

**UNDERSTANDING AND RESOLVING CULTURAL HERITAGE REPATRIATION  
DISPUTES BETWEEN INDIGENOUS PEOPLES AND MUSEUMS**

by

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## ABSTRACT

Disputes between Indigenous peoples and Western museums over repatriation of cultural heritage involve numerous complex issues -- legal, ethical, historical, cultural, spiritual, political and economic, among others – that necessitate a particularly thoughtful approach to resolving such disputes. Resolution of such disputes by negotiation or other alternative dispute resolution (“ADR”) processes should not involve simply finding quick, theoretically “win-win” solutions such as replicas or loans. Because these disputes often involve complex issues such as traumatic colonial injustices and profound differences in cultural values and dispute resolution paradigms, the dispute resolution process must involve a period of exploration and acknowledgement of such issues and differences by the parties, which I term “Relationship Building”, as a necessary precursor to any stage of problem-solving. By analysing the negotiations between various Western museums and the Kwakwaka’wakw and Haisla First Nations of British Columbia, Canada over the repatriation of cultural objects removed from their traditional territories by colonial forces in the early 20<sup>th</sup> century, this thesis seeks to demonstrate how engaging in a stage of Relationship Building early in the negotiation process is key to ensuring the parties understand their dispute holistically and experience a constructive, not destructive, process and outcome.

## **PREFACE**

This thesis is an original intellectual product of the author, Stacey Jessiman. Fieldwork reported herein was carried out by the author and was covered by UBC Behavioural Research Ethics Board Certificate number H11-03368.

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## TERMINOLOGY

In my thesis, I use the term “Indigenous peoples” when referring generally to the peoples indigenous to the territories of what is now called Canada, who self-identify as First Nations, Inuit and Métis, and are recognized by the Constitution of Canada as “Aboriginal”. Admittedly, however, I have not been completely consistent and at times I also use the terms Aboriginal and Native. I also sometimes use the term First Nations when referring to Indigenous peoples in Canada who do not self-identify as Métis and Inuit. I use the term “Indian” only when referring to the *Indian Act*, or the Indian Residential School (IRS) system. Christopher Columbus coined that term when he first referred to the peoples inhabiting the continent now referred to as North America as “Indios”, thinking he had landed in India. My choice of terminology recognizes how word choice can help decolonize thinking.

I chose to use the term ‘Indigenous peoples’ because it is the term used in the *United Nations Declaration on the Rights of Indigenous Peoples*. I use that term when referring to Indigenous peoples around the world, though I also incorporate terms used currently in specific territories, such as Native American and Maori. I capitalize “Indigenous” to signify the peoplehood of the nations to whom individuals belong, as I would for Canadian or American individuals. When I use the word indigenous as an adjective, it is not capitalized.

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Thank you to the professors at the UBC Faculty of Law and Anthropology Department, and the curators at the UBC Museum of Anthropology – Michelle LeBaron, Darlene Johnston, Michael Jackson, Bruce Miller, Nicola Levell, Jennifer Kramer and Bill McLennan -- who willingly shared their knowledge and advice on dispute resolution, First Nations and repatriation issues.

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## CHAPTER 1. INTRODUCTION

Disputes between Indigenous peoples<sup>1</sup> and Western museums<sup>2</sup> over repatriation<sup>3</sup> of cultural heritage<sup>4,5</sup> involve numerous complex issues -- legal, ethical, historical, cultural, spiritual, political and economic, among others – that necessitate a particularly thoughtful approach to resolving such disputes. To date, such repatriation disputes have been analysed by scholars from a variety of perspectives – indigenous studies, human rights law, trade law, intellectual property law, anthropology, archaeology and museum practice, among others<sup>6</sup>. In this thesis I seek to add to the contemporary indigenous cultural heritage repatriation debate by analysing these issues from the perspective of dispute resolution practice. Specifically, I examine how various complex issues that underlie such disputes affect the parties' behaviour in the dispute resolution process and their satisfaction with outcome, in order to determine improved methods of resolving such disputes.

My hypothesis is that resolution of such disputes by negotiation or other alternative dispute resolution (“ADR”) processes should not involve simply finding quick, theoretically “win-win”

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<sup>1</sup> Article 33(1) of the *United Nations Declaration on the Rights of Indigenous Peoples* endorses the concept of self-

<sup>2</sup> I use the term “Western museum” to mean a museum founded by non-Indigenous peoples in countries with a history of colonization by European forces, or in European countries that colonized indigenous peoples.

<sup>3</sup> “Repatriation” generally means the process by which objects or peoples are returned to a nation at its government’s request. Although the term does not inherently connote illicit removal, unlike the term “restitution”, it is frequently used in relationship to indigenous cultural heritage, including illicitly removed material. Its use offers the advantage of encompassing ethical reasons for return and of recognizing the sovereignty of the indigenous nations making such claims. For discussions of the two terms, see: Kathryn Whitby-Last, “Legal Impediments to the Repatriation of Cultural Objects to Indigenous Peoples”, in Paul Turnbull and Michael Pickering (eds), *The Long Way Home: The Meaning and Values of Repatriation* (New York: Berghahn Books, 2010) at 36-37.

<sup>4</sup> In this thesis, I use the term ‘indigenous cultural heritage’ to refer primarily to tangible, moveable forms of indigenous cultural expression, e.g., totem poles, masks, frontlets, rattles and other ceremonial regalia, etc., though the term can refer to many other manifestations of Indigenous peoples’ culture inherited from their forebears, including intangible forms such as songs, ceremonies, dances and languages, and immovable, tangible forms such as sacred and historic sites. See James Nafziger, Robert Paterson and Alison Renteln, *Cultural Law: International, Comparative, and Indigenous* (New York: Cambridge University Press, 2010) at 206. See also Catherine Bell and Heather McCuaig, “Protection and Repatriation of Ktunaxa/Kinbasket Cultural Resources: Perspectives of Community Members” in Catherine Bell and Val Napoleon (eds), *First Nations Cultural Heritage and Law: Case Studies, Voices and Perspectives* (Vancouver: UBC Press, 2008) at 313.

<sup>5</sup> As Kathryn Whitby-Last points out, defining ‘cultural heritage’ is never an objective act, and controlling the process of defining ‘cultural heritage’ has many legal, political and cultural implications: see her discussion in Turnbull and Pickering, *supra* note 3, at 35-36, and in works cited therein.

<sup>6</sup> Recent contributions to the debate include James Nafziger and Robert Paterson, *Handbook on the Law of Cultural Heritage and International Trade* (Cheltenham: Edward Elgar Publishing, 2014); Christopher Graber, Karolina Kuprecht & Jessica Lai, *International Trade in Indigenous Cultural Heritage: Legal and Policy Issues* (Cheltenham: Edward Elgar Publishing Limited, 2013); C. Timothy McKeown, *In the Smaller Scope of Conscience: The Struggle for National Repatriation Legislation, 1986–1990* (Tucson: University of Arizona Press, 2014); James Clifford, *Returns: Becoming Indigenous in the Twenty-First Century*, (Cambridge: Harvard University Press, 2013); and Cara Krompotich, *The Force of Family: Repatriation, Kinship, and Memory on Haida Gwaii* (Toronto, University of Toronto Press, 2014).

solutions such as replicas or loans. Because these disputes involve complex issues such as traumatic colonial injustices and profound differences in cultural values and dispute resolution paradigms, the dispute resolution process must involve a period of exploration and acknowledgement of such issues and differences by the parties, which I term “Relationship Building”, as a necessary precursor to any stage of problem-solving.<sup>7</sup>

By analysing the negotiations between various Western museums and the Kwakwaka’wakw and Haisla First Nations of British Columbia, Canada over the repatriation of cultural objects removed from their traditional territories by colonial forces in the early 20<sup>th</sup> century, this thesis seeks to demonstrate how engaging in a stage of Relationship Building early in the negotiation process is key to ensuring the parties understand their dispute holistically and experience a constructive, not destructive, process and outcome.

As negotiation has been the primary method to date of resolving repatriation disputes between Western museums and Indigenous peoples of Canada for reasons explained in Section 1.2 below, this thesis uses that method of dispute resolution as its basis of analysis. However, the recommendations it makes relating to process design could easily be applied within other alternative dispute resolution (ADR) processes.

### **1.1. Recent developments that make this thesis timely and relevant**

Disputes over repatriation of indigenous cultural heritage in Western museum collections have been the focus of increasing national and international media interest and public discussion. For example, in 2011 a social media storm erupted when the Glenbow Museum auctioned off 167 indigenous cultural and sacred objects after refusing calls for their return by First Nations across Canada.<sup>8</sup> In 2012, Vancouver Sun journalist Douglas Todd publicly questioned the ethicality of museums holding onto objects missionaries acquired from Indigenous peoples during conversion

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<sup>7</sup> Michelle LeBaron and Venashri Pillay, *Conflict Across Cultures* (Boston: Intercultural Press, 2006) at 188. LeBaron and Pillay state in *Conflict Across Cultures* (at page 6) that “relationship-building” is key to their concept of intercultural dispute resolution.

<sup>8</sup> Candice Ward, “Calgary artifact auction stirs First Nations furore”, *Metro news*, September 29, 2011, online: <http://metronews.ca/news/calgary/27285/calgary-artifact-auction-stirs-first-nations-furore/>, accessed June 26, 2014.

efforts and then sold for profit.<sup>9</sup> This past year, The New York Times reported on the Parisian Musee Quai Branly's refusal to repatriate illicitly acquired Zuni sacred war gods on the basis that French national collections are inalienable property of the state.<sup>10</sup>

Such public discussions of repatriation disputes involving indigenous cultural heritage are occurring against an international backdrop of increasing demands by nation states to Western museums for return of illicitly acquired antiquities.<sup>11</sup> In recent years, United States museums have returned more than 100 statues, bronzes, vases, mosaics and other works, including a 2,000 year-old statue of Aphrodite by the Getty Museum to Italy and two 10<sup>th</sup> century sandstone Khmer statues by the Metropolitan Museum of Art to Cambodia.<sup>12</sup> In a 2013 article entitled "The Great Giveback", New York Times reporter Hugh Eakin voiced his opinion on the driving forces behind the returns: "Countries like Italy and Greece have used the news media to embarrass museums with alarming stories of rogue curators and nefarious dealers; they have withheld exhibition loans from museums that rebuff them; and they have resorted to aggressive legal action, opening criminal investigations of museum staff and enlisting the help of American federal prosecutors to obtain museum records and seize disputed works."<sup>13</sup>

In the past decade and a half, Western museums and auction houses also have been under growing pressure to conduct provenance research and return art acquired illicitly by the Nazis. In two significant documents, the 1998 Washington Conference Principles on Nazi-Confiscated Art and the 2009 Terezin Declaration, 46 countries committed to facilitating the provenance research and restitution of works taken by the Nazis, including through sales under duress. In February

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<sup>9</sup> Douglas Todd, "Profits without honour: returning aboriginal artifacts", *The Vancouver Sun*, June 6, 2012, online: <http://blogs.vancouversun.com/2012/06/06/profits-without-honour-returning-aboriginal-artifacts/>, accessed June 28, 2014.

<sup>10</sup> Rachel Donadio, "Zuni ask Europe to return sacred art", *The New York Times*, April 8, 2014, online: <http://www.nytimes.com/2014/04/09/arts/design/zuni-petition-european-museums-to-return-sacred-objects.html>, accessed June 27, 2014. Note that this is the same argument the Museum of Rouen used to refuse repatriation of Maori tattooed heads until President Sarkozy passed legislation to facilitate their return: see, e.g., Robert Paterson, "Heading Home: French Law Enables the Return of Maori Heads to New Zealand", (2010) 17 *International Journal of Cultural Property* 643 at 646.

<sup>11</sup> Robert Paterson, "New Principles for Cooperation in the Mutual Protection and Transfer of Cultural Material", Proceedings of the Annual Meeting (American Society of International Law), Vol. 100 (March 29-April 1, 2006) at 327.

<sup>12</sup> Hugh Eakin, "The Great Giveback", *The New York Times*, January 26, 2013, online: <http://www.nytimes.com/2013/01/27/sunday-review/the-great-giveback.html?pagewanted=all>, accessed June 27, 2014; Rachel Donadio, "Visions of Home: repatriated works back in their countries of origin," *The New York Times*, April 17, 2014, online: [http://www.nytimes.com/2014/04/20/arts/design/repatriated-works-back-in-their-countries-of-origin.html?\\_r=0](http://www.nytimes.com/2014/04/20/arts/design/repatriated-works-back-in-their-countries-of-origin.html?_r=0), accessed June 27, 2014.

<sup>13</sup> *Ibid.*

2014, six Canadian museums committed to examine Nazi-era provenance gaps of paintings in their collections.<sup>14</sup>

Recently, prominent members of the international art trade community have begun to question why similar provenance research is not being conducted on disputed indigenous objects. Following failed legal efforts in April 2013 to block the sale by Paris auction house Neret-Minet of over 70 Hopi katsinam (sacred objects), then Executive Director and General Counsel of the Art Loss Register, Christopher Marinello, said “regarding Nazi looted assets, there have been conventions signed by over 45 countries. But that has not been done for the Native American artifacts. But to me, the cases should not be handled in a different way.”<sup>15</sup> His point is particularly relevant in view of the endorsement by 148 nations, including France, of the 2007 *United Nations Declaration of the Rights of Indigenous Peoples* (“UNDRIP”), which calls for repatriation generally of “cultural, intellectual, religious and spiritual property taken without free, prior and informed consent” (art. 11(2)) and specifically of “ceremonial objects and human remains” (art. 12(2)). Indeed, before the auction, the Heard Museum in Phoenix wrote a letter to Neret-Minet saying “although [the *Native American Graves Protection and Repatriation Act*] does not normally have jurisdiction outside of the United States, since France has agreed to abide by the provisions of the UNDRIP, we feel that the nation should take steps to return these ceremonial objects as defined in Article 12 of the declaration.”<sup>16</sup>

When a third auction of Hopi katsinam was announced in June 2014, this time by Paris auction house Eve, the US-based Holocaust Art Restitution Project (HARP) initiated legal proceedings in France requesting a suspension of the sale by the administrative board that oversees auction house sales, the Conseil des Ventes (CV), and investigation of the provenance of the katsinam. In deciding to allow the sale to proceed, the CV refused to adhere to its own Code of Ethics for Auction Houses, which requires halting a sale involving objects with suspicious provenance, even though HARP presented evidence that title to certain katsinam could not have

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<sup>14</sup> James Adams, “The Hunt is now on for Nazi-Looted Art in Canada”, *The Globe and Mail*, February 9, 2014.

<sup>15</sup> Christopher Marinello, as quoted in Dominique Godreche, “Hopi Katsinam and Nazi Art Theft: An Expert Discusses Principles of Repatriation”, *Indian Country Today Media Network*, April 17, 2013, online: <http://indiancountrytodaymedianetwork.com/2013/04/17/hopi-katsinam-and-nazi-art-theft-expert-discusses-principles-repatriation-148789>, accessed July 23, 2014.

<sup>16</sup> ICTNM Staff, “Hopi Seek to Prevent Paris Auction of Katsinam”, *Indian Country Today Media Network*, April 4, 2013, online: <http://indiancountrytodaymedianetwork.com/2013/04/04/hopi-seek-prevent-paris-auction-katsinam-148602>, accessed August 9, 2014.

vested with the current possessor.<sup>17</sup> The CV also held that the Hopi and other Native American tribes have no legal existence under French law and thus no standing to pursue legal claims in France, despite the fact the Hopi are a federally recognized tribe in the United States.<sup>18</sup> In response, after the sale, the US Embassy in Paris invited American federal judge Diane J. Humetewa, a member of the Hopi Nation and expert on Native American legal issues, to come to Paris to explain the cultural and spiritual significance of the katsinam to French government officials, art dealers, academics and lawyers, who “expressed their support for stronger protections” against future sales.<sup>19</sup>

Canada, like France, recently has been called on to take further concrete steps to show respect for UNDRIP, which Canada endorsed in 2010. In October 2013, United Nations Special Rapporteur on the rights of Indigenous peoples, James Anaya, spent 8 days travelling across Canada and subsequently issued a report on the human rights situation of Indigenous peoples in Canada, in which he highlighted an “ongoing crisis” and encouraged Canada to recognize that UNDRIP “provides a common framework within which the issues faced by Indigenous peoples in the country can be addressed.” Following Professor Anaya’s recommendation, the Canadian federal government extended the national Truth and Reconciliation Commission (TRC)’s mandate of public truth-telling about the horrific abuses Aboriginal children experienced for over a century at the hands of government and church officials in the Indian Residential School (IRS) system. Reports issued by Professor Anaya to Australia, New Zealand and the United States, all of which also endorsed UNDRIP in 2010, similarly called on those countries’ governments to continue efforts to redress colonial harms.

In such an environment, it seems likely that pressures similar to those that have caused museums to research and return Nazi looted art in their collections – i.e., political pressures combined with a recognition by the museum community of the need to return illicitly acquired objects as part of a process of reparation for systematic human rights abuses -- will eventually cause museums to research the provenance of indigenous cultural and sacred objects in museum

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<sup>17</sup> Pierre Ciric, “Opinion, Hopi and Navajo Masks Auction Precedent in Paris is dangerous”, *artnetnews*, July 25, 2014, online: <http://news.artnet.com/art-world/opinion-hopi-and-navajo-masks-auction-precedent-in-france-is-dangerous-66975>, accessed August 9, 2014.

<sup>18</sup> *Ibid.*

<sup>19</sup> Tom Mashberg, “Despite Legal Challenges, Sale of Hopi Religious Artifacts Continues in France”, *The New York Times*, June 29, 2014, online: [http://www.nytimes.com/2014/06/30/arts/design/sale-of-hopi-religious-items-continues-despite-us-embassys-efforts.html?\\_r=0](http://www.nytimes.com/2014/06/30/arts/design/sale-of-hopi-religious-items-continues-despite-us-embassys-efforts.html?_r=0), accessed August 9, 2014.

collections and repatriate objects removed under questionable circumstances. Certainly determining ownership of Indigenous cultural objects is challenging in view of the complex ethical questions surrounding the acquisition of objects by, for example, missionaries and “salvage” anthropologists, and in view of the fact museums frequently accepted large collections of Indigenous objects with little or no provenance attached to them. Meanwhile repatriating those objects is complicated by the fact that ownership of objects may be communal or individual, depending on the type of object and Indigenous nation, and by the fact museums may have to contend with competing claims for objects. In comparison, researching the provenance of Nazi-looted art, to which the title claimed is usually individual in nature and often documented somewhere in writing, is facilitated by the ongoing development of online databases of missing works. Still, there are ways of determining provenance of Indigenous cultural objects, including consultation with potential source communities, which make such an exercise possible and worthwhile.

This thesis responds to the developments described above by seeking to provide a means of better understanding and resolving cultural heritage repatriation disputes between Indigenous peoples and museums, as and when they may arise. In doing so, it is responding to the work of the Committee on Cultural Heritage Law of the International Law Association (ILA), which at its Toronto Conference in 2006 adopted “Principles for Cooperation in the Mutual Protection and Transfer of Cultural Material” (ILA Principles) advising recipients of repatriation requests to “seek to understand the concerns and perceptions of the requesting party or parties on whose behalf a claim is being made”. The ILA Principles also counsel that, “gaining such an understanding will likely facilitate a successful resolution of any claim. Otherwise the spiritual, ceremonial or other uniquely cultural aspects of requested cultural material may not be adequately understood or appreciated, particularly internationally.” (Art.2, Notes)

In order to determine and understand the various issues that can underlie repatriation disputes and drive parties’ behaviour in them, I have done case studies of negotiations between the Kwakwaka’wakw and Haisla First Nations and various museums in North America and Europe over repatriation of certain indigenous cultural objects. Specifically, I have focused on: (1) the repatriation of the G’psglox totem pole from the Swedish Museum of Ethnography to the Haisla First Nation from Kitimaat Village, British Columbia in 2006, and (2) the ongoing repatriations, beginning in 1979, of potlatch regalia from various Western museums to Kwakwaka’wakw First

Nation cultural centres in Cape Mudge and Alert Bay, British Columbia. To the greatest extent possible, I have tried to ensure that the disputants involved describe their experiences resolving their disputes in their own words.

## **1.2. Why I chose to analyse disputes involving Indigenous peoples of Canada**

Disputes involving Indigenous peoples of Canada and Western museums involve a particularly complicated set of legal, ethical, historical, political, cultural and contemporary social issues. Generally set against a backdrop of colonial laws and practices aimed at assimilating or eradicating indigenous cultures and peoples, and consequent mass collecting by museum representatives eager to “salvage” remnants of “dying” cultures, repatriation disputes between Indigenous peoples of Canada and Western museums are fraught with complex and sensitive issues. Issues such as proof of ownership by the indigenous party and acquisition of valid title by the museum can lead to years of legal wrangling. Disagreement over the circumstances of removal of cultural material, and incomplete or missing provenance in the museum’s records, can be complicating factors. As Robert Paterson explains, “the scope of such acquisitions was vast, in geographical, ethnic and numerical scope. Many items were traded or gifted, while others were stolen, obtained by force, misunderstanding or removed as part of the actions of early missionaries and others.”<sup>20</sup>

Meanwhile, the issue of allowing the indigenous party access to the cultural material in the museum’s collection while the dispute is ongoing may be hotly contested. For example, a museum may be concerned about preserving a fragile cultural object for future generations’ enjoyment, while the indigenous party may question how keeping the object in storage fulfills the museum’s alleged educational motives.<sup>21</sup> At the same time, the museum may voice concerns about its ability to repatriate cultural material due to a legislative prohibition on deaccessioning or the need to obtain approval for repatriation from the museum’s trustees, who may see repatriation as conflicting with their fiduciary duty of care.<sup>22</sup> Trauma from colonial harms that form the backdrop

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<sup>20</sup> Robert Paterson, “Resolving Material Cultural Disputes: Human Rights, Property Rights and Crimes Against Humanity”, (2006) 14 *Willamette J. Int’l L. & Dis. Res.* 155 at 161.

<sup>21</sup> This was the situation with the ‘Namgis Transformation Mask, repatriated by the British Museum to the Kwakwaka’wakw peoples in 2006, discussed *infra*.

<sup>22</sup> See Nafziger, Paterson and Renteln, *supra* note 4, at 713-715; Robert Paterson, “The Art of the Sale: Museums and Deaccessioning”, in Valentina Vadi and Hildegaard Schneider, *Art, Cultural Heritage and the Market: Ethical and Legal Issues* (New York: Springer Heidelberg, 2014) at 278; Robert Paterson, “Totems and Teapots”, (2007) 40(1) *UBC*



to such disputes, such as forced relocation from traditional territories, laws prohibiting key cultural ceremonies, and physical, psychological and sexual abuses experienced in residential and day schools that were established to “kill the Indian in the child”, is easily aggravated in such a dispute resolution dynamic.

Although Canada officially acknowledged such injustices when it endorsed UNDRIP and when Prime Minister Harper made his 2008 public apology for the IRS system, Indigenous peoples of Canada continue to struggle to find a feasible means for repatriating their lost cultural heritage. There are still few binding legal instruments at the national or international level detailing how repatriations of cultural heritage removed illicitly from Indigenous peoples of Canada should occur. Indeed, when the Canadian government endorsed UNDRIP in 2010, it emphasized that it views the document as non-binding and not part of customary international law.<sup>23</sup> In 1978, Canada ratified the 1970 UNESCO *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* (the “UNESCO Convention”), which requires a member state to facilitate restitution of cultural property located within its territory that was acquired illicitly after that member state’s accession to the convention. While that convention prompted greater international sensitivity to indigenous repatriation claims<sup>24</sup>, the fact that the Convention operates only prospectively<sup>25</sup>, and that claims under it must be made by Member States (and not by individual or groups of nationals of those states), means that it does not greatly assist Indigenous peoples that lost cultural heritage during the height of colonial collecting activity in the late 19<sup>th</sup> and early 20<sup>th</sup> centuries. In addition, Canada has not ratified the 1995 UNIDROIT *Convention on Stolen or Illegally Exported Cultural Objects*, which in any event also

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*Law Rev.* 421 at 431-434; Patty Gerstenblith, “Acquisition and Deacquisition of Museum Collections and the Fiduciary Obligations of Museums to the Public” (2004) 11 *Cardozo J. Of Int’l & Comp. Law* 409.

<sup>23</sup> “Canada’s Statement of Support on the United Nations Declaration on the Rights of Indigenous Peoples”, online: <http://www.aadnc-aandc.gc.ca/eng/1309374239861/1309374546142>, accessed July 14, 2013.

<sup>24</sup> Nafziger, Paterson and Renteln, *supra* note 4 at 425.

<sup>25</sup> Patrick O’Keefe and Lyndel Prott have argued that Article 7 of the Convention, which states that the Convention does not protect objects exported illegally from a Member State prior to its entry into force in that Member State, applies only to the acquisition or import of such objects by museums and similar institutions, and should not be applied more broadly. Certainly, Article 3 of the Convention gives the impression that the Convention is meant to have wider application; it says simply and clearly that “The import, export or transfer of ownership of cultural property effected contrary to the provisions adopted under this Convention by the States Parties thereto, shall be illicit”. However, Article 15 seems to indicate otherwise: “Nothing in this Convention shall prevent State Parties thereto from concluding special agreements among themselves or from continuing to implement agreements already concluded regarding the restitution of cultural property removed, whatever the reason, from its territory of origin, before the entry into force of this Convention for the States concerned.” See Robert Paterson, “Canada”, in Nafziger and Paterson, *supra* note 6.

does not operate retroactively.<sup>26</sup> Nafziger, Paterson and Renteln argue that legislation “may thus provide the surest paths for the long journeys that remain and that objects may have to take as they find their way back to their indigenous resting places.”<sup>27</sup>

While in the United States, federally-funded museums and institutions must comply with the repatriation provisions of the 1990 *Native American Graves Protection and Repatriation Act* (NAGPRA),<sup>28</sup> there is not yet any federal repatriation legislation in Canada. The province of Alberta has enacted repatriation legislation, the *First Nations Sacred Ceremonial Objects Repatriation Act*<sup>29</sup>, but as its name implies, the act applies only to sacred ceremonial objects in provincial government collections. In certain respects, Canada’s *Cultural Property Export and Import Act*<sup>30</sup> (CPEI) provides Indigenous peoples of Canada with a means of achieving repatriation of lost cultural heritage. For instance, applications can be made under that act to delay or prevent export to foreign markets of cultural objects made by or relating to Aboriginal peoples of Canada with a fair market value of over five hundred dollars<sup>31</sup>, or objects of any value of “archaeological, prehistorical, historical, artistic or scientific interest”<sup>32</sup>, as long as the object in question is more than 50 years old and made by someone no longer living.<sup>33</sup> The CPEI also provides eligible Canadian public institutions with grants and loans to purchase objects for which export permits have been denied, thus effectively providing funding for repatriation of such objects to indigenous cultural centres, for example, with the caveat that such centres must have Category ‘A’ or ‘B’ institution designation under the CPEI.<sup>34</sup> A successful case involves the CPEI Board denying an export permit in 1995 to an art dealer for a Nuxulc Nation Echo Mask, and the Nuxulc Nation subsequently purchasing it, with 70% of the \$200,000 purchase price provided by the CPEI grants fund.<sup>35</sup> In a more recent case, however, the Museum of Northern British Columbia was unable to

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<sup>26</sup> For analyses of UNIDROIT’s applicability to indigenous cultural heritage repatriation claims, see Catherine Bell and Robert Paterson, “International Movement of First Nations Cultural Heritage in Canadian Law”, in Catherine Bell and Robert Paterson (eds) *Protection of First Nations Cultural Heritage: Laws, Policy and Reform*, (Vancouver: UBC Press, 2009) at 92; and Robert Paterson, “The 1970 UNESCO Convention: the Canadian Experience”, UNESCO Mexican Seminar on the Globalization of the Protection of Cultural Heritage: The 1970 Convention: New Challenges, at 242, online: <http://biblio.juridicas.unam.mx/libros/7/3457/15.pdf>, accessed August 20, 2014.

<sup>27</sup> *Supra* note 4, at 425.

<sup>28</sup> Pub. L. 101-601, 25 U.S.C. 3001 et seq., 104 Stat. 3048.

<sup>29</sup> R.S.A. 2000, c.F-17, S.21(1).

<sup>30</sup> R.S.C. 1985, c. C-51.

<sup>31</sup> *Ibid*, Art. 4(2)(b).

<sup>32</sup> *Ibid*, Art. 4(2)(a).

<sup>33</sup> Art 4(3); for a discussion of the CPEI as it relates to First Nations cultural heritage, see Bell and Paterson, *supra* note 26, at 79-82.

<sup>34</sup> Bell and Paterson, *ibid*, at 81.

<sup>35</sup> *Ibid*, at 79-81.

secure a grant in time to prevent the export of a 4000 year-old Tsimshian stone club valued at \$250,000.<sup>36</sup> Similarly, the U'Mista Cultural Centre in Alert Bay was unable to procure a grant in time to prevent the export of the Chief Charles Nowell bead and button blanket to the United States (although in that case the art gallery in Ontario that purchased it at the Sothebys auction in New York agreed to sell the blanket to U'Mista for a \$5,500 profit).<sup>37</sup> Thus, it seems that Indigenous peoples of Canada cannot rely on using the CPEI grants system to repatriate lost cultural objects. Also, the CPEI offers no protection to the vast amounts of illicitly acquired cultural objects of Indigenous peoples of Canada that are already located in museums and private collections outside of Canada's borders. As Robert Paterson notes in his study of the CPEI in *Handbook on the Law of Cultural Heritage and International Trade*, "much historical First Nations or Inuit (indigenous) cultural material has either been lost or has been outside Canada since before Confederation."<sup>38</sup>

Another seemingly promising means for Indigenous peoples of Canada for achieving repatriation from museums within Canada's borders is through federal/provincial land claims settlement agreements. Examples include the 1999 Nisga'a Final Agreement, by which approximately 300 objects were repatriated by the Royal British Columbia Museum and the Canadian Museum of History, and the 2005 Labrador Inuit Land Claims Agreement, by which artifacts in the Canadian Museum of History collections were transferred to the Nunatsiavut government.<sup>39</sup> It is notable, however, that after many decades of land claims negotiations, there are still relatively few settlement agreements that have reached the final stage of approval, i.e., final agreement followed by federal implementing legislation. Arguably, this calls into question the potential of the land claims settlement process for facilitating with any sort of rapidity and scope indigenous cultural heritage repatriation in Canada.

In view of this dearth of binding repatriation mechanisms in Canada, Canadian museums are generally free to make decisions about repatriations on a case-by-case basis. In making those decisions, many museums in Canada follow institutional repatriation guidelines that they adopted following publication of the seminal 1992 Report of the 'Task Force on Museums and First

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<sup>36</sup> See Robert Paterson's description of the sale in his chapter "Canada", in Nafziger and Paterson, *supra* note 6, at 82.

<sup>37</sup> Bell and Paterson, *supra* note 26, at 81-82.

<sup>38</sup> Robert Paterson, in Nafziger and Paterson, *supra* note 6, at 80.

<sup>39</sup> Wendy Stuek, "For Nisga'a artifacts, a homecoming", *The Globe and Mail*, September 4, 2010, online: <http://www.theglobeandmail.com/news/british-columbia/for-nisgaa-artifacts-a-homecoming/article4389045/>, accessed August 23, 2014; Alison K Brown, *First Nations, Museums, Narrations: Stories of the 1929 Franklin Motor Expedition to the Canadian Prairies* (Vancouver: UBC Press, 2014) at 8.

Peoples’<sup>40</sup> (“Task Force Report”), which called on museums to decide disposition of objects of cultural patrimony on “moral and ethical grounds with involvement of First Nations as equal partners”(s.9), to repatriate illicitly acquired objects, and to consider any requests for transfer of title to any sacred and ceremonial objects or to objects having ongoing importance to indigenous communities. The findings in the Task Force Report were affirmed by the landmark 1996 Report of the government-sponsored Royal Commission on Aboriginal Peoples (RCAP), which recommended the adoption by museums of ethical guidelines relating to display of Aboriginal peoples’ cultural objects and repatriation of “objects that are sacred or integral to the history and continuity of particular nations and communities.”<sup>41</sup>

While many museums in Canada have been proactive about voluntarily repatriating human remains during the last decade, repatriations of cultural objects by Canadian museums have happened less frequently. In part that may be due to certain restrictive and subjective conditions on repatriation placed by some guidelines. For example, the Canadian Museum of History guidelines provide that repatriation requests for objects will only be considered if the object is “directly associated with burials” or “employed by traditional curers and/or definitively related to traditional and ongoing religious practice.”<sup>42</sup> Moreover, the museum will not repatriate objects to individuals unless they have an “undisputed historical relationship to the objects” and the objects were acquired illegally, or unless an organization designated by the relevant band council states in writing that will assume responsibility for it.<sup>43</sup> The website of the UBC Museum of Anthropology (MOA) explains some of the challenges it encounters when repatriation claims are filed, as well as the alternatives to physical repatriation that it considers:

In many cases, for example, there may be no clear evidence, either oral or written, on the pathway that led the object to become housed in the Museum. The Museum therefore may involve the community and/ or individuals in the process of responding to a claim. We will consider a variety of options to meet the spirit

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<sup>40</sup> “Turning the Page: Forging New Partnerships Between Museums and First Peoples” was a result of the controversy surrounding the ‘The Spirit Sings’ exhibition at Calgary’s Glenbow museum: for a discussion of the exhibition and surrounding controversy, see Ruth Phillips, *Museum Pieces: Towards the Indigenization of Canadian Museums* (Montreal & Kingston: McGill-Queen’s University Press, 2011) at 48-70. See also Shelley R Butler, “The Politics of Exhibiting Culture: Legacies and Possibilities”, (2000) 23(3) *Museum Anthropology* at 74-92.

<sup>41</sup> RCAP Vol. 3, 556, cited in Ruth Phillips, “Beyond Difficult Histories: First Nations, the Right to Culture and the Obligation of Redress” (forthcoming).

<sup>42</sup> CMCC 2001 Repatriation Policy, Art. 6.1(ii) and (iii), as cited by Catherine Bell, Heather Raven, Heather McCuaig and Andrea Sanborn in “Recovering from Colonization: Perspectives of Community Members on Protection and Repatriation of Kwakwaka’wakw Cultural Heritage” in Bell and Napoleon, *supra* note 4, at 48.

<sup>43</sup> *Ibid*, Art. 6.3(i) or (ii).

and intent of a request, 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.<sup>44</sup>

It should be noted that in recent years, however, the Museum of Vancouver has been active in facilitating repatriation. Since the appointment of UBC anthropology professor Bruce Miller as board member and chair of the museum's collections committee, the museum has repatriated a number of cultural objects including a 3000 year-old mortuary stone to the Sechelt Band, a Maori korowai (cloak) to New Zealand's Wairoa Museum, a Sasquatch mask to the Sts'ailes Band, and a large stone petroglyph to the Stswecem'c Xgat'tem First Nation in British Columbia's interior.<sup>45</sup>

When repatriation requests have been made to museums within Canada's borders and beyond, Indigenous peoples of Canada have generally resorted to litigation alternatives, primarily negotiation, to resolve those disputes. This is due to a number of factors including legal complexities such as limitation periods and proof of ownership, and the high cost of litigating disputes. As Paterson and Bell have recognized, negotiation makes particular sense for international repatriation claims, which occur "in the context of a complex international legal and policy environment."<sup>46</sup> For example, indigenous claimants may not have legal standing to pursue collective repatriation claims in foreign courts, as the Hopi experienced last year in France. Moreover, Paterson and Bell point out that arguments for repatriation based on customary international law, particularly human rights norms relating to cultural integrity and continuity, are more likely to succeed in a negotiation rather than litigation setting.<sup>47</sup>

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<sup>44</sup> UBC Museum of Anthropology, "Introduction to the UBC Museum of Anthropology Repatriation Guidelines", online: <http://moa.ubc.ca/research/collections/repatriation.php>, accessed August 20, 2014.

<sup>45</sup> See Basil Waugh, "UBC Anthropologists help return iconic rock art to B.C. First Nation", June 11, 2012, online: <http://aboriginal.ubc.ca/2012/06/11/ubc-anthropologists-help-return-iconic-rock-art-to-b-c-first-nation/> accessed August 20, 2014; Joan Seidl, "The Joy of Giving Back", *The Tyee*, June 12, 2012, online: <http://thetyee.ca/Life/2012/06/12/Petroglyph-Repatriation/> accessed August 20, 2014; Kate Follington, "When Museum Artifacts Go Home", *The Tyee*, July 8, 2011, online: <http://thetyee.ca/Life/2011/07/08/ArtifactsGoHome/> accessed July 26, 2014; The Canadian Press, "Museum of Vancouver returns Sasquatch mask to Sts'ailes People", *The Vancouver Sun*, May 15, 2014, online: <http://www.vancouversun.com/news/Mask+associated+with+sasquatch+lore+returned+First+Nation/9839263/story.html>, accessed July 26, 2014.

<sup>46</sup> Bell and Paterson, *supra* note 26, at 93.

<sup>47</sup> *Ibid*, at 95.

Often, however, repatriation negotiations, particularly those involving museums outside Canada's borders, can drag on for years or even decades. Even when parties agree to abandon wrangling over legal issues and focus on the non-legal aspects of the dispute, such as the significance of the repatriation to the indigenous party and the benefits to the museum of future collaborative cultural projects, they may find themselves confronted by further dispute resolution obstacles such as divergent cultural values relating to future preservation or use of the repatriated cultural material, concerns on the part of museums about setting dangerous precedent<sup>48</sup>, and scarce financial resources to support the negotiation and repatriation process.<sup>49</sup> The destructive effects on the parties of protracted and often contentious negotiations – psychological, financial, and/or reputational, among others – lead to the conclusion that there must be a better way to resolve these disputes. The question of appropriate process design in this particular dispute context must be approached thoughtfully, however. As Robert Paterson points out, indigenous cultural heritage disputes demand particularly innovative approaches to dispute resolution because of “the special feelings that [objects] invoke because of their symbolic, religious, historical and aesthetic qualities.”<sup>50</sup>

In Chapter 2 of my thesis, I analyse briefly certain challenges of using formal/institutional ADR processes involving a third party neutral to resolve indigenous cultural heritage disputes, including differences in dispute resolution paradigms and cultural values relating to decision-making power. Although ultimately I contend that use of carefully structured negotiations remains the best option for settlement of indigenous cultural heritage repatriation disputes, rather than engage in an in-depth critical analysis of formal ADR mechanisms, my thesis seeks instead to focus on analysing what has happened, and what ideally should happen, when Indigenous peoples and museums encounter one another across the proverbial negotiating table to discuss the return of object(s) in the museum's collection. It aims to provide insights on the kinds of issues and questions such parties may encounter in the future in repatriation negotiations, and on the underlying reasons for their existence.

