



ASSOCIATION OF
NOVA SCOTIA
MUSEUMS

Loan Reconciliation

Introduction

A well-managed loan program is a valuable asset to a museum and its community. It enables individuals to share their stories and belongings in exhibits and programs, and enables museums to enhance interpretive offerings with content beyond its collection. It is a collaborative approach to honouring a community's history.

The practice of objects being “permanently loaned” to a museum for an indefinite period of time and without any sort of standardized renewal process has been abandoned by the museum community due to the liabilities involved with this practice. Internationally recognized museum standards state that loans should be limited to use for specific exhibitions or research projects, and should not exceed a predefined period of time (Canadian Museum Association, *Ethics Guidelines*). In accordance with these guidelines, the Association of Nova Scotia Museums takes the position that the maximum acceptable time period for a loan is one year, after which it must be renewed or returned. This regular review process is key to a well-managed loan program.

Adhering to this standard protects both the museum and the lender. A permanent or long-term loan is not the property of the museum, no matter how long the loaned item has been in its care. Loans are not part of a museum's permanent collection and cannot be formally accessioned. There may also be insurance implications depending on the museum's and lender's insurance coverage. Loaned items occupy valuable storage space and consume scarce staff and financial resources. Returning long-term loaned materials can also be problematic due to increasing difficulties in locating lenders or their heirs and executors over time. For these reasons, old loans should be systematically reconciled by museums.

It is important that the entire organization remains steadfast regarding this position on loans so that the public receives the same message from all parties. Professional standards must be upheld and an owner's wishes should be respected.

Disclaimer

Reconciliation of loans requires decision-making and signing authority which can only be undertaken by senior staff and/or board members. This is NOT a job for the museum's summer students, interns, or other temporary staff/volunteers. There are a few preparatory aspects of this project that they could assist with, such as compiling the list of loaned items (one list per lender), determining accurate contact information by checking the museum's files, phonebook, local and online directories, etc., and completing condition reports and photographs (if they have been given proper training).

Legal Considerations

The paragraphs below address the key legal considerations and context applicable to museums attempting to reconcile ownership of historical loans. An appropriately qualified third party prepared the information, which constitutes general legal information, rather than legal advice specific to any one institution.

1. **When, if ever, does legal title to an object held by a museum under a historical loan transfer to the museum, allowing the museum to sell or dispose of the object?**

If a museum disposes of an object previously held under an undocumented, indeterminate historical loan, the museum may be liable for damages under the common law tort of conversion if an individual or organization with legal title requests that the museum return the object and the museum cannot fulfil that request.

The tort of conversion occurs where one party takes property belonging to another party with the intent to deprive the other party of the property, or destroy or change the nature of the property.¹

There is no common law equitable remedy allowing museums to dispose of objects, even if they become a burden because of storage costs or other considerations.

In the U.S., approximately thirty states have introduced legislation allowing museums, art galleries, or cultural institutions to dispose of loaned objects which go unclaimed for a defined time period. No such legislation exists in Nova Scotia.²

Practically, museums should understand the legal risks applicable to loaned objects, including the common law tort of conversion. However, museums should also be aware of what constitutes a real and present risk on a case-by-case basis. Rare, high market value objects held on loan will expose museums to greater liability relative to comparatively common, low market value objects. These contextual factors will inform the efforts which museums should undertake to locate an object's owner and reconcile legal title to the object. If a museum's efforts to contact an object's owner are unsuccessful, the museum may decide to take the risk and dispose of the object.

If a museum disposes of an object held under an undocumented, indeterminate historical loan, the museum will be entitled to rely on the limitation periods established under the *Limitation of Actions Act* (Nova Scotia) when those limitation periods expire. The legislation prevents one party from claiming against another party on the earlier of

¹ *McLean v. Bradley* (1878), 1878 CarswellNS 5, 2 S.C.R. 535 (S.C.C.) at para. 8)

² Alberta and British Columbia have introduced legislation addressing ownership of unclaimed personal property: *Unclaimed Personal Property and Vested Property Act*, SA 2007 [Unclaimed Personal Property Act (AB)], c U-15 ([link](#)); *Unclaimed Property Act*, SBC 1999, c 48 ([link](#)) [Unclaimed Property Act (BC)]; *Unclaimed Property Regulation*, B.C. Reg. 274/2004 ([link](#))

either (a) two years from the day on which the claim is discovered, or (b) fifteen years from the day on which the act or omission on which the claim is based occurred.

