

## Repatriation Issues in First Nations Heritage Collections

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### Abstract

The repatriation of First Nations artifacts from Canadian museums is subject to continuous debate. First Nations groups wishing to retrieve their heritage artifacts often face numerous challenges due to cultural boundaries, miscommunication and differences in terminology. Moreover, legal limitations and the absence of documentation substantiating ownership make the process complex and often frustrating for all parties. Although there is no one perfect solution to satisfy the needs of First Nations communities and the museums housing their sacred objects, a number of innovative and collaborative solutions are emerging to resolve some of these ongoing conflicts. This paper highlights some of the tensions between museums and First Nations groups, and looks to how both sides are beginning to rectify these conflicts through legislation and increased communication.

**Keywords:** First Nations; Museums; Repatriation; Artifacts

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Museums play a number of roles in society. They exist to acquire, conserve, research, and exhibit artifacts to the public for the purposes of education and preservation. There are instances, however, when the role of the museum extends to returning artifacts to cultural groups, communities or countries of origin. This process is known as repatriation (Alberta Museums Association, 2009). The repatriation of artifacts is a worldwide issue with many complexities. From Greece's continuing fight to have the Parthenon Marbles returned to Athens by the British Museum to Egypt's demands that the Berlin Museum return the famous bust of Queen Nefertiti, experience demonstrates that repatriation questions are rarely straightforward or simple. This paper serves as an overview of some of the key issues First Nations groups face in retrieving their sacred or ceremonial artifacts from museums in Canada and abroad. I will also look to ways repatriation conflicts can be handled more effectively through legislation and increasing collaboration.

There are numerous reasons for a First Nations community to request the return of artifacts. These include: human rights issues; religious reasons; retention or restoration of cultural history and knowledge; preservation; or the desire for redress related to past injustices (Bell & Paterson, 2008). Typically, the objects Aboriginal groups in Canada are most concerned about retrieving from museums are those with sacred or ceremonial significance – artifacts such as totem poles and potlatch gifts (CBC News Online, 2006). Requests for the repatriation of common, utilitarian objects such as blankets, pottery and tools are less common, except in

cases where the artifacts might be considered of high monetary value, culturally important or personally significant to a specific community. Secular items might represent skills and crafts no longer remembered or known within the community. Additionally, it might be important for younger generations to see and understand the objects before the elders with specific related knowledge pass on.

### Historical Background

Regardless of how sacred and secular objects are viewed today, the root of the tensions between First Nations groups and museums over cultural property can be found in the practices of the past. Although it was not uncommon for early explorers and settlers to acquire Aboriginal artifacts through trade, purchase or gifting, the documentation of these transactions was frequently sparse to nonexistent. Arguments continue to this day as to whether some artifacts were received legitimately or not. Collections of artifacts acquired in the 1800s and 1900s by missionaries, collectors or the government through confiscation suffered from a similar lack of complete or consistent documentation (Gadacz, 2010). As many First Nations tribes did not even have a written language to record transactions, ownership claims can be clouded, complex and difficult to prove. As well, marriages involving families from different Nations have blurred the lines of ownership; in some cases two or more communities may have legitimate ownership claims to a single object.

This murky background of legal and illegitimate property transfer set the stage for the unrestrained collection of First Nations art and artifacts – particularly objects from the Northwest Coast – between the 1880s and 1900. Believing that First Nations people were a disappearing race and that their sacred artifacts needed to be salvaged, the activities of anthropologists and ethnographers of the time led to the desecration of graves and removal of totem poles and other traditional objects in order to study them and preserve them for future generations (Gough, 2008).