I have chosen to focus on repatriation negotiations involving the Kwakwaka'wakw and Haisla First Nations for a number of reasons. First, they concern First Nations from British

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<sup>48</sup> *Ibid*, at 98.

<sup>49</sup> This was the case with the repatriation of the G'psgolox totem pole to the Haisla nation by the Swedish Museum of Ethnography, discussed *infra*.

<sup>50</sup> Paterson, *supra* note 20, at 165.

Columbia, my home province, which have had a collaborative relationship with MOA, where I spent a good deal of time during my graduate studies. During my graduate studies, MOA Pacific Northwest curator Bill McLennan collaborated with Sarah Holland and Juanita Johnston, Director and Collections Manager, respectively, at U'mista Cultural Center in Alert Bay to produce the photo exhibition "Speaking to Memory: Images and Voices from St Michael's Residential School". The relationship between MOA staff and these (and other) First Nations provided an important basis for analysing and comparing relationships between the various museums in my study and indigenous source communities.

In addition, these two repatriation case studies concern museums in numerous different countries with diverse and varying legislative and non-legal approaches to repatriation, and therefore involve a noteworthy range of cultural, legal, ethical and other issues. Furthermore, a study of ongoing efforts by the Kwakwaka'wakw First Nations to repatriate Potlatch Collection pieces from countries like France and England that have endorsed UNDRIP provides another fertile ground of analysis.

Most importantly, due to the kindness and generosity of the Indigenous peoples and Western museum professionals who were involved in those repatriations, I was provided with information and insights that proved invaluable to my process of analysing and understanding their negotiations. I am profoundly grateful and deeply indebted to those people for their generosity with their time and wisdom.

### **1.3. My hypothesis about understanding and resolving repatriation disputes**

My first line of inquiry in my thesis is one that I believe is essential to developing a proper understanding of indigenous cultural heritage repatriation disputes, and is a question that should be examined by parties at the beginning of any alternative dispute resolution process in this realm, namely: *what prompts and guides the behaviour of the disputants in the dispute?* My concern relates to improving how the parties understand what underlies their dispute, their own goals, and the behaviour of the other party. I believe that the parties' development of a holistic understanding of those elements, particularly in this dispute context, can positively affect how they experience the process and outcome of the repatriation negotiation process.

My hypothesis is that the often unspoken presence of complex, sensitive issues in disputes over repatriation of indigenous cultural heritage from Western museums, including deeply traumatic experiences relating to colonial assimilation laws and practices, and divergent cultural values with respect to preservation, use and display of the object(s) in question, demands particular attention be paid to process design for such disputes. I seek to demonstrate that resolving repatriation disputes using negotiation, or any other ADR process for that matter, must not involve simply finding “speedy”, theoretically “win-win” solutions, two trademarks of traditional Western-paradigm mediation. Rather, before the parties attempt to problem-solve, they should engage in an early period of exploration and recognition of the key issues that underlie their dispute and can affect its evolution<sup>51</sup>, including the impact of colonialism on the indigenous source community and on the museum’s historic and present approach to Indigenous peoples, differences in the parties’ values and traditions relating to the cultural/sacred object(s) and to their dispute resolution paradigms, any legislative impediments to repatriation, and financial constraints. Engaging in this early exploratory process, *i.e.*, “Relationship Building”, can help parties realize a constructive, not destructive, dispute resolution process and outcome.

#### **1.4. The structure of my analysis and my methodology**

My thesis is structured to provide, in the first instance, necessary historical and cultural context for my hypothesis that Relationship Building is particularly important within dispute resolution processes concerning indigenous cultural heritage repatriation. I then test that hypothesis through examination and analysis of specific repatriation negotiations.

Chapter 2 of my thesis, which focuses on dispute resolution theory, starts by discussing the challenges of using formal ADR processes in disputes with colonial contexts and, against this background, briefly analyses certain existing ADR processes, including the ICPRCP mediation and conciliation processes, the WIPO/ICOM mediation process and the Understanding-Based model of mediation created by Gary Friedman, Jack Himmelstein and Bob Mnookin. It then discusses how Relationship Building can help bridge important cross-cultural gaps between the parties, and proposes a conceptual framework for understanding how Relationship Building should be used

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<sup>51</sup> Professor Michelle LeBaron, Director of the UBC Program on Dispute Resolution, describes this reality in her work *Conflict Across Cultures*, *supra* note 7, at 188; see also Mark Turpin, “The Heroic Journey of Social Change”, online: [http://www.kessels-smit.com/files/The\\_Heroic\\_Journey\\_of\\_Social\\_Change.pdf](http://www.kessels-smit.com/files/The_Heroic_Journey_of_Social_Change.pdf) accessed September 3, 2013.



within a negotiation process.

Chapters 3 and 4 of my thesis examine the historical experiences, beliefs, cultural values, legal and financial realities, and goals that formed the background to the repatriation disputes and drove the behaviour of the disputants. To the greatest extent possible, I rely on primary sources and intentionally provide little analysis in this chapter; rather, I allow the disputants to tell their story themselves by quoting fairly extensively from the transcripts of interviews I conducted with them in person or by telephone. I do this because I believe, as David Neel wrote in *Our Chiefs and Elders*, that “allowing people to tell their own stories is the only way a greater understanding between cultures can occur.”<sup>52</sup> Each interviewee was given one or more opportunities to review and correct the transcript of the interview that I produced from the audio recordings of our interviews. I also quote from interviews with Haisla and Kwakwaka’wakw peoples who participated in the negotiations that appear in films, newspapers and academic sources.

I begin Chapter 3 by discussing the impact on the Haisla and Kwakwaka’wakw peoples of various church and government colonial assimilation laws and practices, such as the legislative ban on the potlatch ceremony and the residential school system. I also discuss contemporary initiatives in Canada aimed at reconciliation and healing around those issues. I then examine the reasons for the Haisla and Kwakwaka’wakw peoples’ repatriation quests that surfaced during my interviews.

My research for this chapter involved interviewing people who participated in the repatriation processes and research using primary sources, i.e., films or written works by Haisla and Kwakwaka’wakw peoples. I was able to carry out fieldwork in British Columbia in 2013 and 2014 and interview five people in person. They included Chief Don Assu, President of the Board of Directors of the Nuyumbalees Cultural Centre, in Cape Mudge; Daisy Sewid-Smith, daughter of hereditary Mamalilikulla Chief James Sewid who first sought repatriation of the Potlatch Collection, in Campbell River; Juanita Johnston, Assistant Director and Collections Manager at U’Mista Cultural Centre, in Alert Bay; and Gerald Amos, former Chief Councillor of the Haisla Nation, in Kitimaat Village. All were extremely generous with their time and insights. In addition, I watched two National Film Board of Canada documentary films by Métis filmmaker Gil Cardinal on the Haisla repatriation efforts: “Totem: the Return of the G’psglox Pole” (2003), and “Totem:

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<sup>52</sup> David Neel, *Our Chiefs and Elders: Words and Photographs of Native Leaders* (Vancouver: UBC Press, 1992) at 11.

Return and Renewal” (2007). I also watched a film directed and narrated by Gloria Cranmer Webster about her father Dan Cranmer’s potlatch and the subsequent trial, “Potlatch, A Strict Law Bids Us Dance” (1975), as well as a film about the repatriation of the Potlatch Collection to the U’Mista Cultural Centre, “Box of Treasures” (1983). Finally, I read many journal and newspaper articles that contained interviews with people from those Nations who participated in the repatriation negotiations or were affected by them.

Certain written materials in particular provided valuable material for my research, namely a study co-authored by Catherine Bell, Heather Raven, Heather McCuaig and former U’Mista Cultural Centre director Andrea (*Pudlas of the Ma’amtagila*) Sanborn entitled “Recovering from Colonization: Perspectives of Community Members on Protection and Repatriation of Kwakwaka’wakw Cultural Heritage”<sup>53</sup>; writings about the Potlatch Collection repatriations and their meaning to the Kwakwaka’wakw peoples by Gloria Cranmer Webster and Andrea Sanborn, both former directors of U’Mista Cultural Centre; and UBC professor of anthropology Jay Powell’s 483-page 2011 study *Stewards of the Land* concerning Haisla ownership and use of their traditional territory and cultural practices, which was prepared in conjunction with Haisla Nation members for submission to the Northern Gateway Joint Review Panel. That document includes *Haisla! We Are Our Land*, a book that she wrote with assistance of Haisla Nation members in 2005, which contains a written account of the Haisla *nuyem* (traditional law) by Haisla Elder Louise Barbetti. This and many other parts of the *Stewards of the Land* document provided invaluable information on Haisla ways of thinking and being.<sup>54</sup>

In Chapter 4, to give context to my subsequent discussion of the primary driving forces behind Western museum professionals’ responses to repatriation claims and their behaviour during negotiations, I first examine the epistemological framework of Western museum professionals and the evolution in the relationship between Western museums and Indigenous peoples. Then, drawing on interviews I conducted with museum professionals who participated in the repatriation negotiations with the Haisla and Kwakwaka’wakw peoples, I summarize the forces that drove the behaviour of those individuals and their institutions in the negotiations. Again, to the greatest

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<sup>53</sup> Bell, Raven, McCuaig and Sanborn, *supra* note 42, at 33-91.

<sup>54</sup> Louise Barbetti and Jay Powell, *Haisla! We Are Our History* (Kitimaat: Kitimaat Village Council, 2005) at 61, appendix to Jay Powell, *Stewards of the Land: Haisla Ownership and Use of their Traditional Territory, and their Concerns regarding the Northern Gateway Project and Proposed Tanker Traffic in the Douglas Channel and Kitimat Arm* (2011), available online: <http://www.ceaa-acee.gc.ca/050/documents/p21799/80479E.pdf>, accessed September 5, 2014.

extent possible, I allow the disputants to tell their own story. I was able to interview Jonathan King, former Keeper of the Department of Africa, Oceania and the Americas at the British Museum, in person. I conducted interviews with Per Kaks and Anders Björklund, former directors of the Swedish Museum of Ethnology, and with Richard West Jr., founding director of the Smithsonian National Museum of the American Indian, by telephone in 2014. I am grateful to them all for their willingness to discuss and analyse their repatriation experiences with me. I also refer in my discussion to comments made by Mr. Kaks and Mr. Björklund in the two films directed by Gil Cardinal described above.

Although in my title I refer to Indigenous peoples generally, and then in Chapters 3 and 4 discuss in depth repatriation disputes involving only certain Northwest Coast First Nations of Canada, my title reflects the fact that I believe there are important similarities in the ways that colonial assimilation laws and museological practices have affected Indigenous peoples across Canada and in other settler-colonial states such as the United States, Australia and New Zealand, including cultural disruption, intergenerational traumas from residential/boarding school systems and a depiction of Indigenous cultures as “dead”. Of course, there are also differences in the way that Indigenous peoples experienced settler-colonialism. However, I contend the similarities make it possible to use repatriation disputes involving the Haisla and Kwakwaka’wakw peoples as a basis for understanding repatriation disputes involving other Indigenous peoples, particularly in settler-colonial states.

In addition, although I refer to “museums” in the title of my thesis, I acknowledge that I discuss only certain Western museums located in North America and Europe, and moreover that the political events that influenced the genesis and development of these various museums differ. The timing and substance of any transformations in the attitudes of professionals in those museums towards the cultural material of Indigenous peoples have also differed. Nonetheless, there are certain similarities in the development and evolution of the Western museum as an institution that justify making certain generalizations about how professionals within that institution have approached their museological practices relating to Indigenous peoples. To the greatest extent possible, however, I situate the transformations in time and space, and highlight the individual approaches of the professionals I interviewed.

Having examined the factors underlying the repatriation disputes over the Potlatch

Collection and G'psgolox Pole, in Chapter 5, I examine how the negotiations for the repatriation of these objects unfolded. The purpose of this discussion is to demonstrate how the parties' behaviour during the negotiations was affected by the factors described in Chapters 3 and 4, e.g., how their epistemologies and dispute resolution goals affected how they addressed the challenges they encountered such as legal issues of valid title and ownership, differences in cultural values surrounding conservation and use of the objects, and financial obstacles.

I then analyse the impact on the parties and the dispute resolution process of the *way* in which various issues were dealt with and resolved, particularly their use of Relationship Building when attempting to resolve their conflicts over the various issues. My ultimate goal is to demonstrate how Relationship Building can increase the likelihood of a productive, rather than destructive, negotiation process and outcome for repatriation disputes.

I believe in the transformative power of developing mutual respect through understanding. By giving voice to the individuals who participated in indigenous cultural heritage repatriation disputes, I hope to contribute to the development of increased intercultural understanding among people who may participate in these kinds of disputes in the future. I have spoken at length with Indigenous peoples and museum professionals who have participated in repatriations and who have been deeply affected by the process and outcome. Indigenous peoples have seen pride restored within their communities and cultural practices reinvigorated. Museum professionals have told me that they have been enlightened and transformed by the experience. However, my research on repatriation disputes shows that the path to those outcomes has often been lengthy, difficult and often re-traumatizing. My thesis advocates early, honest, meaningful dialogue between museums and Indigenous peoples as a way for the parties to understand themselves, each other and their repatriation dispute, and to improve their experience of resolving their dispute while creating a basis for productive long-term relationships with each other.

## **CHAPTER 2. RESOLVING INDIGENOUS CULTURAL HERITAGE REPATRIATION DISPUTES USING ADR PROCESSES**

As my discussion above demonstrates, Indigenous peoples of Canada have somewhat limited legal options at their disposal for pursuing repatriation of cultural objects from museums within and outside the country's borders. While Native Americans in the United States can rely on NAGPRA's legal framework to repatriate cultural objects from state-funded institutions, it seems that ADR processes remain the most economic and perhaps realistic option for Indigenous peoples who seek to recover lost cultural heritage and do not have access to a similar legislative framework. As such, below I analyse the viability of existing institutional and non-institutional ADR processes that Indigenous peoples and museums could use to resolve their disputes. I then discuss how and why an early phase of Relationship Building adds an important tool to the dispute resolution toolkit for museums and Indigenous peoples.

### **2.1. Situating myself in the discussion**

Michelle LeBaron has written that "conflict resolution processes reflect the cultural assumptions of those who design them."<sup>55</sup> Everything I learned and communicated about alternative dispute resolution as a mediation coordinator at the Center for Effective Dispute Resolution (CEDR) in London, then as law student at the University of Toronto, and later as a dispute resolution practitioner in large law firms, was based on the western cultural assumption that parties value efficiency, that the best way to problem-solve and create win-win solutions is through objective, unemotional examination of problems, and that involving a "trained" third-party neutral unknown to the parties can help them determine solutions to their dispute better than they can on their own.

In graduate school, however, my research and fieldwork on indigenous cultural heritage repatriation disputes undid my convictions about the usefulness of ADR processes based on efficiency and having "independent" neutrals helping parties determine "objective" truths. Many inspiring First Nations individuals that I met had been deeply affected personally and through

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<sup>55</sup> Michelle LeBaron, "Learning New Dances: Finding Effective Ways to Address Intercultural Disputes" in Catherine Bell and David Kahane (eds) *Intercultural Dispute Resolution in Aboriginal Contexts* (Vancouver: UBC Press, 2004), at 14.

family and community members by colonial assimilation laws and practices including the potlatch ban and residential school system, and their goals for their dispute resolution process included restorative justice and healing. They discussed concepts in their native languages, Kwak'wala and Haisla, relating to their ontologies and cultural traditions surrounding the objects in question that were at times foreign to the Western mindset. With perseverance and through adherence to their guiding laws (e.g., the Haisla *nuyem*), the Haisla and Kwakwaka'wakw peoples involved in the repatriations had worked on educating the museum professionals about their traditions and the many meanings of repatriating the objects to their communities. Meanwhile the museum professionals who had been involved in the repatriations expressed clear emotional attachment to the objects they had cared for, and genuine distress at the thought of the objects being allowed to deteriorate after being repatriated. They also had come to value the relationships with the Indigenous parties that they were able to establish through a drawn-out negotiation process. I came to understand that a western dispute resolution process aimed at meeting timelines, and which encouraged separating the people from the problem, was clearly not going to serve the best interests of either party. I also understood that something needed to be done to reduce the potential for retraumatization of the Indigenous participants in the negotiations, and increase the likelihood of creating constructive relationships between the parties.

## **2.2. Challenges of using ADR to resolve repatriation disputes with colonial contexts**

Much has been written about the challenges of resolving disputes with colonial contexts using western ADR processes. In this section I review literature that discusses certain problems that I believe need to be considered seriously in any decision regarding using ADR processes to resolve indigenous cultural heritage repatriation disputes. These are: power imbalance due to colonialism; privileging efficiency over relationship-building; differences in dispute resolution paradigms including beliefs as to authority and bases for decision-making; incorporation of indigenous languages and cultural constructs; and respect for differing conceptions of time. This is not an exhaustive list of course, but rather the specific challenges that correspond to concerns I have about existing formal ADR processes for cultural heritage disputes, based on issues that arose in the repatriation disputes that I studied.

Professors Larissa Behrendt (Eualeyai/Kamillaroi) and Loretta Kelly (Gumbaynggirr/Dungutti) remind us in *Resolving Indigenous Disputes* that “power imbalances in

legal institutions extend to alternative dispute resolution (ADR) processes, such as mediation, in ways that are not immediately obvious.”<sup>56</sup> Professor Mick Dodson (Yawuru) explains that “power balance in native title mediation is manifested on cultural lines: the Indigenous side is less powerful than the non-Indigenous side. But the reasons for this are not inherent in the difference between cultures. The reasons are historic and economic.”<sup>57</sup> As Jeremy Webber, Dean of Law at the University of Victoria, argues in Catherine Bell and David Kahane’s *Intercultural Dispute Resolution in Aboriginal Contexts*, “the broader colonial context impinges upon dispute settlement regimes through its impact on the relative starting points and power of the parties in negotiations.”<sup>58</sup>

Behrendt and Kelly ask “how can those power imbalances be remedied? How can disputes be resolved in ways that empower Aboriginal participants and foster and support the agency and autonomy of Indigenous communities?”<sup>59</sup> Their research shows that Australian Aboriginal peoples engaged in native title mediation express “frustration, disappointment and disillusionment” with the process, a result of the failure of mediation process to empower the Aboriginal communities that take part in it. Professor Wenona Victor (Sto:lo) explains that non-Aboriginal dispute resolution forums that contradict Aboriginal culture, community, traditions and laws “are simply another way of maintaining...power imbalances firmly rooted in colonial legacy.”<sup>60</sup> Behrendt and Kelly conclude that ADR processes must be reformed so as to reflect a deeper understanding and appreciation of the dynamics of Aboriginal culture, communities and families.<sup>61</sup> They also emphasize that “a dispute resolution process does not have to be prolonged, distressing and disheartening... The process can be timely, therapeutic and energising.”<sup>62</sup> One of my key goals in writing this thesis is to analyse how this can be achieved.

Various dispute resolution scholars and practitioners have described how certain key cultural differences between parties engaged in ADR processes can influence how they experience process and outcome -- including their dispute resolution paradigms, cosmologies, epistemologies

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<sup>56</sup> Behrendt and Kelly, *Resolving Indigenous Disputes: Land Conflict and Beyond* (Sydney: The Federation Press, 2008) at vii.

<sup>57</sup> Mick Dodson, ‘Power and Cultural Difference in Native Title Mediation’ (1996) 3(84) *Aboriginal Law Bulletin* 8.

<sup>58</sup> Bell and Kahane, *supra* note 55, at 150.

<sup>59</sup> Behrendt and Kelly, *supra* note 56, at 2.

<sup>60</sup> Wenona Victor, “Alternative Dispute Resolution (ADR) in Aboriginal Contexts: A Critical Review”, *Canadian Human Rights Commission*, 2007 at 10.

<sup>61</sup> *Ibid.*

<sup>62</sup> *Ibid.*

and the language used by the parties. They point out that if those differences are left unacknowledged and unaddressed between the parties, they can derail the dispute resolution process.

For example, in “Learning New Dances: Finding Effective Ways to Address Intercultural Disputes”, the first chapter in Bell and Kahane’s edited volume mentioned above, Professor Michelle LeBaron, Director of the UBC Program on Dispute Resolution, describes how certain western conflict resolution skills such as “active listening” may violate certain indigenous paradigms in which it is disrespectful to interrupt or paraphrase, or in which indirect communication is the norm.<sup>63</sup> LeBaron also notes that current ADR training programs do not encourage third-party neutrals to examine how their own cultural frames of reference “nor to question how these frames may limit access, understanding, progress or engagement in conflict processes.”<sup>64</sup> She advocates that neutrals adopt an elicitive approach in which they take their lead from the participants and solicit “input about preferred ways of approaching conflict, optimal identities and roles of third parties, comfortable settings, communication norms, timing, identification and levels of involvement of parties and outcomes.”<sup>65</sup> However, Behrendt points out that giving a stranger the power to facilitate a dispute resolution process is antithetical to Australian Aboriginal conceptions of who has the right to speak within a community.<sup>66</sup> Behrendt also questions whether a non-indigenous mediator, even one trained in cross-cultural training, can really understand indigenous perspectives and experiences.<sup>67</sup>

Those experiences include not only historic colonial injustices – forced relocation, incarceration on reserves, grave robbing, mental duress in missionary conversion efforts, physical and sexual abuse and medical experiments in the residential school system, forced adoption during the Sixties Scoop, treaty breaking, assimilation laws including the potlatch and sundance ceremony ban, among many others -- but also the harms of colonialism that continue to plague many indigenous communities: extreme poverty, chronic ill health, poor educational opportunities,

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<sup>63</sup> LeBaron in Bell and Kahane, *supra* note 55, at 16. “Looping” involves “looping” politely interrupting the party speaking in order to paraphrase back to him/her what had been said, a process meant not only to ensure that the neutral (and the other party, if present) understood what the party said, but also to make sure the party feels he/she was both listened to and understood.

<sup>64</sup> *Ibid* at 13.

<sup>65</sup> *Ibid* at 20.

<sup>66</sup> Larissa Behrendt, “Cultural Conflict in Colonial Legal Systems: An Australian Perspective” in Bell and Kahane, *supra* note 55, at 125.

<sup>67</sup> *Ibid*, at 124.



substance abuse<sup>68</sup> and high suicide rates. For example, the residential school system resulted in patterns of intergenerational abuse which according to the Aboriginal Healing Foundation include “not only physical and sexual abuse but also low self-esteem, anger, depression, violence, addictions, unhealthy relationships, fear, shame, compulsiveness, lack of good parenting skills, body pain, and panic attacks.”<sup>69</sup> Professor James (Sa’ke’j) Youngblood Henderson (Chickasaw) describes how “colonizers created a systematic colonialism and racism that estranged Indigenous peoples from their beliefs, languages, families, and identities; that deprived Indigenous peoples of their dignity, their confidence, their souls, and even their shadows.”<sup>70</sup> As Morris Te Whiti Love (Te Atiawa) explains, among Maori peoples “grievances are passed down to current generations, both through stories and histories and through the social, cultural and economic conditions in which many Maori live today.”<sup>71</sup>

Another challenge for using western ADR processes to resolve indigenous cultural heritage disputes is how to deal appropriately with divergent cultural constructs. Elmer Ghostkeeper (Paddle Prairie Métis) opines that it is important for neutrals working in intercultural contexts to understand the *source* of behaviour, i.e., the “knowledge, wisdom and value that form our communications with each other about conflict”<sup>72</sup> rather than being fixated on developing appropriate outward behaviours. In keeping with Durkheim and Mauss’ argument that categories of thought are societally constructed<sup>73</sup>, Ghostkeeper describes how language and cultural concepts must be taken into consideration in ADR processes:

One factor is the language for negotiations. Will you use an Aboriginal language, and whose concepts are you going to adopt? Aboriginal language may be necessary to communicate Aboriginal concepts. Are you going to use the European concept of culture [“the more you cultivate and dominate nature, the more removed from the land you become and the more culture you acquire”<sup>74</sup>]?

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<sup>68</sup> Linda Tuhawai-Smith, *Decolonizing Methodologies: Research and Indigenous Peoples* (London: University of Otago Press, 1999) at 4.

<sup>69</sup> Aboriginal Healing Foundation, “Residential Schools and the Intergenerational Legacy of Abuse” in Wanda McCaslin (ed), *Justice as Healing: Indigenous Ways* (St. Paul: Living Justice Press, 2005).

<sup>70</sup> James Sa’ke’j Youngblood Henderson, “The Context of the State of Nature”, in Marie Battiste (ed), *Reclaiming Indigenous Voice and Vision* (Vancouver: UBC Press, 2000) at 29.

<sup>71</sup> Morris Te Whiti Love, “The Waitangi Tribunal’s Roles in the Dispute Resolution of Indigenous Treaty Claims”, in Bell and Kahane, *supra* note 55, at 132.

<sup>72</sup> Elmer Ghostkeeper, “*Weche* Teachings: Aboriginal Wisdom and Dispute Resolution” in Bell and Kahane, *supra* note 55, at 161.

<sup>73</sup> Emile Durkheim, Marcel Mauss, Rodney Needham, *Primitive Classification* (Chicago: University of Chicago Press, 1963).

<sup>74</sup> Ghostkeeper, *supra* note 72, at 168.

You must remember that culture is only a concept and concepts exist in our minds...”<sup>75</sup>

Marianne Nicholson (Dzawada'enuxw) provides an example of the link between Kwakwaka'wakw cultural concepts and the language in her PhD dissertation:

Language and culture reflect each other because they derive from the same conceptual source or understructure (worldview) that was developed over thousands of years in the same landscape. Reflected throughout the Kwak'wala language and traditional Kwakwaka'wakw cultural forms such as architecture, social structure, ceremonies and narrative is the primary metaphoric concept Body=House=Land/World... Kwakwaka'wakw cultural forms stem from the same conceptual substructure that Kwak'wala language forms emerge out of. This deeper substructure can also be called worldview. This worldview has developed over thousands of years within the same geographic environment and is indeed, deeply connected to the particular landscape of Pacific Northwest coast land, sea and the intermediate village zone situated in between.<sup>76</sup>

Nicholson concludes that although Kwakwaka'wakw ontology was weakened by colonialism, it has survived due to the strength of the relationship between culture and language and the determination of the Kwakwaka'wakw to continue cultural practices. In Alert Bay this summer, I met two young Salmon Princesses (from 2013 and 2014), both of whom had had to speak publicly about their cultures in Kwak'wala as part of the competition. This should remind us that native languages and their attendant cosmologies are still passed down to younger generations, and need to be incorporated into dispute resolution processes for indigenous cultural heritage disputes. As Winona Victor argues, “the use of Aboriginal languages and concepts is key to the successful resolution of disputes involving Aboriginal people, as only within these languages and concepts will their worldviews be adequately represented and respected.”<sup>77</sup>

My thesis research confirmed that the successful resolution of the repatriation dispute over the G'psgolox Pole was due in part to the respect that both parties paid to the Haisla peoples' guiding law (*nu'yem*) within the repatriation process, particularly the edict “give your knowledge to others.” As I discuss further in Chapter 5, the Swedish Museum of Ethnography demonstrated willingness to incorporate that *nu'yem* concept into the repatriation process by welcoming Haisla

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<sup>75</sup> *Ibid.*, at 173.

<sup>76</sup> Marianne Nicholson, *The Conceptualization of Space in Kwakwaka'wakw Language and Culture*, Uvic PhD Dissertation, 2013, at 463, 466-468 and 501.

<sup>77</sup> Victor, *supra* note 60, at 14.

carvers for two months at the museum while they finished a replica pole in front of visitors to the museum, and then raising the pole with the appropriate traditional ceremony. UCLA sociology professor Duane Champagne (Chippewa)’s description of the non-differentiated and holistic nature of indigenous societies helps explain why respect for Haisla *nu’yem* was crucial to the success of the repatriation process, as does Melissa Gang’s depiction of the contrast between collectivist approaches to dispute resolution in indigenous societies vs. individualistic approaches in western societies. In indigenous societies, Champagne writes, the relations of community, polity, economy and culture overlap, while religion, causality, art, ceremony and morality are tightly interrelated.<sup>78</sup> In contrast, he says, western societies tend to be defined by “relative separation of culture, polity, economy, and complex specialization of organization and function within polity, culture and economy.”<sup>79</sup> Gang emphasizes how collectivism in indigenous communities results in the entire community being wrapped up in a conflict, and “the need for social harmony is a central tenet of informal conflict resolution.”<sup>80</sup> For the Haisla, sharing their culture, history, art and ceremonies with the Swedes was key to the success of a negotiation that also had political, economic and moral considerations. Involving generations of carvers in the dispute resolution process was also important to satisfying the collectivist needs of the community.

Champagne and Gang’s analyses help highlight the challenges of using a formal ADR process with limited participants, controlled by an “independent” and “objective” neutral who privileges efficiency over relationship building, in any dispute relating to indigenous cultural objects. As Victor writes, “the ability to decentre the Western worldview in order to understand the Aboriginal ones is important to the ADR movement and the proper resolution of inter- or intra-cultural conflict.”<sup>81</sup>

Michelle LeBaron points out that a further challenge for using ADR in cross-cultural disputes is parties’ potentially divergent notions of time, notions that she says are embedded in human beings’ understandings of the world. In the West, she says, people tend to be monochronic in their approach to time. “Time tends to be seen as quantitative, measured in units that reflect the march of

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<sup>78</sup> Duane Champagne, “Indigenous Self-government, Cultural Heritage and International Trade: a Sociological Perspective,” in Christoph Graber, Karolina Kuprecht and Jessica Lai, *International Trade in Indigenous Cultural Heritage* (Cheltenham: Edward Elgar Publishing, 2012), at 37.

<sup>79</sup> *Ibid.*

<sup>80</sup> Melissa Gang, “Culture, Conflict Resolution and the Legacy of Colonialism”, Master of Arts Thesis, Faculty of the School of International Service, American University, 2010.

<sup>81</sup> Victor, *supra* note 60, at 24.

progress. It is logical, sequential, and present-focused.”<sup>82</sup> Indigenous peoples, on the other hand, may have different conceptions of time. As she describes, “indigenous people in North America combine a past- and future-oriented approach to time that stretches seven generations forward and back. Negotiators focused on the present should be mindful that others may see the past or the distant future as part of the present.”<sup>83</sup> LeBaron uses a land claims negotiation to illustrate that difference:

During this first meeting, First Nations people took time to tell the stories of their people and their relationships to the land over the past seven generations. They spoke of the spirit of the land, the kinds of things their people have traditionally done on the land, and their sacred connection to it. They spoke in circular ways, weaving themes, feelings, ideas, and experiences together as they remembered seven generations into the past and projected seven generations forward. When it was the government representatives’ chance to speak, they projected flow charts showing internal processes for decision-making and spoke in present-focused ways about their intentions for entering the negotiation process. Their flow charts were linear and spare in their lack of narrative, arising from the bureaucratic culture from which the government representatives came.<sup>84</sup>

According to LeBaron, such different ideas of time may make it difficult for parties in negotiations to establish rapport and make progress.<sup>85</sup> Indigenous peoples may see their actions and choices in the present as relevant to history and to their progeny, while negotiators acculturated to Western European ideas of time “may find the telling of historical tales and the consideration of projections generations into the future tedious and irrelevant unless they understand the variations in the way time is understood by First Nations people.”<sup>86</sup> Of course, as LeBaron points out, there are many different indigenous peoples in Canada and elsewhere, each having a distinct culture, and each culture may have a different relationship to time, and different ideas about how their concept of time should be incorporated into any negotiation, which further complicates the issue.<sup>87</sup> That seems to be the reason that Behrendt concludes that even though Indigenous peoples who are trained as mediators may be better able to understand common indigenous experiences such as racism, they cannot fully understand the culture of someone from an indigenous community other

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<sup>82</sup> Michelle LeBaron, “Cross-Cultural Communication”, *Beyond Intractability*, July 2003, online: <http://www.beyondintractability.org/essay/cross-cultural-communication>, accessed August 27, 2014.

<sup>83</sup> Michelle LeBaron, “Culture-Based Negotiation Styles”, *Beyond Intractability*, July 2003, online, <http://www.beyondintractability.org/essay/culture-negotiation>, accessed August 27, 2014.

<sup>84</sup> LeBaron, *supra* note 82.

<sup>85</sup> Michelle LeBaron, “Culture and Conflict”, *Beyond Intractability*, July 2003, online: <http://www.beyondintractability.org/essay/culture-conflict>, accessed August 27, 2014.

<sup>86</sup> *Ibid.*

<sup>87</sup> *Ibid.*

than his/her own.

The next section of my thesis analyses briefly the extent to which certain extant ADR processes proposed for cultural heritage disputes take the various challenges that I discuss above into account.

## **2.3. Existing ADR processes for indigenous cultural heritage repatriation disputes**

### **2.3.1. Institutional processes**

Within the last decade, certain international organizations have developed specific alternative dispute resolution (ADR) procedures that in theory could be used by parties to indigenous cultural heritage disputes. For example, in 2010 UNESCO's *Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation* (ICPRCP) adopted Procedural Rules for mediation and conciliation processes. The ICPRCP was established in 1978 with the express purpose of resolving disputes relating to cultural heritage removed illicitly prior to Member States' adoption of the 1970 UNESCO Convention. As Alessandro Chechi writes, "the ICPRCP's initial objective was to complete the decolonization process and to facilitate the reconstruction of the cultural heritage of former colonies through the repatriation of cultural materials from the museums of former colonial powers."<sup>88</sup> The ICPRCP's mandate is to consider claims for return of "any cultural property which has a fundamental significance from the point of view of the spiritual values and cultural heritage of a people... which has been lost as a result of colonial or foreign occupation or as a result of illicit appropriation."<sup>89</sup> Claims brought before the ICPRCP may be referred to mediation or conciliation<sup>90</sup> upon mutual consent of the parties.<sup>91</sup> However, claims and requests for mediation/conciliation must be filed by a UNESCO Member or Associate Member State, with respect to cultural objects held by other Member or Associate Members States or their public or private institutions, as long as that State does not object to representing the interests of that

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<sup>88</sup> Alessandro Chechi, *The Settlement of International Cultural Heritage Disputes* (Oxford: Oxford University Press, 2014) at 103.

<sup>89</sup> ICPRCP Statutes, Article 3.2, online: <http://unesdoc.unesco.org/images/0014/001459/145960e.pdf>, accessed August 25, 2014

<sup>90</sup> *Ibid*, Article 4.1.

<sup>91</sup> ICPRCP Rules of Procedure for Mediation and Conciliation, Article 6.1, online: <http://unesdoc.unesco.org/images/0019/001925/192534E.pdf>, accessed August 25, 2014.

institution.<sup>92</sup> As such, the procedures' usefulness to Indigenous peoples involved in disputes with museums depends on the willingness of a Member State to bring a claim on behalf of Indigenous groups within its borders, and the willingness of the State in which the museum is located to represent its interests. In addition, it seems noteworthy that only eight claims in total have filed before the ICPRCP. (Six have been resolved. The most famous, involving the Parthenon Marbles, is still pending.)

Nonetheless, there are several positive aspects of the Procedural Rules that are worth mentioning, in terms of the way the Rules address concerns I expressed above. First, the parties determine not only the identity but also the number of the mediator(s) and conciliators themselves, within a 60-day timeframe.<sup>93</sup> Failing that determination, the mediator(s) or conciliators are chosen by the Director-General of UNESCO<sup>94</sup> "taking into consideration their expertise in the field of restitution and/or their knowledge with regard to the nature of the dispute or the specificity of the cultural property at stake."<sup>95</sup> The Rules encourage the mediators and conciliators to bring the parties to an agreement within a year<sup>96</sup>, but leave the parties free to determine a different timeframe.<sup>97</sup> Furthermore, the rules also make clear that the outcome of any mediation or conciliation procedure is only binding on the parties "if they reach a binding agreement on it."<sup>98</sup> Thus, strict adherence to rigid timelines is clearly not an overriding principle or concern, while the parties maintain significant control over neutral choice, process and outcome. Moreover, the process seems designed with sensitivity to the need for utilizing neutrals with knowledge about the cultural traditions and history associated with the cultural object in question.

Another ADR procedure that in theory could be used for cultural heritage disputes is the mediation process offered since 2010 by the World Intellectual Property Organization (WIPO) in collaboration with the International Council of Museums (ICOM). Unlike the ICPRCP procedure, WIPO/ICOM's mediation process may be initiated by indigenous communities and individuals.<sup>99</sup>

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<sup>92</sup> *Ibid*, Article 4; see also Chechi, *supra* note 88, at 105-106.

<sup>93</sup> *Supra* note 91, Article 7.1.

<sup>94</sup> *Ibid*, Article 7.2.

<sup>95</sup> *Ibid* Article 7.3.

<sup>96</sup> *Ibid* Article 8.9.

<sup>97</sup> *Ibid* Article 8.10.

<sup>98</sup> *Ibid* Article 10.4.

<sup>99</sup> Article 2 of the ICOM-WIPO Mediation Rules provides that the mediation procedure is available to "public or private parties including but not limited to States, museums, indigenous communities, and individuals": online <http://www.wipo.int/amc/en/center/specific-sectors/art/icom/rules/>, accessed August 22, 2014

Several other aspects of the procedure are encouraging from the perspective of expressing sensitivity to the colonial context of indigenous cultural heritage repatriation disputes and divergences in cultural constructs. For example, the ICOM-WIPO Mediation Rules recognize that cultural heritage disputes may involve “complex legal, as well as sensitive non-legal issues of a cultural, economic, ethical, historical, moral, political, religious, or spiritual nature.”<sup>100</sup> In addition, the ICOM website points out that, unlike litigation, mediation is “a forum in which customary laws and protocols can be taken into account to reach an agreement.”<sup>101</sup> Moreover, the Rules stipulate that the parties must submit to the mediator a comprehensive statement “summarizing the background of the dispute, the party's interests and contentions in relation to the dispute and the present status of the dispute, together with such other information and materials as the party considers necessary for the purposes of the mediation and, in particular, to enable the issues in dispute to be identified.”<sup>102</sup>

Still, whether the WIPO/ICOM mediation process as currently formulated is appropriate for repatriation disputes relating to indigenous cultural heritage is debatable. For example, the ICOM website describing the procedure claims that mediation is particularly useful for cultural heritage disputes because “mediation guarantees... a speedy resolution of the dispute at minimal cost.”<sup>103</sup> The Mediation Rules themselves are clearly grounded on the precept that “efficient timelines” are a specific need of cultural heritage disputes. For example, Article 14 of the Rules stipulates that parties must “cooperate in good faith with the mediator to advance the mediation as expeditiously as possible”, while Article 8(b) provided that a mediator will be chosen by WIPO/ICOM if the parties do not agree on one within 15 days of commencing their mediation.<sup>104</sup> Parties receive a list of at least three proposed mediators and must list them in order of preference and may object to any of the proposed names within 7 days; thereafter silence on the issue is deemed to indicate assent. If the process does not result in the choice of a mediator, the ICOM Secretariat chooses one.<sup>105</sup> The Rules further stipulate that the mediator must be a national of a country *other* than the countries of the parties unless the parties agree otherwise and must be impartial and independent.<sup>106</sup> No mention is made of language use within the process. In view of my discussion above, it seems worth

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<sup>100</sup> *Ibid.*

<sup>101</sup> Online: <http://www.wipo.int/amc/en/center/specific-sectors/art/icom/>, accessed August 22, 2014.