2. What types of proof would a person be required to provide to establish legal title to an object held by a museum under a historical loan?

There is no list of requirements that an individual must meet to prove ownership over personal property (e.g. an object, artifact or artwork). Persons asserting ownership over personal property held by a museum under a historical loan may do so through providing the museum with practical, objective evidence establishing ownership of the object in question.

A loan receipt or written loan agreement will provide the strongest evidence of ownership. Without a loan receipt or written loan agreement, the person asserting ownership should provide written evidence or sworn oral evidence (e.g. by means of a written affidavit by the person or a related third-party) supporting their ownership of the object.

The table below offers several inquiries that museums should consider – together with the types of evidence under those inquiries – in evaluating assertions of ownership.

	<i>Lines of Inquiry</i>	<i>Types of Evidence</i>
(a)	The original owner’s entitlement to and ownership of the object.	Purchase receipt, evidence of prior possession, affidavit evidence
(b)	The original owner’s intention that the object be loaned – rather than gifted – to the museum.	Loan receipt, copy of a written loan agreement, affidavit evidence
(c)	The connection between the person asserting ownership and the original owner.	Death certificate, will, gift agreement, or other written instrument showing the original owner’s intent to transfer the property to the person asserting ownership, affidavit evidence
(d)	The absence of other persons with a comparatively stronger claim to the object.	Will, gift agreement, or other testamentary instrument, family records, affidavit evidence

The quantity and quality of evidence that museums should request to prove ownership of an object held under historical loan will increase according to the object’s value and cultural significance. Museums should request more robust evidence from persons asserting ownership over rare, high market value objects, including documentary evidence, sworn affidavits, and sworn third-party party affidavits, among other forms of evidence. Museums may request less robust evidence from persons asserting ownership

over relatively common, low market value objects, omitting requests to include sworn affidavits, or sworn third-party party affidavits.

3. What privacy law requirements apply to museums attempting to locate the descendants of the original owner of an object held by a museum under a historical loan?

Application of PIPEDA to Charitable and Non-Profit Organizations

Most museums will not be subject to the primary source of Canadian privacy law, the *Personal Information Protection and Electronic Documents Act*³ (“**PIPEDA**”).

Effective January 1, 2004, PIPEDA applies to every organization that collects, uses or discloses personal information in the course of commercial activities.⁴ A museum’s non-profit status does not automatically exempt it from PIPEDA’s application.⁵ Rather, engaging in commercial activity will bring a museum within the legislation’s application.

PIPEDA defines "commercial activity" as:

...any particular transaction, act or conduct or any regular course of conduct that is of a commercial character, including the selling, bartering or leasing of donor, membership or other fundraising lists.⁶

Most non-profits – including museums – will not be subject to PIPEDA because they do not engage in commercial activities. Collecting membership fees, organizing club activities, compiling a list of members’ names and addresses, fundraising, and mailing out newsletters are not considered commercial activities.⁷

Applicable Principles of PIPEDA

Although PIPEDA does not strictly apply to museums, some non-profit organizations and charities choose to voluntarily adhere to the standards set out in the legislation as codifications of best practices. The table below summaries key principles of PIPEDA as they apply to ANSM members for the purpose of reconciling ownership of objects held under historical loans.

³ *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5 [PIPEDA].

⁴ “The Application of PIPEDA to Charitable and Non-Profit Organizations”, *Office of the Privacy Commissioner of Canada* (1 April 2004), online: <https://www.priv.gc.ca/en/privacy-topics/privacy-laws-in-canada/the-personal-information-protection-and-electronic-documents-act-pipeda/r_o_p/02_05_d_19/>.