The ethical framework of these late nineteenth century collection practices adds fuel to the repatriation debate fire. The controversy surrounding the Kwakiutl potlatch collection is an excellent case in point. As a result of the 1885-amended Indian Act – legislation that effectively prevented First Nations people from legally participating in potlatch and Sundance ceremonials – the Kwakiutl potlatch artifact collection was acquired by the Federal Government of Canada. The potlatch was an especially vital part of Northwest Coast culture. While its main purpose was to redistribute wealth, it also involved singing, dancing, storytelling, spiritual ceremonies and celebrations of rights of passage, births, deaths, and weddings. While many Northwest Coast people were imprisoned under this act in 1921, others were given suspended sentences contingent on handing over potlatch ceremonial objects to the government (Gough, 2008). The potlatch ban was in effect until 1951 and the Kwakiutl people have been attempting to get approximately 750 ceremonial objects back since 1958, with some limited success (Gough, 2008). Not surprisingly, current refusals by museums to repatriate similar objects are seen by First Nations people as a continued oppression of their cultural expression initiated by the 1885-amended Indian Act. Repatriation demands have thus become overt political acts focused on reclaiming cultural identity and pride (Bell & Paterson, 2008).

Relations with museums, provincial and federal governments continue to be influenced by First Nations desires to reclaim their cultures and pride. The strained quality of these relations was demonstrated in 1988 during the Glenbow Museum's exhibition, *The Spirit Sings: Artistic Traditions of Canada's First Peoples*. Also shown at the 1988 Calgary Olympics, this exhibition of over 650 pieces – many from foreign collections – was boycotted by First Nations groups, the World Council of Churches, the European Parliament, and the executive of the Canadian

Ethnology Society. Two reasons were behind the boycott. First, the exhibit included a Mohawk False Face Mask that purportedly had been sold and displayed. Typically forbidden from being viewed by the general public, both the sale and display of these masks violates Mohawk law. Second, grant money for the exhibition was received from Shell Canada Limited – a firm drilling for oil on land the Lubicon Lake Cree claimed as their traditional territory. In response to the exhibition, the Mohawk nations decided to sue the Glenbow Museum for the return of the mask as well as other cultural artifacts. The lawsuit, however, never went to trial, and the exhibition continued in spite of the associated political and ethical debates (Harrison & Trigger, 1988).

Controversies of this nature are not entirely negative and the debate surrounding the Glenbow Museum exhibition did create some positive outcomes. A national conference between the Assembly of First Nations and the Canadian Museums Association followed the controversy, resulting in the development of ethical guidelines encouraging First Nations groups and museums to work more collaboratively. Recommendations included integrating First Nations people into museum governing processes, as well as involving them in the planning stages, presentation, research and maintenance of exhibits and programs. Additional proposals included: the return of human remains, sacred items, and other cultural objects of importance; training First Nations people as museum professionals; and the implementation of the recommendations through legislation and funding (Devine, n.d.). The Glenbow Museum also established the First Nations Advisory Council in 1990 to improve relations. This advisory council was designed to provide input on the care and handling of First Nations cultural material as well as commentary on items considered for exhibition at the Glenbow Museum. The council also assists in the creation of First Nations exhibits and programs and acts as a liaison between the museum and Aboriginal communities (Bell & Paterson, 2008).

### Provincial Legislation

There are provincial acts in place to prevent the desecration, damage or looting of First Nations cultural heritage sites. These acts, however, do not address repatriation issues (Nanaimo Museum, 2007). Thanks to some groundbreaking legislation in Alberta, however, this may be changing. In 2000, Alberta passed the First Nations Sacred Ceremonial Objects Repatriation Act (FNSCORA) followed by the First Nations Sacred Ceremonial Objects Amendment Act in 2008. These acts are the first of their kind in Canada and allow sacred objects to be returned to First Nations groups to be placed back into active ceremonial use. The acts were the direct consequence of previous collaborations between the Glenbow Museum and the Blood tribe facilitating ceremonial item loans.

Previously, Alberta provincial legislation hindered full deaccessioning for the purposes of repatriation. The Glenbow-Alberta Institute Act states that all objects in the museum's possession are held for the benefit of the people of Alberta and ministerial approval is required to deaccession artifacts. Prior to the First Nations Sacred Ceremonial Objects Repatriation Act this level of approval was difficult to obtain (Bell & Napoleon, 2008). However, the Government of Alberta acknowledged that a more consistent and transparent process was needed, as the Glenbow Museum and the Royal Alberta Museum were agreeing to increasingly extensive loans. The FNSCORA was designed to consolidate the role of museums in supporting the needs of First Nations people to practice their traditional values while still preserving heritage. Under this act the Glenbow Museum and the Royal Alberta Museum are able to return sacred items to First Nations communities in Alberta in order to facilitate use in ceremonies. First Nations need to apply to the Minister of Community Development, and if approved, the group or community gains legal title to the object and holds it on behalf of the people of that First Nations group or tribe (Bell & Napoleon, 2008).