<sup>102</sup> *Supra* note 99, Article 16(a).

<sup>103</sup> *Supra* note 100.

<sup>104</sup> *Supra* note 99.

<sup>105</sup> *Ibid.*, Article 7.

<sup>106</sup> *Ibid.*, Article 9(a) and (b), and Article 10(c).

questioning whether it is appropriate to relatively quickly usurp the parties' ability to choose their mediator and impose a stranger from a different country in a dispute context already fraught with disempowerment issues, or whether those actions can exacerbate power imbalance and feelings of "frustration, disappointment and disillusionment". As Michelle LeBaron stresses, "a process designed with the values of cost savings and efficiency in mind may screen out what some participants see as critical relationship-building steps."<sup>107</sup>

### 2.3.2. Understanding-Based mediation

A non-institutional ADR model that seems well-suited to resolving indigenous cultural heritage disputes is the Understanding-Based mediation model conceptualized by Gary Friedman, Jack Himmelstein and Robert Mnookin and described in *Challenging Conflict: mediation through understanding*.<sup>108</sup> In the book, Friedman and Himmelstein define Understanding-Based Mediation as "a voluntary process in which the parties make decisions together *based on their understanding of their own views, each other's, and the reality they face*. The mediator works as a non-coercive neutral to help the parties negotiate an agreement that serves them better than their alternatives."<sup>109</sup> (my emphasis) As in "Relationship-Building", described further below, their mediation model is based on the theory that having parties remain together throughout the process (rather than meet with the neutral separately) and delve into both the background of their dispute and their reasons for preferring certain solutions will encourage consideration of each other's concerns and needs, and enhance their ability to develop mutually acceptable solutions. Barbara Hoffman recognized during a WIPO-ICOM Workshop for Mediators in Art and Cultural Heritage held in Paris in October 2011 that the model is particularly appropriate for claims by indigenous peoples because of the value it places on establishing a process of communication amongst the stakeholders.<sup>110</sup> As Robert Mnookin clarifies in the Preface to *Challenging Conflict*, the model

urges the mediator to explore with the parties the psychological, emotional, and value-laden issues that may lie *beneath* the stated conflict. It asks the mediator personally to forgo and resist the use of coercion and manipulation. And what is

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<sup>107</sup> Bell and Kahane, *supra* note 55, at 15.

<sup>108</sup> Gary Friedman and Jack Himmelstein, *Challenging conflict: mediation through understanding* (Chicago: American Bar Association, 2009).

<sup>109</sup> *Ibid*, at 31.

<sup>110</sup> Barbara Hoffman, "Beyond the Adversarial Model: Using Mediation to Create Value in the Resolution of Disputes in the Art and Heritage Sector", ICOM/WIPO Workshop for Mediators in Art and Cultural Heritage, Paris, October 17-18, 2011.



most challenging to today's conventional wisdom is the idea that the mediator should work with the parties *together, in each other's presence*, to create a resolution based on a deeper understanding of the other side.

As such, it seems Understanding-Based mediation could help parties to indigenous cultural heritage repatriation disputes identify and deal with cultural differences that otherwise may be sources of misunderstanding within the dispute resolution process.<sup>111</sup> As Friedman and Himmelstein confirm, “underlying many conflicts is a deeper level of meaning that is not touched or examined in many disputes.”<sup>112</sup>

Another aspect of Friedman and Himmelstein's Understanding-Based model of mediation that I appreciate is that the parties develop their own procedural rules, or as Friedman and Himmelstein prefer to call them, “ground agreements”, and thereby “share the responsibility for how the mediation will unfold.”<sup>113</sup> Considering the history of disempowerment and oppression of Indigenous peoples by Euro-capitalist forces that generally underlies Indigenous cultural heritage repatriation disputes, their model seems preferable to any model that imposes one-size-fits-all mediation rules. As Navajo Nation Chief Justice Emeritus, the Honorable Robert Yazzie, emphasizes, “one of the problems indigenous people are trying to escape is having things done “to” them, rather than doing things for themselves. The core problem is who has control.”<sup>114</sup>

Still, however, Understanding-Based mediation model remains a western construct. Friedman and Himmelstein write that “the traditional approach to conflict is deeply embedded at a subjective level in the psyches of all the participants... they treat each other as adversaries as they would in a legal battle, largely because that is what they have internalized from the traditional way that conflict is approached in *our* culture.”<sup>115</sup> Their model is a response to the western adversarial model of conflict resolution, and seeks to help parties overcome their adversarial tendencies by encouraging them to understand themselves, each other and their dispute with the assistance of a mediator who is “looping”. “Looping” is seen as key to the model's success; as the authors explain, “developing understanding systematically, authentically, and compassionately is core to

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<sup>111</sup> A problem highlighted by Michelle LeBaron and Venashri Pillay in *Conflict Across Cultures*, *supra* note 7.

<sup>112</sup> *Ibid*, at 118.

<sup>113</sup> Friedman and Himmelstein, *supra* note 108, at 29 and 42.

<sup>114</sup> Robert Yazzie, “Navajo Peacemaking and Intercultural Dispute Resolution” in Bell and Kahane, *supra* note 55 at 111.

<sup>115</sup> Friedman and Himmelstein, *supra* note 108 at 14.

our approach to mediation and the loop of understanding is central to that effort.”<sup>116</sup> (Looping is, by the way, difficult to do, even in one’s native tongue.) In all likelihood, however, the “looping” is not happening in the Indigenous party’s language, and the mediator is bringing her/her cosmology to the looping process. Thus, the success of the process for Indigenous peoples and museums alike is highly dependent on mediator choice. That is not to say viable choices can’t be made. One possible solution, for example, might be Understanding-Based co-mediation by mediators who are intimately familiar with the cultural construct of the party by whom he/she is appointed.

Still, however, the mediators will charge the parties for their time. While rates will vary, mediators that act in ICOM-WIPO procedures, for example, are paid US\$300 per hour.<sup>117</sup> Splitting the cost of the mediators between the parties, which is often what is agreed at the outset of a mediation, creates a situation where one or both of the parties might feel impatient with the other party taking too much time to be “understood”. And as my discussion of culture-based conceptions of time highlights, parties may have different understandings of how the mediators’ and the parties’ time is best used.

In view of all these challenges, one wonders whether in this specific dispute context inviting neutral(s) into a position of control in the process is a good idea after all.

#### **2.4. Using Relationship Building to ensure constructive negotiation process and outcome**

One of my goals in this thesis is to demonstrate how historic and contemporary colonial injustices have an impact on the dispute resolution process and how early Relationship Building can help parties acknowledge those injustices together and establish a mutual understanding of differences in their bases for communication in order to increase their satisfaction with process and outcome. Of course, Relationship Building could be used in any institutional or informal ADR process. However, for reasons I identify above, it is my contention that for the moment, in the context of indigenous cultural heritage repatriation disputes, negotiation remains the best option for parties to such disputes.

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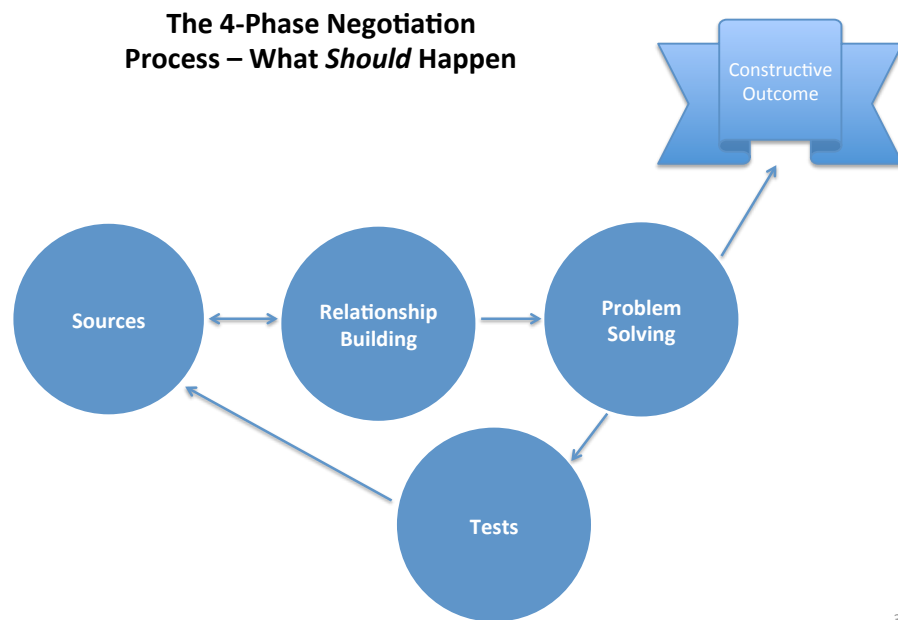
<sup>116</sup> *Ibid*, at 68.

<sup>117</sup> Schedule of Fees for ICOM-WIPO Mediation”, online: <http://www.wipo.int/amc/en/center/specific-sectors/art/icom/fees/>, accessed August 27, 2014.

The question then becomes, how could parties maximize the probability that their negotiation process will (better) address those challenges? My hypothesis is that parties should agree to engage in a formal phase of Relationship Building at the beginning of their negotiations. Below I describe the rationale for Relationship Building and when it should be used.

In order to help me analyse how and why parties should engage in early Relationship Building, I refer in my thesis often to the stages of a 4-phase negotiation process<sup>118</sup>:

**Figure 1**



In this diagram, the "Sources" of parties in disputes are what drives their behaviour and affects them deeply, including traumatic colonial experiences, epistemologies, cosmologies, beliefs, values, goals, dispute resolution paradigms, and communal/cultural imperatives. It is the place from which they start their dispute resolution journey and from which they draw their power and energy, and where they can come back to during the dispute process to re-energize themselves.<sup>119</sup>

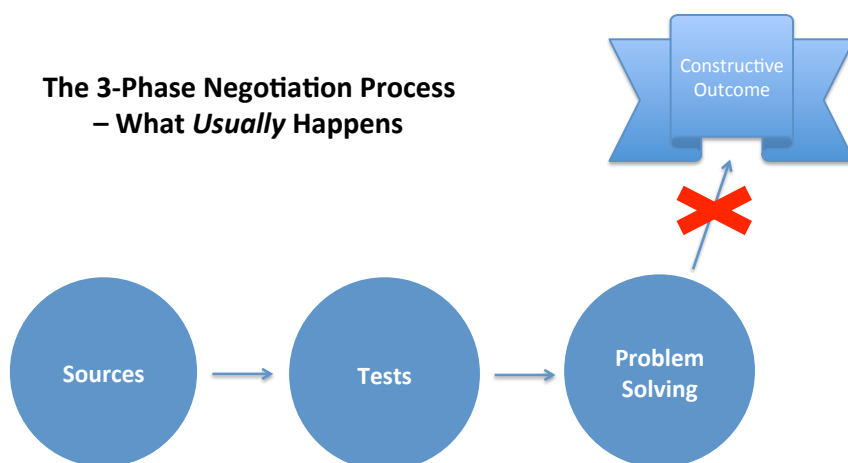
<sup>118</sup> This process is my adaptation of a process described by Professor Michelle LeBaron in her 'Conflict, Culture and Diversity' seminar course at the University of Victoria in 2011.

<sup>119</sup> As described by Professor LeBaron on September 11, 2011, *ibid*.

The theory behind this diagram is that “Tests” or conflicts between parties over issues, such as legal issues relating to ownership and valid title, are inevitable parts of any indigenous cultural heritage dispute. According to the theory behind this diagram, *immediately upon* starting any dispute resolution process and *before* proposing/imposing solutions in the “Problem Solving” phase, the parties should go through a “Relationship Building” phase of working together in a respectful manner to understand the Sources that empower and guide each party in its dispute resolution journey. By doing so, they are more likely to experience a positive “Shift” in the conflict, which can help them better identify mutually agreeable solutions and increase the likelihood of a constructive, rather than destructive, process and outcome. In addition, whenever parties encounter new Tests during the dispute, they should return to their Sources, and then enter a new Relationship Building phase during which they re-explore their beliefs and imperatives surrounding that issue before attempting to Problem Solve again.

The diagram below describes what happens if parties do not engage early in a Relationship Building phase, which is often how parties behave in negotiations. In this scenario, they usually fail to understand each other and their dispute holistically, which could lead to the conflicts/Tests in the dispute being exacerbated and to a decrease in the parties’ overall feelings of satisfaction with process and outcome.

**Figure 2**



As you can see from the first diagram, one of the important benefits of Relationship-Building is that it encourages the parties to take control of elucidating the contours of their dispute – both content and process -- through the process of voicing and acknowledging the Sources underlying it *throughout the negotiation process*. This is particularly important in disputes relating to indigenous cultural heritage where colonial injustices can affect indigenous parties' trust of non-indigenous dispute resolution mechanisms and necessitate exploration of ongoing grievances. As Morris Te Whiti Love explains, referring to the resolution of Maori treaty claims by New Zealand's bicultural Waitangi Tribunal,

[i]t is difficult to move beyond a historical grievance if that grievance is not acknowledged. In this respect, the Waitangi Tribunal provides an important forum in which grievances can be acknowledged and recommendations for resolution made. Acknowledgement of grievances is a key step towards their resolution.<sup>120</sup>

The Waitangi Tribunal has authority to hear and investigate claims related to repatriation of Maori *taonga* (treasures) removed in breach of Crown treaty obligations, and as part of its investigative procedure, hears oral evidence by Maori claimants. It thus provides a useful model of a cultural heritage repatriation dispute resolution forum with a mandate to acknowledge and address colonial injustices. As Michelle LeBaron stresses, “conflict can be addressed well only with awareness of our historical context that includes oppression, subjugation, and misunderstanding, along with the development of social consensus.”<sup>121</sup>

Relationship Building empowers parties to repatriation disputes by encouraging them to work together to reconcile their versions of their shared histories. The reality that colonial church and government assimilation and eradication policies and practices inflicted lasting harms on Indigenous peoples in Canada, while simultaneously influencing museums' attitudes towards Indigenous peoples and their cultures, means that any exploration of what underlies and drives both parties' behaviour in repatriation disputes must involve a discussion of the colonial history forming the backdrop of the disputes. As law professor Val Napoleon (Saulteau/Gitxsan) emphasizes, reconciliation “implies a historic relationship, conflict, injury, mutual commitment and effort,

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<sup>120</sup> Morris Te Whiti Love, in Bell and Kahane, *supra* note 55, at 133.

<sup>121</sup> Bell and Kahane, *supra* note 55, at 1.

acceptance of responsibility, a common future, and most importantly, memory... Part of reconciliation is about reconciling our memories – who gets to say what happened.”<sup>122</sup>

In addition to helping parties have a conversation up front about the colonial traumas underlying their dispute, Relationship Building also may help reconcile differences between indigenous and non-indigenous dispute resolution paradigms by making space for dispute resolution practices of the Indigenous peoples in question. Catherine Bell has emphasized that “a fundamental goal of consensual ADR processes is to create a process that is meaningful to the parties and improves relationships, participation, responsibility, and satisfaction; this goal is shared by many traditional and contemporary indigenous dispute resolution mechanisms.”<sup>123</sup> Relationship Building can help parties create such a process. As Bell<sup>124</sup> and Webber rightly point out, however, any dispute resolution process created should reflect the values of a *particular* indigenous community rather than a generic set of indigenous values. Below I mention as examples certain indigenous dispute resolution practices that Relationship Building can help create space for.

In his Masters thesis entitled “A Kwakwaka’wakw Perspective on Dispute Resolution and Relationship Building”, Dale Hunt (Kwakiult) identifies four key concepts for dealing with conflict in Kwakwaka’wakw culture: *mayaxala* (respect for each other)<sup>125</sup>; communication, including the concepts of *Ninaxsola* (“to try to straighten it out”) and *Nanwakola* (“to come together to talk about it”)<sup>126</sup>; collectiveness (taking care of each other)<sup>127</sup>; and identity (knowing who you are and where you are from, as the basis for understanding interconnectedness).<sup>128</sup> According to Hunt, while colonialism has had a significant impact on dispute resolution practices of Kwakwaka’wakw peoples, those concepts remain an integral part of Kwakwaka’wakw culture. Ken Noskey, past president of the Metis Settlements General Counsel, explains the importance of consensus seeking within Metis culture: “consensual decision making may be difficult but we believe it is fundamental and part of our tradition.”<sup>129</sup> Navajo Nation Chief Justice Emeritus, the Honorable Robert Yazzie, explains that a key tenet of the Navajo peacemaking tradition is interacting in a way

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<sup>122</sup> *Ibid*, at 178-179.

<sup>123</sup> *Ibid*, at 257.

<sup>124</sup> *Ibid*, at 246.

<sup>125</sup> Dale Hunt, “‘We Are All Different, Still Living Under the Same Culture’: A Kwakwaka’wakw Perspective on Dispute Resolution and Relationship Building”, Master of Arts Thesis, Faculty of Human and Social Development Institute for Dispute Resolution, University of Victoria, 2005, at 66.

<sup>126</sup> *Ibid*, at 73.

<sup>127</sup> *Ibid*, at 79.

<sup>128</sup> *Ibid*, at 76.

<sup>129</sup> Bell and Kahane, *supra* note 55, at 248.

that is “respectful, gentle, peaceful and promotes good relationships.”<sup>130</sup> Disputants are encouraged by the *naat’aanii* (a civil leader chosen by consensus) to discuss the actual and perceived facts of the dispute “including opinions about the facts and the emotional impact of what happened”.<sup>131</sup> Catherine Bell comments that “peacemakers guide those in conflict with the law, or each other, on a journey to discover their perfections and imperfections...” Chief Justice Yazzie stresses that respect and relationship are central to indigenous justice and “essential if you wish to incorporate indigenous methods into non-indigenous frameworks.”<sup>132</sup> Yet Yazzie also stresses that “when designing effective dispute resolution mechanisms, one cannot simply look at the method or procedure for doing things, write down a checklist of what to do, and implement it anywhere.”<sup>133</sup> Instead, he encourages parties to ask themselves “what is the basis for my culture’s ideas of right and wrong and how to do things?”<sup>134</sup>

By encouraging parties to work together respectfully on understanding the particular cultural values and dispute resolution paradigms underlying their dispute, Relationship Building can help increase both indigenous and non-indigenous parties’ satisfaction with the dispute resolution process in which they are involved and with its outcome. As Jeremy Webber explains, “the greater the clarity and agreement about the historical conjuncture – the more sustained the attempt to incorporate indigenous concerns and modes of interaction – the greater the likelihood that mechanisms will produce outcomes acceptable to the parties.”<sup>135</sup>

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<sup>130</sup> Robert Yazzie, *supra* note 114, at 111.

<sup>131</sup> *Ibid.*, at 108.

<sup>132</sup> *Ibid.*, at 110.

<sup>133</sup> *Ibid.*

<sup>134</sup> *Ibid.*

<sup>135</sup> Jeremy Webber, “Commentary: Indigenous Dispute Settlement, Self-Governance, and the Second Generation of Indigenous Rights.” in Bell and Kahane, *supra* note 55, at 150.

## **CHAPTER 3. UNDERSTANDING REPATRIATION DISPUTES: INDIGENOUS PERSPECTIVES**

The next chapter of my thesis examines the colonial backdrop to the repatriation claims of the Haisla and Kwakwaka'wakw peoples, as well as the values, beliefs, goals, financial realities and cultural imperatives that underlay their actions and responses in the repatriation negotiations. I begin, in Section 3.1, with a brief discussion of pre-contact life among the Haisla and Kwakwaka'wakw peoples in their traditional territories and the impact of contact with European traders and missionaries and settler colonialism. I then provide details on how the G'psgolox Pole and the Potlatch Collection were removed from those traditional territories by colonial government and museum representatives. I finish Section 3.1 with a discussion of recent mechanisms aimed at redressing colonial harms. Section 3.2 examines what the Haisla and Kwakwaka'wakw peoples have said themselves about what drove them in their repatriation quests.

### **3.1. Historical context of the Kwakwaka'wakw and Haisla peoples' repatriation requests**

Though separated by hundreds of kilometres on British Columbia's northwest coast, the people of the Kwakwaka'wakw and Haisla First Nations are closely related linguistically, with the Kwak'wala and Haisla languages both belonging to the Wakashan language family. They also share certain important cultural practices with each other and other Northwest Coast First Nations, including the potlatch tradition and totem pole carving. In view of the fact that my goal in this first part of Chapter 3 is to describe the impact of colonialism on those traditions, I discuss together below certain elements of the Haisla and Kwakwaka'wakw peoples' pre- and post-contact histories that relate to these shared practices.

#### **3.1.1. Kwakwaka'wakw and Haisla ways of being**

The traditional territory that the various Kwakwaka'wakw First Nations have occupied since time immemorial<sup>136</sup> encompasses northern Vancouver Island, the adjacent mainland coastal

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<sup>136</sup> The term "time immemorial" reflects Indigenous understandings of first inhabitation of traditional territories according to creation stories. See: Daisy Sewid-Smith, "In Time Immemorial", (1991) 89 *BC Studies* 16-33.



areas and the islands in between. The seventeen Kwak'waka-speaking tribes<sup>137</sup> historically have been divided into groups called 'na'mima ("of one kind") within which individuals are ranked according to their lineage and possession of rights (e.g., to fish in certain waters) and intangible possessions (such as crests, stories, songs, dances and names)<sup>138</sup>, starting with the hereditary head Chief, a direct descendent of the founding ancestor, to lesser chiefs, to commoners and their families. Until the late 19<sup>th</sup> century, the life of the Kwakwaka'wakw followed a similar rhythm each year. In the summer months, a 'na'mima moved within its territory according to the hunting and fishing seasons. During the winter months, they lived with members of their tribe in 'big houses' in more permanent villages, where they engaged in ceremonial activities such as the potlatch and feasted on their abundant harvests from the sea and land. As Chief Harry Assu describes, for example, the big houses in Cape Mudge "were, on average, forty by sixty feet. There were about ten of them stretching along the seafront at Cape Mudge. Each big house belonged to a different chief, and all his family and relatives lived together. My grandfather, Charley Assu, owned a big house."<sup>139</sup>

The traditional territory of the people of the Haisla Nation is a mainland coastal region approximately 650 km northwest of Vancouver. It includes the Kitlope Heritage Conservancy (*Huchsduwachsdw Nuyem Jeas* in Haisla, which means "source of milky blue waters"), the world's largest continuous tract of coastal temperate rainforest, which achieved protected status as a result of decades of struggle by the Haisla peoples to prevent logging of the rainforest.<sup>140</sup> It also includes the areas surrounding the Gardner and Douglas Channels, the latter being another long-term site of controversy, this time between the Haisla and Enbridge Oil, which wants to use the channel as the pathway for tankers carrying unrefined crude oil from the Alberta tarsands to Asian markets via its proposed Northern Gateway pipeline. As Professor Powell's explains in "Stewards of the Land", because of the Haisla peoples' *nuyem*-imposed land stewardship responsibility, "no Haisla could in good conscience consider supporting a project that involved the risk of catastrophic environmental

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<sup>137</sup> Originally, there were 28 Kwak'waka-speaking tribes, but with population decline in the 19<sup>th</sup> century due to European diseases such as smallpox and influenza against which the First Nations had no immunity, a number of tribes either died out or amalgamated.

<sup>138</sup> Paul Tennant, *Aboriginal Peoples and Politics: The Indian Land Question in British Columbia, 1849-1989*, (Vancouver: UBC Press, 1990) at 7.

<sup>139</sup> Harry Assu and Joy Inglis, *Assu of Cape Mudge: Recollections of a Coastal Indian Chief* (Vancouver: the University of British Columbia Press, 1989) at 52-53.

<sup>140</sup> In 1994, West Fraser Timber relinquished its logging rights without compensation, and in 1996, the provincial government officially designated the area as a Protected Area.

risk to their lands.”<sup>141</sup>

The Haisla Nation is actually a recent (1949) amalgamation of two historically separate tribes, the Henaksiala or “Kitlope” peoples (meaning “people of the rocks”) and the Haisla or “Kitimaat” peoples (meaning “people of the snow”). The hereditary Chief G’psgolox who commissioned the totem pole was part of the Kitlope tribe. In my thesis, I refer to these two distinct tribes individually as the Kitlope or Kitimaat, and together as “the people of the Haisla Nation” or simply as “the Haisla”.

The Kitlope and Kitimaat are members of clan-based societies with a matrilineal inheritance tradition.<sup>142</sup> Originally, the Kitlope comprised eight clans<sup>143</sup>, each of which traditionally lived in its own winter village where clan members constructed large post-and-beam houses from giant red cedar trees. During other parts of the year, they moved between seasonal homesites on the family *wa’wais* area (individually owned watershed stewardship areas).<sup>144</sup> Following massive population decline in the latter half of the 19<sup>th</sup> century, the clans eventually came together to live in the same winter village.<sup>145</sup> As with the Kwakwaka’wakw, wealth and rank in villages were linked to lineage and possession of rights such as *wa’wais* areas, and of intangible possessions such as crests, stories, songs, dances and names.<sup>146</sup> Professor Powell explains that “Haisla traditional ownership involves an evolved cultural institution that has worked for centuries to specify the person responsible in each generation for protecting each watershed of Haisla traditional territory.”<sup>147</sup> The Haisla Nation peoples’ clan, inheritance and land stewardship systems are based on the Haisla *nuyem* (traditional rule of behaviour based on a body of oral narratives).<sup>148</sup>

Like other coastal First Nations, the peoples of the Haisla and Kwakwaka’wakw Nations traditionally relied on nature’s bounty for their subsistence, fostering a deep-seated belief in their

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<sup>141</sup> Powell, *supra* note 54, at 25.

<sup>142</sup> Clan or feast names are passed on through the female line from a man to his sister’s son – uncle to nephew – rather than from father to son in patrilineal systems.

<sup>143</sup> Beaver, Raven, Crow, Blackfish, Salmon, Eagle, Wolf and Frog. With population decline in the 19<sup>th</sup> century, the Wolf and Frog clans disappeared entirely. See John Pritchard and Anne-Marie Pederson, “Haisla (Kitimaat)”, *The Canadian Encyclopedia*, online: <http://www.thecanadianencyclopedia.com/index.cfm?PgNm=TCE&Params=A1ARTA0004334>, accessed September 2, 2013.

<sup>144</sup> Powell, *supra* note 54, at 7.

<sup>145</sup> *Ibid.*

<sup>146</sup> Tennant, *supra* note 138, at 7.

<sup>147</sup> Powell, *supra* note 54, at 25.

<sup>148</sup> *Ibid.*, at 8.

connectedness with the earth and its living beings, and with the spirit world.<sup>149</sup> Spirit encounters were and still are commemorated in various forms of cultural expression, including totem poles and the ceremonial dances, songs and stories that formed part of potlatch ceremonies.

The potlatch ceremony was and still is a key feature of Haisla and Kwakwaka'wakw cultural and social life. Potlatches are held to recognize significant events such as marriages, the naming of children, mourning the dead, and transferring rights and privileges.<sup>150</sup> Guests are given gifts for witnessing these events, with the value of the gift reflecting their social rank. Until the end of the 19<sup>th</sup> century, gifts included sea otter and marten pelts, robes of black bear, elk and deer skin.<sup>151</sup> By the early 20<sup>th</sup> century it was more common to give blankets, carved cedar boxes, food, canoes, jewelry, money, furniture and appliances. In 1911, Chief Billy Assu gave away seventeen canoes to important guests attending his potlatch in Cape Mudge, half of which were almost sixty feet long.<sup>152</sup> The most valuable and prestigious items such as coppers were bestowed with great ceremony. Traditionally, individuals hosting a potlatch give away material goods to show goodwill to their guests, display privileges, maintain their social status and fulfill the social convention of wealth redistribution and reciprocity. Those who give lavish potlatches are held in high esteem.

Until their suppression by the Canadian government, potlatches entailed many days and sometimes weeks of feasting, speeches, storytelling, singing and dancing. As the daughter of Chief Dan Cranmer, Gloria Cranmer Webster, explains, "It is a time for sharing and for pride – a time for showing the masks and dances owned by the family giving the potlatch."<sup>153</sup> Andrea Cranmer explains in more detail the ceremony's importance:

As a witness, your responsibility was to pay attention so that you can see all the treasures and all the names and all the important things that the chief's doing... Passing on his chieftainship, passing on privileges and rights, passing on songs and dances, weddings, memorials. All those are very important things in a person's life, and our potlatch had a structure in place for that. And that was through the potlatch system. So it was very important.<sup>154</sup>

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<sup>149</sup> Hilary Stewart, *Looking at Totem Poles* (Seattle: University of Washington Press, 1993) at 17.

<sup>150</sup> Bell, Raven, McCuaig and Sanborn, *supra* note 53, at 46.

<sup>151</sup> See, e.g., Gloria Cranmer Webster, "From Colonization to Repatriation" in Gerald McMaster and Lee Ann Martin, *Indigena: Contemporary Native Perspectives* (Vancouver: Douglas & McIntyre, 1992) at 28.

<sup>152</sup> Assu and Inglis, *supra* note 139, at 42.

<sup>153</sup> Gloria Cranmer Webster, "The U'mista Cultural Centre", (1990) 31(1/2) *The Massachusetts Review* 132 at 133.

<sup>154</sup> Bell, Raven, McCuaig and Sanborn, *supra* note 42, at 47.

Kwakwaka'wakw hereditary chief Dr. Robert Joseph confirms that the potlatch “reflects our ancient traditional constitutional framework for how we used to live on those lands that we come from... it's still the basis for the spiritual foundation that we stand on... all the significant transitory moments of life are reflected in those rituals...”<sup>155</sup> Professors Catherine Bell and Val Napoleon emphasize that “potlatches were the foundation of Kwakwaka'wakw economic, political, social, spiritual, and legal systems and the means for transferring cultural knowledge to future generations. They also promoted values such as humility, generosity, responsibility, and respect. They were ‘the essence of Kwakwaka'wakw culture’.”<sup>156</sup> The potlatch is the ritual that binds Indigenous peoples and cultures of the Northwest Coast together, connecting them “to the unseen but vital realms of identity and deeply held values.”<sup>157</sup> As Lucy Bell describes,

In p'əsa, through rank, dances performed, songs shared, speeches made, food consumed and the gifts that are distributed, it is evident that we have reciprocal relationships of respect and responsibility to ourselves, to our families, to our nation, and to all Kwakwaka'wakw people. Each of these relationships includes interconnectedness to all beings and nature. Therefore, it is necessary to know who you are and where you come from.<sup>158</sup>

Haisla *nuyem* expresses the same imperative. As Louise Barbetti writes, “know your history, including the background of your tribe, clan and family. It is the source of your identity and self-confidence. Listen to the elders when they tell our story.”<sup>159</sup> In Haisla territory, the potlatch ceremony and settlement feasts (hosted traditionally one year after someone dies by the person inheriting the deceased's name) are opportunities to publicly put on record the transfer of names and *wa'wais* ownership. Professor Powell explains the kind of gifts that guests at contemporary settlement feasts in Haisla territory might receive:

Chiefs witnessing a settlement feast might be given several hundred dollars and other gifts. Dancers and drummers might be given an expensive Pendleton Native design blanket and \$20-\$50. High status women could expect a hamper full of food, a 25 kg bag of flour or sugar, a blanket and some dishes. An ordinary guest from one of the non-host clans could be given \$5, some fruit or an Aboriginal art print that was specially made to give to all guests as a souvenir. Of course,

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<sup>155</sup> Chief Robert Joseph, SFU Centre for Dialogue, “Chief Robert Joseph - Part 1: Culture and Ancestry”, February 3, 2014, online: [https://www.youtube.com/watch?v=ge\\_pM9k1CPs](https://www.youtube.com/watch?v=ge_pM9k1CPs), accessed July 13, 2014.

<sup>156</sup> Bell, Raven, McCuaig and Sanborn, *supra* note 42, at 46.

<sup>157</sup> LeBaron and Pillay, *supra* note 7, at 127.

<sup>158</sup> Lucy Bell, “Kwakwaka'wakw Laws and Perspectives Regarding Property” (2006) 5 *Indigenous Law Journal* 119 at 125.

<sup>159</sup> Barbetti and Powell, *supra* note 54, at 63.

everyone gets fed and people from a distant village might receive “gas money”.”<sup>160</sup>

The settlement feast and potlatch ceremonies enable transmission of *nuyem* law, rights and history across generations. While they continue to be practiced to this day, colonialism and its many harms significantly affected the Haisla peoples’ ability to practice their traditions.

### **3.1.2. The impact of contact, missionary activity and assimilation laws and practices**

The arrival of European traders in the traditional territories of the Haisla and Kwakwaka’wakw peoples in the late 18<sup>th</sup> century, and the subsequent effects of disease, missionizing, and church and government assimilation laws and practices, altered their traditional ways of living.

Both the Haisla and Kwakwaka’wakw peoples’ first contact with traders occurred when they encountered the ships of George Vancouver’s expedition. The Kwakwaka’wakw first encountered Vancouver when he visited the ‘Namgis village of Xwalkw, across from ‘Yalis (Alert Bay), in 1792.<sup>161</sup> The Haisla encountered Vancouver in June of the following year when Joseph Whidbey and Archibald Menzies from Vancouver’s expedition sailed into the mouth of the Gardner Channel. In accordance with Haisla *nuyem* dictating that strangers should be greeted hospitably with gifts, they were offered two 70-pound salmon. Louise Barbetti recounts in rich detail how Haisla oral tradition recalls first contact:

The Haisla people were out fishing and one canoe saw this strange canoe come in. It was outside Geldala (Kildala Arm), and they were so shocked and astonished at this huge canoe. They stayed in their canoes and just looked, gazed at these ghostly people who not only were ghostly pale, but some of them had coloured hair and that was fascinating. And they were dirty. And all of a sudden the people that were on the masts, they disappeared out of sight like they had gone down through the surface, down into the boards of the floor of this big floating island. They called them q’wemksiwa (kwung-see-WAH). Q’wemksiwa means ‘to go down between the cracks’... And we still call the Whiteman that. They didn’t know what it was, what those people were. They thought it was some kind of supernatural being happening. And they decided to give them an offering, a gift. They picked out two of the biggest spring salmon, because this happened in the late springtime and the spring salmon (which run in June) were running.

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<sup>160</sup> Powell, *supra* note 54, at 24.

<sup>161</sup> Cranmer Webster, *supra* note 151, at 26.

And they picked out two of the biggest ones and here the biggest spring salmon are huge. So they picked out the two big ones and gave it to the q'wemksiwa.<sup>162</sup>

Initially, fur trade with English, Spanish, American and Hudson's Bay Company ships<sup>163</sup>, particularly of sea otter pelts prized in China, provided coastal First Nations with valuable material wealth that could be given away during potlatches in exchange for increased prestige. As Gloria Cranmer Webster explains, "the relationship between the traders and the local people was generally amicable and mutually beneficial"<sup>164</sup> and indigenous peoples "prospered in a manner that suited their own purposes".<sup>165</sup> Cranmer Webster describes how

[o]rdinary Hudson's Bay blankets were transformed into ceremonial wear by the addition of applied designs decorated with mother-of-pearl buttons... Empty gun cartridges, metal thimbles and bells replaced puffin beaks on dance aprons, which were now made from commercial cloth... Gradually, the Hudson's Bay Company blanket became a form of currency, with single blankets valued at 50¢ and double blankets valued at \$1.50. In later years, the number of blankets given away at potlatches varied from a hundred to several thousand, giving some idea of how important this item had become to the system. Other goods, such as bolts of calico, glassware, sacks of flour and enamel basins and pots were gathered in huge quantities to be given away.<sup>166</sup>

By the mid 19<sup>th</sup> century, however, trade was resulting in the rapid spread of diseases such as smallpox and influenza, against which local indigenous populations had no immunity.<sup>167</sup> Certain coastal First Nations experienced up to 90% population decline.<sup>168</sup> A smallpox epidemic in 1862, for example, decimated the population of four Kitlope villages, which plummeted from 3500 to 57.<sup>169</sup>

Meanwhile, as European settlement on the coast was increasing, church and government forces began escalating their efforts to separate First Nations from their traditional territories in order to create space for settlement and to sever what the 2007 *United Nations Declaration on the*

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<sup>162</sup> Powell, *supra* note 54, at 16.

<sup>163</sup> *Ibid.*, at 19.

<sup>164</sup> Cranmer Webster, *supra* note 151, at 27.

<sup>165</sup> *Ibid.*

<sup>166</sup> *Ibid.*

<sup>167</sup> Robin Fisher, *Contact and Conflict: Indian-European Relations in British Columbia, 1774–1890* (Vancouver: University of British Columbia Press, 1977) at 115.

<sup>168</sup> Donna Wilson and Herbert Northcott, *Dying and Death in Canada* (Toronto: University of Toronto Press, 2008) at 25–27.

<sup>169</sup> Stephen Hume, "Return of the Spirit Pole", *The Vancouver Sun*, June 5, 2000, as cited in Catherine Bell, Graham Statt, Michael Solowan, Allyson Jeffs, and Emily Snyder, "First Nations Cultural Heritage: A Selected Survey of Issues and Initiatives", in Bell and Napoleon, *supra* note 4, at 380, FN 87.

*Rights of Indigenous Peoples* (UNDRIP) has recognized is the inextricable link between possession of traditional lands and the ability of Indigenous peoples to practice and strengthen their cultures and traditions.<sup>170</sup> Former Chairperson-Rapporteur of the UN Working Group on Indigenous Populations, Erica-Irene Daes, described the link between culture, land and resources among coastal First Nations as follows:

The entire system of chiefly titles, names, symbols, and ceremonies has been interconnected with the stewardship of the land and living resources... While present day Western ways of thinking *separate* arts, religion, political organization, kinship, nature, and science, your knowledge systems *integrated* all aspects of human experience and human responsibilities. In this way, your ancestors had a clear grasp of the total social and ecological implications of their actions...<sup>171</sup>

In certain parts of Canada, the federal government relocated Indigenous peoples from traditional territories onto reserves by entering into treaties with them, in accordance with the British Crown's 1763 *Royal Proclamation*, which recognized that it was in the Crown's interest that the various "Indian Nations... should not be molested or disturbed in the Possession of such Parts of Our Dominions and Territories as, not having been ceded to or purchased by Us, are reserved to them, or any of them, as their Hunting Grounds."<sup>172</sup> That document went on to declare that all future sales of unceded land to the Crown would be publicly negotiated and would be recorded in writing. The federal government entered into a total of 11 numbered treaties, including Treaty 8, which covers 850,000 km<sup>2</sup> in north-eastern British Columbia, northern Alberta and Saskatchewan, and the south of the Northwest Territories.

