

REVIEW BOARD DECISION

September 8, 2025

REQUEST FOR REVIEW OF AN APPLICATION FOR CULTURAL PROPERTY EXPORT PERMIT

Application No.: 0495-25-04-04-001
The Immigrants, circa 1928, by Prudence Heward

INTRODUCTION

1. On April 3, 2025, PACART Inc. (the Applicant) applied¹ to the Canada Border Services Agency (CBSA) for a permit to export the work *The Immigrants*, circa 1928, oil on canvas (the Object), by Prudence Heward (Heward).
2. On May 14, 2025, a permit officer employed by the CBSA sent to the Applicant a written notice of refusal with respect to the Object.² 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 June 2, 2025, the Applicant expressed its intention to request a review of its application for an export permit³ (the Request for Review) by the Canadian Cultural Property Export Review Board (the Review Board). On the same date, the Applicant's representative submitted the Request for Review and advised that the Applicant "fully agrees" with the Expert Examiner and requested that the Review Board immediately establish a delay period of six months during which it will not direct that an export permit be issued in respect of the Object.
4. The Review Board met on June 6, 2025 to consider the Request for Review.
5. For the reasons that follow, the Review Board agrees with the Applicant and the Expert Examiner and finds that the Object is included in the *Canadian Cultural Property Export Control List* (the Control List), is of outstanding significance by reason of its aesthetic qualities and 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 **March 8, 2026**, during which it will not direct that an export permit be issued in respect of the Object.

¹ Application #0495-25-04-04-001.

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

³ Subsection 29(1) of the Act.

REVIEW BOARD DECISION

September 8, 2025

REQUEST FOR REVIEW OF AN APPLICATION FOR CULTURAL PROPERTY EXPORT PERMIT

Application No.: 0495-25-04-04-001
The Immigrants, circa 1928, by Prudence Heward

LEGISLATIVE FRAMEWORK

6. The Review Board is established by the Act. Included in its duties are that it must, “on request...review applications for export permits.”⁴
7. 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.⁵
8. 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.⁶
9. 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.⁷

THE EXPERT EXAMINER’S REASONS FOR REFUSAL

10. In his reasons for recommending refusal, the Expert Examiner indicates that the Object is of outstanding significance and national importance.
11. The Expert Examiner states that the Object is of outstanding significance by reason of its aesthetic qualities and value in the study of the arts.

⁴ Subsection 20(a) of the Act.

⁵ Subsection 29(3) of the Act.

⁶ Subsection 29(5) of the Act.

⁷ Subsection 29(4) of the Act.

REVIEW BOARD DECISION

September 8, 2025

**REQUEST FOR REVIEW OF AN APPLICATION FOR CULTURAL PROPERTY
EXPORT PERMIT****Application No.: 0495-25-04-04-001*****The Immigrants*, circa 1928, by Prudence Heward**

12. With respect to aesthetic qualities, he states that the Object “is of exceptional aesthetic quality, highly original in terms of its composition, execution and style.”⁸
13. With respect to the Object’s value in the study of the arts, the work has been the subject of significant critical writing, from when it was first exhibited, to the memorial exhibition in 1948, and then its inclusion in the blockbuster Beaver Hall group exhibition in 2015. The Expert Examiner notes that the work is considered one of “the artist’s chef d’oeuvres.”
14. The Expert Examiner indicates also that the Object is of national importance by reason of its rarity and representativeness, contextual association, and research value.
15. With regards to rarity and representativeness, he notes that Heward’s works from this period are “considerably rare in public collections in Canada.” Further the work is “highly representative work from Heward’s most acclaimed period,” and “stands among her most celebrated canvases.”
16. With regards to contextual association, the Expert Examiner notes that the work has contextual associations with other key works by the artists, including “Girl on a Hill” and “At the Theatre.” In terms of wider cultural contextual associations, he further notes, “*The Immigrants* holds remarkable contextual associations for the fact it is a highly accomplished and bravura painting of women by a women (sic) artist working in Canada in the late 1920s. The additional association of migration connects the work to larger histories of displacement and immigration in the early-twentieth century in this country.”
17. With regards to research value, the Expert Examiner notes that the work’s rarity and contextual associations provide ample opportunities for research value.

THE APPLICANT’S SUBMISSIONS

18. The Object, *The Immigrants*, is an oil on canvas executed by Prudence Heward (1896-1947) in 1928 (or circa 1928). It measures 66 x 66 cm.