⁵ *Ibid.*

⁶ PIPEDA, *supra* note 7, s 2.

⁷ “The Application of PIPEDA to Charitable and Non-Profit Organizations”, *supra* note 3.

<i>PIPEDA Principle</i>	<i>Application to ANSM Members</i>
(a) Collection, use or disclosure of personal information “must only be for purposes that a reasonable person would consider appropriate in the circumstances”. Personal information includes factual or subjective information, recorded or not, about an identifiable individual, including name and age.	Enables ANSM members to either use existing information on historical donors – or collect new information from the public domain related to historical donors and their descendants – for the purpose of reconciling ownership of objects held under historical loans.
(b) Principle 4, “Limiting Collection”, states that the “collection of personal information must be limited to that which is needed for the purposes identified by the organization”. In addition, information must be collected by fair and lawful means.	Collection of personal information related to historical donors and their descendants should be limited to what is reasonably required to fulfil the purpose of reconciling ownership of objects held under historical loans, restricting the collection of personal information to: names, addresses, telephone numbers, email addresses, birth, death and marriage records, and other information required to verify identity, ownership, and relationships among the original donor and their descendants.
(c) Principle 5, “Limiting Use, Disclosure, and Retention”, states that “unless the individual consents otherwise or it is required by law, personal information can only be used or disclosed for the purposes for which it was collected.”	Limited disclosure of personal information by ANSM members for the purpose of reconciling ownership of objects held under historical loans is permissible insofar as the disclosure is made for the purpose for which it was collected, specifically, returning the loaned property.
(d) Organizations may collect personal information without the knowledge or consent of the individual if the collection is clearly in the interests of the individual and consent cannot be obtained in a timely way.	ANSM members can collect personal information from the public domain ⁸ in an attempt to contact the donor or their descendants where collection is clearly in the interests of the individual and consent cannot be obtained in a timely way. ⁹

⁸ Potential research sources include: (a) [Nova Scotia Archives](#) (Genealogical Reference, Archival Reference); (b) [Nova Scotia Historical Vital Statistics](#) (Birth Records, Marriage Records, Death Records); (c) [Access Nova Scotia: Vital Statistics](#); (d) [MemoryNS](#) (provides access to archival records from institutions across Nova Scotia); (e) [Courts of Nova Scotia](#); (f) [Land Records](#); (g) [Wills](#); (h) [Other](#).

⁹ As implicit support for this proposition, the UPPA (AB) contains provisions authorizing the collection, use and disclosure of personal information about or identifiers of an apparent owner in order to determine the current address of the apparent owner. UPPA (AB), *supra* note 1, s 5(4).

4. How should museums word public notices in seeking to locate the descendants of the original owner of an object held by a museum under a historical loan?

There is no set list of requirements of what is to be contained in public notices to contact the owners of abandoned property in Nova Scotia.

Before attempting to locate an object's owner by public notice, museums should first attempt to contact the object's apparent owner, or their descendants, at their last known address.¹⁰

If unsuccessful, museums may leverage the information they have within their records and the information they have access to in the public domain to identify the object's owner.¹¹ The level of time, effort, and resources which a museum invests to identify an object's owner should be reasonable in the circumstances and a function of the object's value.

If efforts to identify the object's apparent owner through independent research are unsuccessful, museums may then consider publishing a public notice to locate the owner. To provide ANSM-members with a framework for drafting public notices, we considered the relevant provisions of the U.S. *Uniform Unclaimed Property Act* (the "UUPA"), which various U.S. states have adopted to address the deficiencies in the common law described above.¹² We measured UUPA provisions against the notice provisions of two examples of provincial legislation in Canada addressing unclaimed personal property, specifically: the *Unclaimed Personal Property and Vested Property Act* (Alberta), and the *Unclaimed Property Act* (British Columbia).