However, the government's subsequent non-respect of treaty promises, the meagre consideration offered in exchange for vast tracts of land, and the disjoint between the version of treaties the Crown penned and Indigenous peoples' understandings of what transpired during the treaty negotiations, are ongoing sources of bitterness for Indigenous peoples in Canada. For example, the total amount paid up front by the government upon execution of Treaty 8 was \$26,000. Much of the 140,000 km<sup>2</sup> Alberta tar sands lie within Treaty 8 territory. Ten years

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<sup>170</sup> Ana Vrdoljak, "Reparations for Cultural Loss" in F Lenzerini, ed., *Reparations for Indigenous Peoples: International and Comparative Law Perspectives* (Oxford: Oxford University Press, 2008) at 197-228.

<sup>171</sup> Erica-Irene Daes, "Defending Indigenous Peoples' Heritage", Keynote Address, *Protecting Knowledge: Traditional Resource Rights in the New Millennium*, February 23, 2000, Vancouver, BC.

<sup>172</sup> The *Royal Proclamation of October 7, 1763*, online: <http://www.bloorstreet.com/200block/rp1763.htm>, accessed August 9, 2013.

before that treaty was signed, the director of the Geological Survey of Canada, Robert Bell, had reported to a Senate Committee that "the evidence . . . points to the existence in the Athabasca and Mackenzie valleys of the most extensive petroleum field in America, if not the world."<sup>173</sup> After negotiating Treaty 8 in 1899, the Treaty Commissioners reported in writing to the federal government that the Indigenous signatories had been assured that they would retain their fishing and hunting rights indefinitely, that they would not be confined to reserves, and that government schools would not interfere with the practice of Native religions.<sup>174</sup>

In most of British Columbia, on the other hand, First Nations' traditional territories were simply treated as terra nullius by the provincial government, which appropriated them for settlement and resource development and relocated First Nations to postage-stamp sized reserves. The only exception to this rule is 930 square kilometres on Vancouver Island covered by the fourteen 'Douglas Treaties'.

Beginning in 1890, for example, the Canadian federal government set aside 1640 acres of reserve land for the Haisla, a fraction of the approximately 4 million acres of land and waterways that comprise Haisla traditional territory.<sup>175</sup> In 1905, federal Indian Agent Ivar Fougner wrote that the reserves assigned to the Haisla Nation "are the poorest reserves and of smaller dimensions according to the size of the band than any other in the agency".<sup>176</sup>

Another tactic that the federal government used to solve its "Indian problem"<sup>177</sup> was legislation crafted to destroy Indigenous peoples' cultures and identities. For example, in the mid 19<sup>th</sup> century it enacted legislation appropriating Indigenous peoples' right to determine who was a "Status Indian" entitled to treaty rights, and thus the right to determine their own identities and communities.<sup>178</sup> Further legislation forced communities to establish democratically elected band chiefs and male-only councils rather than operate according to their own traditional political

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<sup>173</sup> Canada Senate, Journals, 27 March 1888, at 65-66, as cited in René Fumoleau, *As Long as this Land Shall Last: A History of Treaty 8 and Treaty 11, 1870-1939* (Calgary: University of Calgary Press, 2002) at 26.

<sup>174</sup> See the *Report of Commissioners for Treaty No. 8*, September 22, 1899, online: <http://www.aadnc-aandc.gc.ca/eng/1100100028813/1100100028853#chp2>, accessed August 14, 2013.

<sup>175</sup> Haisla First Nation, "Location", online: <http://haisla.ca/community/location/>, accessed September 6, 2014.

<sup>176</sup> Margaret Butcher, *The Letters of Margaret Butcher: Missionary Imperialism on the Pacific Northwest Coast* (Calgary: University of Calgary Press, 2006) at xvi.

<sup>177</sup> See *infra*, footnote 191.

<sup>178</sup> *An Act to Encourage the Gradual Civilization of Indian Tribes in this Province, and to Amend the Laws Relating to Indians, 1857.*



structures, in which female elders played a key role.<sup>179</sup> Then, in 1876, the federal government passed the *Indian Act*, a sweeping piece of legislation by which it granted itself exclusive authority to legislate in relation to Indigenous peoples and through which it implemented numerous further assimilation policies.

During the same period, Euro-Christian missionaries increasingly were urging potential converts to give up their traditional ways, including by ceasing production of and destroying ceremonial regalia and totem poles, which the missionaries purported to revile as objects of heathen worship. Ceremonial regalia and cultural objects were taken by missionaries for their private collections, sold to collectors, or simply destroyed in bonfires, some totem poles being cut up as firewood.<sup>180</sup> According to Welsh anthropologist John Pritchard, missionary George Raley subjected the Haisla people to one of the “sterner, more uncompromising missions, which may have accelerated abandonment of elements of their traditional culture.”<sup>181</sup> At the same time, Raley was an avid collector of the regalia he condemned and confiscated. Much of his large collection is now at MOA.

Similar missionary work was being carried out in Kwakwaka’wakw territory. Gloria Cranmer Webster tells us that:

The introduction of Christianity must have been a confusing time for our people. At the same time missionaries like [Revered Alfred J.] Hall were preaching, “Thou shalt not steal,” settlers were helping themselves to large tracts of land with the approval of the government and without regard for the rights of the indigenous peoples. While Hall was excoriating the Kwagu’ for the ceremonial eating of human flesh, he was encouraging them to become participants in a church ritual that involved some kind of symbolic cannibalism. While Hall was telling the people that, “It is better to give than to receive,” he was also telling them that lavish gift giving at potlatches was sinful and heathenish. With all these mixed messages the missionaries were giving local people, it is no wonder there were few converts.<sup>182</sup>

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<sup>179</sup> *An Act for the gradual enfranchisement of Indians, the better management of Indian affairs, and to extend the provisions of the Act 31st Victoria, 1869*; see Wayne Warry, *Ending Denial: Understanding Aboriginal Issues* (Peterborough: Broadview Press, 2007) at 33.

<sup>180</sup> Stewart, *supra* note 149, at 20.

<sup>181</sup> John Pritchard, “Economic Development and the Disintegration of Traditional Culture Among the Haisla”, unpublished UBC PhD thesis, 1977, at 2. Pritchard lived among the Haisla people on their reserve in Kitimaat while conducting his PhD dissertation research in the 1970s.

<sup>182</sup> Cranmer Webster, *supra* note 151, at 29.

Indeed, as part of their attempt to “civilize” the Natives, missionaries on the Northwest Coast were urging the government to outlaw the potlatch ceremony, which they viewed as the main impediment to their conversion efforts.<sup>183</sup> William Duncan, a lay Anglican priest who worked to convert Tsimshian peoples in Metlakatla, opined that the potlatch was “by far the most formidable of all obstacles in the way of Indians becoming Christians, or even civilized.”<sup>184</sup> Similarly, colonial government officials recognized the difficulty of converting to a Euro-capitalist way of life people whose primary motive for collecting wealth was to give it away during a potlatch in exchange for esteem. The federal Indian Agent in Kwakwaka’wakw territory, William Halliday, once complained that “the [potlatch] system nearly approaches socialism in many of its ways as the desire of every Indian is to get something to give it away to his friends.”<sup>185</sup>

And so, in 1884, the Canadian government amended the *Indian Act* to make a criminal offense of the massive giving of “gifts”<sup>186</sup> in an effort to suppress the potlatch ceremony and transmission of Aboriginal culture and traditions, oral history and identity. Among the Kitimaat, George Raley worked hard to realize the demise of the potlatch ceremony, including by helping craft an 1893 edict stipulating that anyone who participated in a potlatch would be fined \$140, the equivalent of a season’s salary at a cannery.<sup>187</sup> A by-product of the potlatch ban, which is important to the G’psglox pole repatriation story, was a decline in pole carving on the Northwest Coast in part due to the fact potlatch ceremonies are the traditional means of celebrating the raising of a totem pole.<sup>188</sup>

Then, in 1894, the federal government augmented its assimilation efforts by amending the *Indian Act*<sup>189</sup> to enable the removal of Indigenous children under the age of 16 to Christian

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<sup>183</sup> Gloria Cranmer Webster, “The Potlatch Collection Repatriation”, (1995) *Special Issue U.B.C. L. Rev.* 137.

<sup>184</sup> Fisher, *supra* note 167, at 207.

<sup>185</sup> Daisy Sewid-Smith, *Persecution or Prosecution* (Cape Mudge: Nu-Yum-Baleess Society, 1979) at 17.

<sup>186</sup> *An Act further to amend “The Indian Act, 1880”*, S.C. 1884, c.27 (47 Vict.); Section 3 provided as follows: “Every Indian or other person who engages in or assists in celebrating the Indian festival known as the “Potlatch” or in the Indian dance known as the “Tamanawas” is guilty of a misdemeanor, and shall be liable to imprisonment for a term of not more than six nor less than two months in any gaol or other place of confinement; and any person who encourages, either directly or indirectly, an Indian or Indians to get up such a festival or dance, or to celebrate the same, or who shall assist in the celebration of the same is guilty of a like offence, and shall be liable to the same punishment.”

<sup>187</sup> Pritchard, *supra* note 181, at 200.

<sup>188</sup> Stewart, *supra* note 149, at 17.

<sup>189</sup> The new section 138(2) of the *Indian Act* provided as follows: “The Governor in Council may make regulations, which shall have the force of law, for the committal by justices or Indian agents of children of Indian blood under the age of sixteen years, to such industrial school or boarding school, there to be kept, cared for and educated for a period not extending beyond the time at which such children shall reach the age of 18 years.” S.C. 1894, c. 32, s.11.

“residential schools” and definitively “kill the Indian in the child.”<sup>190</sup> At the schools, children were prohibited from speaking their native languages and engaging in other forms of indigenous cultural and artistic expression. Many were abused physically, psychologically and sexually, and subjected to medical experiments and forced sterilization.<sup>191</sup> In 1907 and 1909, the Chief Medical Inspector for the federal Department of Indian Affairs, Dr. Peter Bryce, visited schools across the country and produced a report that detailed poor sanitary conditions and mortality rates of between 24-75% in the schools. The government suppressed his findings and eventually forcibly retired from his position.<sup>192</sup> In 1918, the government admitted in internal correspondence that “it is readily acknowledged that Indian children lose their natural resistance to illness by habituating so closely in the residential schools, and that they die at a much higher rate than in their villages. But this alone does not justify a change in the policy of this Department, which is geared towards a final solution of our Indian Problem.”<sup>193</sup> By 1920, it had become mandatory for all Native children between the ages of 7 and 15 to attend residential school,<sup>194</sup> though frequently government officials took children from their families at the age of four or five. That year, Duncan Campbell Scott, who worked in the federal Department of Indian Affairs from 1879 to 1932 and headed that department from 1913 until his retirement, said before a parliamentary committee, “our objective is to continue until there is not a single Indian in Canada that has not been absorbed into the body politic, and there is no Indian question and no Indian department.”<sup>195</sup> In 2008, Prime Minister Harper acknowledged in a televised public apology before the House of Commons that the prime objective of the Indian Residential School system was removal of Indigenous children from their families in order to assimilate them into white settler society -- an act covered by Article II(e) of the 1948

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<sup>190</sup> Prime Minister Stephen Harper admitted this was the intent of the Indian Residential School system in his apology in parliament on June 11, 2008, online: <http://www.pm.gc.ca/eng/media.asp?id=2149>, accessed June 12, 2013.

<sup>191</sup> Ian Mosby, “Administering Colonial Science: Nutrition Research and Human Biomedical Experimentation in Aboriginal Communities and Residential Schools, 1942-1952” (2013) 46(1) *Histoire sociale/Social history* 145-172;

<sup>192</sup> Upon leaving his position, Dr. Bryce published his findings in a 1922 book entitled *The Story of a National Crime, being an appeal for justice to the Indians of Canada, the wards of the nation, our allies in the Revolutionary War, our Brothers-in-Arms in the Great War* (Ottawa: James Hope & Sons, 1922). See Bill Curry and Karen Howlett, “Natives died in droves as Ottawa ignored warnings”, *The Globe and Mail*, April 24, 2007, online <http://www.globeadvisor.com/servlet/ArticleNews/story/gam/20070424/SCHOOLS24> accessed August 30, 2013.

<sup>193</sup> Excerpt from letter by Duncan Campbell Scott to BC Indian Agent General Major D. MacKay, online: <http://learningcircle.ubc.ca/files/2013/08/IRS-Colonialism-History-Impacts-2013.pdf>, accessed September 15, 2015.

<sup>194</sup> In 1920 the *Indian Act* was amended to provide as follows: “s.10. “(1) Every Indian child between the ages of seven and fifteen years who is physically able shall attend such day, industrial or boarding school as may be designated by the Superintendent General for the full periods during which such school is open each year...” S.C. 1919-1920, C.50, s.1, amending R.S.C. 1906, c.81.

<sup>195</sup> Duncan Campbell Scott’s testimony in 1920 before the Special Committee of the House of Commons in support of forced enfranchisement of Aboriginal peoples: National Archives of Canada, Record Group 10, volume 6810, file 470-2-3, volume 7, pp. 55 (L-3) and 63 (N-3), cited in RCAP report, Volume 1, Part Two, Chapter 13, “Conclusions”, online: <http://caid.ca/RRCAP1.13.pdf>, accessed September 7, 2014.

United Nations *Convention on the Prevention and Punishment of Genocide*, which defines genocide as “acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group” including “forcibly transferring children of the group to another group.”<sup>196</sup>

Numerous children from the Kwakwaka’wakw and Haisla Nations experienced traumas at the school that deeply affected them and their families for generations to come. When Kwakwaka’wakw children arrived at St. Michaels residential school in Alert Bay they were stripped naked and forced to hand over their traditional clothing. Children were beaten and publicly shamed if they spoke their native tongue Kwak’wala. According to one residential school Survivor, there was “no nurturing, no encouragement, only put-downs, as children we had to rely on each other for comfort.”<sup>197</sup> Chief Dr. Robert Joseph remembers being probed in the genitals by staff while being showered with 40 other children, and being cuffed so often on the ears that he lost his hearing in both ears.<sup>198</sup> He says,

I spent ten lost years of my life there. The only language I knew was Kwakwala. Almost from the very first day I entered that school I was beaten for speaking my birthright. I would cry myself to sleep at night, alone and terribly lonely. When I ran out of tears I would fantasize about being home with my family and being in my home community. There were many times that I was very hungry and sometimes the worms danced on top of my porridge.<sup>199</sup>

Chief Joseph says that when he left there, he was totally broken and felt no sense of purpose.<sup>200</sup> An evaluation of the school written in 1934 by the Indian Residential School Commission of the Missionary Society of the Church of England thanked “Almighty God for what has been accomplished: for a race of people brought in the shortest period of time known in history from the most debasing savagery to citizenship both in the Kingdom of our God and in his God-blessed Dominion of Canada.”<sup>201</sup>

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<sup>196</sup> See online: <https://treaties.un.org/doc/Publication/UNTS/Volume%2078/volume-78-I-1021-English.pdf>, accessed September 7, 2014.

<sup>197</sup> Kevin Griffin, “St. Michael's Residential School at Alert Bay”, *The Vancouver Sun*, March 1, 2014, online: <http://www2.canada.com/vancouversun/features/apology/story.html?id=b5bda8e8-2e57-438c-937a-b8ef308adccc>, accessed March 1, 2014.

<sup>198</sup> Chief Robert Joseph, SFU Centre for Dialogue, “Chief Robert Joseph - Part 2: Residential School Experience”, February 13, 2014, online: <https://www.youtube.com/watch?v=D2hk7JEQtI>, accessed July 13, 2014.

<sup>199</sup> Dr. Chief Robert Joseph, UBC Honorary Doctorate of Law Speech, 27 May 2003, online: [http://www.library.ubc.ca/archives/speeches/chief\\_robert\\_joseph.html](http://www.library.ubc.ca/archives/speeches/chief_robert_joseph.html), accessed July 13, 2014.

<sup>200</sup> Joseph, *supra* note 198.

<sup>201</sup> Griffin, *supra* note 197.

At the boarding school constructed on the Haisla Nation reserve, young children were allowed to stay with their families who lived in close proximity only on weekends and holidays. At approximately the age of ten to twelve (this varied), they were sent to Coqualeetza residential school near Vancouver, a 1000 km round trip from their homes, or to the residential school in Port Alberni on Vancouver Island.<sup>202</sup> In 1995, Arthur Plint, dorm supervisor at the Port Alberni residential school from 1947-1968, was convicted of sixteen counts of indecent assault for sodomizing and forcing boys between the ages of six and sixteen to perform oral sex on him, at times in exchange for letters from the boys' mothers. B.C. Supreme Court Justice Douglas Hogarth called Plint a "sexual terrorist" and declared that "as far as the victims were concerned, the Indian residential school system was nothing more than institutionalized pedophilia."<sup>203</sup> Missionary George Raley, who later ran the Coqualeetza residential school, rationalized the residential school system as follows: "Therefore, if we want the future of the people to be Christian, the children must be removed from such demoralizing surroundings, into homes where they are under the constant influence of Christian teaching."<sup>204</sup>

Thus, the lives of the Haisla and Kwakwaka'wakw peoples were significantly altered by disease, and by government laws and church practices aimed at dispossessing Indigenous peoples of their land, cultures, familial ties and identities. Most children who were kept apart from their families at residential schools grew up afraid or unable to speak their native languages, the main vehicles for passing on traditional knowledge in oral-based knowledge systems. With some notable exceptions such as renowned Kwakwaka'wakw carvers Mungo Martin and Willie Seaweed, and Haisla carver Gordon Robertson (father of Henry Robertson and grandfather of Derek and Barry Wilson, who carved a replica of the G'psgolox pole for the Swedish Museum of Ethnography), many carvers died without passing on their skills and knowledge to the next generation, and important traditional knowledge was lost. As James Clifford has recognized, "the punishments and loss of regalia dealt a severe blow to the traditional community: large-scale exchanges disappeared, and ceremonial life and social ties were maintained with difficulty in the face of socioeconomic change and hostility from government, missions and residential schools."<sup>205</sup>

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<sup>202</sup> Interview with Gerald Amos, September 16, 2014.

<sup>203</sup> Suzanne Fournier and Ernie Crey, *Stolen From Our Embrace: the Abduction of First Nations Children and the Restoration of Aboriginal Communities* (Vancouver: Douglas and McIntyre, 1997) at 72.

<sup>204</sup> Raley in Pritchard, *supra* note 181, at 205.

<sup>205</sup> James Clifford, *Routes: Travel and Translation in the Late Twentieth Century* (Cambridge: Harvard University Press, 1997) at 125.

Meanwhile, as First Nations communities struggled to survive, private collectors and anthropologists, archaeologists and other representatives of museums in Europe and North America were scouring British Columbia for what they saw as souvenirs of “dying” cultures – including masks, headdresses, rattles, baskets, coppers and totem poles.<sup>206</sup> Hilary Stewart tells us that, “between the 1870s and 1920s hundreds of poles were purchased, or simply removed from seasonally vacant or abandoned villages without permission or payment.”<sup>207</sup> Totem poles were shipped all over Canada, the United States and Europe.<sup>208</sup>

### 3.1.3. Dan Cranmer’s potlatch and government confiscations of regalia

In Kwakwaka’wakw territory, government officials initially found it difficult to enforce the potlatch ban in part because it had been vaguely drafted and also because it was difficult to find a magistrate who would send a Native to jail “for what nobody considered to be a crime.”<sup>209</sup> Some tribes continued to potlatch openly, while others found ways to disguise the ceremony as other festivities.<sup>210</sup> William Halliday, who became the region’s fourth Indian Agent in 1906, eventually grew frustrated with his inability to abolish the practice. In 1914, Halliday wrote to Ottawa recommending that the *Indian Act* “be amended so that any gathering where money, goods or articles of any sort are given away should come under the section.”<sup>211</sup> Shortly thereafter, section 149 of the *Indian Act* was amended to make participating in a potlatch a summary conviction offense<sup>212</sup>, meaning that as Justice of the Peace, Halliday could try cases, convict and sentence.<sup>213</sup> In 1918, the provision was amended further to increase the potential prison time from one month to between two to six months.<sup>214</sup> Halliday wrote to the local chiefs threatening punishment if they

<sup>206</sup> Stewart, *supra* note 149 at 21. See also Douglas Cole, *Captured Heritage: The Scramble for Northwest Coast Artifacts* (Vancouver: Doulgas & McIntyre, 1985).

<sup>207</sup> Stewart, *ibid.*

<sup>208</sup> Edward Malin, in *Totem Poles of the Pacific Northwest Coast* (Portland: Timber Press, 1986) at 170, mentions that “[t]he Field Museum in Chicago and the American Museum in New York probably accounted for close to 100 poles between them; the Canadian National Railways and the National Museums of Canada probably an equal number. Institutions large and small acquired at least another 100, perhaps even more. A survey might reveal over 300 totem poles housed in various institutions around the world. There is no way to tell how many are lodged in private collections...”

<sup>209</sup> John Pritchard, interview cited in Bell, Raven, McCuaig and Sanborn, *supra* note 42, at 53.

<sup>210</sup> Emma Knight, “The Potlatch Collection and its Many Social Contexts: Constructing a Collection’s Object Biography”, Masters of Museum Studies thesis, Faculty of Information, University of Toronto, 2013, at 31.

<sup>211</sup> Sewid-Smith, *supra* note 185, at 15.

<sup>212</sup> *Ibid* at 16.

<sup>213</sup> Bell, Raven, McCuaig and Sanborn, *supra* note 42, at 53.

<sup>214</sup> R.S.C. 1927, Vol.II, Chap 98, No.140, p. 2218 read as follows: “Every Indian or other person who engages in or assists in celebrating or encourages either directly or indirectly another to celebrate any Indian festival, dance or other ceremony of which the giving away or paying or giving back of money, goods or articles of any sort forms a part or is

continued to ignore the potlatch ban, prompting a reply that noted, “we see our white friends giving presents to one another and why can we not do the same? Our white friends give feasts and why can we not do the same? They dance and why should we not be allowed to dance also.”<sup>215</sup> In 1921, Many tribes continued to potlatch despite the ban and the threat of arrest.<sup>216</sup>

In December 1921, ‘Namgis hereditary chief Dan Cranmer held a large, lavish potlatch on Village Island, the home of his wife’s family, believing it to be a safe distance from the RCMP outpost at Alert Bay on Cormorant Island. Approximately 400 people came from neighbouring villages, and for days, the participants feasted, sang and danced while Chief Cranmer bestowed lavish gifts on his guests, including gas-powered boats, pool tables, cash, blankets and flour.<sup>217</sup> When Halliday learned of the potlatch from certain potlatch guests who had converted to Christianity and were acting as informants,<sup>218</sup> he and RCMP constable Donald Angermann conducted a “witch” hunt. Eventually over fifty people<sup>219</sup> were arrested for “such criminal acts as singing, dancing, making speeches and giving and receiving gifts.”<sup>220</sup>

At the trial in early 1922, William Halliday acted as magistrate. The local Indian Day School was used as the courthouse and jail. The prisoners were convicted and, following Sgt. Angermann’s suggestion, told that they could avoid being sent to prison if their entire tribes gave up their potlatch paraphernalia and they signed an agreement to that effect.<sup>221</sup> Three tribes – the We-Wai-Kai from Cape Mudge, the ‘Namgis from Alert Bay, and the Mamalilikulla from Village

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a feature, whether such gift or money, goods, articles takes place before, at or after the celebration of the same, or who encourage or assists in any celebration or dance of which the wounding or mutilation of the dead or living body of any human being or animal forms a part or is a feature, is guilty of an offense and is liable on summary conviction for a term not exceeding six months and not less than two months.”

<sup>215</sup> Sewid-Smith, *supra* note 185, at 19.

<sup>216</sup> *Ibid*, at 30.

<sup>217</sup> Interview with Chief William Cranmer, quoted in Jack Knox, “A Crime Unmasked”, *The Times-Colonist*, November 5, 2005. See also Sewid-Smith, *supra* note 185, at 67.

<sup>218</sup> Sewid-Smith, *ibid*, at 57; Cranmer Webster, *supra* note 183, at 138 explains that “Unfortunately for the potlatch givers, the missionaries had been partially successful in their efforts, as several people who had attended the potlatch became police informers.”

<sup>219</sup> Various sources give different accounts of the number of people arrested. In a letter to W.E. Ditchburn, Chief Inspector of the Indian Agencies, dated February 12, 1931, William Halliday claims 64 people were ultimately arrested (see Sewid-Smith, *supra* note 185 at 85). Cranmer Webster, *ibid*, states that the informants at the potlatch gave the names of forty-five people to the police. Douglas Cole and Ira Chaikin in *An Iron Hand Upon the People: The Law against the potlatch on the Northwest Coast* (Vancouver: Douglas & McIntyre, 1990) at 118-123, indicate that initially Sgt Angermann laid charges against 34 Kwakwaka’wakw, later summoned 17 more, and that ultimately 58 people “appeared before Halliday’s makeshift bench”.

<sup>220</sup> Cranmer Webster, *ibid*.

<sup>221</sup> Cole and Chaikin, *supra* note 219, at 121.

Island<sup>222</sup> -- ‘agreed’ and their members were given suspended sentences based on their ‘agreement’ to these terms. Twenty-two men and women, including four female elders and a number of high-ranking chiefs including Mungo Martin refused the bribe and were sentenced to between two and three months in Oakalla prison near Vancouver<sup>223</sup> where many were subjected to demeaning and harsh treatment including being undressed publicly and hosed down with cold water.<sup>224</sup> Shortly thereafter, William Halliday wrote to Duncan Campbell Scott, saying:

I feel that too much credit cannot be given to Sergt. Angermann of the Royal Canadian Mounted Police as he has worked very hard over this case and has been indefatigable in his efforts to assist me in the absolute suppression of this crying evil, the potlatch. The Indians are now inspired by a wholesome fear of the law... Amongst those who are being sent to prison are four women... The fact that eight of them were convicted and four of them are doing penance for their misdeeds while the other four are on suspended sentences must have a very salutary effect on them.<sup>225</sup>

The vast trove of masks, rattles, coppers, whistles, costumes and other regalia that Halliday and Angermann collected from the various Kwakwaka’wakw villages using scows – approximately 500 objects in total -- was piled up, photographed and displayed in the Anglican church in Alert Bay. Halliday told the hereditary owners that they could come to say good-bye to their treasures, and then charged them 25 cents’ admission to see them.<sup>226</sup> This action, along with the confiscation and public display of the ceremonial masks and regalia that were normally kept concealed by their owners in boxes between ceremonies, were devastating to the Kwakwaka’wakw.

During this time, Halliday sold thirty-five objects for \$291 to the American collector George Heye, who placed them in his Museum of the American Indian/Heye Foundation in New

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<sup>222</sup> *Ibid.*

<sup>223</sup> ‘Namgis First Nation Council Hall History, at 3, online: [www.namgis.bc.ca/pages/council-hall-history.aspx](http://www.namgis.bc.ca/pages/council-hall-history.aspx), accessed July 13, 2013.

<sup>224</sup> Sewid-Smith, *supra* note 185, at 47 and 54; Cranmer Webster, *supra* note 183 at 138; Bell, Raven, McCuaig and Sanborn, *supra* note 42, at 57. See also, Tina Loo, “Dan Cranmer’s Potlatch: Law as Coercion, Symbol, and Rhetoric in British Columbia, 1884-1951”, 1992 73(2) *Canadian Historical Review* 125 at 126.

<sup>225</sup> Letter from William Halliday to Duncan Campbell Scott, dated April 10, 1922, quoted in Sewid-Smith, *supra* note 185, at 39.

<sup>226</sup> Interview with Daisy Sewid-Smith, August 7, 2013; see also Ira Jacknis, “Repatriation as Social Drama: The Kwakiutl Indians of British Columbia, 1922-1980”, (1996) 20(2) *American Indian Quarterly* 274, at 275.



York.<sup>227</sup> Royal British Columbia Museum curator Peter Macnair, who in 1998 prepared a report for the U'Mista and Nuyumbalees Cultural Centres on the pieces sold to Heye, noted that:

We cannot be certain what motivated Heye to select the 35 pieces he chose from the Potlatch Collection but his correspondence with other collectors, many of whom acquired objects on his behalf, clearly reveals he was a shrewd bargainer and a rapacious collector of indigenous North American artifacts. From the results of his transactions with Halliday it appears he had a far better sense of the ethnographic, artistic and market value of the collection than did Halliday. Thus Heye selected all the frontlet headdresses, most of the spectacular transformation masks and large articulated masks and other unique artifacts such as the “corral” (hamatsa cradle), the three “flat totems” (dantsik board) etc., to his distinct advantage... eight [headdresses] were purchased at \$6.00 each<sup>228</sup>

Sgt. Angermann took certain pieces for himself and later sold them to Heye under his wife's name<sup>229</sup>, including a transformation mask<sup>230</sup> that the Museum of the American Indian deaccessioned in 1936<sup>231</sup>, which was purchased by Harry Beasley for his Cranmore Museum in Kent, England. Beasley's widow donated it to the British Museum after his death.<sup>232</sup>

The remaining treasures were then inventoried and shipped to the Victoria Memorial Museum in Ottawa (as the museum is presently called the Canadian Museum of History, I shall refer to it from now on as the “CMH”). Duncan Campbell Scott, who had been working so assiduously to eradicate indigenous culture through the residential school system and the potlatch ban, kept eleven of the best treasures for himself.<sup>233</sup> Scott, Halliday and Angermann were never punished for profiting personally from the confiscations. Part of the collection was then loaned to the Royal Ontario Museum (“ROM”). The government ascribed an appraised value of \$1,456 to

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<sup>227</sup> “Documentation and Identification of the George G. Heye and B.E. Angermann Collections”, by Peter L. Macnair, Stewart Macnair Consultants, May 1988, at 3; Hawker, Ronald. *Tales of Ghosts: First Nations in British Columbia, 1922-61* (Vancouver: UBC Press, 2003) at 29.

<sup>228</sup> Macnair, *ibid*, at 6-7.

<sup>229</sup> Webster, *supra* note 181, at 140.

<sup>230</sup> According to Kwakiutl creation stories, there once was a time when the only difference between humans and birds, fish and animals was their skin covering, and they all could transform themselves into the other form at will. Transformation masks usually depict an outer, animal face, which the performer can open by pulling a string to reveal an inner, human face carved in wood.

<sup>231</sup> The mask was sold to Harry Beasley, an English collector, for his Cranmore Museum in Kent. Beasley's widow donated it to the British Museum after his death.

<sup>232</sup> Andrea Sanborn, “The reunification of the Kwakwaka'wakw mask with its cultural soul” (2009) 61 *Museum International* 81, at 85.

<sup>233</sup> Jacknis, *supra* note 226, at 276. Jacknis notes in fn 10 that “All but two items of the Scott collection were later sold to the National Museum of Canada [CMH] after his death.”

the objects<sup>234</sup> and supposedly sent Halliday cheques for the various tribe members who surrendered their treasures, although Harry Assu wrote in 1990 that “people are still alive who didn’t get paid, and they never knew anybody who did get paid.”<sup>235</sup> Nothing at all was paid for the most prized articles in the collection, the coppers, which were valued by the owners at the time at \$36,000.<sup>236</sup>

Though Halliday bragged to his superiors in Ottawa that the potlatch was “truly dead”<sup>237</sup>, in fact potlatching continued to be carried out illicitly. Daisy Sewid-Smith has written that “potlatching never was defeated for the people just simply found ways of camouflaging their activities.”<sup>238</sup> As Chief Don Assu describes, the Kwakwaka’wakw figured out that “the best time to have a potlatch even though you are doing it underground... [was] close to Christmas or special dates”, i.e., when the celebrating would go unremarked.<sup>239</sup> The ice in the winter months also made it more difficult for the RCMP to monitor the coastal communities. Often, however, the ceremony was modified in order for its participants to avoid detection.<sup>240</sup> For example, the various parts were carried out separately, or chiefs would go from door to door to announce important events and present gifts.<sup>241</sup> Chief Assu explains that they tried to figure out “the best way they could still practice their culture.”<sup>242</sup>

Nonetheless, because of the government’s prohibition on potlatching and removal of children to residential schools, certain important stories and information were not passed down and were lost. Andrea Sanborn explained, “during the period of the potlatch prohibition many things were not discussed openly with younger generations because of fear of repercussions: in particular, having children removed from homes and sent to residential schools...”<sup>243</sup> As hereditary Chief Bill Cranmer, Chairman of the U’mista Cultural Society, has observed, “What they did was stop our ability to pass on our culture.”<sup>244</sup>

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<sup>234</sup> Sewid-Smith, *supra* note 185, at 2-3; Cole and Chaikin, *supra* note 219, at 123.

<sup>235</sup> Assu and Inglis, *supra* note 139, at 104.

<sup>236</sup> Gloria Cranmer Webster in “Potlatch: a strict law bids us dance”, a film by the U’mista Cultural Society (National Film Board of Canada, 1975).

<sup>237</sup> Webster, *supra* note 181, at 138.

<sup>238</sup> Sewid-Smith, *supra* note 185, at 2.

<sup>239</sup> Interview with Chief Donald Assu, August 6, 2013.

<sup>240</sup> *Ibid.*

<sup>241</sup> Bell, Raven, McCuaig and Sanborn, *supra* note 42, at 55.

<sup>242</sup> Interview with Chief Donald Assu, August 6, 2013

<sup>243</sup> Sanborn, *supra* note 232, at 85.

<sup>244</sup> *Ibid.*, at 83.

### 3.1.4. The search for the Potlatch Collection

For decades, the Kwakwaka'wakw who had attended Dan Cranmer's potlatch and their descendants continued to hope that the Potlatch ban would be repealed and their treasures would be returned. Finally, in 1951, the Canadian government revised the *Indian Act*, silently deleting rather than publicly repealing the reference to the potlatch prohibition.<sup>245</sup>

Beginning in 1957, the Kwakwaka'wakw sought to repatriate their confiscated treasures. That year, Andrew Frank, a Coast Salish Native married to a high-ranking Kwakwaka'wakw woman, contacted his local member of parliament, who helped locate the collection in the basement storage of the CMH in Ottawa. In 1964, Chief James Sewid travelled to Ottawa to attend a 12-Mile Limit Conference, and during his visit went to the CMH to see the regalia. At first the museum refused to even allow Chief Sewid access to it. When Chief Sewid demanded their return on the basis they were stolen property, the museum refused. Eventually, however, due to a number of factors discussed in greater detail in subsequent chapters, in 1975 it finally agreed to return all of the pieces of the Collection in its possession on the condition that a museum be built to house them.<sup>246</sup> However, because the hereditary owners of the confiscated regalia lived in various different villages, there was a dispute among the Kwakwaka'wakw tribes as to where the repatriated regalia should end up, resulting in the collection being divided according to the wishes of the descendants of the original owners, and in two separate cultural centres being constructed to house them, the Nuyumbalees Cultural Centre in Cape Mudge (formerly the Kwagiulth Museum) and the U'Mista Cultural Centre in Alert Bay (in Kwak'wala, *nuyumbalees* means "the beginning of all legends"<sup>247</sup>, and *u'mista* means "to return home"). The repatriations to those cultural centres happened in 1979 and 1980, respectively. MOA director Michael Ames and curator Bill McLennan offered assistance to the Cultural Centre in Cape Mudge with handling and display of the newly repatriated regalia.<sup>248</sup>

The negotiations with the ROM were less fruitful, however. According to Gloria Cranmer Webster, who had become involved in the repatriation negotiations in the 1970s, the museum made it clear at their first meeting in October 1984 that it believed it had a legitimate claim to the

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<sup>245</sup> Webster, *supra* note 181, at 139.

<sup>246</sup> *Ibid.*, at 140.

<sup>247</sup> Assu and Inglis, *supra* note 139, at 106.

<sup>248</sup> Personal communication by Bill McLennan.

objects.<sup>249</sup> Ultimately, the pieces in the ROM's collection were repatriated to the two cultural centres in 1988, but only after the CMH, who had originally loaned the pieces to the ROM, got involved and recalled the loan.<sup>250</sup>

In 1992, the Smithsonian National Museum of the American ("NMAI") repatriated nine Potlatch Collection pieces from George Heye's collection and returned a further seventeen in 2002.<sup>251</sup> In 1997, negotiations with the British Museum began for the return of the 'Namgis Transformation Mask, which culminated with the restoration of the mask in 2005 to the U'Mista Cultural Centre in Alert Bay as part of a long-term loan, which remains the only feasible means of repatriating cultural objects due to restrictions on de-accessioning in the British Museum Act (which I discuss further in Chapter 4). In 2004, MOA returned on long-term loan three *Hamsaml* bird masks that Peter Macnair identified were from the Potlatch Collection based on the photograph taken by William Halliday in the Alert Bay Anglican Church.<sup>252</sup> At the moment, the U'Mista Cultural Centre is working on repatriation of a *Dzunukwa*<sup>253</sup> mask from the Horniman Museum and Gardens in London, which purchased the mask from the NMAI when it deaccessioned some of the regalia that George Heye had bought from Indian Agent Halliday.

Certain Potlatch Collection pieces have also been repatriated from private collections. For example, with the help of French anthropologist Marie Mauzé, who worked and lived for many years in both Cape Mudge and Alert Bay, a Potlatch Collection *yaxwiwe*' headdress that ended up in French surrealist André Breton's private collection was voluntarily returned to U'Mista by Breton's daughter in 2003.<sup>254</sup> However, because I focus in my thesis on repatriation negotiations

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<sup>249</sup> Gloria Cranmer Webster, "The "R" Word" (1988) 6 *Muse* 43.

<sup>250</sup> *Ibid.*

<sup>251</sup> Jack Knox, "Exposed by a mask" *Edmonton Journal*, August 11, 2002; Andrea Sanborn, "Special Projects Update", U'Mista News, Winter 2002, at 3; see also, U'mista Cultural Society, "The Potlatch Collection History", online <http://www.umista.org/collections/> accessed August 15, 2013.

<sup>252</sup> Interview with Juanita Johnston, October 4, 2013; see also Knight, *supra* note 210, at 103.