⁸ Expert Examiner’s advice, dated May 13, 2025, at p. 2.

REVIEW BOARD DECISION

September 8, 2025

**REQUEST FOR REVIEW OF AN APPLICATION FOR CULTURAL PROPERTY
EXPORT PERMIT****Application No.: 0495-25-04-04-001*****The Immigrants, circa 1928, by Prudence Heward***

19. The Applicant states that the Object is included in the Control List under Group V, Objects of Fine Art, Section 2(b).⁹
20. The Applicant submits that the Object “is of outstanding significance by reason of its aesthetic qualities and value in the study of the arts as set out in paragraph 11(1)(a) of the Act; and (...) the Object meets the degree of national importance set out in paragraph 11(1)(b) of the Act by reasons of the rarity of comparable object in public collections in Canada and the Object’s representativeness, contextual association and research value”.¹⁰
21. Furthermore, the Applicant submits that they fully agree with the advice of the Expert Examiner dated May 13, 2025.
22. With respect to whether an institution or public authority in Canada might make a fair offer to purchase the Object, the Applicant notes that there is already “an expression of interest from an institution in Canada to acquire the Object”.¹¹
23. The applicant submits that a delay period of six months should be established in respect of the Object.¹²

ANALYSIS**Whether the Object is included in the Control List**

24. 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.

⁹ Applicant’s cultural property export permit application, Part II, at p. 2.

¹⁰ Applicant’s written statement, dated June 2, 2025 at p. 1.

¹¹ Applicant’s written statement, dated June 2, 2025 at p. 2.

¹² *Ibid.*

REVIEW BOARD DECISION

September 8, 2025

**REQUEST FOR REVIEW OF AN APPLICATION FOR CULTURAL PROPERTY
EXPORT PERMIT****Application No.: 0495-25-04-04-001**
The Immigrants, circa 1928, by Prudence Heward

-
25. The Applicant admits that the Object is included in the Control List under Group V, Objects of Fine Art, subsection 2(b). Subsection 2(b) applies to paintings or sculptures made within or outside the territory that is now Canada by a person who at any time ordinarily resided in the territory that is now Canada, and that have a fair market value in Canada of more than \$15,000.00 CAN.¹³
26. The Review Board agrees that the Object is included in the Control List under Group V, Objects of Fine Art, subsection 2(b).

Whether the Object is of outstanding significance

27. 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.¹⁴
28. The Review Board agrees with the Applicant that the Object is of outstanding significance by reason of its aesthetic qualities and value in the study of arts.
29. With respect to the Object's aesthetic qualities, the Review Board finds that the Object has significant aesthetic qualities and agrees with the expert examiner's observations. Further, the Review Board notes that the work is exemplary in its merging of figurative and modernist tendencies of abstraction into one cohesive image that is balanced in its palette, form and painterly style.
30. With respect to the Object's value for the study of the arts, the Review Board finds that the Object has significant value in the study of the arts. The Review Board agrees with the Expert Examiner's observations, in particular that it is a 'chef d'oeuvre' by Heward and further notes that the work has value in the study of the arts not only in the body of the work of the artist, but in wider art historical currents in Canada such as Montreal modernisms, Beaver Hall Hill Group and the development of Canadian art history in the 1920-1940s. This timeframe was a significant period of history for cultural and artistic shifts in Canada¹⁵.

¹³ Control List, section 4E

¹⁴ Paragraphs 29(3)(b) and 11(1)(a) of the Act.

¹⁵ The Expert Examiner draws attention to key art historical writings, among them Natalie Luckyj, *Expressions of Will: The Art of Prudence Heward*, 1986. The Review Board further notes that the work of Heward continues to be

REVIEW BOARD DECISION

September 8, 2025

REQUEST FOR REVIEW OF AN APPLICATION FOR CULTURAL PROPERTY EXPORT PERMIT**Application No.: 0495-25-04-04-001*****The Immigrants, circa 1928, by Prudence Heward***

31. The Review Board thus concludes that the Object is of outstanding significance by reason of its aesthetic qualities and value in the study of arts.

