintings in New York and Paris have been well documented, exhibited and studied.

## ANALYSIS

### Whether the Object is included in the Control List

35. An object that falls under one of the eight groups in the Control List cannot be exported from Canada without a permit if it:
  - is more than 50 years old;
  - was made by a natural person who is no longer living; and,
  - meets the criteria, including age or a minimum dollar value, set out in the Control List.

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<sup>18</sup> Expert Examiner’s advice, dated January 24, 2025, at p. 3.

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36. The Applicant admits that the Object is included in the Control List under Group V, Objects of Fine Art, subsection 4(b). Subsection 4(b) applies to paintings or sculptures made outside the territory that is now Canada by a person who at the time was not ordinarily resident in the territory that is now Canada, and that have a fair market value in Canada of more than \$30,000.00 CAN.<sup>20</sup>
37. The Review Board agrees that the Object is a painting that was made more than 50 years ago outside the territory that is now Canada by a person who is no longer living. The Review Board also agrees that the Object's fair market value, as specified by the Applicant in its export permit application, exceeds \$30,000.00 CAN.
38. The Review Board therefore concludes that the Object is included in the Control List under Group V, Objects of Fine Art, subsection 4(b).

**Whether the Object is of outstanding significance**

39. In reviewing a refused application for an export permit, the Review Board must determine whether the 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.<sup>21</sup>
40. The Review Board determines the Object is of outstanding significance by reason of its close association with Canadian history, aesthetic qualities, and value in the study of arts.
41. With respect to the Object's close association with Canadian history, the Review Board disagrees with the Applicant's submission that the Object has no significant connection to Canada's history. As noted in the CCPERB website, "CCPERB will consider the object's place in the national life of Canada through its close association with a cultural tradition or way of life; a spiritual practice or system of belief; a group or community."<sup>22</sup> A close association with Canadian history may involve among other factors: a connection to a group, place, or formative aspect of Canadian history. The Review Board finds the Object has a close association to Canada and the Netherlands both diplomatically and through immigration. Canada played a central role in the liberation of the Netherlands from occupation in 1945. The enduring gratitude of the Dutch people

<sup>20</sup> Control List, section 4.<sup>21</sup> Paragraphs 29(3)(b) and 11(1)(a) of the Act.<sup>22</sup> CCPERB website, Section on Outstanding Significance and National Importance for the Review of an Application for an Export Permit

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has forged a deep diplomatic and emotional bond between the two nations. Following the liberation after the Second World War, tens of thousands of Dutch immigrants arrived in Canada forming robust communities. Their cultural influence can be seen in everything from architecture to art, farming practices and even civic life, and the strong connection of historical ties between Canada and the Dutch continues into contemporary lived identities.<sup>23</sup>

42. With respect to the Object's aesthetic qualities the Review Board observes that the Object is outstanding in its composition and style – specifically the painterly approach and treatment of the object – which shows inspiration from other modern art movements such as Fauvism. The painterly style of the artist, visible in the details shown in close-up photographs, such as the brushstrokes, is an important aesthetic component in this work. The Object is outstanding in its aesthetic qualities as it shows the way in which the artist was inspired by modern art painting styles and approaches to landscape, indicating his artistic experimentation and setting the stage for continued development of the artist's distinctive style.
43. With respect to the Object's value for the study of the arts, the Review Board agrees with the Applicant that the Object has value in the study of the arts. Key publications by art historian Robert Welsh including the Art Gallery of Toronto (now Art Gallery of Ontario) exhibition catalogue *Piet Mondrian, 1972-1944* (1966) and *Piet Mondrian: Catalogue Raisonné* (1998) offer extensive and even exhaustive records of Mondrian's output. The Review Board observes that this period of the artist's work has been studied in Canada demonstrated by the expertise of Professor Welsh.<sup>24</sup> Until recently, the whereabouts of the Object was unknown, and the Review Board expects that there will be significant national interest for continued research and study firsthand.
44. The Review Board thus concludes that the Object is of outstanding significance by reason of its close association with Canadian history, aesthetic qualities, and value in the study of arts.

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<sup>23</sup> The subject of Dutch connections to Canada have been the subject of much research, see for example, Herman Ganzevoort, "The Dutch in Canada," *Images of Canadianness: Visions on Canada's Politics, Culture, Economics in International Canadian Studies Series*, University of Ottawa Press, 1998, Frans J Schryer, *The Netherlandic Presence in Ontario: Pillars, class & Dutch ethnicity*, Wilfrid Laurier University Press, 2006.

<sup>24</sup> Mondrian's work has also been the subject of studies and theses in Canada, for example. Ian Hugh "Piet Mondrian: The Evolution of his neo-plastic aesthetic 1908-1920." University of British Columbia Thesis, 1968.