<sup>253</sup> According to the January 2013 U'Mista newsletter "Dzunukwa (Wild Woman of the Woods) is a giantess; she has a black hairy body, pendulous breasts, pursed lips that indicate her cry "uu huu uu" and deep-set eyes. It is said that Dzunukwa is vain, has poor vision, and is somewhat stupid. She often seeks children, intending to capture them and take them to her remote houses in the woods. Once there, she plans to eat them. She controls the water of life and can bring back the dead by sprinkling this magic liquid on them."

<sup>254</sup> Dr. Marie Mauzé, an anthropologist who has worked extensively with both the Cape Mudge and Alert Bay bands, identified the *yaxwiwe*' headdress when the French government was considering buying parts of Breton's private collection. In 2003, Breton's daughter, Aube Breton-Elleouet, travelled from Paris to Alert Bay to return the mask to the Kwakwaka'wakw: interview with Juanita Johnston, October 4, 2013; see also Jack Knox, "Potlatch treasure returned from France", *The Vancouver Sun*, September 22, 2003.

between state museums and Indigenous peoples, I discuss primarily the repatriations from the CMH, ROM, NMAI and British Museum.

### 3.1.5. The legend of the G'psgolox pole

I start my discussion of the G'psgolox pole with the story of the pole's creation in order to provide context for the story of the pole's removal, absence and repatriation.

The legend of the pole involves a hereditary chief G'psgolox wandering into the forest in a state of deep mourning following the death of all his children and other members of his clan.<sup>255</sup> There he encountered the spirit Tsooda, who upon hearing of Chief G'psgolox's loss, gave him a piece of transparent crystal and told him to bite into it at the tree where he had buried his children. G'psgolox did so and was reunited with his children and clan members, who descended alive from the branches of the trees where they had been interred in boxes, accompanied by Tsooda.<sup>256</sup>

In 1872, Chief G'psgolox (Paddy McDonald), the head of the Eagle clan, commissioned two carvers from the Raven clan, Hemzid (Johnny Paul) and Wakas (Solomon Robertson), to carve a pole to commemorate the event.<sup>257</sup> The carvers placed Tsooda, wearing a hat that revolves on his head, in the place of honour at the top of the pole, and below him Asoalget, another personified spirit with the paws of a bear. Below Asoalget was a mythical grizzly bear living under water, an important symbol of spiritual power in Haisla culture. Considered a semi-divinity, the grizzly bear forms a link between humans and the spirit world.<sup>258</sup> The pole was erected that year in Misk'usa, one of the four traditional villages of the Henaksiala people, where it "acted as a portal to the world

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<sup>255</sup> Bell et al, *supra* note 169, at 380; see also Robin Fisher, *supra* note 167, at 115.

<sup>256</sup> Marius Barbeau, *Totem Poles: According to Location*, (1950) Bulletin No. 19, Volume II, Anthropological Series No.30, National Museum of Canada, at 476-477; Hume, *supra* note 169.

<sup>257</sup> This date of creation is mentioned by the Haisla Totem Pole Committee in "Chronology of the G'psgolox Totem Pole Journey", online: <http://www.turtleisland.org/culture/haisla.pdf>, accessed September 21, 2014. However, there is some discrepancy in various works about the date of and reason for the pole's commissioning. For example, in his 2003 National Film Board of Canada documentary, "Totem: The Return of the G'psgolox Pole" ("Totem 2003"), Gil Cardinal states that the pole was commissioned by the Chief G'psgolox who lost his children to a smallpox epidemic. Bell et al, *supra* note 169 at 380, similarly state that a smallpox epidemic was the reason for the pole's commissioning, that the epidemic was in 1862, and that the pole was erected in 1872. Barbeau, *ibid* at 477, however, describes a meeting with the daughter-in-law of the chief who commissioned the pole, who according to Barbeau said that the pole was commissioned to perpetuate the memory of an important spiritual encounter in the clan's history, not to commemorate her father-in-law's own spiritual encounter. In any event, I note that many Haisla refer to the pole as a mortuary pole, and that the place where the original pole stood was near a graveyard.

<sup>258</sup> Barbeau, *ibid*, at 454; Jeannette Greenfield, *The Return of Cultural Treasures* (Cambridge University Press, 2007) at 317; Pat Kramer *Totem Poles* (Canmore: Altitude Publishing Canada, 1995) at 63.

of water, air and earth, and it stood as a gateway to the village for 57 years.”<sup>259</sup>

### 3.1.6. The removal of and search for the G’psgolox pole

In the 1920s, Olof Hanson, the Swedish Consul stationed in Prince Rupert, British Columbia, decided that he wanted to acquire a totem pole for Sweden. At the time, many of the museums in Europe, including the British Museum, had totem poles in their collections. Hanson thus contacted Iver Fougner, the regional Indian Agent, for assistance in the matter. In December 1927, Mr. Fougner requested permission from the federal Department of Indian Affairs for Mr. Hanson’s purchase of the G’psgolox pole, arguing that the “chances are that the pole, if not removed, after some time will fall down and be destroyed.”<sup>260</sup> (In fact, according to Haisla tradition, that is exactly what totem poles were *meant* to do, namely eventually fall down and return to Mother Earth. Carved from western red cedar trees, totem poles exposed to the Northwest Coast climate last on average only 60 to 80 years.<sup>261</sup>) In January 1928, the Department of Indian Affairs granted Hanson’s request on the basis that “the Indian reserve is uninhabited and very isolated... and provided that the Indian owners are willing to dispose of it.”<sup>262</sup>

By 1928 the Kitlope people had in fact moved the site of their permanent village from Misk’usa up the river to Kemano due to mudslides and steep population decline from smallpox and influenza epidemics.<sup>263</sup> However, traditionally the Kitlope lived according to the season in several different villages, a fact that Indian Agent Fougner would most likely have known.<sup>264</sup>

In 1929, the pole was severed at its base and transported to Sweden, where it was donated to the Museum of Ethnography in Stockholm. The pole was erected in the open air in front of the Museum for six months before being taken down when the Museum moved to new premises. Due

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<sup>259</sup> Greenfield, *ibid*.

<sup>260</sup> Public Archives - Indian Affairs (RG10, Volume 4087 file 507,787-2B). Note that in 1926 the *Indian Act* was amended to prohibit the acquisition or removal of totem poles without written permission of the federal government, on penalty of a fine not exceeding two hundred dollars or a prison term of up to three months. The new section 106A provided in relevant part as follows: “No title to any Indian... totem pole... on an Indian reserve, shall be acquired by any means whatsoever by any person without the written consent of the Superintendent General of Indian Affairs, and no Indian... totem pole... on an Indian reserve shall be removed, taken away, mutilated, disfigured, defaced or destroyed without such written consent.” See Douglas Cole, *supra* note 206, at 278.

<sup>261</sup> Stewart, *supra* note 149 at 29.

<sup>262</sup> Letter from the Deputy Superintendent General to Iver Fougner dated January 11, 1928, Public Archives - Indian Affairs (RG10, Volume 4087 file 507,787 -2B).

<sup>263</sup> Discussed by Louisa Smith in Totem 2003, *supra* note 257; see also Bell et al, *supra* note 169, at 380.

<sup>264</sup> I discussed this issue with Anders Björklund during my interview with him on September 29, 2014.

to the fact the new Museum lacked a space high enough to display it, the pole was placed horizontally in an unheated storeroom at the new premises for 45 years. In 1975, the pole was moved again to undergo conservation work to deal with the effects of dry rot. In 1980 it was re-erected in a new climate controlled building at the Museum, in a hall constructed especially to house it.<sup>265</sup>

In the early 1980's, Cecil Paul Sr. sought the assistance of the Kitimat Centennial Museum to locate the G'psgolox pole.<sup>266</sup> According to Mr. Björklund, the subject of the pole's repatriation to Canada was subsequently raised by the CMH at the 1989 annual meeting of the International Council of Museums ("ICOM"), although it seems the museum was hoping to acquire the pole for its own collection, not for the Haisla.<sup>267</sup> In December 1991, a delegation from the Haisla Nation travelled to Stockholm to make their repatriation claim in person. Having received much needed funding from Greenpeace to travel to Finland in order to convince Enso-Gutzeit Oy, the 50% owner of Kitimat-based Eurocan Pulp and Paper Co, to abandon its plan to log the Kitlope Valley, the Haisla delegation took advantage of Helsinki's proximity to Stockholm and travelled there by overnight ferry once their meetings with Enso-Gutzeit Oy had concluded. According to former Museum of Ethnography director Anders Björklund, the arrival of Haisla Nation elected Chief Gerald Amos, G'psgolox descendant Louisa Smith and anthropologist John Pritchard at the Museum of Ethnography caused quite a stir: "Here comes this small Indian tribe from somewhere in Northwest Canada in these fantastic suits. They are trying to stop big lumber companies who want to tear down their whole forest. They had the romantic kind of approach. The Swedish media loved it."<sup>268</sup> According to Per Kaks, Director of the Museum of Ethnography from 1991 to 2002, "they said, we want to have the pole back. What could I say? I can't say either yes or no, because I haven't got the right to do that. As this is now national property, government property, I have to ask for permission."<sup>269</sup>

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<sup>265</sup> "Chronology of the G'ps Golox Totem Pole Journey", online: <http://www.turtleisland.org/culture/haisla.pdf>, accessed October 3, 2013.

<sup>266</sup> Associated Press, "Canadians Rejoice over Return of Totem Pole from Sweden after 77 Years", *blouinartinfo.com*, April 27, 2006: <http://www.blouinartinfo.com/news/story/15287/canadians-rejoice-over-return-of-totem-pole-from-sweden-after-77-years/?page=1>, accessed October 10, 2014. The article does not specify which museum, but the only museum in Kitimat at the time was the Centennial Museum. It has since been renamed the Kitimat Museum & Archives.

<sup>267</sup> Interview with Anders Björklund, September 29, 2014.

<sup>268</sup> *Ibid.*

<sup>269</sup> Totem 2003, *supra* note 257.

The people of the Haisla Nation spent the next 15 years negotiating the pole's return, during which they carved a replica pole for the Museum in front of visitors to the Museum, and struggled to deal with the financial and cultural obstacles posed by the condition for repatriation imposed by the Swedish government<sup>270</sup> that the original pole be preserved indoors. They also carved a second replica pole that they raised in Misk'usa in August 2000, during a formal ceremony attended by more than 200 guests of the Haisla Nation, including Olof Hanson's daughter.<sup>271</sup> Finally, in March 2006, a 15-member Haisla delegation travelled to Sweden to participate in a traditional ceremony celebrating the raising of the replica pole outside the Museum of Ethnography, which was attended by representatives of the Museum, the Canadian federal and provincial governments, the Swedish government and the Sami (the Indigenous people of Sweden). They then witnessed the original pole, packed in a special case created by the museum, leave the Gothenburg harbor on its journey home via the Panama Canal. Three hundred Swedes joined the Haisla delegation on those memorable occasions.

On April 26, 2006, hereditary Chief G'psgolox Dan Paul Sr., as traditional owner of the pole, welcomed the pole to Vancouver in a historic ceremony at the UBC Museum of Anthropology attended also by Mr. Björklund. On June 21, National Aboriginal Day, a further ceremony was held in Vancouver to celebrate the return of the pole. Shortly thereafter, the pole was transported to Haisla Nation territory, where the Haisla and numerous neighbouring First Nations welcomed it home in emotion-filled celebration. For almost six years, it was displayed in Kitimat City Centre Mall, a 10-minute drive from Kitimaat Village, while the Haisla tried to raise funds to build a dedicated facility in Kitimaat Village. However, due to a lack in necessary funding, a dedicated facility was never built. In 2012, the pole was removed from the mall and subsequently moved to an outdoor resting place in Kitlope territory, in accordance with the wishes of the then ailing Chief G'psgolox, Dan Paul Sr. (who has since passed on). In Chapter 5, I analyse further the legal, ethical, financial and cultural complexities of the decision to return the pole to nature.

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<sup>270</sup> Interview with Anders Björklund, September 29, 2014.

<sup>271</sup> A photo of that pole-raising ceremony is available online at: <http://northword.ca/summer-2006/haisla-totem>



### 3.1.7. Modern-day procedures aimed at redressing colonial harms

Understanding the historical context of repatriation claims by Indigenous peoples of Canada requires also being familiar with the debate surrounding contemporary redress procedures for past and ongoing harms resulting from colonial assimilation laws and practices. While some of the redress procedures discussed below post-date the majority of the repatriations to the Haisla and Kwakwaka'wakw Nations, I nonetheless include a brief discussion of them, as they are necessary to understanding future repatriation claims by Indigenous peoples of Canada.

In the 1980s, residential school Survivors began coming forward with accounts of horrific physical, psychological and sexual abuse they suffered at residential schools. A number of Survivors have published accounts of the abuses they endured.<sup>272</sup> The fact that many of the cases of abuse are relatively recent and that the harmful effects of a century of such abuses continue to plague Indigenous communities must be considered in understanding repatriation disputes. For example, one Survivor recounts that in June 1981, at the Muscowequan Residential School, ‘five or six girls between the ages of eight and ten years had tied socks and towels together and tried to hang themselves.’<sup>273</sup>

In 1991, following a campaign for investigation of the abuses led by Phil Fontaine, who at that point was Grand Chief of the Manitoba Assembly of Chiefs, the federal government established the RCAP. Its final Report provided a detailed and damning indictment of the residential school system. In 1993, 1994 and 1998, the Anglican, Presbyterian and United Churches (in that order) issued formal apologies to IRS Survivors. The apology of the Archbishop of the Anglican Church of Canada, for example, stated:

I accept and I confess before God and you, our failures in the residential schools. We failed you. We failed ourselves. We failed God. I am sorry, more than I can say, that we were part of a system which took you and your children from home and family. I am sorry, more than I can say, that we tried to remake you in our image, taking from you your language and the signs of your identity.

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<sup>272</sup> See, e.g., Fournier and Crey, *supra* note 203; Theodore Fontaine, *Broken Circle: The Dark Legacy of Indian Residential Schools: A Memoir* (Victoria: Heritage House Publishing, 2010); and Bev Sellars, *They Called Me Number One: Secrets and Survival at an Indian Residential School* (Vancouver: Talonbooks, 2013).

<sup>273</sup> Mark Cherrington, “O Canada!”, (2007) 31(3) *Cultural Survival*.

I am sorry, more than I can say, that in our schools so many were abused physically, sexually, culturally and emotionally. On behalf of the Anglican Church of Canada, I present our apology.

On the other hand, the Catholic Church, which operated close to 75 per cent of the residential schools across the nation, refused to apologize. Finally, in 2009, following a meeting with then Assembly of First Nations Grand Chief Phil Fontaine, Pope Benedict XVI issued a statement in which he “expressed his sorrow at the anguish caused by the deplorable conduct of some members of the Church”, “offered his sympathy and prayerful solidarity” and “prayed that all those affected would experience healing and encouraged first nations peoples to continue to move forward with renewed hope.”<sup>274</sup> Following the statement, Grand Chief Fontaine said, “I think His Holiness understands the pain that was endured by so many and I heard him say that it caused him great anguish... it gives me comfort.”<sup>275</sup> However, hereditary Chief Bill Wilson from the Musgamagw Band on northern Vancouver Island said “There is no apology... it's one thing to have sorrow for tragedies that happened in the world. It's quite another thing to accept responsibility for causing them.”<sup>276</sup>

In 1998, the Minister of Indian Affairs and Northern Development in Prime Minister Jean Chretien’s Liberal government issued a *Statement of Reconciliation*, which read in part:

As a country, we are burdened by past actions that resulted in weakening the identity of Aboriginal peoples, suppressing their languages and cultures, and outlawing spiritual practices. ... We must acknowledge that the result of these actions was the erosion of the political, economic and social systems of Aboriginal people and nations. The [Residential School system] separated many children from their families and communities and prevented them from speaking their own languages and from learning about their heritage and cultures. In the worst cases, it left legacies of personal pain and distress that continue to reverberate in Aboriginal communities to this day. Tragically, some children were the victims of physical and sexual abuse. The government of Canada acknowledges the role it played in the development and administration of these schools. Particularly to those individuals who experienced the tragedy of sexual and physical abuse at residential schools, and who have carried this burden believing that in some way they must be responsible, we wish to emphasize that what you experienced was not your fault and should never have happened. To

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<sup>274</sup> Peter O’Neil and Linda Nguyen, “Pope’s statement of remorse pleases native leader”, *The Vancouver Sun*, April 30, 2009; CTV News Staff, “Pope apologizes for abuse at native schools”, *CTV News*, April 29, 2009, online: <http://www.ctvnews.ca/pope-apologizes-for-abuse-at-native-schools-1.393911>, accessed October 28, 2014.

<sup>275</sup> *Ibid.*

<sup>276</sup> *Ibid.*

those of you who suffered this tragedy at residential schools, we are deeply sorry.<sup>277</sup>

Chretien's government also provided \$350 million to establish an Aboriginal Healing Foundation, an Aboriginal-managed, not-for-profit organization that provided resources for healing-related initiatives including counseling, addiction treatment, parenting skills training and women's shelters. It aimed to "help Survivors in telling the truth of their experiences and being heard"<sup>278</sup> and engage all Canadians in the process of healing and reconciliation.

By 2000, over 10,000 sexual abuse claims had been filed in the courts. In 2005, the federal government and churches began negotiating a class action settlement with legal representatives of Survivors and of the Assembly of First Nations. The Indian Residential Schools Settlement Agreement (IRSSA), which received court approval in 2007, provided a fixed "common experience" payment of \$10,000 for the first year spent at a federally owned or administered residential school and \$3000 per additional year. It also promised assessment of eligibility for further compensation for physical or sexual abuse, committed a further 125 million to the Aboriginal Healing Foundation, and established a commemoration project and Truth and Reconciliation Commission (TRC), which subsequently held meetings across the country to hear testimony of those affected by and involved in the schools. The stated 5-year mandate of the TRC, which was recently extended by the federal government, is to learn and inform about the truth of what happened at the schools, in the hope of guiding Aboriginal and non-Aboriginal peoples of Canada in "a process of truth and healing leading toward reconciliation and renewed relationships based on mutual understanding and respect."<sup>279</sup>

While the public acknowledgment by the government and churches within the IRSSA of the abuses experienced by Aboriginal children was an important redress action, the IRSSA has not been without controversy, particularly the point system it created for determining eligibility for further compensation. As Cultural Survival described in 2007,

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<sup>277</sup> The Honourable Jane Stewart, January 7, 1998, online: <https://www.itk.ca/historical-event/statement-reconciliation>, accessed September 27, 2014.

<sup>278</sup> The Aboriginal Healing Foundation, "Vision, Mission, Values", online: <http://www.ahf.ca/about-us/mission>, accessed August 6, 2013.

<sup>279</sup> Truth and Reconciliation Commission of Canada, online: <http://www.trc.ca/websites/trcinstitution/index.php?p=4>, accessed August 6, 2013.

if as a seven-year-old girl you suffered repeated vaginal penetration with an object or were repeatedly raped by a school staff member, you get 45 to 60 points (if you were only penetrated with an object once, you get half that many points—apparently you were only half as traumatized). For repeated oral intercourse you get 36-44 points, but physical assaults that led to permanent disfigurement are worth a mere 11 to 25 points. And if you were photographed in the nude, fondled by a nun, or had the headmaster masturbate in front of you, you are eligible for only five points. There are categories for the results of the abuse, too. If you have chronic post-traumatic stress disorder or suicidal tendencies you can get 20 to 25 points, but if you have become addicted to drugs, have panic attacks, or sexual dysfunction, you get only 11 to 15 points. Once you've parsed out all your most personal violations and traumatic experiences on the grid and added up your points, you go to another chart that shows the dollar value of those points and file your claim. In order to receive compensation, however, your claim has to be heard by an adjudicator. At that hearing, you have to provide sufficient evidence to prove your claim. This can be exceptionally difficult when the only legal proof may be a former student's word against the official record. To make matters worse, the person who abused you has the right to testify (assuming that person is still alive)... If the goal were to retraumatize the victims, it would be hard to imagine a more effective way to do it.<sup>280</sup>

Also problematic was the fact that in 2007, the newly elected Conservative government stated that it would not issue an official apology to Aboriginal peoples as part of the settlement, despite the fact it had recently apologized to the Chinese for the racist head tax system in place between 1885 and 1923. At the time, Minister for Indian Affairs Jim Prentice asserted that, "I've said quite clearly that the residential school chapter of our history is one that was a difficult chapter. Many things happened that we need to close the door on as part of Canadian history, but fundamentally, the underlying objective had been to try and provide an education to aboriginal children."<sup>281</sup>

Under pressure, Prime Minister Harper relented and in 2008 formally apologized in the House of Commons for the residential school system. In his apology, he stated that "this policy of assimilation was wrong, has caused great harm, and has no place in our country," that "this policy has had a lasting and damaging impact on aboriginal culture, heritage and language" and that "[t]here is no place in Canada for the attitudes that inspired the Indian Residential Schools system to ever prevail again."<sup>282</sup> In response, IRS Survivor Nora Martin from Tofino, B.C. stated, "It is an

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<sup>280</sup> Cherrington, *supra* note 273.

<sup>281</sup> Bill Curry, "No residential school apology, Tories say", *The Globe and Mail*, March 27, 2007, online: <http://www.theglobeandmail.com/news/national/no-residential-school-apology-tories-say/article681921/>, accessed October 28, 2014.

<sup>282</sup> Apology of Prime Minister Harper, House of Commons, June 11, 2008.

important day, one that I have been waiting for, for many years to acknowledge the pain and suffering that I have gone through, that my family has gone through.”<sup>283</sup> IRS Survivor Michael Auger from River Cree Resort in Alberta, said, "It gave me hope that it's a start and that we all seem to be united. I do feel forgiveness. I do feel (there was) genuineness and sincerity.”<sup>284</sup> Chief Ron Nyce of the Nisga'a Nation in B.C. said "Today is a long time coming for reconciliation to what has happened to over 80,000 still alive. It is a very important - new beginning for a lot of people who need to hear an apology. It has to be sincere of course, coming from the heart, that is what I am seeking.”<sup>285</sup>

Soon thereafter, however, Prime Minister Harper caused the sincerity of his apology to be called into question when he declared at the 2009 G20 Pittsburgh Summit that “there are very few countries that can say for nearly 150 years they’ve had the same political system without any social breakdown, political upheaval or invasion. We are unique in that regard. We also have no *history* of colonialism.”<sup>286</sup> Then in 2010, Prime Minister Harper’s government decided not to renew direct funding to the Aboriginal Healing Foundation, saying that “the foundation’s funding was never meant to last forever.”<sup>287</sup> His government’s further passage of two omnibus bills in 2011, which provoked massive national and international Idle No More rights movement protests against impingements of Aboriginal and treaty rights, further eroded public confidence in the sincerity of his apology to IRS Survivors.

Another complicated issue that underlies repatriation disputes with Indigenous peoples of Canada is a lack of consensus on the appropriateness of the concept of ‘reconciliation’. Dr. Robert Joseph, founder of the national not-for-profit organization Reconciliation Canada, believes that “we can transform our Canada if we truly hold on to this idea that reconciliation through deep dialogue, and better understanding and commitment to each other is a better way.”<sup>288</sup> At a July

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<sup>283</sup> The Vancouver Sun, “Reactions to the Apology”, June 11, 2008, online: <http://www2.canada.com/vancouversun/features/apology/story.html?id=68be7402-4918-41ae-9b09-3402df6e028f>, accessed August 13, 2014.

<sup>284</sup> *Ibid.*

<sup>285</sup> *Ibid.*

<sup>286</sup> Jennifer Henderson and Pauline Wakeham, “Colonial Reckoning, National Reconciliation?: Aboriginal Peoples and the Culture of Redress in Canada” (2009) 35(1) *ESC* 1.

<sup>287</sup> Comment of Aboriginal Affairs Minister Chuck Strahl, CBC News, “Aboriginal leaders, PM meet following healing foundation debate” March 31, 2010, online: <http://www.cbc.ca/news/canada/north/story/2010/03/31/north-aboriginal-healing-foundation.html>, accessed August 7, 2013.

<sup>288</sup> Vovo Productions, “Chief Dr. Robert Joseph & Dr. David Suzuki - Speaking the Language of Reconciliation”, online: <http://vimeo.com/67170414>

2014 International Association of Genocide Scholars conference in Winnipeg, however, Native Education College professor Tamara Starblanket called reconciliation a “destructive” concept, saying that expecting Aboriginal peoples, who were deeply harmed by colonialism, to “reconcile” is misplaced. Dr. Robert Joseph, himself a survivor of the IRS system, argues in contrast,

I've seen the destruction and devastation left by colonialism on a race of people... Those of us who grew up in those times were broken; it led to resentment, hostility, anger, and being left out...I slowly began to recognize that if we're ever to resolve this grave issue, we have to deal with it together. It doesn't matter how much money is paid to survivors or programs provided to them; if we don't reconcile in the long term, we'll continue to be angry, resentful and separated.<sup>289</sup>

Dr. Joseph asserts that "nothing will change unless we change our own mindset, who we are, and where we want to go in the future. Otherwise, there's a danger we might just languish in resentment, anger and darkness."<sup>290</sup>

UBC professor of political science and First Nations studies, Glen Coulthard, does not believe that emotions like rage, resentment or contempt are negative, however. Rather, he says, they are important, motivating responses to ongoing injustices:

They're seen as holding us back, as creating a kind of debilitating pain which we can't escape... as leading to all kinds of issues such as alcoholism [and] suicide. In the context of oppression and colonialism, the existence of emotions like anger and resentment are telling us that something is wrong. To be resentful of something is to have indignation at being treated unfairly. When that emotion expresses itself as a politicized form of anger, we ought not try to overcome that prematurely -- but channel it in a direction that will target the source of that oppression or wrongdoing.<sup>291</sup>

In his opinion, making concrete political demands or commitments is essential to lasting transformation: “Reconciliation needs to be engaged, and not just uncritically taken at face value.”<sup>292</sup>

A recent political initiative seems aimed at finding ways to realize that ideal. On September

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<sup>289</sup> David Ball, “Reconciliation Week Envisions 'New Way Forward'”, *The Tyee*, September 5, 2013, online: <http://thetyee.ca/Presents/2013/09/05/Reconciliation-Week/>, accessed August 13, 2014.

<sup>290</sup> *Ibid.*

<sup>291</sup> *Ibid.*

<sup>292</sup> *Ibid.*

4, 2014, two former Prime Ministers, numerous Indigenous leaders, former auditor general of Canada Sheila Fraser, and Justice Murray Sinclair, who chairs the Truth and Reconciliation Commission, signed a declaration establishing *Canadians for a New Partnership* (CFNP). CFNP's stated mission is to "establish and support a broad-based, inclusive leadership initiative to engage Canadians in dialogue and relationship building aimed at building a new partnership between First Peoples and other Canadians." At the signing, former AFN National Chief Ovide Mercredi stated:

There is much to be gained by repairing relations between Indigenous and non-Indigenous people – and much to be lost if we fail to reconcile our differences. The Constitution enshrines our rights and the courts have consistently upheld them. We are not going to go away and we are not going to fade into the fabric of non-Aboriginal society. We can either develop the vast potential of Canada together or we can continue the paralysis that flows from misunderstanding, betrayal and neglect. There is no question which path this Partnership chooses to travel. Our challenge to the rest of Canadians now is 'come with us.'<sup>293</sup>

Mary Simon, past president of Inuit Tapiriit Kanatami, added that: "When the first settlers came to our land, we welcomed them... Trade relationships and alliances of friendship and peace flourished and solemn treaties were signed. These are the values – and the partnership – that we are trying to restore starting today. A partnership of equals, pledged to reconcile historic wrongs, committed to mutual respect and dedicated to the eradication of inequities."<sup>294</sup> Former Conservative Prime Minister Joe Clark expressed his conviction that "we can succeed, if we base our approach on mutual respect and responsibility, mutual recognition of our shared history and a genuine commitment to cooperation."<sup>295</sup>

The people of the Haisla and Kwakwaka'wakw Nations have been active participants in national reconciliation and healing processes, while continuing their struggles to protect their traditional territories and seek redress for cultural harms. For example, having succeeded in protecting the Kitlope Valley from logging, the Haisla people continue their decade-long struggle to prevent Enbridge Oil company from building a pipeline carrying bitumen from the Alberta tarsands across their traditional territories and through the Douglas Channel to Chinese markets. The Kwakwaka'wakw First Nations continue to negotiate a Specific Claim with the federal

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<sup>293</sup> The Canadian Press, "Former politicians and aboriginal leaders announce new partnership", *cbcnews.com*, September 4, 2014, online: <http://www.cbc.ca/news/aboriginal/former-politicians-and-aboriginal-leaders-announce-new-partnership-1.2754758>, accessed September 7, 2104.

<sup>294</sup> *Ibid.*

<sup>295</sup> *Ibid.*

government requesting compensation for the injustices endured by the Kwakwaka'wakw peoples following banning of the Potlatch ceremony and a posthumous pardon for those who were interred in 1922.<sup>296</sup> In September 2013, members of the Kwakwaka'wakw and Haisla Nations travelled the long distance to Vancouver to attend the five-day TRC Vancouver national event, which culminated in over 70,000 Aboriginal and non-Aboriginal Canadians walking through the streets of Vancouver together in the pouring rain to demonstrate their support for IRS Survivors as part of Reconciliation Canada's official Reconciliation Walk.

As discussed further below, many Haisla and Kwakwaka'wakw peoples see repatriation as an important part of contemporary redress procedures. So does MOA, which stated in Case Studies that it prepared to supplement British Columbia high school students' curriculum that,

Repatriation of cultural property is an important part of acknowledging and reconciling the unjust ways that many First Nations people were treated in the past....The return of wrongfully taken cultural property to their original communities is important work. Acknowledging the historical events that resulted in First Nations losing their cultural property and addressing these issues is an important part of repatriation and reconciliation. It is one way to recognize Indigenous peoples' history and future.<sup>297</sup>

Shawn Atleo, then Regional Chief of the BC Assembly of First Nations, at the ceremony celebrating the return of the G'psglox pole from Sweden on National Aboriginal Day (June 21) in 2006, emphasized his belief that repatriation is key means of redressing colonial harms and creating better futures for Aboriginal peoples and society as a whole:

Today is a demonstration of our continued path towards reconciliation. We are building new relationships based on respect and recognition. The return of cultural property is integral to maintaining and passing on our culture, teachings and languages, and to reclaiming our identities. The Haisla's long-standing efforts are important steps to creating an optimistic future for everyone.<sup>298</sup>

The process of Relationship Building that I recommend is aimed at increasing the likelihood that repatriation negotiations will foster understanding and respect between the parties. The next section of Chapter 3 seeks to mirror the Relationship Building process by discussing elements that

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<sup>296</sup> Cranmer Webster, *supra* note 153, at 140.

<sup>297</sup> MOA, "Returning the Past: Repatriation of First Nations Cultural Property", 2008 at 3, online: <http://moa.ubc.ca/learn/resources/pdf/Repatriation%20Case%20Studies.pdf>, accessed September 4, 2014.

<sup>298</sup> "Aboriginal Celebration Marks Historic Repatriation", June 21, 2006, News Release, Office of the Premier, online: [http://www2.news.gov.bc.ca/news\\_releases\\_2005-2009/2006OTP0108-000836.htm](http://www2.news.gov.bc.ca/news_releases_2005-2009/2006OTP0108-000836.htm), accessed September 4, 2014.



underlie repatriation negotiations and thus should be explored during that process. In particular, it provides further context about the various different cultural values, beliefs and imperatives that drove the Kwakwaka'wakw and Haisla peoples in their repatriation quests.

### 3.2. Reasons for the Haisla and Kwakwaka'wakw peoples' repatriation quests

The reasons why various Indigenous peoples around the world have sought repatriation of cultural objects are varied and complex. Robert Paterson and Catherine Bell have written that Canadian First Nations seek return of cultural heritage as

part of the larger project of decolonization, including reparation of past injustice. Specific rationales include loss of cultural knowledge, cultural continuity and revitalization, adherence to First Nations laws and protocols, secular and inappropriate use of ceremonial items, and respect for human rights such as the right to self-determination and religious and cultural freedom.<sup>299</sup>

Other reasons are apparent in the explanation by Diana Henry (Coast Salish) of grievances that underlay the Saanich peoples' efforts to prevent the export of SDDLNEWHALA ("medicine bowl") to the United States in 1993: "the Saanich Nation has never received financial remuneration for lands and resources lost, yet every day our burial grounds are desecrated, our cultural properties are removed, and our land and resources are sold!"<sup>300</sup> For the Zuni Tribe of Arizona, repatriation is a means of redressing affronts to their traditions and beliefs by looters' illicit removal of their *Ahayu:da* (wooden "war gods"), which breaks the natural cycle of their return to Mother Earth and which the Zuni believe causes "war, violence, and natural disasters."<sup>301</sup> In his article entitled "The Meanings and Values of Repatriation", Yorta Yorta Elder Henry Atkinson emphasizes that repatriation "is important to the healing processes of indigenous peoples, for the past holds much pain with not only the ancestors being taken by force and brutal means but also the tearing apart of the fabric of our lives."<sup>302</sup>

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<sup>299</sup> Paterson and Bell, *supra* note 26, at 93.

<sup>300</sup> Diana Henry, "Back from the Brink: Canada's First Nations' Right to Preserve Canadian Heritage", (1995) *Special Issue U.B.C. L. Rev.* 8.

<sup>301</sup> T.J. Ferguson, Roger Anyon and Edmund J. Ladd, "Repatriation at the Pueblo of Zuni: Diverse Solutions to Complex Problems", in Devon Mihesua (ed), *Repatriation Reader: who owns American Indian remains?* (Lincoln: University of Nebraska Press, 2000) at 240.

<sup>302</sup> Henry Atkinson, "The Meanings and Values of Repatriation", in Turnbull and Pickering, *supra* note 3, at 18.

Discussing in one thesis all of the reasons that Indigenous peoples around the world seek repatriation of their cultural objects would be impossible, of course, not only because the reasons are so numerous but also because they vary among Indigenous nations and individuals. As Devon Mihesua points out, “who speaks for all tribes, if anyone?”<sup>303</sup> What I have chosen to do, therefore, is to discuss what drove the Kwakwaka’wakw and Haisla peoples in their repatriation quests, as a means of illustrating what drives Indigenous peoples from colonial settler states when they seek to reclaim objects they believe were stolen from them. Rather than rely on non-Haisla and non-Kwakwaka’wakw scholars’ theories about their repatriation quests, to the greatest extent possible I rely on comments made by Haisla and Kwakwaka’wakw peoples who participated in the repatriation processes, without interpreting those comments. In doing this, I am trying to remove my voice from the discussion, and at the same time provide insights into what might be heard in a Relationship Building exercise.

I have grouped their comments together into seven categories, although admittedly there is a great deal of overlap among the categories – a reflection of the fact that the concept of “cultural loss” to the Haisla and Kwakwaka’wakw peoples, as to many Indigenous peoples, encompasses multiple intertwined losses relating to land, resources, religious ceremonies, language, political and economic systems, artistic traditions, family relations and social structures, all of which are essential to the practice of their cultural traditions.<sup>304</sup>

Finally, I note that while I refer at times to “Kwakwaka’wakw peoples” or “Haisla peoples” in my discussion below, I do so only when the person that I interviewed indicated that a certain emotion or experience was shared by many members of the community. Otherwise, I refer to specific peoples’ experiences. To the greatest extent possible, I have named the people involved and have quoted them directly rather than paraphrased, so that their story is told in their own words.

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<sup>303</sup> Mihesua, *supra* note 301, at 7.

<sup>304</sup> For a discussion of non-differentiation in indigenous societies vs. differentiation in Western societies, see Duane Champagne, *supra* note 78.

### 3.2.1. Righting historic wrongs

Professor Ana Vrdoljak has written that repatriation is seen by Indigenous peoples as a means of “ameliorating or reversing internationally wrongful acts.”<sup>305</sup> My fieldwork and research confirmed the accuracy of this statement. Repeatedly, I was told during interviews that the main impetus for the Haisla and Kwakwaka’wakw peoples’ repatriation claims was righting historic wrongs, particularly the ban on the potlatch ceremony, the confiscation of the Kwakwaka’wakw regalia through duress, the inhumane treatment of those who were arrested following Dan Cranmer’s potlatch, and the removal of the G’psgolox pole from Misk’usa without Chief G’psgolox’s consent.

For example, Juanita Johnston, Collections Manager at U’Mista Cultural Centre, said, “one of the main reasons behind the repatriation was that it was righting a wrong. It wasn’t so much about the stuff, it was about righting a wrong and the stuff never should have left in the first place... It was mainly that they felt that there never should have been the [potlatch] law.”<sup>306</sup> Gloria Cranmer Webster similarly has confirmed that “our goal in having our treasures come home was to rectify a terrible injustice that is part of our history.”<sup>307</sup> Their observations are confirmed by the behaviour of Chief James Sewid when he first visited the CMH in 1964. Sewid, who had spent his childhood in Alert Bay, had been deeply affected as a child by the sight of the chiefs and female elders locked in the day school after their arrest.<sup>308</sup> When he went to the CMH and demanded return of all the regalia on the basis it was stolen, he said, “they were not purchased. The people didn’t consent for them to be taken. They used the RCMP to take it away, and the Indian Agents.”<sup>309</sup>

In 1987, the Kwakwaka’wakw drafted a specific claim against the Indian Affairs department demanding the return of all potlatch regalia, posthumous pardons for those who were jailed and monetary compensation for “the suffering of the loss of our treasures for all those

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<sup>305</sup> Ana Vrdoljak, *International Law, Museums and Cultural Heritage* (Cambridge: Cambridge University Press, 2006) at 228.

<sup>306</sup> Interview with Juanita Johnston, October 4, 2013.

<sup>307</sup> Cranmer Webster, *supra* note 183, at 141.

<sup>308</sup> James Sewid and James Spradley, *Guests Never Leave Hungry: the Autobiography of James Sewid, a Kwakiutl Indian* (New Haven: Yale University Press, 1969), as cited in Knight, *supra* note 210, at 74.