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

32. 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.¹⁶
33. 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.
34. As indicated above, the Applicant submits that “the Object meets the degree of national importance set out in paragraph 11(1)(b) of the Act by reasons of the rarity of comparable objects in public collections in Canada and the Object’s representativeness, contextual association and research value.”
35. The Review Board agrees with the Applicant’s submission that the Object is of such a degree of national importance that its loss to Canada would significantly diminish the national heritage. The Review Board finds that the Object is of national importance due to its rarity and representativeness, contextual associations and research value.
36. The Review Board is of the view that the Object is rare in public collections in Canada and highly representative of Heward’s work. It also has significant contextual

the subject of art historical research as evidenced by articles, books and theses on the artist. See for example: Julia Skelly: *Prudence Heward: Life & Work*, Art Canada Institute, Toronto 2023; Evelyn Walters, *The Women of Beaver Hall: Canadian Modernist Painters*, Dundurn Press, Toronto 2005. For a selection of academic theses see for example: Shirley Kathleen Emeny, *Plurality and Agency: Portraits of Women by Prudence Heward*. National Library of Canada, 2000. Grace Powell, *Challenging the status quo: Prudence Heward's portrayals of Canadian women from the 1920s to the 1940s*. PhD diss., Concordia University, 2008; Laverdière, Julie Anne Godin. *L'apport de Prudence Heward, Liliás Torrance Newton et Jori Smith à l'élaboration de la modernité picturale canadienne: 1920-1948*, PhD diss., Université du Québec à Montréal, 2010.

¹⁶ Paragraphs 29(3)(c) and 11(1)(b) of the Act.

REVIEW BOARD DECISION

September 8, 2025

REQUEST FOR REVIEW OF AN APPLICATION FOR CULTURAL PROPERTY EXPORT PERMIT**Application No.: 0495-25-04-04-001*****The Immigrants, circa 1928, by Prudence Heward***

associations. The Review Board agrees with the Expert Examiner's observations on these points.

37. Moreover, the Review Board agrees that the Object has significant research value. The Review Board agrees with the Expert Examiner, both in terms of its research value in the artists' body of work, its research value in art history, and further its research value in wider social history such as immigration and migration.
38. Further the Review Board notes that the work is an exemplary painting by a woman artist. Painted in the later 1920s, this work also has additional research value in global art histories of women, feminism and the arts.¹⁷

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

39. 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.¹⁸
40. 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 information is required for the Review Board to be satisfied that an institution or public authority might make a fair offer to purchase.
41. The Applicant has submitted that there has already been an expression of interest from a Canadian institution in acquiring the Object. Given the rarity, aesthetic and research

¹⁷ The Review Board draws attention to the shifting terrain of the discipline of art history itself, that situates the work of artists within wider currents, for example, the work of Heward has been the subject of feminist studies, see for instance: Lynne Pearce, "The Viewer as Producer: British and Canadian Feminists reading Prudence Heward's 'Women'", *RACAR: Revue d'art canadienne* 25, no. 1 (1998): 94-102 and most recently in wider exhibitions examining the role of women in Canadian art, such as the nationally touring and acclaimed exhibition, *Uninvited: Canadian Women Artists in the Modern Moment*, 2023; which was accompanied by an extensive catalogue.

¹⁸ Subsection 29(5) of the Act.

REVIEW BOARD DECISION

September 8, 2025

REQUEST FOR REVIEW OF AN APPLICATION FOR CULTURAL PROPERTY EXPORT PERMIT

Application No.: 0495-25-04-04-001
The Immigrants, circa 1928, by Prudence Heward

value of the Object, the Board finds it likely a Canadian institution might acquire the work.

42. In light of these circumstances, the Review Board finds it likely that an institution or public authority in Canada 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

43. 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.
44. The Review Board finds the Object should be given the maximum delay period of six months due the value and importance of the Object. A six month delay period is necessary to provide institutions and public authorities with sufficient time to consider the possibility of making an offer to purchase the Object and potentially acquire the appropriate funds to do so.
45. The Review Board establishes a delay period of six months, ending **March 8, 2026**, during which it will not direct that an export permit be issued in respect of the Object.

CONCLUSION

46. 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 ending **March 8, 2026**, during which it will not direct that an export permit be issued with respect of the Object.

REVIEW BOARD DECISION

September 8, 2025

REQUEST FOR REVIEW OF AN APPLICATION FOR CULTURAL PROPERTY EXPORT PERMIT

Application No.: 0495-25-04-04-001

The Immigrants, circa 1928, by Prudence Heward

For the Review Board

Joanne Stober, Chair
Stephen Borys
Daniel Chouinard
Tzu-I Chung
Monte Clark
Laurie Dalton
Jo-Ann Kane
Susan Mackenzie