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**Whether the Object is of such a degree of national importance that its loss to Canada would significantly diminish the national heritage**

45. In reviewing a refused application for an export permit, the Review Board must determine whether the object is of such a degree of national importance that its loss to Canada would significantly diminish the national heritage.<sup>25</sup>
46. The factors that the Review Board considered when making its assessment that the Object is of national importance are rarity, contextual associations, provenance and research value.
47. As indicated above, the Applicant submits that the Object “is not of national importance and its loss would not significantly diminish the national heritage by reason of the fact that it has little to do with Canadian cultural heritage.” The Applicant further states: “[i]ts research value is limited, its contextual associations are tenuous, its rarity disputable although its provenance is excellent.”<sup>26</sup>
48. The Review Board disagrees with the Applicant’s submission that the Object is not of such a degree of national importance that its loss to Canada would not significantly diminish the national heritage. The Review Board finds that the Object is of national importance due to its provenance, rarity, contextual associations and research value.
49. Related to provenance, the Review Board agrees with the applicant that the Object has exceptional provenance, being within the same family since its initial purchase.
50. Related to rarity, the Review Board finds the Object to be rare. As noted, the work is connected to two other paintings in collections in Europe, with all three being rare objects in the artist’s early body of work. There are also limited holdings of Mondrian’s work in Canadian collections. The Board thus finds the Object to be rare in the artist’s body of work, and also within public collections in Canada.
51. The Review Board is also of the view that the Object has significant contextual associations. As outlined by the Expert Examiner, the bilateral relationship between Canada and the Netherlands is significant. The Review Board does not agree with the Applicant that when presented out of context the work loses its meaning - this presupposes there is only one context.

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<sup>25</sup> Paragraphs 29(3)(c) and 11(1)(b) of the Act

<sup>26</sup> Applicant’s written statement, dated February 18, 2025, at p.6.

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52. In addition, the Board finds the Object to have contextual associations with Canadian art – for example it is well documented that important artists such as General Idea, Robert Houle, and Harold Town have all been inspired by Mondrian. The work also has contextual associations to the development of modern art history, to experimentation, and to connection of the subject matter (Haystacks) to other artists for example, Monet.
53. The Review Board does not agree with the Applicant and finds the Object has significant research value for several reasons. The work has been included in exhibitions in Canada, as noted in the 1966 Art Gallery of Toronto exhibition. The work has also been studied by Professor Welsh, a preeminent expert on Mondrian in Canada. Mondrian was a significant artist in the development of modern art, in particular the approach he later became well-known for in flat planes of colour, limited colour palette, and abstraction.
54. The Board acknowledged this work is not from his best-known period – but rather the Object is an important example of the artist’s early experimentation in landscape painting styles. The Board notes this Object has significant research value as it provides an understanding of the artist’s practices. Early works by Mondrian have been the subject of research and exhibitions in Canada, such as the Art Gallery of Ontario exhibition in 2015<sup>27</sup>.

**Whether an institution or public authority in Canada might make a fair offer to purchase the Object within six months after the date of the determination**

55. If the Review Board determines that an object is on the Control List and is of outstanding significance and of national importance, subsection 29(5) of the Act requires that the Review Board form an opinion as to whether an institution or public authority in Canada might make a fair offer to purchase the object within six months after the date of the determination.<sup>28</sup>
56. The threshold under the Act for determining whether an institution or public authority might make a fair offer to purchase an object is very low. Paragraph 29(5)(a) uses the word “might”. The threshold is therefore just a possibility – far less than a probability or a certainty. The Review Board therefore concludes that only limited evidence or

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<sup>27</sup> See for example the exhibition “Piet Mondrian: Before Abstraction,” Art Gallery of Ontario, May 23 – November 1, 2015.

<sup>28</sup> Subsection 29(5) of the Act.

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information is required for the Review Board to be satisfied that an institution or public authority might make a fair offer to purchase.

57. The Review Board is satisfied that an institution or public authority might make a fair offer to purchase. There are few Mondrian works in Canada, this is an important early work in the artist's oeuvre and there can be no doubt that Mondrian did have an influence on generations of Canadian painters.
58. The Applicant admits that no opportunity was provided to Canadian institutions to consider purchase of the Object. In light of these circumstances, the Review Board is of the view that an institution or public authority might make a fair offer to purchase the Object within six months of the Review Board's determination in this matter.

#### **Delay period during which the Review Board will not direct that an export permit be issued in respect of the Object**

59. When the Review Board is of the opinion that an institution or public authority in Canada might make a fair offer to purchase an object within six months after the date of the determination, the Review Board must establish a delay period of not less than two months and not more than six months during which the Review Board will not direct that an export permit be issued in respect of the object.
60. The Review Board establishes a delay period of six months, ending **December 6, 2025**, during which it will not direct that an export permit be issued in respect of the Object.
61. In establishing a six-month delay period, the Review Board took into consideration the long process needed for curators, collection committees and boards to review the potential purchase and apply for additional funds where needed.

#### **CONCLUSION**

62. In conclusion, the Review Board determines that the Object is on the Control List, that it is of outstanding significance, and that it is of such a degree of national importance that its loss to Canada would significantly diminish the national heritage. Furthermore, the Review Board is of the opinion that a fair offer to purchase the Object might be made by an institution or public authority in Canada within six months after the date of this decision. The Review Board therefore establishes a delay period of six months

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ending **December 6, 2025**, during which it will not direct that an export permit be issued in respect of the Object.

#### For the Review Board

Joanne Stober, Chair  
Stephen Borys  
Monte Clark  
Laurie Dalton  
Patricia Feheley  
Jo-Ann Kane  
Susan Mackenzie