<sup>309</sup> *Ibid.*

years.”<sup>310</sup> Many Kwakwaka’wakw alive then remembered the objects that were wrongly taken from their families and wanted them back. Chief Harry Assu, whose father and grandfather had lost treasures in the confiscations, wrote in 1990: “that is our family inheritance I am talking about. You don’t give up on that! Our people figured that all the potlatch gear that was taken away to museums was still theirs by rights and that they still owned it, so it would have to be given back.”<sup>311</sup> He describes one item that had special significance for him:

I remember a big carved wood frog displayed at my father’s potlatch [in 1911] that I really liked as a little boy... That big frog was bought by a collector from the stuff that was being taken away from our people so they couldn’t potlatch. We want those things given back. My nephew Bill Assu and Bob Joseph and others for the two museums at Alert Bay and here went down to New York to talk to those people, but nothing has come of it. Earlier on we asked them to photograph my father’s frog carving and send that to us. At first they said they didn’t know anything about it and couldn’t find it, but after a few months they sent us the picture...<sup>312</sup>

The coercive, deceptive manner in which their treasures were taken was also very traumatic for the Kwakwaka’wakw. Daisy Sewid-Smith said that when the prisoners were convicted, Indian Agent Halliday threatened not only imprisonment but also taking away their children if they refused to give up their regalia.<sup>313</sup> She also expressed anger about the fact that when Halliday took the regalia away, he did not indicate he was taking it to keep it permanently, but rather said that he was taking it so that “the masks could have a rest.”<sup>314</sup> The depth of the trauma is apparent in the words of Chief Jim King, who recounted in 1977 that “my uncle took me to the Parish Hall, where the Chiefs were gathered. Odan picked up a rattle and spoke, we have come to say goodbye to our life; then he began to sing his sacred song. All the Chiefs, standing in a circle around their regalia were weeping, as if someone had died.”<sup>315</sup> Daisy Sewid-Smith said that her grandmother, Agnes Alfred, was disgusted all her life by the fact that Halliday charged the chiefs 25 cents’ admission to see their confiscated treasures and then kept the money for himself.<sup>316</sup> Until the end of her life, Agnes Alfred “never trusted the white man... never trusted the police.”<sup>317</sup>

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<sup>310</sup> Ron Gebhard, “Potlatch regalia must be returned to natives”, *North Island Gazette*, October 14, 1987.

<sup>311</sup> Assu and Inglis, *supra* note 139, at 106.

<sup>312</sup> *Ibid.*, at 46-47.

<sup>313</sup> Interview with Daisy Sewid-Smith, August 7, 2013.

<sup>314</sup> *Ibid.*

<sup>315</sup> Sanborn, *supra* note 232, at 83.

<sup>316</sup> Interview with Daisy Sewid-Smith, August 7, 2013.

<sup>317</sup> *Ibid.*

The Kwakwaka'wakw were also deeply marked by the inhumane way those who were arrested in 1922 and sent to jail were treated. According Agnes Alfred, the people who were sentenced “just ended up sleeping on the floor of the day school. They were not permitted to leave... Those people, there were a lot of them... They were all heartbroken because there was no reason for such treatment.”<sup>318</sup> Another elder, Herbert Martin, also described how, prior to being sent to Oakalla Prison near Vancouver, “they kept us in prison at the day school. We were all in there. We went to sleep at night. All we had was blankets, no mattress.”<sup>319</sup> The humiliating treatment that the 22 chiefs, female elders and others received after being transported to Oakalla prison, including being beaten, stripped naked and hosed down with cold water, was also very damaging. According to Agnes Alfred, several developed heart conditions and nervous disorders after their ordeals in prison.<sup>320</sup> In an interview conducted by Dale Hunt in 2004, Peter and Mabel Knox confirmed that “when they did their two months in jail, half the people that went to jail just died because they felt so bad because they were shamed.”<sup>321</sup>

Many Kwakwaka'wakw also expressed confusion about the fact that government and church officials, while refusing to let them keep their ceremonial objects, wanted to acquire them for their own collections. Emma Taminlin questioned “why did we lose it? What really happened? Why was the government against us?... [was] it just to kill our souls?”<sup>322</sup> Their feelings of confusion and loss were compounded by the fact that their treasures sat unused in basement storage for much of their time in the museums<sup>323</sup>, and yet the museums refused to give them access to them when they requested their return. When Chief James Sewid first arrived at the CMH and the museum informed him the regalia was in boxes in the basement, he said, “Well then, why do you want to keep it? Our people want to use it. Why do you want to keep it boxed up in your basement?”<sup>324</sup> The museum's behaviour violated one of their fundamental values as a people, namely *maya'xala*, which means respect or treating someone or something well. Andrea Sanborn

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<sup>318</sup> “Cranmer Potlatch Trial and Elders Comments”, ‘Namgis First Nation Council Hall History, *supra* note 223, at 5.

<sup>319</sup> *Ibid.*

<sup>320</sup> Sewid-Smith, *supra* note 185, at 54.

<sup>321</sup> Hunt, *supra* note 125, at 57.

<sup>322</sup> Bell, Raven, McCuaig and Sanborn, *supra* note 42, at 33.

<sup>323</sup> As Knight, *supra* note 210, at 47-66, discusses, in 1927, 1954, 1959, and several times in the 1960s, certain pieces were loaned by the CMH and ROM to museums in Canada and abroad, including to the Campbell River and District Historical Society. However, in view of the Collection's size and the fact that the loans involved relatively small numbers of pieces, overall it is true that most of the Potlatch Collection was kept locked in storage for the majority of its time in the museums.

<sup>324</sup> *Ibid.*

explained that concept as follows: “it’s protecting our songs and dances and history. It’s protecting our land because all the land base comes out of our creation stories in this area.”<sup>325</sup>

According to Daisy Sewid-Smith, the government and church efforts to destroy the potlatch were not simply aimed at stopping “heathen” practices such as the allegedly cannibalistic hamat’sa dance, but also a recognition that Northwest Coast peoples’ entire economy and social system was supported by the potlatch system. She pointed out, “see, there’s different potlatches. There’s the memorial potlatch -- nothing is given out. There’s the wedding. And then you have the investing [the p’assa]. That’s what keeps the economy going for the clans.”<sup>326</sup> By banning the potlatch,

they were completely trying to wipe out our culture and traditions... The government even had the audacity to come in and tell the clan chiefs, ‘You are no longer clan chiefs. We are going to make that commoner Paul Jones there, we are going to make him chief, but for the government’... The reason why our culture really deteriorated was because clan chiefs are trained when they are five years old. They are trained how to be a chieftain, how to treat people. They’re taught the laws, they’re taught everything there is about the people, all about the p’assa, everything...”<sup>327</sup>

Thus, as New York Times journalist Clifford Krauss observed, repatriation for the Kwakwaka’wakw is “part of a broad effort to reverse a cultural theft by Christian missionaries and a series of Canadian governments.”<sup>328</sup>

The Haisla similarly were driven in their repatriation quest by their desire to right wrongs, particularly the removal of the G’psgolox pole from Misk’usa without proper consent. Louisa Smith, a descendent of the chief who commissioned the pole, confirms that “just because that place had nobody there doesn’t mean it was abandoned. Our people would move with the seasons to where the food was, but we were always here.”<sup>329</sup> According to Gerald Amos, the Kitlope people discovered the totem pole’s disappearance when they arrived in Misk’usa after a fishing trip.<sup>330</sup> Louisa Smith insists that the pole “was taken against the will of the family of G’psgolox.”<sup>331</sup>

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<sup>325</sup> *Ibid.*, at 39.

<sup>326</sup> Interview with Daisy Sewid-Smith, August 7, 2013.

<sup>327</sup> *Ibid.*

<sup>328</sup> Clifford Krauss, “Reclaiming the Stolen Faces of their Forefathers”, *The New York Times*, September 18, 2003.

<sup>329</sup> Hume, *supra* note 169.

<sup>330</sup> Kathleen Cherry, “G’psgolox pole comes home”, *Northword Magazine*, June 7, 2006, online: <http://northword.ca/summer-2006/haisla-totem>, accessed October 7, 2014.

<sup>331</sup> *Ibid.*

The fact that missionaries confiscated Haisla ceremonial regalia as part of their conversion efforts and then kept it for themselves is another perceived historic wrong that was behind the Haisla's repatriation quest. Thus, for the Haisla, repatriating the G'psgolox pole was a means of redressing both the removal of cultural objects under questionable circumstances, and the resulting dearth of cultural heritage in communities. As carver Derek Wilson said, "it's not just about the pole. [It's] also about the ancestral skeletal remains, the masks, rattles and button blankets."<sup>332</sup> As Wilson describes, "everything our people did was criminalized.. hunting, fishing, dancing, singing, carving, the language, was all against the law, so the preachers and the government threw everything away and burnt everything. The thing that almost destroyed our people was the lack of connection to our past. When the things were taken away from us, we lost that connection."<sup>333</sup> The contradiction in the behaviour of church and government officials – indeed George Raley amassed a large collection of the regalia that he demonized -- has left a lasting feeling of confusion and resentment among many Haisla. Louise Barbetti explains why repatriating the pole was important to helping the Haisla deal with those feelings: "in the churches eyes, our dances and our songs and our masks and our paraphernalia were all to do with the devil. As a result our people, they were intimidated into getting rid of whatever they had. No matter how long you talk about it, you can't ever change what happened to our people, but you can rebuild. And that's why the pole to me is so important."<sup>334</sup>

Mr. Amos believed that repatriating the pole and building a museum-like facility to house it was important to righting those colonial wrongs: "There are very few First Nations' artifacts left in British Columbia -- they are in museums all over North America and our kids can't see them... We think if we build the center we can begin the process of healing between our community and the Canadian government and public."<sup>335</sup>

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<sup>332</sup> Linda Lafleur, "Kitlope people share repatriation experience", *Prince Rupert Daily News*, August 6, 2004.

<sup>333</sup> Totem 2003, *supra* note 257.

<sup>334</sup> *Ibid.*

<sup>335</sup> Gerald Amos in Reuters, "Canadian Indians want totem pole back from Sweden", October 28, 2003, online: <http://www.ecotrustcan.org/canadian-indians-want-totem-pole-back-sweden>, accessed September 23, 2014.

### 3.2.2. Healing traumas and losses

Another important driving force behind the Kwakwaka'wakw and Haisla peoples' repatriation quests relates to healing trauma from abuse and cultural loss experienced in residential schools. As Daisy Sewid-Smith said,

they didn't just stop at confiscating the masks. They also forbade us to speak our language. I would say 90 percent of the people I went to school with stopped speaking our language... There was a big sign in the school, "You must speak English"... My first language was Kwak'wala. When I came into the classroom, I had a girlfriend by the name of Glenna Webber. All I said, when I walked in, was "Yo yeh" which is "Hello pal." That's all I said to her, "Yo yeh." Next thing I know, somebody grabbed me from behind and yanked her out of her seat and we both got strapped. All she said was "yo" back, which is "Hello." We got what we call the double strap. They used to take this leather strap about this wide, they'd fold it over so it's doubled, and that's what they'd use on us. Me, I got so scared, I started speaking English...<sup>336</sup>

The abusive implementation of assimilation policies happened at local day schools as well. As Chief Donald Assu recounts, "I was a young boy when I went to the day school here and if you were caught speaking your language they put you up in front of the class and you got the strap... and [were] made to stand in the corner to set an example..."<sup>337</sup> One of the long-term impacts of such assimilation policies is described by Daisy Sewid-Smith: "the psychological damage of the parents, because they were children during that period, was so, so bad, that they were afraid to teach their children [Kwak'wala]... You'd be lucky to have 200 people speaking Kwak'wala now." The associated problem that Sewid-Smith identified is that "you need the language for the songs, and you need the songs for the dancing... See, when you dance, you listen to the song. The song tells you what to do with your hands... Today a lot of them don't speak the language properly, therefore you don't understand what they're singing..."<sup>338</sup>

Thus, one important goal of the Kwakwaka'wakw peoples' repatriation quest was using the repatriated material to spark interest in, and funding for, redressing language loss. According to Cranmer Webster, after the regalia was repatriated, U'Mista worked with UBC linguist Jay Powell to produce a set of twelve language books for use in teaching the Kwak'wala language in local

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<sup>336</sup> Interview with Daisy Sewid Smith, August 7, 2013.

<sup>337</sup> Interview with Chief Donald Assu, August 6, 2013.

<sup>338</sup> Interview with Daisy Sewid-Smith, August 7, 2013.



elementary schools.<sup>339</sup> The Centre also offered a three-year teacher training program. Chief Assu confirms that at the Nuyumbalees Cultural Centre as well, “that is something we are very much involved in today, the language, because we had a group from our band go out and video tape some of our Elders speaking in our language.”<sup>340</sup> In 2012, the Museums Assistance Program provided a \$48,000 grant to the Nuyumbalees Cultural Centre to create a digital audio-visual library by recording and preserving an estimated 320 hours of elders conversations in the Liqwala/Kwak’wala language. Chief Assu, as President of the Nuyumbalees Cultural Centre Board of Directors, thanked the government for “funding assistance to record and document the few remaining speakers within our communities of the Liqwala/Kwak’wala language... This funding comes at a very critical time for our community because of the age of our speakers. These speakers will guarantee the future of our language.”<sup>341</sup>

In Haisla territory as well, language loss remains a painful reminder of the injustices of the residential school system. Thus, the Haisla peoples’ repatriation efforts were driven by the goal of healing that harm inflicted by the residential school system, among many others. Renowned Haisla carver Henry Robertson, the grandson of the carver of the original pole, recounts that when he was caught secretly carving poles at his residential school, the principal “got mad at me and slapped me around and told me I am not going to the school to learn to carve totem poles, the Indian ways, I am going to the school to learn the white man’s ways.”<sup>342</sup> Then the principal jabbed a pencil into the palm of his carving hand, leaving a scar that he bears to this day. The residential school system inflicted lasting harm on the families of the Haisla children as well. As Gerald Amos recounts,

the real damage to the culture was in the parents and the grandparents that were left behind when the kids were taken... that is when alcoholism really took root in our community. You picture yourself. You’ve got two children, 4, 5, 6 years old, and somebody had the power to come to you and say, your kids are coming with us, we are going to take them out and we are going to incarcerate them and we’re going to beat them. We are taking them away and you won’t have any rights and we will bring them back once a year... how the hell would you feel?<sup>343</sup>

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<sup>339</sup> Cranmer Webster, *supra* note 153, at 137.

<sup>340</sup> Interview with Chief Donald Assu, August 6, 2013.

<sup>341</sup> Canadian Heritage - Government of Canada, “Harper Government Invests in the Nuyumbalees Society’s Liqwala/Kwak’wala Language Preservation Initiative”, August 20, 2012, online: <http://www.pch.gc.ca/eng/1345484900051/1345485645058>, accessed August 26, 2014.

<sup>342</sup> Totem 2003, *supra* note 257.

<sup>343</sup> Interview with Gerald Amos, September 16, 2014.

Mr. Amos describes how, upon first seeing the Gpsgolox pole in the Museum of Ethnography held erect by a system of metal wires attached to a yoke around its neck, he and Louisa Smith, a residential school Survivor herself, both wept, the yoke acting as a reminder of the Haisla's painful history of having childhoods, children, land, culture and community stolen by church and government forces. Mr. Amos realized that freeing the pole from its shackles and bringing it home could help his community with their healing process. He said, "this pole connects us to the past. It also comes from a time of our strength, when our culture was intact. Therefore it is also about hope and healing."<sup>344</sup>

Carving the replica pole beside the original in front of Swedish museum visitors provided an important opportunity for Henry Robertson and the other two carvers, Derek and Barry Wilson, to experience a form of reconciliation with the Swedes. As Derek Wilson told a crowd of visitors gathered to witness the carving:

We believe in sharing. That is why our law made us come here and do that, because we have to share with you. Share with you our happiness and at the same time, share with you our pain and suffering. And to see that [old] pole up there, brings both sadness and happiness in my heart. Sadness in effect that what has happened to our people is represented by what you see up there. And happiness at the same time, to see that our people are finally being recognized as human beings, finally recognized as people, not objects of archaeology or objects of anthropology. New history, that [replica] pole is creating.<sup>345</sup>

Working on repatriating the G'psgolox pole thus offered Haisla community members an important opportunity to address the losses inflicted by colonialism and begin a journey of recovery and healing.

### **3.2.3. Respecting tradition**

For the people of the Haisla Nation, repatriation was also a way of redressing colonial forces' disruption of the natural cycle of decay and renewal that ensures transmission of their cultural knowledge across generations. Carving totem poles requires learning carving techniques and clan histories, and the tradition of allowing totem poles to decay outdoors and return to nature obliges the continuous re-learning of that knowledge. Thus, the cycle of decay and creation is an important

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<sup>344</sup> Cherry, *supra* note 330.

<sup>345</sup> Totem 2003, *supra* note 257.

vehicle for transmission of traditions and history. Colonial acts of removing poles to museums, and removing the children from their communities so that they could no longer learn the techniques needed for their creation, caused a painful break in that cycle.

For those reasons, certain Haisla, including elders Cecil and Dan Paul Sr., wanted the pole to be returned to nature once it came home from Sweden. Henry Robertson, the grandson of one of the original pole's carvers, said "my father told me, when the pole comes back from Sweden, take the old pole up to Misk'usa and leave it there, lay it on the ground and let it go back to Mother Nature where it came from."<sup>346</sup> Knowing that traditional protocol relating to totem poles, Haisla Elder Louise Barbetti acknowledged that it was painful to think of placing it in a museum when the Swedish government indicated that the poles' return was conditioned on building a museum-like facility.<sup>347</sup>

Repatriating the G'psgolox Pole was also viewed by many Haisla as important to ensuring the well-being of the spirits associated with the pole. They made clear a number of times during the repatriation process that they believed that the spirits associated with the pole were not happy about the pole's removal from beside the graveyard to a foreign land. As Louisa Smith explained "in order for our ancestors to rest peacefully everything must be in place. Since the pole was a mortuary pole, you can use your imagination to imagine what the people would have felt to find it missing."<sup>348</sup> When he was working on the replica pole at the Museum of Ethnography, carver Derek Wilson explained to the Swedish people, "when the old pole comes back to our territory, it will bring back the spirit of our ancestors."<sup>349</sup> Gerald Amos then told the crowd assembled to watch the old pole depart Sweden in 2006, "the spirits of our ancestors are waiting and will be very pleased when this totem pole comes home to where it belongs."<sup>350</sup> Upon its return home, he stated, "I believe it was the guidance and wishes of our ancestors that have helped us finally achieve what most thought was impossible."<sup>351</sup>

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<sup>346</sup> *Ibid.*

<sup>347</sup> *Ibid.*

<sup>348</sup> *Ibid.*

<sup>349</sup> *Ibid.*

<sup>350</sup> Gil Cardinal, "Totem: Return and Renewal", National Film Board of Canada, 2007 ("Totem 2007").

<sup>351</sup> *Ibid.*

### 3.2.4. Reaffirming identity

Another key force behind the Kwakwaka'wakw and Haisla peoples' repatriation quests was reaffirming forms of identity, which colonial forces had set out to destroy through missionary work, the potlatch ban, the residential school system and other assimilation laws.<sup>352</sup> Gloria Cranmer Webster has stressed that

the anti-potlatch law failed because our forefathers were strong and determined. They left us a legacy and we have a clear obligation to them to develop our own strength and determination. We also have a responsibility to future generations of Kwakwaka'wakw to maintain our cultural identity. We are not the "vanishing race" as the early white people said we were. We have survived.<sup>353</sup>

One element of the quest to reaffirm identity for the Kwakwaka'wakw was making themselves and their cultures whole. As Andrea Sanborn emphasized: "The very soul of our culture remains fragmented until all the pieces can be reunited, repatriated and returned home..."<sup>354</sup> Bell and Napoleon explain that "a mask might have particular songs, dances, land use, or rights, names, and families associated with it. All are seen as part of a whole. The mask has little to no meaning or value if it is separated from the other elements of its whole being."<sup>355</sup> Thus, as Sanborn wrote, "we ask that our language, cultural ceremonial masks and regalia be returned to us as part of our spirit. Only then can our culture be whole again, and only then can the spirit of our ancestors be at rest... Without reunification and repatriation we cannot be whole."<sup>356</sup>

For many Kwakwaka'wakw, repatriating the potlatch regalia was also important to reaffirming family identity and asserting family rights. According to Daisy Sewid-Smith, a mask "represents family history that's in your library. That's what it is... you get your history verbally. You hear it from the old people... then it's put on your totem poles and your talking sticks. It's just a repeat of the stories that have been told to you."<sup>357</sup> As Harry Assu has written, "That's what all the masks and other things mean to us: family ownership. We are proud of that! It tells our family rights to the people. With our people you don't talk about what rights to dances you've got; you

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<sup>352</sup> Bell, McCuaig and Sanborn, *supra* note 4, at 316.

<sup>353</sup> Cranmer Webster, *supra* note 153, at 142.

<sup>354</sup> Sanborn, *supra* note 232, at 81.

<sup>355</sup> Bell, Raven, McCuaig and Sanborn, *supra* note 42, at 39.

<sup>356</sup> Sanborn, *supra* note 232, at 81.

<sup>357</sup> Interview with Daisy Sewid-Smith, August 7, 2013.

call the people and show them in a potlatch.”<sup>358</sup> In potlatches, each dance is “like a book... it triggers the history of your family... everything that happens to your family is put on that [dance] floor.”<sup>359</sup>

However, the fact that the CMH indicated as early as 1971 that repatriation of the Potlatch Collection would be conditional on (1) the return of the regalia to the community as a whole, not to individuals, and (2) housing the regalia in a museum-like facility<sup>360</sup>, complicated the realization of the Kwakwaka’wakw peoples’ goal of reaffirming family identity. Not only was the dream of families regaining their treasures dashed, but also years of struggle between the communities in Cape Mudge and Alert Bay for the right to house the regalia caused tensions between family members who lived in the different communities. Ultimately, when a decision was taken in 1975 to house the regalia in two separate cultural centres, the families were allowed to decide themselves where their regalia would be housed, using Indian Agent Halliday’s list of confiscated regalia and the owners as a guide.<sup>361</sup>

Reaffirming *cultural* identity was also seen as an important goal, particularly for the future well-being of Kwakwaka’wakw children. As Rod Naknakim has written, “I think, when you get your sense of place and that education about yourself you will improve your own livelihood because it creates less stress on yourself... once [youth] get a hold of it, it creates a positive image of their identity and everything falls into place.”<sup>362</sup>

The Haisla similarly saw the repatriation process as a means of reaffirming their cultural identity, and restoring pride in that identity. Indeed, as a means of demonstrating that cultural identity was a driving force in their repatriation quest, the Haisla negotiators showed up at their first meeting in Stockholm in 1991 wearing their button blankets. During the negotiations for the repatriation of the G’psgolox pole, Gerald Amos emphasized that: “Our culture and heritage is the basis of who we are and critical to our survival as a peoples.”<sup>363</sup> Louisa Smith explained further that “the original pole is the umbilical cord that ties us to our ancestors, our history and our

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<sup>358</sup> Assu and Inglis, *supra* note 139, at 106.

<sup>359</sup> Interview with Daisy Sewid-Smith, August 7, 2013

<sup>360</sup> Knight, *supra* note 210, at 82.

<sup>361</sup> Knight, *supra* note 210, at 87.

<sup>362</sup> Nadine C, Ana P. Sachiko I. Julia K and Nazreat E, “Case Study on the Nuyumbalees Cultural Centre”, prepared for Dan McDonald, Aboriginal Tourism, 2011 (“Nuyumbalees Case Study”), at 21.

<sup>363</sup> Turtle Island Native Network, “The Haisla Prepare to Welcome Their Totem Pole Back Home”, [turtleisland.org](http://www.turtleisland.org/culture/culture-haisla.htm), June 27, 2006, online: <http://www.turtleisland.org/culture/culture-haisla.htm>, accessed October 7, 2014.

culture.” Carver Barry Wilson said, “I hope that when the pole comes back, I hope that brings back pride to our children and that they will learn their history.”<sup>364</sup> Mr. Amos believed that “If we repatriate the pole and build the center, our people will have a sense of pride and ownership. Right now our people don’t have a hell of a lot.”<sup>365</sup> Still, he also recognized that “you don’t survive in that type of a climate without being resourceful and determined. And that is true of the whole northwest coast, not just the Haisla.”<sup>366</sup>

Indeed, one important aspect of the repatriation process for the Haisla was their quest to correct the misperceptions that Haisla culture was “dead” and that museums alone could preserve it, and to prove correct James Clifford’s prediction that “master narratives of cultural disappearance and salvage could be replaced by stories of revival, remembrance, and struggle.”<sup>367</sup>

### 3.2.5. Reinvigorating cultural practices and preventing further loss

Another force driving the Kwakwaka’wakw and Haisla peoples’ repatriation quests was the desire to reinvigorate cultural practices that had continued despite colonial government and church efforts to eradicate them, but in secret and/or in altered forms, as well as prevent further cultural loss.<sup>368</sup> As Andrea Sanborn confirmed, a key desire of the Kwakwaka’wakw in repatriating the potlatch regalia and having an active cultural centre was “to maintain it as a living culture, an ongoing, evolving culture.”<sup>369</sup> Similarly, the mandate of the Nuyumbalees Cultural Centre in Cape Mudge is “to promote and foster carving, dancing ceremonies and other cultural and artistic activities engaged in the Kwa’kwa’ka’wa’kw people.”<sup>370</sup>

According to Bell and Napoleon, who carried out numerous interviews in 2002 and 2003 for a case study they did of the Potlatch Collection repatriations<sup>371</sup>, many of the Kwakwaka’wakw they interviewed also expressed a fear of further cultural loss. As Ethel Alfred insisted, “all customs, including regalia, language, songs, and dance, are gifts from the Creator that must be

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<sup>364</sup> Totem 2003, *supra* note 257.

<sup>365</sup> Reuters, *supra* note 335.

<sup>366</sup> Interview with Gerald Amos, September 16, 2014.

<sup>367</sup> Clifford, *supra* note 205, at 108-109.

<sup>368</sup> Bell and McCuaig, *supra* note 4, at 316.

<sup>369</sup> Knox, *supra* note 217.

<sup>370</sup> Nuyumbalees Cultural Centre, “Nuyumbalees Mission”, online: <http://www.museumatcapemudge.com/#!/missionstatement/clldor>, accessed September 29, 2014.

<sup>371</sup> Bell, Raven, McCuaig and Sanborn, *supra* note 42, at 33-91.

protected so that they will not disappear” and that “that’s why it’s so important for us to protect our culture now, our regalia, and all the customs of our people... so we will never lose it again.”<sup>372</sup>

Unfortunately, there were many Kwakwaka’wakw who had been so traumatized by the arrests in 1922 and the events that followed, and by the abuses and brainwashing they suffered in residential schools, that they abandoned their cultural practices and refused to teach their children and grandchildren for fear of inflicting the same harm on them that they had suffered. Chief Don Assu laments that because First Nations were banned from practicing their culture, “there is a big gap in our generations.”<sup>373</sup> Daisy Sewid-Smith expressed dismay that younger generations who attend potlatches do not respect traditional protocols. She says:

I hardly go to potlatches now... In the early days, you would hear a chief say “Oh ye, Giḡamēy ye” every time a speaker speaks. What he’s saying is, “It is true, my chief. What you say is the truth.” You don’t hear that today. None of it... I just told my cousin, ‘I think our whole way of life is going to disappear.’ Either that, or we’re going to end up with something we don’t even recognize. We’re pretty close to it now.<sup>374</sup>

Still, it is apparent when one visits Alert Bay and watches young children dancing in regalia at Big House celebrations that many Kwakwaka’wakw have found ways to continue their traditions, though sometimes in an altered form. One reason is that some of the tribes who had refused to give up their regalia in the 1922 confiscations had carried on potlatching illicitly at times when feasting would not seem suspect, such as Christmas.<sup>375</sup> Also, when Chief James Sewid became the first elected chief in Alert Bay in 1950, he renovated the former day school in order to create a space for cultural activity. According to Vera Newman “the old ladies just tied big towels around the young girls to represent native blankets and dancing was taught to them. Boys learned to sing in our language from the older men and these same men taught the boys to dance.”<sup>376</sup> In the 1970s, under the leadership of Chief Don Assu in Cape Mudge and Gloria Cranmer Webster in Alert Bay, the bands established cultural societies to promote the survival of Kwakwaka’wakw culture and support the repatriation efforts. They are known as the Nuyumbalees Society and the U’mista Cultural Society. The repatriation of the potlatch regalia in 1979 and 1980 to Cape Mudge

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<sup>372</sup> *Ibid*, at 41.

<sup>373</sup> Interview with Chief Donald Assu, August 6, 2013.

<sup>374</sup> Interview with Daisy Sewid-Smith, August 7, 2013.

<sup>375</sup> Interview with Chief Donald Assu, August 6, 2013.

<sup>376</sup> ‘Namgis First Nation Council Hall History, *supra* note 223, at 6.

and Alert Bay, respectively, seems to have acted as a further catalyst for interest in cultural traditions in both places. Chief Don Assu says that as soon as the regalia came back to Cape Mudge, “the members of the community started to get involved in cultural areas, blanket making, which they had never done before. Learning how to dance, which they had never done before. You go through all the areas of our culture, it was coming out and people were very anxious to learn them.”<sup>377</sup> Daisy Sewid-Smith confirms that “when the masks came back, then the training started... training them to dance.”<sup>378</sup>

### 3.2.6. Transmitting history and knowledge to future generations

The Kwakwaka’wakw and Haisla also care deeply about passing on their clan histories and stories to their future generations, and saw their repatriation processes as integral to achieving this. Chief Bill Cranmer has said, “It’s important to know your past if you are going to fight for your future.”<sup>379</sup> Andrea Sanborn wrote, “Our children are our future, our artists are integral to our history and culture, and honouring our memories of them is mandatory; all these factors are central to our arguments for repatriation.”<sup>380</sup> Gerald Amos similarly explained that “it was important for our people to feel and touch the pole. Our culture lasted and functioned for at least 8,000 years, so we must have been doing something right. It is important for our people, our youth, to connect with this.”<sup>381</sup>

U’Mista Cultural Center collections assistant Trevor Isaac calls the repatriated masks “history in object form.”<sup>382</sup> Indeed, when Juanita Johnston’s grandmother held a repatriated raven and ermine headdress in her hands for the first time, she instantly remembered the legend that went with it. Johnston says that “it wasn’t until the physical piece was in her hands that she remembered that.”<sup>383</sup> According to Johnston, people now come to the U’Mista Cultural Center to learn more about their family history, and seeing their grandparents’ regalia sparks their interest in it.<sup>384</sup>

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<sup>377</sup> Interview with Chief Donald Assu, August 6, 2013.

<sup>378</sup> Interview with Daisy Sewid-Smith, August 7, 2013.

<sup>379</sup> Jacknis, *supra* note 226, at 283.

<sup>380</sup> Sanborn, *supra* note 232, at 86.

<sup>381</sup> Cherry, *supra* note 330.

<sup>382</sup> Interview with Juanita Johnston, October 4, 2013.

<sup>383</sup> *Ibid.*

<sup>384</sup> *Ibid.*



Andrea Sanborn wrote, “We must maintain the cultural and historical information of our ancestors for the generations of children to come. Everyone has the right to know where they belong, what cultural privileges they hold and what songs, dances and legends they can celebrate.”<sup>385</sup> She also emphasized that, “We need to tell our own stories and build our own histories. After all, they are ours, and we will share them in friendship, living together in this world with peace and understanding...”<sup>386</sup> Juanita Johnston similarly asserted that the U’Mista Cultural Center is better placed to tell those stories than a large museum in a foreign land: “It’s our stuff and I think we can tell the story of it better... We would like to tell everyone our story in person, but if we can’t, there are other ways to tell them. It is never going to mean as much to the people that own it to have it [stored] in a box in a museum than have it here.”<sup>387</sup>

The Haisla share with the Kwakwaka’wakw a deep desire to ensure transmission of their culture and traditions to future generations. Haisla *nuyem* expresses that imperative: “know your history, including the background of your tribe, clan and family. It is the source of your identity and self-confidence. Listen to the elders when they tell our story.”<sup>388</sup> During the repatriation process, Louisa Smith said that she believed that displaying the pole indoors would help Haisla children learn about their ancestors’ traditions: “I really wanted the old pole to be a teaching tool. It’s an extension of our culture. It holds the invisible umbilical cord to our ancestors. And if we were to take the old pole and put it in a museum our children could see and observe it first hand, and understand the history of our people.”<sup>389</sup> As Gerald Amos explained, he wanted the repatriation to provide a means for children to see their past linked to their present and future in positive ways. As he said, “I’ve always maintained that our mission must be to create better stories together. Stories that we can be proud of together. Stories we can tell our children.”<sup>390</sup>

### **3.2.7. Sharing history and traditions with museums, and creating constructive relationships**

Many Haisla and Kwakwaka’wakw peoples also saw their repatriation journey as an important tool in creating constructive relationships with museums and educating non-Indigenous peoples about their histories and cultures. When Andrea Sanborn was Director of U’Mista Cultural

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<sup>385</sup> Sanborn, *supra* note 232, at 82 and 86.

<sup>386</sup> *Ibid.*

<sup>387</sup> Interview with Juanita Johnston, October 4, 2013.

<sup>388</sup> Barbetti and Powell, *supra* note 54, at 63.

<sup>389</sup> Totem 2003, *supra* note 257.

<sup>390</sup> *Ibid.*

Centre, she recognized, “How can we have others get a better understanding of that part of our history, to appreciate what our ancestors went through and what generations after them have undergone because of these actions? It is only through education that we can achieve this. This is part of the goals and objectives of the U’Mista Cultural Society.” Similarly, the mandate of the Nuyumbalees Cultural Centre is “provide opportunities for learning and engagement for visitors from all destinations.”<sup>391</sup>

For the Haisla, a decision to use the repatriation process as an opportunity to create constructive relationships and educate the Swedes about their history and traditions was made possible by adherence to their *nuyem*, which stipulates among other things that “if someone spits in your face, don’t spit back at them.” It was also very much in keeping with the part of their *nuyem* which dictates “share what you have with others.”<sup>392</sup>

In September 2000, for example, three Haisla carvers travelled to Sweden to continue their carving work on the replica pole at the Museum of Ethnography. They spent the next two months finishing the replica pole in front of museum visitors, sharing with them their beliefs, their repatriation story and their pride in their culture. As Carver Derek Wilson explained to a crowd of visitors gathered to witness the carving of the replica:

We believe in sharing. That is why our law made us come here and do that, because we have to share with you. Share with you our happiness and at the same time, share with you our pain and suffering. And to see that [old] pole up there, brings both sadness and happiness in my heart. Sadness in effect that what has happened to our people is represented by what you see up there. And happiness at the same time, to see that our people are finally being recognized as human beings, finally recognized as people, not objects of archaeology or objects of anthropology.<sup>393</sup>

Former Museum of Ethnography Director Per Kaks has commented on how this act of sharing by the Haisla enabled the Swedish peoples’ deepening relationship with and comprehension of the Haisla people and their culture: “It’s very important to be able to tell this story, especially to the children, because they have this vulgar idea that totem poles were something where you tied up the

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<sup>391</sup> Nuyumbalees Cultural Centre, “Visit”, online: <http://www.museumatcapemudge.com/#!/page2/cjg9>, accessed September 29, 2014.

<sup>392</sup> Barbetti and Powell, *supra* note 54, at 63.

<sup>393</sup> Totem 2003, *supra* note 257.

enemies and threw axes at them. That's from Indian books..."<sup>394</sup> According to Mr. Amos, the Haisla peoples' efforts to respect their *nuyem* and create constructive, enlightening relationships paid off: "We made some wonderful relationships which we would otherwise not have had... The pole is part of an ongoing journey which connects First Nations people with their past while building hope and relationships for the future."<sup>395</sup>

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<sup>394</sup> *Ibid.*

<sup>395</sup> Cherry, *supra* note 330.

## CHAPTER 4. UNDERSTANDING REPATRIATION DISPUTES: MUSEUM PERSPECTIVES

Understanding the complex historical relationship between museums and Indigenous peoples is essential to properly understanding the reasons for museums' responses to repatriation disputes, as well as the dynamics of repatriation negotiations. Thus, in the first part of this chapter, I examine briefly the role that Western museums have played in the colonial project as well as late 20<sup>th</sup> century efforts by museums to decolonize and indigenize their museological practices. I focus on museums and countries implicated in the repatriation disputes over the Haisla and Kwakwaka'wakw cultural objects that I have studied. After providing a brief history of this complex historical relationship, I discuss the cultural values, beliefs, and legal realities that seem to underlie the behaviour of those museums and their representatives in the repatriation negotiations, based on comments they and others involved in the repatriations have made.

### 4.1. The role of Western museums in the colonial project

Since their inception in 16<sup>th</sup> century Europe as private cabinets of curiosity and the appearance in the 18th century of public galleries showcasing the spoils of imperial conquest and colonial subjugation, Western museums have played a key role in shaping visitor attitudes towards Indigenous peoples' histories and cultures.<sup>396</sup> American political artist Hans Haacke has called museums "managers of consciousness" -- a recognition that museums possess the power to form and alter human beings' perception of one another.<sup>397</sup> Professor Robyn Gillam describes how "by the mid-nineteenth century, museums were used as educative and ideological tools that displayed Western culture as the triumphant culmination of all life forms on the planet, especially in its superiority to other human cultures, which were seen as less developed and hence inferior."<sup>398</sup> John MacKenzie confirms in his study of the origins of colonial museums in Canada that the Royal

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<sup>396</sup> See Michael Ames, *Cannibal Tours and Glass Boxes: The Anthropology of Museums* (Vancouver: UBC Press, 1992) from 15-24.

<sup>397</sup> Hans Haacke, "Museums: Managers of Consciousness", in *Hans Haacke: Unfinished Business* (Cambridge: MIT Press, 1987); see also Simpson, *supra* note 8, at 245; Susan Ashley, "State Authority and the Public Sphere: Ideas on the Changing Role of the Museum as a Canadian Social Institution", (2005) 3(1) *museum and society* 5, at 7; Patricia Davison, "Museums and the Reshaping of Memory", in Gerald Corsane (ed.) *Museums, Heritage and Galleries: an introductory reader* (London: Routledge, 2005) at 192.

<sup>398</sup> Robyn Gillam, *Hall of Mirrors: Museums and the Canadian Public* (Banff: Banff Centre Press, 2001) at XV; See also Dean Sully, *Decolonizing Conservation: caring for Maori meeting houses outside Europe* (Vancouver: UBC Press, 2007) at 28.