The act has been directly responsible for the repatriation of over one hundred Blackfoot sacred bundles and over two hundred other sacred ceremonial objects – items that were previously held in the Glenbow Museum and the Royal Alberta Museum (Government of Alberta News Release, 2009). These actions demonstrate a marked change from the Royal Alberta Museum's policy in the early 1990s, a period characterized by resistance to repatriation (Devine, n.d.). However, objects that are not considered sacred, such as replicas, articles of personal or familial importance, etc., cannot be considered for repatriation (Royal Alberta Museum, n.d.). This provides a clear framework so that First Nations communities can reclaim items that are culturally and spiritually valuable, while at the same time leaving many other everyday artifacts in the hands of the museums for the general public to learn from and appreciate.

### Federal Legislation

At the federal level, there are no specific laws focused on repatriation per se. Moreover, Canadian laws and policies regarding cultural property rights and heritage conservation are outdated, failing to adequately address the interests and rights of First Nations groups. This can directly impact repatriation claims (Bell & Napoleon, 2008). There are also difficulties in reconciling Aboriginal law with Canadian law. The First Nations relationship to artifacts is not about ownership of the object, but rather about a connection to the item that cannot be broken or changed. The Common Law understanding of ownership, on the other hand, is that it is alienable or transferable to another owner. This ideological clash is frustrating for First Nations groups as they try to prove their ownership claims in terms acceptable to the Canadian legal system (Kramer, 2004). As a result, terminology and vocabulary must be chosen carefully by all parties in order to make dialogues clear and understandable to everyone involved.

Although there is no official Canadian legislation regarding repatriation, there are some relevant federal policies. Repatriation is also commonly addressed in First Nations land claims. The first land claim agreement to include repatriation provisions was the Nisga'a Agreement of 1999 – a document signed by representatives of the Nisga'a First Nation, the province of British Columbia and the Government of Canada. Over 200 artifacts from the Canadian Museum of Civilization and the Royal British Columbia Museum have been returned to the Nisga'a through this agreement (Gadacz, 2010). As well, the Nisga'a Final Agreement has been used as a template for other treaty agreements covering culture and heritage concerns (Nanaimo Museum, 2007).

This agreement model does not address, however, the affairs of all First Nations groups involved in repatriation issues. The Snuneymuxw, as an example, have found the Nisga'a Agreement challenging to work with because of the sparseness and nature of their own collections (Nanaimo Museum, 2007). Additionally, broader problems such as language barriers, conflicting terminologies, and problems generated by the primitive research processes used by nineteenth and early twentieth century ethnographers have resulted in continuing confusion over provenance and ownership, complicating repatriation efforts (Nanaimo Museum, 2007).

### Repatriation of Artifacts Outside of Canada

While the repatriation of First Nations artifacts in Canada are at least subject to discussion, dealing with artifacts that are no longer on Canadian soil is much more complicated. As Canadian Aboriginal artifacts are highly prized by foreign collectors, many pieces have been taken out of the country and sold or placed into museum collections around the world. For example, it is estimated that over 16,500 First Nations artifacts are currently housed in British museums alone (Stewart-Robertson, 2006). British museums have no legal obligation to repatriate cultural items to First Nations communities in Canada or elsewhere. Similarly, while

the United States has official legislation such as the Native American Graves Protection and Repatriation Act (NAGPRA) – a law designed to address long-standing claims by federally-recognized tribes for the return of Native American cultural items – it only applies to the mandatory repatriation of Native American artifacts within the United States. In other words, American museums in possession of First Nations artifacts from Canada and elsewhere are not obligated to return anything to their original owners (Devine, n.d.).