The paragraphs below summarize the key UUPA notice provisions:

Manner of Notice

- (a) Notice must be published in a newspaper of general circulation in the areas of the [province] in which the last known address of the historical donor is located.¹³
- (b) If there is no last known address of the historical donor, the notice must be published in the [province] and town in which the museum has its principal place of business.¹⁴

Contents of Notice

- (c) The contents of the notice must include the following:

¹⁰ This is consistent with the provisions of the UUPA (AB), *supra* note 1, s 5(2).

¹¹ For a non-exhaustive list of potential research resources, see footnote 7.

¹² *Uniform Unclaimed Property Act (1995)*, drafted by the National Conference of Commissioners on Uniform State Laws (US) ([link](#)) [UUPA]. For an updated version of this document, see also the *Uniform Unclaimed Property Act (2016)*, drafted by the National Conference of Commissioners on Uniform State Laws (US) ([link](#)).

¹³ *Ibid*, s 9(a).

¹⁴ *Ibid*.

- i. the name of each person appearing to be the owner of the property;
- ii. the last known address or location of each person appearing to be the owner of the property, if the administrator has an address;
- iii. a statement explaining that property of the owner is presumed to be abandoned and has been taken into the protective custody of the administrator;¹⁵ and
- iv. a statement that information about the property and its return to the owner is available to a person having a legal or beneficial interest in the property, upon request to the administrator.¹⁶

Subject to the footnotes below, despite the absence of legislation analogous to the UUPA in Nova Scotia, the UUPA's recommendations regarding the manner and contents of public notices appears to be reasonable, consistent with the principles of PIPEDA, and consistent with the relevant provisions of the Alberta and British Columbia legislation addressing unclaimed personal property.

ANSM members seeking to publish a public notice to locate the owner of an object held under historical loan may follow the framework established in the UUPA. Because of the absence of analogous legislation in Nova Scotia, ANSM members also have greater flexibility to select the channels they use to publish public notices, such as museum websites, social media channels, and other modern platforms.