British Columbia Museum's efforts to collect and preserve the cultures of Northwest Coast Indigenous peoples were fuelled not only by a desire to pre-empt avaricious American collectors who were busy emptying communities of their treasures (and thus was a statement of that museum's view of the objects as national, not tribal, heritage), but also a "thrust that was very much of its age, rooted in Darwinism and racial assumptions."<sup>399</sup>

According to Ruth Phillips, Western museums also participated in the colonial project by appropriating and re-presenting indigenous cultural expression:

If, as Thomas Richards has argued, the museum, like the library, is part of the 'imperial archive' assembled by European nations in order to control colonized peoples, then the reduction to visual and textual forms -- which was integral to processes of collecting and archiving -- was a form of colonial violence that compressed and muted the expressive systems in which indigenous material objects participate.<sup>400</sup>

Michael Ames similarly pointed out in 1992 that, "museums are cannibalistic in appropriating other peoples' material for their own study and interpretation, and they confine their representations to glass box display cases."<sup>401</sup> The fact that Canadian museums in the early 20<sup>th</sup> century actively participated in the colonial project by representing indigenous cultures from a Western collector perspective is evident from a letter that Duncan Campbell Scott received from Charles Trick Currelly, Director of the ROM, in October 1922, stating:

Mr. Halliday, the Indian Agent of Alert Bay, confiscated a number of Indian dancing masks, red cedar dancing boxes, old stone axes, old coppers etc... As the Ottawa collection is already so large, and as we are the other big museum in the country, I should be exceedingly grateful if it were possible to move in this direction, so that the things were sent to us.<sup>402</sup>

Former MOA director Michael Ames confirms that by the 20<sup>th</sup> century museums in Canada and the United States had become "something like a public temple, an institution that plays an important role in expressing and authenticating established values and images of society... and the

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<sup>399</sup> John MacKenzie, *Museums and Empire: natural history, human cultures and colonial identities* (Manchester: Manchester University Press, 2009) at 25.

<sup>400</sup> Ruth Phillips, "Making sense out/of the visual: Aboriginal presentations and representations in nineteenth-century Canada", (2004) 27(4) *Art History* 593–615.

<sup>401</sup> Ames, *supra* note 396, at 3.

<sup>402</sup> CMH Archives E2010.14. B13 F3-4, cited in Knight, *supra* note 210, at 40.

subordination of other values and images.”<sup>403</sup>

#### **4.2. Late 20<sup>th</sup> century efforts to decolonize/indigenize Western museum practices**

Since the late 1980s, however, museums in Canada and the United States have attempted to ‘decolonize’ or ‘indigenize’ their approaches to display and conservation of indigenous cultural objects. According to Ruth Phillips, the indigenization movement refers to:

the incorporation into the mainstream museum world of concepts, protocols, and processes that originate in Aboriginal societies. These include ways of thinking about key issues that are central to museum work, such as the nature of materiality, spirituality, community, and history. They also include traditional Aboriginal modes of decision making whose goal is to arrive at consensus through discussions that involve careful and respectful listening and in which all interested parties have equal opportunities to speak.<sup>404</sup>

In Canada, that trend was driven in part by nationwide and international protests of the Glenbow Museum’s 1989 *Spirit Sings* exhibition over displays of cultural material that were seen as culturally insensitive and over the exhibition’s sponsorship by Shell Oil, who was drilling on land subject to a long-term land claim by the Lubicon Nation. Those protests prompted the formation of the ‘Task Force on Museums and First Peoples’ by the Assembly of First Nations and Canadian Museums Association. Their 1992 Task Force Report, “Turning the Page: Forging New Partnerships Between Museums and First Peoples”, detailed an ethical framework for the treatment of Indigenous cultural heritage and the representation of their cultures. The reports’ findings prompted a number of museums in Canada including the CMH and MOA to publish ethics guidelines governing repatriation to Aboriginal source communities of human remains and sacred objects.<sup>405</sup> The findings were also affirmed in the 1996 RCAP Report, which recommended that “museums and cultural institutions adopt ethical guidelines governing all aspects of collection, disposition, display and interpretation of artifacts related to Aboriginal culture and heritage,

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<sup>403</sup> Ames, *supra* note 396, at 3.

<sup>404</sup> Phillips, *supra* note 40, at 10.

<sup>405</sup> In 1991, the CMH established a Human Remains Policy that provides for repatriation of human remains to First Nations. Ten years later, it published the Canadian Museum of Civilization Corporation Repatriation Policy, which covers human remains and associated burial objects, archaeological objects and related materials, ethnographic objects, and associated records.

including... repatriating, on request, objects that are sacred or integral to the history and continuity of particular nations and communities.”<sup>406</sup>

The museum decolonization movements in Canada and the US are similar in certain ways, including their origins and timing. Both founded in indigenous rights activism of the 1960s and 70s, they were also a reaction to displays of Native cultural objects in large museum collections that propagated the myth of “vanishing” Native American cultures. However, the particularity of the US museum decolonization movement lies in the enactment of the federal 1990 *Native American Graves Protection and Repatriation Act (NAGPRA)*. As James Nafziger has stated, *NAGPRA* is at its base human rights legislation intended “to repair past wrongs and ensure present and future rights.”<sup>407</sup> Amy Lonetree similarly describes in *Decolonizing Museums* that *NAGPRA* “was designed first and foremost to address the historical inequalities created by a legacy of past collecting practices, the continual disregard for Native religious beliefs and burial practices, and a clear contradiction between how the graves of white Americans and the graves of Native Americans were treated.”<sup>408</sup> According to Richard West Jr., although the law is clumsy in the way it fails to include certain kinds of claims and certain Native American peoples, still “the fact is that that clumsy federal statute sets a certain bar” and “once the bar was established... it was a powerful lever.”<sup>409</sup> Though Canada has no similar federal repatriation legislation, Lonetree mentions an element of the US decolonization movement in the US that equally transpired north of the 49<sup>th</sup> parallel: “Native involvement in the museum world did not happen because of academic epiphanies by non-Native academics or curators, but as a result of prolonged and committed activism.”<sup>410</sup>

In England, according to Jonathan King, museum professionals began re-examining their approaches to Indigenous peoples in the 1980s in reaction to the anti-fur trade movement in the UK. In 1982, Mr. King organized an exhibition at the British Museum called ‘Thunderbird and Lightning’ concerning Woodlands material from eastern Canada, and brought over specialists in beadwork and porcupine quill work.<sup>411</sup> Then, he says:

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<sup>406</sup> RCAP Vol. 3, 556, cited in Ruth Phillips, *supra* note 41.

<sup>407</sup> James Nafziger, “The Protection and Repatriation of Indigenous Cultural Heritage in the United States”, in Bell and Paterson, *supra* note 26, at 118.

<sup>408</sup> Amy Lonetree, *Decolonizing Museums: Representing Native America in National and Tribal Museums* (Chapel Hill: The University of North Carolina Press, 2012) at 18.

<sup>409</sup> Interview with Richard West Jr., January 28, 2014.

<sup>410</sup> Lonetree, *supra* note 408.

<sup>411</sup> Interview with Jonathan King, August 7, 2014.

I became involved in working on the arctic and I worked very closely with people from what is now Nunavut and from Dene people in the Northwest territories. We organized a major exhibition about the arctic in 1987, which was called “Living Arctic” with the anthropologist and filmmaker Hugh Brody. We brought in a lot of people from the Northwest Territories to work in London, and we employed an Inuit man, David Serkoak from Arctic College to work with the British Museum in educating people about hunting... So in a sense we were already moving in what I would say was the right kind of direction... and the next stage in the process was we had a series of conferences in the 2000s about issues. One was about arctic clothing, once was about powwows. To one of these, Andrea Sanborn, who ran U’Mista, came...<sup>412</sup>

Mr. King summarizes the result of the decolonization movements in the UK, Canada and the United States as follows: “I think what’s happened since the two acts in the US, NAGPRA and the NMAI Act in 1990 and 1989, and the Task Force Report of 1992 in Canada, what happened is that everybody agrees that everyone benefits from the involvement of First Nations, of Aboriginal people. There’s no question that’s true.”<sup>413</sup>

Some of these transformations in museum practice seem to have had an impact on the way some museum professionals responded to the Haisla and Kwakwaka’wakw peoples’ repatriation requests. In other cases, the professionals clung to traditional Western ways of understanding objects and their meanings. I explore these various responses below.

#### **4.3. Reasons for the museums’ responses to the repatriation claims**

##### **4.3.1. The museum believed it acquired valid title**

One similarity in the responses of the various museum professionals to the Haisla and Kwakwaka’wakw peoples’ repatriation requests was the assertion that the museum had acquired valid title to the objects in question. In fact, at no point in any of the negotiations did any museum admit that there was any flaw in the title acquired due to the circumstances of the objects’ removal. While professionals at many of the museums -- the Swedish Museum of Ethnography, the CMH, the NMAI and the British Museum -- ultimately came to understand that returning the object was ethically the right thing to do, none of the museums admitted that title to the object had not been legally or legitimately acquired in the first place.

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<sup>412</sup>*Ibid.*

<sup>413</sup> Interview with Jonathan King, January 28, 2014.



Initially, for example, the CMH refused Chief Sewid's repatriation claim on the basis that the museum had paid \$1400 for the regalia, even though it was aware of the questionable circumstances of its removal. The British Museum similarly justified its refusal to return the 'Namgis transformation mask by arguing that the mask was legally obtained in 1944 from the widow of collector Harry Beasley. While admitting that title was not validly acquired in the first place theoretically would have provided the British Museum trustees with a valid basis under s.5(1)(c) of the *British Museum Act 1963* for de-accessioning the mask and transferring title to the Kwakwaka'wakw, this did not happen. (See my discussion of that provision in Section 4.3.2. below.)

The issue of valid title was also one of the first arguments that the Swedish Museum of Ethnography in Sweden raised when the Haisla made their repatriation claim. Former museum director Per Kaks insisted that Hanson negotiated the sale of the pole with the Kitlope people, although he confirmed, as Hanson admitted after the pole was removed, that at least one older member of the tribe had resisted the sale.<sup>414</sup> Anders Björklund has admitted, however, that, "there are no receipts or documents to prove that."<sup>415</sup> The only document in existence is the export license from the Canadian government,<sup>416</sup> a fact that highlights the complexities of engaging in legal battles over valid title to cultural objects removed from Indigenous communities during this era. As a result, the question of the legality of the removal of the pole from Misk'usa by Mr. Hanson remained a point of contention between the parties to the repatriation negotiation, albeit one that the parties decided ultimately not to pursue. In the end, legal title to the pole was transferred to the Haisla Nation Council by the Swedish government.

#### **4.3.2. Legislative impediments to repatriation**

Another legal issue that was a source of concern for some of the museums was legislative or other legal impediments to repatriation. For example, when Kwakwaka'wakw Chief Bill Cranmer

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<sup>414</sup> Totem 2003, *supra* note 257; Gerhard Lindblom, "A Kwakiutl Totem Pole in Sweden", (1936) 1(6) *Ethnos* at 138; see also nordicway.com, "Around Swedish America in 548 Days – Day 8 – Kitimat", 2009.

<sup>415</sup> "Swedish Museum Returns Totem Pole to Canada", *blouinartinfo.com*, November 18, 2005, online: [http://www.blouinartinfo.com/news/story/1605/swedish-museum-returns-totem-pole-to-canada/?printer\\_friendly=1](http://www.blouinartinfo.com/news/story/1605/swedish-museum-returns-totem-pole-to-canada/?printer_friendly=1), accessed July 20, 2014.

<sup>416</sup> Totem 2003, *supra* note 257.

wrote to the British Museum in November 1995 to request repatriation of the ‘Namgis Transformation Mask, British Museum director Robert Anderson replied in January 1996 that:

Whilst I realise that the other museums you mention have been able to consider favourably your requests for repatriation, the legal circumstances under which they operate are quite different from our own. The British Museum Act under which we function specifically precludes the possibility of alienating objects legally from our collections. I am afraid neither I nor my Trustees are in a position to take the matter further.<sup>417</sup>

Dr. Anderson was referring to s.3(4) of the British Museum Act 1963 which prohibits disposal of objects from the museum’s collection except in certain circumstances – the same provision on which the museum has relied to refuse to return the Parthenon Marbles and the Benin Bronzes to Greece and Nigeria, respectively. Publicly, Dr. Anderson stated that if he returned the mask he “would, in fact, be breaking British Law.”<sup>418</sup> Actually, pursuant to the British Museum Act, the museum’s trustees may loan objects (s.4, the provision on which they ultimately relied to grant a long-term loan of the ‘Namgis transformation mask) and may also de-accession duplicates (s.5(1)(a)) or any objects that are “unfit to be retained in the collections of the Museum and can be disposed of without detriment to the interests of students.”(s.5(1)(c)) In theory, Section 5(1)(c) *could* be interpreted to include situations in which the illicit removal of an object from its owner, particularly under situations of duress, prior to its acquisition by the Museum makes the object “unfit”, but in practice the provision has never been interpreted this way.<sup>419</sup> For example, in 2005, the Chancery Court ruled that the British Museum could not restitute works with tainted provenance to a Holocaust claimant in the absence of legislative amendment of Section 3(4) of the British Museum Act.<sup>420</sup> In response to this ruling, a private member’s bill was introduced in parliament and eventually resulted in the *Holocaust (Return of Cultural Property) Act 2009*, which permits trustees of seventeen British museums and government bodies to restitute Nazi-looted objects, except when doing so would violate the terms of a trust (s. 2(6)).

The Human Tissue Act 2004 also permits nine national collections in England, including the British Museum, to de-accession remains of humans who died after 1004 CE, unless the

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<sup>417</sup> Letter from Dr. Robert Anderson, Director of the British Museum, to Mr. William T. Cranmer, Chairman of U’Mista Cultural Society, dated January 16, 1996, provided to me by U’Mista Cultural Centre.

<sup>418</sup> Knox, *supra* note 251.

<sup>419</sup> Bell and Paterson, *supra* note 26, at 93.

<sup>420</sup> *Ibid*, at 93-94.

provisions of a private trust prevent de-accessioning. As Jonathan King explains,

for the British Museum, everything is determined by the British Museum Act, and that only allows for the return of objects in various circumstances. Those circumstances came about in 2004 with the Human Tissue Act, which allowed for the return of human remains within certain parameters. It had to be less than a thousand years old and it had to be of cultural importance and so on. Apart from that piece of legislation, material cannot be returned from the British Museum... The point there is that because of the overriding legal situation, the moral ones were not in a sense up for discussion.<sup>421</sup>

The British Museum trustees' treatment of human remains repatriation requests subsequent to passage of the *Human Tissue Act 2004* gives some insight, I believe, into their decision to return the 'Namgis transformation mask on long-term loan, rather than de-accession it and transfer title. Despite the fact that British Museum trustees can use the *Human Tissue Act 2004* to override the *British Museum Act 1963*'s restrictions on deaccessioning, in 2008 they refused to return seven Maori *toi moko* (tattooed heads) to the Museum of New Zealand Te Papa Tongarewa on the following basis:

The museum policy starts from a presumption of retention which can be outweighed in certain circumstances. They concluded that in the case of the seven preserved tattooed heads it was not clear whether or not a process of mortuary disposal had been interrupted or disturbed; and that it was not clear that the importance of the remains to an original community outweighed the significance and importance of the remains as sources of information about human history.<sup>422</sup>

In view of the fact that the only restriction in the *Human Tissue Act 2004* on museums' ability to repatriate human remains is when doing so would violate the terms of any trust or condition associated with a donation,<sup>423</sup> the basis for the trustees' continued rejection of human remains repatriation requests is unclear. A UK Department of Culture, Media and Sport guidance document relating to the *Human Tissue Act 2004* explains how, in British law, there is a "work and

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<sup>421</sup> Interview with Jonathan King, August 7, 2014.

<sup>422</sup> The British Museum, "Request for Repatriation of Human Remains to New Zealand, Minutes of meeting of the Trustees - April 2008"; Te Papa Museum Repatriation Researcher Amber Aranui argues that in fact the style of the tattooing of most of the *toi moko* in the British Museum's collection confirms that they were tattooed before death: personal communication by Ms. Aranui, October 14, 2014.

<sup>423</sup> Section 47(2) of the *Human Tissue Act 2004* provides that "Any body to which this section applies may transfer from their collection any human remains which they reasonably believe to be remains of a person who died less than one thousand years before the day on which this section comes into force if it appears to them to be appropriate to do so for any reason, whether or not relating to their other functions." Section 47(4) then clarifies that "The power conferred by subsection (2) does not affect any trust or condition subject to which a body to which this section applies holds anything in relation to which the power is exercisable."

skill" exception to the rule that there are no property rights in human remains<sup>424</sup> -- which may be the basis for the trustees' argument, i.e., that they can legally hold onto *toi moko* that were tattooed after death. That document says, "The laws of England and Wales do not recognise the concept of property (i.e. a right of ownership) in human bodies or tissue except where remains have been treated or altered through the application of skill."<sup>425</sup> However, that document also emphasizes that "that some human remains were obtained in circumstances that are considered unacceptable. For example, some were acquired between 100 and 200 years ago from Indigenous peoples in colonial circumstances, where there was a very uneven divide of power"<sup>426</sup> – a seeming endorsement of existing initiatives aimed at redressing such power imbalances including the World Archaeological Congress' 1989 *Vermillion Accord on Human Remains*.<sup>427</sup> Moreover, the UK's endorsement in 2007 of UNDRIP further calls into question the British Museum's continued refusal repatriate indigenous human remains and illicitly acquired cultural objects.

An interesting relevant development in the UK is that in 2009, a private member's bill was introduced in parliament to enable the British Museum to transfer objects to other institutions when they became part of that museum's collections in circumstances which make their retention undesirable or inappropriate, or where they would be more widely accessible to visitors and more appropriately displayed by reason of historic links. Though such a bill could have wide application, the sponsor of the bill apparently envisaged its application solely to return of the Elgin Marbles. The bill did not receive a second reading in parliament.<sup>428</sup> No bill has been introduced in parliament relating to illicitly acquired indigenous objects.

The British Museum is not the only UK institution whose trustees must deal with legislative impediments to de-accessioning works in their collections. A similar provision to s. 5(1)(c) of the *British Museum Act 1963* in the UK *Museums and Galleries Act 1992* applies to the Tate Gallery (s.4(4)(b)), while even more restrictive de-accessioning provisions apply to the other UK institutions covered by that act, namely the National Gallery, National Portrait Gallery and Wallace Collection. Indeed, that legislation prohibits any acquisition/disposal of any object to/from the Wallace Collection. The Horniman Museum and Gardens, however, as a private museum, is not

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<sup>424</sup> Paterson and Bell, *supra* note 26, at 157 and 170.

<sup>425</sup> UK Department for Culture, Media and Sport, "Guidance for the Care of Human Remains in Museums" (London: DCMS, 2005) at 12.

<sup>426</sup> *Ibid*, at 8.

<sup>427</sup> Paterson and Bell, *supra* note 26, at 164-168.

<sup>428</sup> <http://services.parliament.uk/bills/2009-10/britishmuseumact1963amendment.html>

covered by either piece of legislation, which may help explain its openness to discussing repatriation of the *Dzunukwa* mask with the Kwakwaka'wakw.

Though similarly not governed by legislation like the *British Museums Act 1963* that prohibits de-accessioning of its collections, nonetheless the Swedish Museum of Ethnography did not believe it had the authority to repatriate the G'psgolox pole when the Haisla demanded its return. Although Swedish law does not specifically provide that the collections of state museums are part of the public domain and inalienable<sup>429</sup>, the Museum nonetheless considered it necessary to obtain the state's permission for its return. Former museum director Anders Björklund has explained the museum's conduct as follows: "We are a governmental body. Everyone would tell you that it's state property. If there is a demand of that kind, then the question has to go to the government. We don't take that kind of decision."<sup>430</sup>

#### **4.3.3. Fiduciary duties of the museum's managers**

Another legal issue that may influence museum managers' responses to repatriation claims is the source and content of their fiduciary duties. As Patty Gerstenblith describes, the directors of corporations (how many Canadian state museums are organized) and the trustees of charitable trusts (the status of many US museums) are generally subject to two fiduciary obligations, the duty of loyalty and the duty of care. According to Gerstenblith, "the duty of loyalty requires that trustees remain true to the charitable organization's purpose – in the case of museums, their public educational purpose... The duty of care requires that the trustees be attentive to the management and preservation of the museum's physical assets (...in the case of a museum, its collections) and monetary assets."<sup>431</sup>

Whether or not the source of those fiduciary duties is legislation or the common law seems to have an impact on how a museum responds to repatriation claims of Indigenous peoples. In addition, museum guidelines may influence how those duties are interpreted and applied.

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<sup>429</sup> An example of such a provision is found in the French *Code du Patrimoine*, Article L.451-5, as discussed by Robert Paterson in "Heading Home: French Law Enables the Return of Maori Heads to New Zealand", *International Journal of Cultural Property* 17 (2010) 643, at 646.

<sup>430</sup> Interview with Anders Björklund, September 29, 2014.

<sup>431</sup> Gerstenblith, *supra* note 22, at 416-417.

The trustees of the British Museum have interpreted strictly the fiduciary duties found in Articles 3, 4 and 5 of the *British Museum Act*; as an example, in 2003 the trustees' representative, British Museum deputy secretary Stephen Corri, refused repatriation of the 'Namgis transformation mask to the Kwakwaka'wakw on the basis that "there is a legal duty for us to hold these things in trust and make them available to scholars and put them on display."<sup>432</sup> As Jonathan King describes, from his perspective as curator in charge of the British Museum's Americas collection, "there was no easy way of dealing with a situation in which the trustees, because of the law, could not return anything."<sup>433</sup> While he recognizes the colonial injustice underlying the museum's acquisition of the mask, he says his hands were tied:

the reality that the ['Namgis transformation] mask was seized because of the extremely bad Indian Act of 1884 and because of Halliday and other people's involvement in trying to stamp out the Potlatch and then the sale of the material, all of which made this extremely questionable from a moral point of view. But the point remains that as a curator, this was not in my hands, this was in the hands of the legal representative of the trustees.<sup>434</sup>

According to Mr. King, the *Human Tissue Act 2004* was a catalyst for an institutional change that resulted in the trustees beginning to approve long-term loans.<sup>435</sup>

In the United States, the advent of *NAGPRA* significantly affected federally-funded institutions' interpretation of their fiduciary duties relating to repatriation of Native American cultural objects and human remains. As James Nafziger describes, "the NAGPRA-centred regime of repatriation has had the effect of enriching and extending the definition of this fiduciary duty. Today institutions must take into account the interests of not only visitors and other users of their facilities but of tribes."<sup>436</sup> Apparently, certain museums at first were concerned that *NAGPRA* "would force them to abandon their fiduciary responsibilities, act against the law of their state, deprive the nation of its cultural patrimony and adversely affect relationships with some Native American groups."<sup>437</sup> By 1995, however, according to Professor Nafziger, *NAGPRA* had facilitated "the gradual repatriation of significant cultural heritage to the tribes without sacrificing

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<sup>432</sup> Krauss, *supra* note 328.

<sup>433</sup> Interview with Jonathan King, August 7, 2014.

<sup>434</sup> *Ibid.*

<sup>435</sup> *Ibid.*

<sup>436</sup> James Nafziger, "The New Fiduciary Duty of United States Museum to Repatriate Cultural Heritage: the Oregon Experience", (1995) *Special Issue U.B.C. L. Rev.* 37 at 41.

<sup>437</sup> Julia Harrison, "Ideas of Museums in the 1990s" (1993) 13 *Museum Management and Curatorship* 160, at 169.

educational and other interests of the public.”<sup>438</sup> However, the discovery one year later of the skeletal remains of ‘Kennewick Man’, and their ongoing presence at the Burke Museum in Seattle while scientists, the US government and five Native American tribes battle for ownership of the remains, has brought to the forefront the limits of *NAGPRA*’s ability to affect museum managers’ conception of their fiduciary duties.

Richard West Jr. discusses how the trustees at the NMAI, whose decision-making on repatriations is governed by the 1989 *National Museum of the American Indian Act* and *Repatriation Policy Statement* rather than by *NAGPRA*, reacted to repatriation claims when he became director of that institution:

remember that the original board of trustees, which is required by law to be 50% Native plus one -- that charter group of trustees came from a number of different sources... And I will say that in those early days of *NAGPRA* there was lots of trepidation around any room of museum people on the question of repatriation. But there was an early acceptance both that: A) the fact that even if the statute did not apply to us quite literally, that we operated in its spirit, and quite frankly the Repatriation Policy of the [NMAI]... was more liberal than *NAGPRA* both as to the burden of truth and the fact that we entertained requests from state-recognized, not just federally recognized, tribes in the US; and B) the fact that we crossed international boundaries in dealing with certain claims on the basis of comity... So, we really did early on operate under our Policy and I think everybody came aboard. There were probably varying degrees of comfort with it but nobody really disputed the fact that we needed to have a very active and proactive Repatriation Policy at the museum.<sup>439</sup>

In Canada, where there is no equivalent legislation to *NAGPRA*, museum managers generally turn to non-binding museum codes of ethics and any institutional repatriation guidelines for guidance on how to deal with Indigenous peoples’ repatriation claims. For example, the Canadian Museum’s Association’s Ethics Guidelines stipulates that “there is a strong presumption against disposal of accessioned collections to which the museum has title.”<sup>440</sup> They also stipulate however that

Museums should be committed to the return of human remains, directly associated funerary objects and culturally sensitive objects, when requested by communities or groups with a demonstrable claim of historical relationship to

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<sup>438</sup> Nafziger, *supra* note 436.

<sup>439</sup> Interview with Richard West Jr., January 28, 2014.

<sup>440</sup> Canadian Museums Association, “Ethical Guidelines 1999”, E 4.4.

them, and be prepared to facilitate the return of material *which may have been acquired under circumstances that invalidate the museum's claim to title.*<sup>441</sup>  
(emphasis added)

Similarly, MOA's Guidelines for Repatriation state that the museum "considers the return of cultural objects to individual families in cases where the objects are private and ceremonial, or *left the family under dubious circumstances.*" (emphasis added) Since the three *Hamsaml* bird masks that Peter McNair discovered in MOA's collection appear in the photograph of the regalia in the Alert Bay Anglican church and thus clearly were removed from their owner "under dubious circumstances", it would seem that a transfer of title, rather than a long-term loan, is encouraged by those guidelines.

#### **4.3.4. All peoples' cultural heritage belongs to mankind**

Despite the transformations in museum practice described above that resulted in many museums publicly acknowledging the vibrant nature of First Nations cultures, still some of the Western museum professionals involved in the Potlatch Collection and G'psgolox pole repatriations used the precept of 'cultural property internationalism' to explain their hesitancy to repatriate the Kwakwaka'wakw and Haisla peoples' cultural heritage. As conceived by Professor John Merryman, 'cultural property internationalism' "is shorthand for the proposition that everyone has an interest in the preservation and enjoyment of cultural property, wherever it is situated, from wherever cultural or geographic source it derives."<sup>442</sup> As Paterson and Bell explain further,

continued retention by large institutions, such as the British Museum, the American Museum of Natural History, and the Berlin Museum fur Volkerkunde, in popular tourist destinations is viewed as essential for safekeeping, maximum public accessibility, and serving the greater good of contributing to the knowledge of humankind. Emphasis is placed on conservation and aesthetic value and the overall role of museums in safeguarding material that might have otherwise been destroyed or dispersed.<sup>443</sup>

For example, former British Museum director Robert Anderson once said that "my job is to preserve the collection we have, not to remove objects... My job is to arrange for the presentation

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<sup>441</sup> *Ibid.*

<sup>442</sup> John Henry Merryman, "Cultural Property Internationalism", (2005) 12 *International Journal of Cultural Property* 11.

<sup>443</sup> Paterson and Bell, *supra* note 26, at 97.



of world cultures to the five million people a year who come here.”<sup>444</sup> Even after that museum adopted a loans policy, Dr. Anderson insisted that “the trustees are determined that such loans should not deprive visitors of the chance to see objects that are famously part of the museum’s collections, which they may reasonably expect to see on display when they come, and which offer the public an overall sense of the past.”<sup>445</sup> When Neil MacGregor took over as director of the British Museum in 2002, he similarly stated: “All great works of art are surely the common inheritance of humanity... This is a truth that is surely more important to proclaim now than ever before. In a world increasingly fractured by ethnic and religious identities, it is essential that there are places where the great creations of all civilizations can be seen together, and where the visitor can focus on what unites rather than what divides us.”<sup>446</sup>

When first approached by the Haisla about repatriating the G’psglox pole, Swedish Museum of Ethnography director Per Kaks expressed a similar sentiment: “I wanted to give it back. The only condition we had, having kept the pole for so many years and tried to make it survive, ...was that together we could look upon the pole *as the property of mankind*. I would be unhappy if they put it back according to their traditions because it wouldn’t survive.”<sup>447</sup>

In the case of the Potlatch Collection, the CMH’s early responses to requests for the Collection’s return seem to have been based on its belief that the Collection was part of Canada’s *national* heritage. Indeed, in 1966, Dr. Robert Glover, then director of the CMH, stated in a letter to G.E.E. Steele, the Under Secretary of State, that “the function of this museum was to preserve the national Treasure of all the people of Canada.”<sup>448</sup> In May 1967, A.D. DeBlois, Chief Ethnologist at the CMH, argued in a memorandum to new museum director William Taylor that the Collection should be retained by the museum because “only thus can this invaluable, irreplaceable part of Canada’s national treasure, this national resource, be assured of proper and adequate preservation and safe-keeping, in accordance with the most modern museum techniques available.”<sup>449</sup>

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<sup>444</sup> Knox, *supra* note 217.

<sup>445</sup> *Ibid.*

<sup>446</sup> Neil MacGregor, “Oi, Hands Off Our Marbles”, *The Sunday Times*, January 18, 2004, section 5, page 7.

<sup>447</sup> Totem 2003, *supra* note 257. (emphasis added).

<sup>448</sup> CMH Archives VII-E-35M B466 F1-4, cited in Knight, *supra* note 210, at 77.

<sup>449</sup> CMH Archives E2010.14 B13 F3-4, cited in Knight, *ibid.*

Juanita Johnston says, however, that she does not believe that a large state museum in any country is better placed than the Kwakwaka'wakw themselves to recount Kwakwaka'wakw heritage to the world: "that doesn't sit well with me when they start talking like that... we can do a better job of telling our own story... We would like to tell everyone our story in person, but if we can't, there are other ways to tell them. For sure it is never going to mean as much to the people that own it to have it [stored] in a box in a museum than have it here."<sup>450</sup>

#### 4.3.5. Museum professionals' training: preservation vs. use

A difference in cultural values with respect to preservation and use of cultural objects is often one of the most complex issues that museums and Indigenous peoples grapple with in repatriation disputes. Generally, Western museum professionals believe that the role of the museum is to preserve objects for future generations. As Robert Anderson, director of the British Museum from 1992 to 2002, has stated, "the first responsibility of the Museum is, however, to keep the objects in its care safe for present and future generations."<sup>451</sup> Miriam Clavir, former Senior Conservator at MOA, adds that "the museum, as an institution, becomes a signifier as well as a creator of cultural meanings. Museums, therefore, have a vested interest in preserving their collections, and preservation is a primary mandate of most museum policies."<sup>452</sup>

In the Western museum world, the preservationist paradigm is pervasive. For example, the International Council of Museums' definition of the museum includes conservation as a key activity<sup>453</sup>, while the Canadian *Museums Act* similarly declares that "the heritage of Canada and all its peoples is an important part of the world heritage and must be preserved for present and future generations."<sup>454</sup> As a result of their training and the prevalence of this paradigm, Western museum professionals adhere to a Foucauldian view of the museum as a *heterotopia* – i.e., a place where one accumulates and archives objects in order to protect them from the ravages of time.<sup>455</sup> As evidence, some museums initially refused the Kwakwaka'wakw access to their regalia. For over six years, the British Museum was only willing to offer the Kwakwaka'wakw pictures of the

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<sup>450</sup> Interview with Juanita Johnston, October 4, 2013.

<sup>451</sup> *Ibid.*

<sup>452</sup> Miriam Clavir, *Preserving What is Valued: Museums, Conservation, and First Nations* (Vancouver: UBC Press, 2002) at 27.

<sup>453</sup> Online: <http://icom.museum/who-we-are/the-vision/museum-definition.html>.

<sup>454</sup> *Museums Act*, S.C. 1990, c 3, s 3.

<sup>455</sup> Michel Foucault, "Of Other Spaces (1967) Heterotopias", (1984) *Architecture/Mouvement/Continuité*.

‘Namgis Transformation Mask, saying it may allow an “Indian carver” to make a copy.<sup>456</sup> Andrea Sanborn, then director of the U’mista Cultural Centre, wrote that the Kwakwaka’wakw were frustrated because

they don’t know if it will ever be on display... [t]hey’d just as soon leave [it] in the back room somewhere and not allow people to have access. Although they have said it is museum law for them to have it so that anybody who wants to study it, anybody with any interest in it, will be able to go at any time and study it, and yet it’s not even on display... It’s pretty hard to go and study something that’s in a box.<sup>457</sup>

When the CMH agreed to repatriate the Potlatch Collection to the Kwakwaka’wakw First Nations in the 1970s, it did not hand over the treasures unconditionally; instead, it conditioned their return on construction of a museum to house them. The Swedish government imposed a similar condition on its repatriation of the G’psgolox pole, a decision that Mr. Kaks admits that he supported at the time based on a desire to see the pole to preserved for future generations, both of the Haisla and the general public.<sup>458</sup> His views, however, have since changed. He has come to believe that not all objects need to be preserved in order for them to have greater meaning: “I think that objects have a history to tell, if there’s somebody to interpret and tell them. At the same time I would say that I’m quite happy that objects disappear and are destroyed, otherwise everybody would be living in a museum, and that’s not life....”<sup>459</sup> Another reason, according to Mr. Kaks, that museums should consider allowing objects to be destroyed relates to the kind of story they have been associated with, particularly when it involves Indigenous peoples who have been subjected to colonial traumas: “As a museum person, I think that one has to have a much more open attitude to the ethics of museums than absolute attitude of keeping things at any cost.”<sup>460</sup>

#### **4.3.6. An “attachment” or right arising from conserving/caring for the object**

In some cases, the museums’ responses to the Haisla and Kwakwaka’wakw peoples’ repatriation claims were also caused by a certain attachment to the objects in dispute. On one end of the spectrum was the Royal Ontario Museum’s demand for monetary compensation for “all the

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<sup>456</sup> Krauss, *supra* note 328.

<sup>457</sup> Bell, Raven, McCuaig and Sanborn, *supra* note 42, at 76.

<sup>458</sup> Interview with Per Kaks, October 5, 2014.

<sup>459</sup> *Ibid.*

<sup>460</sup> *Ibid.*

years of curatorial care, conservation, insurance, etc.”<sup>461</sup> A more emotion-based argument against repatriation, however, was expressed by Swedish Museum of Ethnography education officer Karin Westberg, who emphasized that “people have spent years and years looking after [the pole] and preserving it. So this is a very complex project, it has a long, long history and it contains a lot of opinions and emotions. And it’s very, very difficult and complex.”<sup>462</sup> As Richard West Jr. confirms, when asked if it was hard emotionally for museum staff to see the Potlatch Collection pieces leave the museum in 1994 and 2002, “I don’t think there’s any question that it was. As I say and I don’t dispute them this, really curators love this material. The parting cannot be completely sweet. They’ve been working with it for ages, so I understand that.”<sup>463</sup> Ultimately, however, although “it was difficult emotionally to have the material out from in front of them... we were big people and we approached it in a way I think we should have.”<sup>464</sup>

Jonathan King similarly recognizes the particular attachment that curators at the British Museum have to the objects in their care, but says the nature of that attachment has evolved over time, in particular with the advent of computer technology. According to Mr. King,

museum curators are of a certain type... they like to keep things, that’s why they’re there. So part of the problem is that the individual museum curator may be more likely to be tied up in terms of identity with specific objects. One of the things that’s happened is that the business of connoisseurship, of curatorship, has changed. In 1975, if you went to the British Museum, the Museum of Mankind, and you wanted to see an object, the curator would bring out the object and explain what it was. Now, of course, you can see all that information online, and in a sense the relationship between the importance of communication and the importance of curatorship has changed. So if curators are not primarily connoisseurs, but if actually their role is to facilitate communication and to facilitate learning, not simply close learning about the object, but a more general conceptualization of the culture and of the background of the object, they actually become less emotionally involved in the objects. I’m not saying that’s “the truth”, but it’s one way of looking at the question....I think there’s a process of detachment by curators from their collections as they move away from being emotionally attached in objects and I think that’s quite an interesting and important thing.<sup>465</sup>

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<sup>461</sup> Webster, *supra* note 249, at 43.

<sup>462</sup> Totem 2003, *supra* note 257. For a good discussion of curators’ approaches to cultural objects in repatriation disputes, see Victoria Kablys, “Repatriation, Conservation, and Pre-Repatriation Conservation: Entanglement and Contemporary Practice”, Unpublished Master of Arts Honors Thesis, University of British Columbia Department of Anthropology, 2013.

<sup>463</sup> Interview with Richard West Jr., January 28, 2014.

<sup>464</sup> *Ibid.*

<sup>465</sup> Interview with Jonathan King, August 7, 2014.

In fact, at the Museum of Ethnography, new attachments have been formed that the museum, its staff and its public find even more meaningful. Mr. Björklund says that “the pole that we got as a gift from the Haisla, for us tells even a richer story than the old one. The old one told a story that was hidden behind knowledge and associations and culture that we don’t have access to, not full access anyway. The new pole hasn’t got that. We know why it’s here, we know that it was part of an exchange. It tells a fantastic story of repatriation...”<sup>466</sup>

#### **4.3.7. The background/knowledge of the museum’s director/staff**

Familiarity with the impact of colonialism on Indigenous peoples of Canada also seems to have had a significant influence on various museum professionals’ reactions to the Haisla and Kwakwaka’wakw peoples’ repatriation claims.

For example, until 1967, the CMH maintained a negative attitude to repatriating the Potlatch Collection. However, after the appointment as director of William Taylor, an archaeologist with significant knowledge of Canadian Aboriginal histories and cultures, the museum became more open to the possibility of returning the potlatch treasures. A further development in terms of the museum staff’s sensitivity to the Kwakwaka’wakw peoples’ history of persecution is mentioned in an internal memorandum by CMH Plains Ethnologist Ted Brasser, who after attending the National Conference on Native Culture in Kamloops in 1971, reported to Taylor that:

Dignified and without even an undertone of hate, Mrs. Mabel Stanley described in detail what she personally saw and experienced when the R.C.M.P entered into her village and confiscated the greater part of the ceremonial paraphernalia. The whole atmosphere of this account reminded me strongly of the all-pervading terror during a German razzia, in which my father and many other men were arrested and sent off to a concentration camp. As far as the Kwakiutl-delegates were aware, the R.C.M.P had the legal ‘right’ under the anti-potlatch law to break up an Indian ceremonial meeting. However, there appears to have been no justification whatsoever to confiscate the ceremonial paraphernalia. Therefore the Kwakiutl delegates could not but regard this affair as outright robbery... Disregarding the sentiments of the Indian owners is dishonourable to all of us and certainly will jeopardize the image of the museum and our relations with the

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<sup>466</sup> Interview with Anders Björklund, September 29, 2014.