Although Canada and its provinces cannot apply their ethical frameworks and laws to other countries, mechanisms do exist to deal with the sale of Canadian cultural material to buyers outside of Canada. Implemented in 1977, the Canadian Cultural Property Export and Import Act was created to ensure that heritage material of national importance is preserved in Canadian public collections. The act also provides a platform for collaboration with other countries to prevent illegal trafficking of cultural property (Canadian Heritage, 2009). While this act has been helpful in returning First Nations artifacts, the complexity of navigating different sets of national repatriation laws and conflicting museum policies makes efforts challenging. In some cases, only voluntary repatriation by museums overseas can overcome the many barriers.

One such success story relates to a 135-year old Haisla totem pole retained in a Swedish museum since 1929. A 15-year battle to have it returned finally resulted in a mutually acceptable agreement between the Haisla and the museum. In 2006, Sweden voluntarily sent the totem pole back to British Columbia where it originated. In return, the Haisla sent some of their carvers to Sweden to carve a replica (CBC News Online, 2006). This novel approach illustrates how First Nations groups can work with museums collaboratively – even those outside of Canada.

### Terminology Around Legitimate Ownership

Even current language use by curators and researchers has the potential to cloud the complex issues of accession and ownership. For example, a Haida artifact known as the Raven Totem Pole – created in the Queen Charlotte Islands between the 1870s and 1880s – is currently being exhibited in a traveling repatriation tour in Western Canada. This totem pole stood in front of a family house until it was moved to a Jasper, Alberta railway station in 1954. Due to weathering and structural damage resulting from years of exposure the pole was removed in 2009. The Haida Nation, in partnership with Parks Canada, will construct a new totem pole to put in its place. Interestingly, however, the language describing the totem pole's provenance is not as precise as it could be. News releases for this event state that the totem poles were "acquired" by railway companies to display at their stations. This ambiguous term is especially intriguing in today's climate of cultural sensitivity and political correctness. Were the totem poles gifted, bought by the railway, or simply taken without express permission? This example illustrates the importance of clear and precise language when issues of ownership and acquisitions are concerned (Parks Canada, n.d.). Ambiguous terminology can call the legitimacy of acquisitions into question and stir up repatriation claims that may or may not be justifiable. This can further strain the relationships between First Nations groups and museums.

### Museums and the Handling of First Nations Artifacts

The preservation and study of material culture are important for the survival of First Nations cultural identity, allowing younger generations to appreciate and respect their ancestry (Hendry, 2005). Unfortunately, many First Nations groups feel that museum collecting and display practices alienate Aboriginal people from their heritage (Gadacz, 2010). These concerns are now addressed to some degree by the new ways institutions display First Nations collections. For example, some museums now include the proper Indigenous language names

for tribes mentioned in museum displays. As well, display signage is included in First Nations languages as well as in English or French. And, to enhance the presentation of historically important artifacts, contemporary First Nations voices are used (Hendry, 2005). First Nations groups are even encouraged to participate in the creation of displays to enhance the meaning and interpretation of the exhibits. The Syncrude Gallery of Aboriginal Culture at the Royal Alberta Museum is a good illustration of this type of collaborative work.

The issue of how objects are displayed can be a source of considerable discord between First Nations groups and museums. Some First Nations people believe that objects considered to be alive will die when locked up in glass cases. Consequently, museum displays often are frowned upon altogether (Hendry, 2005). In response, some First Nations groups have opened their own museums, allowing control over displays, storage, descriptions and interpretation. Objects considered to be alive and crucial for maintaining relationships with the spiritual world are not kept in cases. While this makes the museum displays more interactive and hands-on, some curators and museum visitors can be disturbed by the absence of normal museum protocols and display standards. Exhibits of this type can jeopardize future lending or repatriation from other institutions if museum professionals believe that artifacts are being mishandled, improperly stored or potentially damaged.

### Museums and Repatriation Policies

Each museum handles requests for repatriation differently. For example, both the Royal BC Museum and the Canadian Museum of Civilization negotiate repatriation claims through government treaty negotiators (provincial and federal, respectively.) The Royal BC Museum is willing to either work within the formal treaty negotiation process or outside of treaty negotiations, depending on whether the First Nations community wants to include cultural artifacts as part of their agreements or address the return of museum collections separately (Nanaimo Museum, 2007).