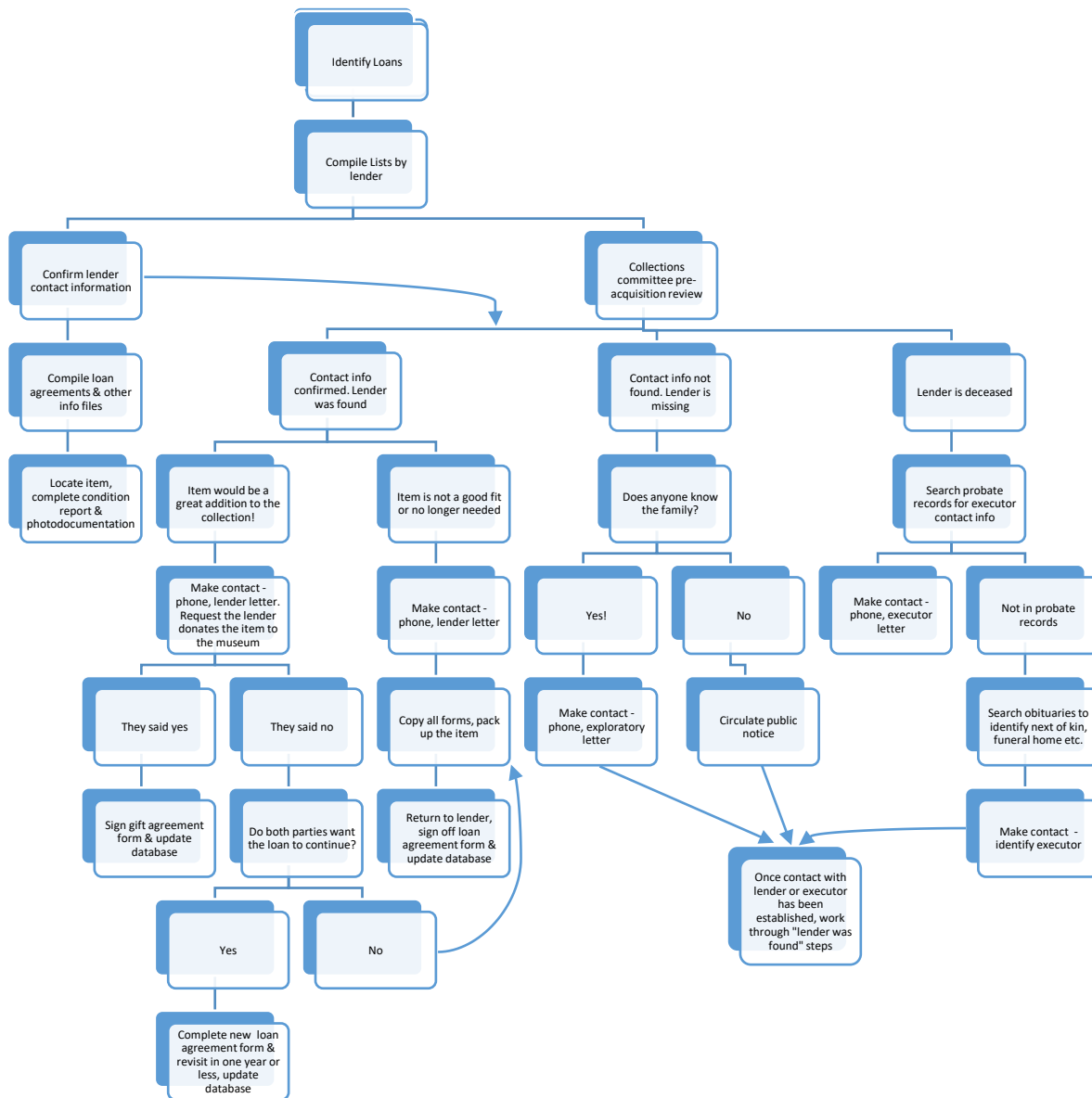
Work Flow and Decision Tree

The reconciliation process and amount of work involved will vary slightly from item to item. Factors impacting the process include the museum's loan records and supporting documentation, whether or not items have been digitized, and the ability to connect with the lender or their heirs.

As outlined in the following flow chart and decision tree, some tasks can be completed in tandem. While staff or volunteers confirm contact information, locate items and conduct photodocumentation and condition reporting, the collections committee can be reviewing and making decisions about each item. Once all of this work is completed, the museum's ability to contact the lender dictates how to proceed. Regardless of which scenario branch the museum needs to follow, as soon as the lender (or executor) is in communication with the museum, the work flow proceeds with the "lender was found" step.

¹⁵ Regarding statement (c)(iii) – a statement explaining that property of the owner is presumed to be abandoned and has been taken into the protective custody of the administrator – including this language in a public notice will not absolve a Nova Scotian museum from potential liability under the tort of conversion due to the absence of legislation similar to the UUPA in Nova Scotia. Though it is possible to include this language within a public notice to justify a museum's subsequent conduct in disposing of an object, the legal effect of that language will not be certain.

¹⁶ UUPA, *supra* note 8, ss 9(a)(1)–(4).



Step by Step Instructions

Step 1 – Identify items on loan.

Compile the items into lists by lender. Include key information such as: lender’s full name and contact information, date of loan, description of each item, digital image(s), and storage location.

Step 2 – Review each item and decide the ideal outcome.

Before contacting the lender(s), the museum’s collections committee should treat all items as potential acquisitions and work through the **Pre-Acquisition Review Form** process. On the loan lists, make note of which items are to be returned and which items the museum would like to request for donation.

*Note - It is important for the lender to know that this is part of an overarching collections review process and was not any one individual's decision. If questioned, make sure the museum can prove that each item was reviewed and discussed by the committee and that its decisions are documented.

Step 3 – Complete **Condition Reports**.

For each item that is to be returned to the lender, compile corresponding photographs and complete a **Condition Report**. This creates a known record of condition at that specific point in time and will protect the museum in case of damage occurring to the item after it leaves the museum.

As a second priority, complete **Condition Reports** for the lender's other items (ie loaned items the museum hopes to change to donations), including photodocumentation.

Step 4 – Confirm lender contact information.

Once the museum has decided how it wishes to proceed with each loaned item, it must determine the accuracy of the lenders' contact information. Original loan agreements, phone directories, local knowledge, and online searches will prove useful.