Some museums have clear repatriation policies noting that in cases where artifacts appear to have been acquired by questionable means, the museum must relinquish title and repatriate. The Royal Ontario Museum (ROM) in Toronto acknowledges in its repatriation policy, that some objects may have been acquired in circumstances that render their title invalid (Royal Ontario Museum, 2007). In those cases, the ROM will return the artifacts in question. The Museum of Anthropology (MOA) at the University of British Columbia offers flexibility in its repatriation options including “special access to holdings, loans, exhibits, stewardship arrangements, sharing authority and responsibility for care and interpretation, replication or new creation of objects, and respectful storage and/or display of collections in accordance with the advice of the originating peoples” (University of British Columbia, 2010). The MOA also acknowledges that if objects in its collection were obtained illegally, they “should be returned” (CBC News Online, 2006). Unfortunately, not all museums or institutions have a formal written policy around repatriation, although most museums will consider repatriation on a case-by-case basis.

Of course, museums can encounter issues even when repatriation policies are in place. The Anthropology Museum at the University of Winnipeg had a number of ceremonial objects associated with an Ojibwa ceremonial group called the Midewiwin Society, stored on their premises for safekeeping by members of the Pauingassi First Nation. In 2001, an investigation was launched when 89 artifacts were discovered to be lost from the museum’s ethnological collection, many of which were from the Pauingassi collection. Due to inadequate inventory controls, poor staff training, failure to follow their own museum practices manual, and poorly documented transactions and deaccessioning, these items had been “repatriated” to an American Ojibwa cultural organization in the United States without the knowledge or consent of



the museum's administrators or the Pauingassi community (Devine, n.d.). Although a few items were given back to the Pauingassi, many pieces have yet to be returned.

Repatriation can be a sensitive subject for museums. Once it is known that one cultural group is requesting items to be returned, the effect can snowball as other communities or individuals come forward to make claims. Since museums are designed to support public interest, some keep their repatriation policies very narrow, while others will only support short or long-term loans rather than full repatriation. As with the example above, there is also a fear of repatriating items to the wrong community, especially when there is a lack of written proof or verifiable oral statements of ownership. The legal and financial implications can be overwhelming (Bell & Napoleon, 2008).

Some museums may also be reluctant to entertain repatriation requests involving artifacts donated by private individuals. Museum professionals are well aware that prospective donors will be hesitant to gift items that might be subject to future repatriation claims. A number of museums have policies in place to make potential donors aware of this possibility. Most expressly prevent repatriation if it is indicated as a condition on a sale or donation and in cases where the validity of ownership is not an issue. Unfortunately, this could also mean that more significant cultural items will be kept by private collectors. As well, it may encourage sales or donations outside of Canada. This is why it is important to give First Nations groups a more consultative role regarding the export of Aboriginal cultural property, and that legislation is revised to guarantee appropriate notification and support (Bell & Paterson, 2008). And, regardless of established policies or agreements with First Nations communities, ultimately the power to decide which items are returned still lies in the hands of the museum itself.

The decision to repatriate artifacts or not often hinges on practical issues such as the availability of proper storage and care facilities as well as the high monetary cost of the repatriation process. In some cases, repatriation simply is not a realistic approach due to lack of proper storage and exhibition facilities as well as trained staff and funding. In these instances a museum may keep the items in question, but act as a caretaker on behalf of the rightful owners (Gadacz, 2010).

Some museums have tried to retain First Nations advisors and consultants to promote more collaboration. This has had limited success as it is a narrow field of study making it difficult to find trained staff. Museums are also attempting to create stronger partnerships to develop 'joint custody' agreements for collections in order to be able to continue to exhibit and preserve important artifacts while having the support of First Nations communities (Ames, 2000). As mentioned above, several First Nations are now establishing their own facilities for the safekeeping and exhibition of repatriated objects (Gadacz, 2010).

### Virtual Museums and Digital Repatriation

One solution to the ongoing custody debate is digital or virtual repatriation. Digital repatriation is a process where museums make digital or virtual copies of First Nations artifacts and return them to the community or tribe so they can be used for language preservation and cultural education. This approach is also beneficial in cases when physical repatriation is not practical or possible. Additionally, it can be used to bring fragmented collections back together. Digital or virtual repatriation can open a whole new world of online learning to younger, computer-savvy generations and can include both tangible and intangible properties such as music, language, photographs, material culture, and so on. These virtual sites also can be limited to First Nations users in instances when the general public should not view culturally sensitive and sacred objects. While this middle-ground approach would not be acceptable or sufficient in all cases, it does have the potential to revitalize interest in First Nations culture and expand knowledge to a

wider audience. Furthermore, it can also lower some of the financial barriers to physical repatriation by reducing the number of requests First Nations communities need to make.