It is possible that the museum will have difficulty locating an individual. In this case, local knowledge will be key. Staff members, the board of directors, and volunteers should be asked if they have any connections with the lender or their family. If so, making contact through these connections should enable the museum to send an exploratory letter looking for the lender's contact information (Appendix 1: **Exploratory Letter**). If there are no internal connections, the museum can circulate a public notice seeking to connect with the lender or their family (Appendix 2: **Public Notice**).

If research reveals that the lender is deceased, the museum will need to make contact with their executor(s) (Appendix 3: **Executor Letter**). Probate court records should have information about the person's estate, and obituaries will note which funeral home and/or religious organization handled arrangements, enabling the museum to reach out and request that the executor be in touch to discuss the estate.

*Note – Some funeral homes have a policy of not passing on messages to a bereaved family. If this is the case, refer back to the obituary for any other organizations or individuals that may be of assistance.

Step 5 – Send the lender a letter.

Once contact information has been confirmed, a formal letter should be sent explaining that the museum is updating its collections management procedures and this includes reviewing all items on loan. The letter needs to be signed by the president of the Board and Curator/Director (Appendix 4: **Lender Letter**).

*Note – Ideally, the lender with the largest number of items should be approached first, enabling the museum to reconcile many items at once. However, the museum may need to adjust this approach based on local knowledge, ie a lender’s age, health, their relationship with the museum, etc. For instance, if any board members, staff or volunteers have items on loan, these can and should be dealt with immediately.

Step 6 – Invite the lender to visit the museum to discuss their loans.

Be sure that they understand the nature of the discussion beforehand. Both parties should have a copy of the loan list. The museum’s list serves as a reference as it also includes the ideal outcome for each item. The conversation should take place in a comfortable space, and may include walking around the museum to review large items. Small items can be brought to the office or meeting room. Reviewing the items in person will help to avoid any confusion.

For lenders that live out of town, discussions can occur over the phone, but the reconciliation process may be more difficult to complete than if the meeting was held in person. After letting them know about the museum’s review process, send lenders the formal letter and list of their loaned items (with photographs). Follow this up with a second conversation to review and discuss each item.

*Note – While none of these conversations or meetings should be rushed, this is especially important for meetings with lenders regarding the return of loans. The loaned items may have significant meaning for the lender, they might feel hurt or embarrassed that their items are being returned, or seeing the items again might spark memories that they will want to share. It is important to listen and empathize, but the collections committee’s decision to return the item(s) must be respected.

Step 7 – By the end of the meeting, a clear understanding about next steps should exist. Depending on the discussions and decisions, these will include:

1. Returning items to the lender.
Anything the museum wishes to return to the lender should be carefully packed and returned with corresponding copies of **Condition Reports** and photographs. The museum and lender must sign the original **Loan Agreement** (or a revised form if the original does not accommodate signing off, or cannot be found) to note that the item(s) have been returned. If the loans were entered in the collections database, these entries must be updated.
2. Renewing loans or changing the loan to a donation.
For the decisions requiring signing over of ownership or renewal of loan agreements, the lender may wish to take some time to consider their options. Encourage them to consult with family members and/or friends, but let them know that the museum would like an answer within 30 days. If necessary, follow up with the lender and sign the relevant documents.

- a. If the lender agrees to donate the item(s) to the museum, the **Gift Agreement** form must include a statement about the lender having the authority to transfer ownership of the item(s) to the museum, and request that they also sign over intellectual property rights (if applicable). All items can be grouped on the same **Gift Agreement**, with an itemized list attached. If the loans were entered in the collections database, these entries must be updated.

- b. If the lender wishes to renew the loan, a specific time period of no more than one year must be agreed to, after which the item(s) will be returned to the lender or the loan will be revisited by both parties. All items included in the loan can be grouped on one **Loan Agreement**, with an itemized list attached. Ensure that all relevant information (contact details, rationale for loan) are updated and included on the form. If the loans were entered in the collections database, these entries must be updated.

Appendix 1: Exploratory Letter



[Date]

[Recipient's Address]

Dear **[Recipient's Name]**,

I am writing on behalf of the **[Museum/Society Name]**. The purpose of this letter is to seek contact information for **[Lender's Name]**.

We have been reviewing our museum's artifact collection records, and are attempting to contact individuals who have made contributions to our institution in the past. Despite our best efforts, we have been unable to reach **[Lender's Name]**. It is my hope that you may be able to provide information that could put us in touch with them.

Please contact me at **[museum phone number]**. Your help in this matter is greatly appreciated.

Thank you for your time and assistance.

Sincerely,

[Name and Position Title]

[Name of Museum and/or Society]

Appendix 2: Public Notice



[Date]

The **[Museum/Society Name]** is conducting a collections review project and is seeking to contact individuals who have contributed items for exhibition and research purposes.

Despite the museum's best efforts, it has been unable to connect with the following individuals:

[Name], formerly of **[Street Name, Town, Province]**

...

The museum requests that these individuals, their heirs, or anyone who can assist in connecting the museum with these individuals, to please contact **[Name and Position Title]** at **[museum phone number and/or email address]**.

Their property is presumed to be abandoned and is in the protective custody of the museum. Information about the item(s) and **[its/their]** return to the owner is available to a person having a legal or beneficial interest in it, upon request to the aforementioned museum representative.

Your help in this matter is greatly appreciated. Thank you for your time and assistance.

Appendix 3: Executor Letter



[Date]

[Recipient's Address]

Dear **[Recipient's Name]**,

I am writing on behalf of the **[Museum/Society Name]**. The purpose of this letter is to discuss **[(an) item(s) that was/were]** loaned to the **[Museum/Society Name]** in **[Year]** by **[Lender's Name]**.

We truly appreciate and understand the trust that has been placed in us in caring for items loaned to the museum. It is with this in mind that we are reviewing all items on loan to the museum. Through this process it was discovered that we are currently in possession of items belonging to **[Lender's Name]**. I was given your name as **[the/an]** executor of **[Lender's Name]'s** estate.

Please contact me at **[museum phone number]** in order to discuss **[this/these item(s)]**. **[In the event of multiple executors, include the following statement: *A copy of this letter has been sent to each executor.*]**

We want to ensure that **[Lender's Name]** wishes are carried out, and look forward to working with you to determine a solution to this issue.

Thank you for your time and assistance in this matter.

Sincerely,

[Name and Position Title]
[Name of Museum and/or Society]

[cc: Names of other executors]

Appendix 4: Lender Letter



[Date]

[Recipient's Address]

Dear **[Recipient's Name]**,

I am writing on behalf of the **[Museum/Society Name]** to express our appreciation for your interest in the **[Museum/Society Name]**, particularly for the **[item(s)]** you have loaned us in the past.

The **[Museum/Society Name]** strives to maintain high standards of operation, and recently conducted a review of the collection. Our Collections Policy no longer allows for the acceptance of loans for a period beyond one year. It is with this in mind that we are reviewing all items on loan and, according to our records, you loaned us **[(an) item(s)]** **[insert date(s) of loan]**.

As part of our loan review process, we would like to invite you to the museum to discuss your loan. **[If the ideal outcome is identical for all items in the loan, be more specific in this statement, such as inviting the lender to *discuss returning this/these item(s)* OR *requesting this/these item(s) for donation*].** We have attached an overview of your **[loan(s)]** for your convenience. Please review it to ensure our records are accurate, and then contact me at **[museum phone number]** to discuss **[this/these item(s)]**.

If possible, please bring either proof of ownership or your copy of the Loan Agreement that was signed when the **[item(s)]** were first brought to the museum.

We appreciate the trust that has been placed in us as your **[loan(s)]** enabled us to enhance our interpretive offerings and honour our community's history. Thank you for your continuing support of the **[Museum/Society Name]**. We look forward to meeting with you in the near future.

Sincerely,

[Name and Position Title]

[Name of Museum and/or Society]