Drawbacks do exist, however, to digital or virtual repatriation. Copyright infringement, unrestricted access, and access to politically-sensitive information derived from GPS coordinates that might have an impact on land claims and treaty negotiations generate problems that are not easily managed. Handled carefully however, this approach to repatriation can be a valuable tool in the preservation and sharing of cultural knowledge.

### Additional Issues Around Repatriation

Of course, one of the biggest obstacles facing repatriation efforts is the cost. Many repatriation requests do not reach the litigation stage simply because the First Nations communities in question do not have the funds to go forward with lengthy and costly lawsuits. Requests to the federal and provincial governments for funding towards repatriation requests are often denied. While many museums are willing to provide lists of the items they have on-site, the lists are not always accurate or comprehensive. Often, many exploratory visits by First Nations personnel are required. This adds time and cost to the pursuit. Additionally, the information must be reconciled with community information before a request for repatriation can be initiated (Bell & Napoleon, 2008). And once the process starts, the amount of research required to substantiate ownership can be very costly.

Other factors can elevate the cost of repatriation too. Some items need to be purchased back from private owners or at auctions. Prices often rise to astronomical levels far out of reach of most individuals and communities. Even when museums and First Nations communities join together in attempts to repatriate artifacts collaboratively, the cost can hinder their progress.

Museums, First Nations groups and federal heritage officials are now trying to work together in order to purchase and repatriate significant Aboriginal artifacts from around the world.

In 2006 these groups consulted with each other in order to attempt to purchase the Dundas Collection, an assemblage of high-profile artifacts acquired in 1863 by a Scottish clergyman in British Columbia. The potential sale of this important collection at a New York auction house brought Department of Canadian Heritage officials, museum curators and Tsimshian tribal leaders together to pool funds and coordinate a bidding strategy in order to prevent the collection from being split up. Sensitive political and cultural baggage was associated with the collection. The items were acquired when a Tsimshian grand chief converted to Christianity and was required to surrender all spiritual objects deemed to be "pagan" (Times Colonist (Victoria), 2006). Unfortunately, there was a lack of government interest in the collection and the participating museums only had a limited budget of \$200,000 between them. Most of the items were bid up beyond the museums' budgets and were not purchased. Private buyers bought the largest part of the collection for over \$5 million. Although the buyers allowed the pieces to be displayed in a traveling exhibit, the sale at auction divided both the collection and those who wanted to salvage it (Ramsay, 2007).

While many First Nations groups still want artifacts returned directly to them, allowing museums in Canada to repatriate artifacts from around the world and exhibit them on their behalf is becoming an accepted alternative. For some First Nations communities and people, simply having these items back on Canadian soil is sufficient. This shift of attitude reflects the increased willingness of museums and First Nations communities to communicate more openly and to work together for common repatriation goals.



## Conclusions

Clearly, while some progress has been made with First Nations groups and museums working together toward a stronger partnership, there is much more work to be done. Relations between these groups still need to be restructured in a way that respects First Nations culture, beliefs and history while at the same time allowing museums to maintain their integrity and professionalism as centers of education, research and preservation. The goal of repatriation is not solely about retrieving objects, but to ensure that artifacts considered the patrimony of First Nations groups or individuals are handled and displayed in a respectful manner (Bell & Napoleon, 2008). Better funding for First Nations-owned museums would help Aboriginal communities to tell their stories in their own words and in a way that is meaningful to them, while also ensuring that appropriate conservation and preservation methods are available for artifacts. Stronger legislation at the provincial and federal levels and clearer guidelines around repatriation policies would also facilitate this process. Finally, ongoing communication and open dialogue between museums and First Nations groups will go far in continuing to identify common ground to ensure transparency and understanding around repatriation requests and conflicts.

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