Indians throughout Canada. It is a mistaken idea that the Indians will forget this affair; particularly along the west coast where the detailed transmission of oral traditions still is unbelievably strong...<sup>467</sup>

Clearly, direct contact with people from a community affected by the regalia confiscations had an impact on Mr. Brasser. In her Masters Thesis on the Potlatch Collection, Emma Knight concludes that his report indicates an institutional shift in understanding of the significance of the regalia. In reply to Mr. Brasser's note, William Taylor wrote "I am very pleased that the Division agrees that a large collection of the confiscated potlatch material should be returned to a proper museum at Alert Bay... I do think it correct that we pay more attention to justice and less attention to the legalities of the history of the case."<sup>468</sup>

At the NMAI, a change in director at the museum had a similar effect. In 1990, when Richard West, Jr. was appointed director of the NMAI, the Kwakwaka'wakw say they were able to "negotiate with much more reasonable people."<sup>469</sup> According to Juanita Johnston, "as soon as he was Director, things progressed a lot more quickly.... there was a definite change between when we were writing letters in the 1980s and when we started back again in '91... a definite change in tone and even response time."<sup>470</sup> Mr. West says that he and the NMAI Northwest Coast curator, Mary Jane Lenz, and the head of the Office of Repatriation, Jim Pepper Henry, "all knew about the Canadian Potlatch Law, and we knew that these were basically materials rounded up by somebody else and traded to George Gustav Heye under the Canadian Potlatch Law, so we certainly knew the colonial background to it."<sup>471</sup> Mr. West also notes that because the NMAI was not covered by *NAGPRA*, but rather by the less comprehensive *NMAI Act*, he was more free to craft his own repatriation policy at the museum, and so he indicated within it, as a matter of comity, that the museum would entertain transnational repatriation requests.<sup>472</sup> Another factor that seems to have been influential in the museum's approach to repatriation was having Native American scholar and rights activist Vine Deloria, Jr. as a member of the Board of Trustees. As Mr. West says, "it was hard to have Vine Deloria in the room and on a board of trustees and have really much dissension over the question of repatriation."<sup>473</sup>

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<sup>467</sup> CMH Archives VII-E-35M B466 F1-4, cited in Knight, *supra* note 210, at 81.

<sup>468</sup> *Ibid.*

<sup>469</sup> Cranmer Webster, *supra* note 183, at 140.

<sup>470</sup> Interview with Juanita Johnston, October 4, 2013.

<sup>471</sup> Interview with Richard West Jr., January 28, 2014.

<sup>472</sup> *Ibid.*

<sup>473</sup> *Ibid.*

Juanita Johnston also says that the involvement at the British Museum of curator Jonathan King, who has spent his career as an academic and museum professional working with North American Indigenous peoples, was the key factor in the British Museum finally agreeing to a long-term loan agreement. Mr. King not only was an instigator of the museum transformations that took place in England, as described above, but also was intimately involved in the transformations that took place in Canada. As Mr. King describes, immediately after *The Spirit Sings* exhibition in Calgary,

Carleton in Ottawa had a conference about museums and First Nations, and I spoke at that about how important it was to work with Native people. Out of that came the Task Force, and that published a report in 1992 written by Hill and Nicks, and that transformed the way Canadian museums looked at the whole business of involving First Nations and Inuit and Métis people. There was a huge change, and in one small way I was involved in all of that, and so my perception of what was good and what was bad had changed enormously.<sup>474</sup>

Mr. King says that another factor that contributed to the British Museum agreeing to a long-term loan was Neil McGregor's appointment as director of the Museum in 2003. According to Mr. King, "he was more interested in looking at these issues and in facilitating solutions to them, so he was very much behind this whole process, and I think that's very important."<sup>475</sup>

Juanita Johnston attributes a positive recent experience with the Horniman Museum and Gardens, a small museum in Forest Hill, London, founded in 1901 by tea merchant Frederick John Horniman, to the fact that former British Museum staff member Robert Story is employed at that museum and already knew the story of the Potlatch Collection. In her opinion, the awareness of the museum of the history of colonialism and its impact on the Kwakwaka'wakw did have an impact on the museum's reaction to their request for repatriation of the *Dzunukwa* mask. When Johnston and Andrea Sanborn arrived at the museum for the first time, the museum immediately brought the mask out of storage into one of their labs, and allowed them to see it. According to Johnston "Basically, it was one letter and one meeting and the ball was rolling."<sup>476</sup>

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<sup>474</sup> Interview with Jonathan King August 7, 2014.

<sup>475</sup> *Ibid.*

<sup>476</sup> Interview with Juanita Johnston, October 4, 2013.

#### 4.3.8. Concern about “opening the floodgates”

A possible reason for certain museums’ responses to the repatriation claims of the Kwakwaka’wakw was voiced by U’Mista Cultural Center founder Gloria Cranmer Webster, namely, “the paranoia of major museums that any repatriation sets a dangerous precedent and that such institutions will face hordes of Native peoples from across the continent demanding the return of their treasures.”<sup>477</sup> In fact, Robert Anderson of the British Museum has stated that he is concerned that the “restitutionist premise, that whatever was made in a country must return to an original geographical site, would empty both the British Museum and the other great museums of the world.”<sup>478</sup> Similarly, Dr. Robert Glover, director of the CMH until 1967, wrote in 1966 to G.E.E. Steele, Under Secretary of State, that “if the claim of the Indian Affairs is upheld [to repatriate the Potlatch Collection], certain unpleasant consequences follow, of which the least is that that we lose some valuable ethnological material. The worst is that a precedent may be created for other departments to raid the National Museum [CMH] for their own advantage.”<sup>479</sup>

However, as Cranmer Webster says, “as far as I know, such fears remain unfounded.”<sup>480</sup> Per Kaks confirms that that holds true at the Swedish Museum of Ethnography also. According to Mr. Kaks, at the time the Swedish Museum of Ethnography was considering sending the G’psgolox Pole back to Sweden,

there were a lot of people who said ‘no, no, no, if you say yes to this then the museum would be emptied’. I never saw that risk, definitely not... The only thing that has happened is that my successor sent back a lot of human material to Australia that had been lying there and nobody had studied it. The Aborigines of Australia wanted their ancestors back, and they got it, and they buried them. And that’s it. So what! Nobody had studied them in Sweden.<sup>481</sup>

Anders Björklund similarly believes that discussing repatriation with indigenous communities is important that and repatriating certain material won’t result in the “stores being emptied”:

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<sup>477</sup> *Ibid*, 43.

<sup>478</sup> Robert Anderson, Director of the British Museum, “The Elgin Marbles are staying put in London”, *The Times*, January 15, 2002, online: <http://www.info-world.com/elgin.marbles/times/>, accessed January 20, 2014. See also, Paterson and Bell, *supra* note 26, at 98.

<sup>479</sup> *Supra* note 448.

<sup>480</sup> *Ibid*, at 43.

<sup>481</sup> Interview with Per Kaks, October 5, 2014.



of course there will be restitution of objects. That is a process that will never end. But it doesn't mean the stores will be emptied. There are thousands and thousands and thousands of objects and we could discuss every one of them and we should discuss every one of them, but not all of them will be restitution cases. I think it's not a relevant idea, opening the floodgates. It's an exaggeration.<sup>482</sup>

Richard West Jr. tells a similar story about his experience working on repatriation cases at the NMAI:

In the early days of NAGPRA, there was a lot of trepidation around any room of museum people on the question of repatriation... I remember walking into the room where I was giving a speech [at the Association of American Museums conference], which was supposed to be an hour long session, so I expected maybe, I don't know, 20 to 30 people might at best show up to hear what I had to say about the subject of repatriation. Well, needless to say there were about between two and three hundred people in the room and you could have cut the anxiety with a knife. It was incredible to me... And I made a joke in that speech, and everybody did laugh but I think some weren't really laughing a lot, about the fact that nobody need fear 18-wheelers being at the back bay door, that that really wasn't going to happen. And of course, it didn't happen.<sup>483</sup>

Mr. West also states that within a couple of years of NAGPRA's enactment, the NMAI's trustees began to realize that Native people were finding the process of repatriation complex and "did not just come banging on doors asking for whole collections back."<sup>484</sup> Juanita Johnston confirms that

we're not going to repatriate everything... we're really specific about what we want back... We just want the collection back that was taken... We have our hands full housing properly and taking care of what we have. I don't see the wisdom in asking for something back if we can't afford to look after it... That's why we're pretty selective now about what we are given as gifts as well. At one time, they said yes to everything... It's been a bit of a learning curve to teach the board that you don't say yes to everything. You need to factor in insurance and care taking.<sup>485</sup>

In Jonathan King's opinion, museums need to understand this reality in thinking about the subject of repatriation. According to Mr. King, "most of the important requests and important returns of objects... have to do with symbolic moments of particular moral difficulty. I can see

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<sup>482</sup> Interview with Anders Björklund, September 29, 2014.

<sup>483</sup> Interview with Richard West Jr., January 28, 2014.

<sup>484</sup> *Ibid.*

<sup>485</sup> Interview with Juanita Johnston, October 4, 2013.

that that has to be a very important feature of the way museums operate and of the way museums select those countries and peoples and projects to pursue.”<sup>486</sup>

#### **4.3.9. Decolonizing museological practices and creating better relationships**

While certain museums involved in the repatriations with the Haisla and Kwakwaka’wakw peoples initially expressed hesitancy about repatriating the objects requested, there is evidence that some of the museums came to view the repatriation process as an opportunity to redress colonial harms and create constructive relationships with those communities.

For example, Anders Björklund acknowledged that “one of the goals of giving the pole back was to build up a live contact with the Kitimat group... on a human basis. It’s not just that we give back something, but we have a lot of things coming back to us – their experience, their knowledge, their thoughts and their friendships. Most people think that museums are about objects, but museums are about human beings.”<sup>487</sup> Similarly, according to Richard West Jr., the NMAI “was doing its level best to construct very healthy, mutually reinforcing, mutually participatory relationships with native communities. And so it’s in that context that of course, we sent some of our folks out to help welcome the material back to the community.”<sup>488</sup> One of the ways that the NMAI has achieved this goal is by providing internship and fellowship programs for Native Americans, to create ties and cooperative arrangements with Native communities.

At the British Museum, curator Jonathan King worked hard to develop and maintain a good relationship with the Kwakwaka’wakw despite the legal constraints he worked under as a curator. He then personally accompanied the ‘Namgis transformation mask on its journey home to Alert Bay. He did this because he recognizes that “if you invest the time and energy and effort into bringing the originators of the collections back together with the collections, everybody benefits enormously, there’s no question about that. The objects come to mean much more to the museum, to the originating community, and so on.”<sup>489</sup>

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<sup>486</sup> Interview with Jonathan King, August 7, 2014.

<sup>487</sup> Totem 2003, *supra* note 257.

<sup>488</sup> Interview with Richard West Jr., January 28, 2014.

<sup>489</sup> Interview with Jonathan King, August 7, 2014.

## CHAPTER 5. ANALYSING PROCESS AND OUTCOME OF THE REPATRIATION NEGOTIATIONS

Drawing on the discussion in the previous chapters and on interviews that I conducted and that appear in media and academic sources, this chapter will explore some key issues that the parties confronted during the repatriation negotiations and the impact of the way those issues were resolved on the process and outcome of the negotiations.

### 5.1. Anatomy of the Potlatch Collection repatriation negotiations

#### 5.1.1. Legal issues

One issue that acted as an obstacle to resolution of the dispute between the Kwakwaka'wakw and all of the museums was the legal issue of whether the regalia had been illegally confiscated (which the Kwakwaka'wakw asserted) or legally acquired/purchased (which the museums all initially alleged).

Indeed, when Chief James Sewid first demanded return of the Collection by the CMH on the basis they were stolen goods, the museum replied that the government had paid \$1400 for them, implying it had acquired valid title.<sup>490</sup> According to Daisy Sewid-Smith, who worked for the Indian Agent's office in Alert Bay for many years, there is no record of any payment having been received.<sup>491</sup> Generally, she says, whenever a check was sent to the band council, "they would send it to the Indian Agent because we didn't have addresses." Chief Sewid himself searched for proof of the payment in the 1960s but found none.<sup>492</sup>

In the early 1970s, Professor Michael Jackson, who assisted the Kwakwaka'wakw with the negotiations for the repatriation of the Collection, issued a legal opinion to the effect that "the trials were illegal..., the transfer was written under duress and with unconscionable behaviour on the part of the Indian Agent, and the title that the Museum got to the regalia was one that could be set

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<sup>490</sup> Sewid-Smith, *supra* note 185, at 2; see also, Jacknis, *supra* note 226, at 277.

<sup>491</sup> Interview with Daisy Sewid-Smith, August 7, 2013.

<sup>492</sup> *Ibid.*

aside by a court.”<sup>493</sup> Similarly, Gloria Cranmer Webster has said, “the legality of the sentencing was questionable. The suspended sentences were based not on offenses but on the handing over of goods. Worse, individuals were sentenced not based on their own actions but on the actions of the entire village, completely contrary to principles of British law.”<sup>494</sup> E.K. DeBeck, who had acted as a defense lawyer for Kwakwaka’wakw tribe members who had been arrested for contravening the potlatch ban, also commented in a 1975 interview: “It’s all very well to give some kind of an indemnity to prisoners if they will help with other convictions under certain protections they have..., but to take from them material things, it’s the same as letting them buy themselves law.”<sup>495</sup> Anthropologist John Pritchard further points out that, “although the Act had specified that people could not engage in ceremonies at which dances were given and songs were given, it neglected to prohibit the possession of regalia. So... they were perfectly entitled to possess that material, whether they had been at a potlatch or not.”<sup>496</sup>

Ira Jacknis opines that indeed part of the reason the CMH returned the objects was that it had trouble justifying keeping them, as they were acquired as part of a legal proceeding involving duress and not as part of scientific research.<sup>497</sup> The museum’s acknowledgement of that fact, at least internally, is apparent in an internal memorandum of CMH Plains Ethnologist Ted Brasser to William Taylor and Chief Ethnologist Barrie Reynolds, after Brasser attended the National Conference on Native Culture in 1971. He reports that “as far as the Kwakiutl delegates were aware, the RCMP had the legal “right” under the anti-potlatch law to break up an Indian ceremonial meeting. However, there appears to have been no justification whatsoever to confiscate the ceremonial paraphernalia. Therefore the Kwakiutl delegates could not but regard this affair as outright robbery.”<sup>498</sup> In addition, as early as 1966, the federal government had begun pressuring the CMH to return the regalia as part of a means of redressing the harms of the potlatch ban and other colonial wrongs and “overcoming bad relations between the Department of Indian Affairs and the Kwakwaka’wakw.”<sup>499</sup>

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<sup>493</sup> Personal communication by Professor Jackson.

<sup>494</sup> Webster, discussing the legal opinion given at the time by Michael Jackson, in “Potlatch: a strict law bids us dance”, *supra* note 236.

<sup>495</sup> Interview with DeBeck in “Potlatch: a strict law bids us dance”, *supra* note 236.

<sup>496</sup> Interview with John Pritchard cited in Bell, Raven, McCuaig and Sanborn, *supra* note 42, at 54.

<sup>497</sup> See Jacknis, *supra* note 226 at 283; in *Preserving What is Valued*, *supra* note 452, at 15, Miriam Clavir discusses the fact that museums in the late 19<sup>th</sup> and early 20<sup>th</sup> century collected Indigenous artifacts for “scientific purposes”, *i.e.*, urgently collecting cultural material before the Native cultures disappeared and collecting remains to study the races.

<sup>498</sup> Knight, *supra* note 210, at 81.

<sup>499</sup> *Ibid*, at 76.

According to Professor Jackson, there are both legal and non-legal reasons the CMH and Kwakwaka'wakw eventually succeeded in moving past the issue of title without resort to litigation: "the combination of the threat of a law suit, the publicity that would be generated by a trial, and Gloria's relationship with the people at the Museum — it's difficult to know what the relative combination of those things was but they all played a role -- but in the end it was an amicable relationship and we never had to go to court."<sup>500</sup> Gloria Cranmer Webster confirms that "for the most part, discussions with the [CMH] people were positive and productive. Museum staff and board members were very sympathetic and handled the situation with sensitivity."<sup>501</sup>

Professor Jackson explains why a non-litigious approach was important to the Kwakwaka'wakw:

Litigation is expensive, it's time consuming and it polarizes people and hardens their positions, and makes it much more difficult to come up with reasonable accommodations. Given that so much of what these negotiations have been about is not just getting stuff back, but also trying to get compensation in terms of funding a building or a language program,... if you've got people [at the museum] that are anxious to demonstrate that they want to be part of the solution, you are going to get much further along [with them] through negotiations than through crafting a lawsuit, in which you immediately run into problems with issues of limitations and proof.<sup>502</sup>

In repatriation negotiations, the Kwakwaka'wakw have preferred emphasizing moral rights to asserting legal rights, and using the media to educate the public about the importance of repatriation to cultural revival and to celebrate successful repatriations, rather than use it to put pressure on museums.<sup>503</sup> In negotiations with the ROM, NMAI and British Museum, however, the Kwakwaka'wakw could not use their preferred approach because of the museums' initial refusal to even consider repatriating the treasures.

For example, the ROM stated that while they would agree to a "co-operative travelling exhibit", part of the collection or replicas thereof must remain at the ROM to tell the story of the potlatch. Chief Donald Assu, who attended the meeting with the Board of the Directors of the

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<sup>500</sup> Personal communication by Professor Jackson.

<sup>501</sup> Cranmer Webster, *supra* note 249, at 43.

<sup>502</sup> Personal communication by Professor Jackson.

<sup>503</sup> Bell, Raven, McCuaig and Sanborn, *supra* note 42, at 76.

ROM, says that the Board stipulated that “before you can take home the artifacts on display you would have to make duplicates.”<sup>504</sup> The Kwakwaka’wakw negotiators refused, saying “no, we won’t do that because these artifacts belong to our people.”<sup>505</sup> The ROM also sought compensation for “all the years of curatorial care, conservation, insurance, etc.”<sup>506</sup> The Kwakwaka’wakw refused these terms, believing that given the precedent set by the CMH, the ROM had no right to impose such conditions on return of the treasures. They were also deeply offended by the ROM’s lawyers’ insistence in November 1985 that the museum’s claims to legal ownership of the regalia were “as strong as anyone else’s.”<sup>507</sup> As Gloria Cranmer Webster commented, “it was becoming obvious to us that we were not getting through to the ROM people.”<sup>508</sup> According to Chief Donald Assu, the museum’s demands did not sit well with the Kwakwaka’wakw but they maintained their composure during the negotiation: “maybe deep down you feel angry about it, but you don’t want to focus on it...because you are there to be respectful and if you treat people that way, they will treat you the same.”<sup>509</sup>

The Kwakwaka’wakw then wrote in May 1986 to the Minister of Indian Affairs and Northern Development, the Honorable David Crombie, requesting his intervention, on the basis of an October 1922 letter from Duncan Campbell Scott to Edward Sapir, curator of the CMH at the time, that made clear that the regalia did not belong to the ROM: “these curios are to remain the property of the Dept. of Indian Affairs although housed in the [CMH]”. The CMH then officially recalled the pieces that it had loaned to the ROM.<sup>510</sup> Twelve months later the Minister advised the Kwakwaka’wakw that the Potlatch Collection treasures had been retrieved from the ROM and were being sent home.<sup>511</sup>

Negotiations with the NMAI began on a similarly contentious note. Gloria Cranmer Webster describes how “our initial contact with NMAI representatives in 1984 gave us a good idea of how difficult our task would be. It was as if the NMAI was reading from the same script as the

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<sup>504</sup> Interview with Chief Donald Assu, August 6, 2013.

<sup>505</sup> *Ibid.*

<sup>506</sup> Webster, *supra* note 249, at 43.

<sup>507</sup> *Ibid.*

<sup>508</sup> Bell, Raven, McCuaig and Sanborn, *supra* note 42, at 69.

<sup>509</sup> Interview with Chief Donald Assu, August 6, 2013.

<sup>510</sup> Interview with Juanita Johnston, October 4, 2013.

<sup>511</sup> Cranmer Webster, *supra* note 249, at 43-44.

ROM had.”<sup>512</sup> A 1988 article she wrote for the Canadian Museums Association journal hints at her frustration with the behaviour of those museums:

How often have we heard museum directors and curators say, “We’re not responsible today for what was done in the past” or “If we hadn’t taken care of these artifacts all these years, they would have disappeared”? Such statements do not justify the holding by major museums of materials acquired in a dubious manner. My question to museums out there is, “Why would you want to keep objects that you know, or even suspect, may have been stolen or otherwise illegally acquired.” If you can’t answer that honestly, don’t talk to me about your ethics.<sup>513</sup>

There are certain possible reasons for the museum’s response. One of them is described by Professor Jackson:

Unfortunately what happened is right at the time I was about to write a letter to the trustees of the [NMAI], they had a big scandal in New York... Dick Cavett and people like that had bought things from the Museum in a de-accessioning scandal and the Museum was put into trusteeship, so I wrote to the Attorney General of New York and said, ‘we have a claim on some of that stuff’, and he wrote back and said, ‘maybe you do but I represent the people of the state of New York and so I’m not giving you anything’.<sup>514</sup>

In 1990, however, when Richard West, Jr. became founding director of the newly built Smithsonian NMAI, the museum began working more actively to return some of the treasures that Heye had acquired. Mr. West confirms that he recognized that “one of the ethical factors that was very specific to this case was the role that the Canadian potlatch law had played in all of it.”<sup>515</sup> However, after several pieces were repatriated in 1992, the NMAI was unable to continue to respond to requests for return of other Potlatch Collection pieces due to its trustees’ decision that the museum should focus on returning human remains in its collection.<sup>516</sup> According to Johnston, “our claim got put on the back burner with the understanding that as soon as they had done that, they would pick it up, and...the rest of the stuff came back in 2002.”<sup>517</sup>

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<sup>512</sup> *Ibid.*, at 44.

<sup>513</sup> *Ibid.*

<sup>514</sup> Personal communication by Professor Jackson.

<sup>515</sup> Interview with Richard West Jr., January 28, 2014.

<sup>516</sup> *Ibid.*

<sup>517</sup> Interview with Juanita Johnston, October 4, 2013.

The Kwakwaka'wakw had a similar initial experience with the British Museum as it did with the ROM and NMAI. When Chief Bill Cranmer wrote to the museum in November 1995 to request repatriation of the 'Namgis Transformation Mask, he described the circumstances of the confiscation of the regalia and the repatriations by the CMH, ROM and NMAI. Despite the fact that the Transformation Mask was stored in the museum's basement and had never been on display, British Museum director Robert Anderson refused to return it. In his January 1996 response to Chief Cranmer, Dr. Anderson insisted that "the British Museum Act under which we function specifically precludes the possibility of alienating objects legally from our collections."<sup>518</sup> The museum further asserted publicly that it had rightful title because the mask had been legally obtained in 1944 from the widow of collector Harry Beasley.<sup>519</sup> In response, Sanborn pointed out that "if it's against their law to return it, it's against our law for them to have it... that property was supposed to be held by the Canadian government. Basically they're in possession of stolen property."<sup>520</sup> Eventually in 2005 however, due to Andrea Sanborn's persistence and negotiating skills, considerable negative media coverage for the museum, public pressure, and the support of Jonathan King, the museum relented and a long-term loan agreement was reached.<sup>521</sup> At the time, Sanborn remarked that "Over time I came to believe that changes were taking place in the negotiating process. I could see that attitudes were softening, my own included, and many were sympathetic to our cause. The process showed that, given sufficient information, it became easier for people to understand our deep desire to have our masks and regalia returned to us..."<sup>522</sup>

Johnston contrasts the initial experience of dealing with the British Museum with the experience of dealing recently with the Horniman Museum and Gardens. When Johnston and Sanborn arrived at the museum for the first time, the museum immediately brought the mask out of storage into one of their labs, and allowed them to see it.<sup>523</sup> Johnston says the experience was very emotional one: "I wasn't prepared for how emotional I would be... it was pretty amazing and I can't wait until it comes home because it's good for people to see the pieces, especially when they've been away for a long time... it's just that they belong here."<sup>524</sup> The Horniman Museum has expressed enthusiasm about repatriating the mask. According to Johnston, "they were really

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<sup>518</sup> *Supra* note 416.

<sup>519</sup> Beasley acquired the mask from the NMAI in 1936: see Sanborn, *supra* note 232, at 85.

<sup>520</sup> Jack Knox, "Native mask hides a dark secret", *Calgary Herald*, July 12, 2002.

<sup>521</sup> *Ibid.*

<sup>522</sup> Sanborn, *supra* note 232, at 85.

<sup>523</sup> Interview with Juanita Johnston, October 4, 2013.

<sup>524</sup> *Ibid.*



excited about the idea of it telling a story, and this summer it went on a display in an exhibit they have called The First Time Out.”<sup>525</sup> The tour, sponsored by the Wellcome Trust, travelled to Stratford-Upon-Avon, Shakespeare’s birthplace, to share the Kwakwaka’wakw peoples’ story of their potlatch, the potlatch ban and their cultural resilience. Johnston says, “we’re looking at developing a lot more educational materials and stuff around the repatriation and the history of this piece in conjunction with the Horniman. So their attitude is completely different.”<sup>526</sup>

The Kwakwaka’wakw had a similar positive experience with the daughter of André Breton. Mr. Breton had purchased a frontlet originally acquired by Edward Primus from the NMAI in 1957. When Breton died, his family decided to auction off much of his art collection. French anthropologist Marie Mauzé, who has spent many years in Alert Bay and Cape Mudge, was contacted. She recognized the NMAI number on the frontlet, and using photographs taken of the confiscated pieces displayed in the Anglican Church Parish Hall by Vivian Lord and William Halliday, she was able to confirm that it was part of the Potlatch Collection.<sup>527</sup> Breton’s daughter brought the piece to U’Mista in person and donated \$40,000 for its ongoing care.<sup>528</sup>

A large transformation mask that was also in the photo is currently in the possession of the Duthuit family. However, as of the date of writing, the family has not responded to U’Mista’s several requests for repatriation of the piece.<sup>529</sup>

Overall, it would seem that the issue of title to the regalia has been a source of ongoing frustration for the Kwakwaka’wakw. For example, in 1986, the Privy Council formally issued a document transferring ownership to the regalia confiscated by the Canadian government to the Centres jointly, listing all of the items being returned by the government. However, they did not inform the Centres that they had done this. It was only in 1998 when U’Mista wrote to the CMH to request that ownership to the regalia returned to them be officially transferred that they discovered that an Order in Council had already been issued transferring title to them.<sup>530</sup> Moreover, both the British Museum and MOA have not transferred title to the regalia back to the Kwakwaka’wakw despite those museums’ knowledge of the circumstances of its removal. According to Johnston,

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<sup>525</sup> *Ibid.*

<sup>526</sup> *Ibid.*

<sup>527</sup> *Ibid.*

<sup>528</sup> *Ibid.*

<sup>529</sup> *Ibid.*

<sup>530</sup> *Ibid.*

MOA's decision not to transfer title to the three *Hamsam̓t* masks that appear in the photos taken by Halliday in the Alert Bay Anglican church may be due to the fact that the masks do not appear on Halliday's lists of the confiscated regalia, and the fact that their provenance is not complete.<sup>531</sup>

Another source of frustration for the Kwakwaka'wakw is that some of the pieces confiscated by the government and sent to the CMH are still missing. When Chief Sewid returned a second time to the CMH in 1967 with his uncle Billie Sandy Willie and mother-in-law Agnes Alfred, and they were able to see the collection in storage, they noticed numerous articles that had been confiscated in 1922 and allegedly transported to the CMH were not there, particularly many valuable pieces.<sup>532</sup> (It turned out Halliday had sold many of these to George Heye.) According to Daisy Sewid-Smith, the Elders commented, "where is the rest? It is not all here."<sup>533</sup> A complicated and drawn out process of tracing the dispersal of numerous treasures that had been confiscated and photographed by Halliday commenced.<sup>534</sup> The lack of careful recording of the secret sales of the confiscated regalia by Halliday and Angermann, and loans by the CMH to institutions in various parts of the world, complicated matters. That process of researching the whereabouts of missing pieces continues to this day. Johnston says that all the waiting causes great frustration. "It can wear you down... but I think everyone who works here really loves this place and they all feel the same way, that eventually everything is going to come home... that's just what's going to happen and that's what we're here for. You just kind of dig your heels in I guess and get stubborn."<sup>535</sup>

### 5.1.2. Cultural issues

Another significant challenge that the Kwakwaka'wakw encountered in their negotiations with all of the museums was a difference in opinion, arising from a difference in the parties' cultural values and beliefs, regarding the future conservation and use of the potlatch regalia. Traditionally, Northwest Coast First Nations ceremonial masks and other regalia are created to be used and then replaced with new ones when their usefulness is expended, to allow for artistic traditions thereby to be kept alive. According to Chief Ken Harris, "We don't really conserve – in the same sense as storage at the Museum of Anthropology – we renew. It's a continuity, like a

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<sup>531</sup> *Ibid.*

<sup>532</sup> *Ibid.*

<sup>533</sup> Interview with Daisy Sewid-Smith, August 7, 2013.

<sup>534</sup> Interview with Juanita Johnston, October 4, 2013.

<sup>535</sup> *Ibid.*

lineage.”<sup>536</sup> Gloria Cranmer Webster explains that “the objects themselves are not important; what matters is what the objects represent. They represent the right to own that thing, and that right remains even if the object decays or is otherwise lost.”<sup>537</sup>

The museums, on the other hand, wanted the Potlatch Collection regalia to be preserved, away from human contact, apparently in accordance with the traditional view of conservators that handling and use “pose[e] potential risk to the physical integrity of the object.”<sup>538</sup> When Chief James Sewid first visited the CMH to make his repatriation request, for example, the female museum official he dealt with at first refused to show him the collection<sup>539</sup>, telling him that it was in seventeen cases in the basement.<sup>540</sup>

It appears, however, that a gentle threat that Chief Sewid made to involve the media in the dispute may have had some impact on the museum’s decision to allow Sewid to see the regalia. When he offered to write a cheque for the amount that the CMH alleged was paid for the treasures by the government, he added: “tomorrow morning I want you to have TV people here... and you tell me how much you paid for the masks that you say belong to you now and I’ll make a check out for that amount and give it to you in front of the TV people.”<sup>541</sup> Although Sewid’s offer of a cheque was refused<sup>542</sup>, the museum subsequently began treating his repatriation request more seriously.<sup>543</sup> Chief Donald Assu, who was one of Sewid’s advisors in the repatriation efforts, and negotiated the repatriations from the ROM, believes that “that move he made was the best thing he could have done because it opened the door for them to really look seriously at what they were there to do.”<sup>544</sup> Moreover, Daisy Sewid-Smith says, “we realized we had to get political, and that’s exactly what we did... talking to different Members of Parliament and things like that.”<sup>545</sup>

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<sup>536</sup> Clavir, *supra* note 452, at 114.

<sup>537</sup> Cranmer Webster, from a speech given at the 1986 symposium of the Canadian Conservation Institute entitled “The care and preservation of ethnological materials”, cited in Charles Rhyne, “Recent Approaches to the Conservation of Northwest Coast Totem Poles”, 2003 17(1) *Zeitschrift für Kunsttechnologie und Konservierung* 179-184.

<sup>538</sup> Miriam Clavir, “Heritage Preservation: Museum Conservation and First Nations Perspectives”, (2002) 24(2) *Ethnologies* 33.

<sup>539</sup> Interview with Daisy Sewid-Smith, August 7, 2013.

<sup>540</sup> Knight, *supra* note 210, at 75.

<sup>541</sup> Interview with Chief Donald Assu, August 6, 2013; see also Sewid-Smith, *supra* note 185, at 3.

<sup>542</sup> Sewid-Smith, *supra* note 185, at 2-3; see also, Jacknis, *supra* note 226, at 277.

<sup>543</sup> Interview with Chief Donald Assu, August 6, 2013.

<sup>544</sup> *Ibid.*

<sup>545</sup> Interview with Daisy Sewid-Smith, August 7, 2013.

In Professor Jackson's opinion, the fact that the treasures were hidden from view in storage for almost fifty years long undermines the validity of the CMH's initial argument that retaining the treasures at the CMH would preserve their value as heritage. According to Jackson, the museum had said that, "they weren't so much worried about it being used for ceremonies, but they were worried that if it were just given back to the families, that its heritage value would be lost because the artifacts, [having] been in air conditioning and climate control for so long, wouldn't last very long... That's the story they gave, but actually they were just stored in boxes [in the basement]."<sup>546</sup>

Ultimately, the CMH gave the Kwakwaka'wakw access to the regalia at the museum, and agreed to repatriate the pieces in its collection, but only on the condition that a museum be built to house them. According to Chief Assu, the museum said "you can have all the artifacts and regalia returned to you providing you house them in a building that would meet the standards of a museum."<sup>547</sup> Juanita Johnston says that the condition "was a bit hard for some people to swallow, because a) it's their family stuff and b) it's their stuff and they should be able to burn it if they want to."<sup>548</sup> Daisy Sewid-Smith confirms that when her father told the Elders about the condition, they "got very angry. His Uncle, Henry Bell said, "why are they dictating to us? They stole it from us... How dare they dictate how we're going to treat and use our masks... We don't treat our masks like that. They don't just sit there and gather dust."<sup>549</sup> Evidently, however, once they saw how fragile the masks had become, the traditional owners who may have wanted to use the regalia when it returned realized that this was not possible. Chief Sewid then told the Cape Mudge band members, "there's nothing stopping you from making duplicates... They're coming back to the community but we have to put them in a museum. They will return it if we build a museum."<sup>550</sup>

Also, according to Chief Assu, some Kwakwaka'wakw were not unhappy with the idea of preserving the regalia in cultural centres. As he explains, "The Chiefs and Elders...too felt very strongly that these artifacts don't go back to individual families. That we hold it in trust for them, because what they were afraid of is if they went back to individual families they would start selling them."<sup>551</sup> However, Johnston says that families were saddened by the state of the regalia when it was returned by the CMH, after having been stored in boxes for over fifty years. And some were

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<sup>546</sup> Personal communication by Professor Jackson.

<sup>547</sup> Interview with Chief Donald Assu, August 6, 2013.

<sup>548</sup> Interview with Juanita Johnston, October 4, 2013.

<sup>549</sup> Interview with Daisy Sewid-Smith, August 7, 2013.

<sup>550</sup> Interview with Chief Donald Assu, August 6, 2013.

<sup>551</sup> *Ibid.*

not pleased with the appearance of the pieces when they were displayed in the U'Mista Center after they were repatriated. According to Johnston, they said, "they would never have been displayed like this in a potlatch, ever. They would have been repainted. The feathers would have been replaced and they would have had the rigging replaced because you can't have rigging break at all... and it's also important that things work. You don't want things breaking, such as during performance."<sup>552</sup> Overall, however, according to Johnston, there was a tremendous sense of joy on the day the U'Mista Center opened.<sup>553</sup>

In Alert Bay, the regalia is now both displayed at the U'Mista Cultural Centre and in ceremonies at the nearby Big House. As Johnston says, "we have had family members borrow the pieces to show in their potlatches. They're not danced anymore, obviously, because they are too fragile. But we will allow families to show their regalia up in the Big House because it's important for them to show that ownership, for one, and to show that the rights and privileges are still there."<sup>554</sup> Still, the fact that the masks are shown at all is a compromise. "Our entire Potlatch Collection is stuff that wouldn't be on display... their regalia is stored away and it's only shown in the Big House. So that's why we ask people not to take pictures."<sup>555</sup> Still, Johnston says, "I think U'Mista has done a really good job of taking the hand that we're dealt, and these are the conditions. So basically we're going to use these pieces now to teach as many people as we can about the story behind the repatriation, about the anti-potlatch legislation, about the pieces themselves and what they're used for."<sup>556</sup>

In addition, according to Juanita Johnston, the decision to allow regalia to be housed at U'Mista "is the right choice because we do a lot more than just house the collection. The Cultural Centre has a lot of programming and we do a lot with the language, so instead they turned it into a place to focus on all aspects of the culture."<sup>557</sup> It would seem that the same is true in Cape Mudge. In a recent study completed by Aboriginal Tourism BC, the authors acknowledged that the Nuyumbalees Cultural Centre has helped rekindle interest among youth in the potlatch ceremony. Also, according to the authors, the young people of the community "aspire to the revitalization of

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<sup>552</sup> Interview with Juanita Johnston, October 4, 2013.

<sup>553</sup> *Ibid.*

<sup>554</sup> *Ibid.*

<sup>555</sup> *Ibid.*

<sup>556</sup> *Ibid.*

<sup>557</sup> *Ibid.*

their language as a critical factor of culture, are enthusiastic and engage in actual discussions about how to accomplish a further preservation of cultural values.”<sup>558</sup>

Many of the cultural challenges that the Kwakwaka’wakw experienced with the CMH were repeated in their dealings with the British Museum. For over six years, the British Museum only offered the Kwakwaka’wakw pictures of the Transformation Mask, saying it may allow an “Indian carver” to make a copy, and justifying its position with the argument that the mask was legally obtained in 1944 from the widow of collector Harry Beasley.<sup>559</sup> Stephen Corri, deputy secretary of the museum, alleged in 2003 that “there is a legal duty for us to hold these things in trust and make them available to scholars and put them on display”<sup>560</sup> Andrea Sanborn, who at that point was director of the U’mista Cultural Centre, wrote that the Kwakwaka’wakw were particularly frustrated because

they don’t know if it will ever be on display... [t]hey’d just as soon leave [it] in the back room somewhere and not allow people to have access. Although they have said it is museum law for them to have it so that anybody who wants to study it, anybody with any interest in it, will be able to go at any time and study it, and yet it’s not even on display... It’s pretty hard to go and study something that’s in a box.<sup>561</sup>

Moreover, as Paterson and Bell point out, “it is hard to argue the supremacy of public access and education over the centrality of an item to an ongoing religious or cultural practice, or its special significance to its creators, when the item has been kept in storage for many years and is not accessible to the public.”<sup>562</sup>

Eventually, of course, the Transformation Mask came home to Alert Bay on long-term loan. According to Juanita Johnston, however, the loan agreement is fairly onerous. She says, for example, “we are not allowed to move the piece, unless we wait and tell them.”<sup>563</sup> At one point, when they moved the piece into a better case, the museum expressed displeasure. Johnston explains why the piece was moved:

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<sup>558</sup> Nuyumbalees Case Study, *supra* note 362, at 8.

<sup>559</sup> Sanborn, *supra* note 232, at 85; Krauss, *supra* note 328.

<sup>560</sup> Krauss, *ibid.*

<sup>561</sup> Bell, Raven, McCuaig and Sanborn, *supra* note 42, at 76.

<sup>562</sup> Paterson and Bell, *supra* note 26, at 97.

<sup>563</sup> Interview with Juanita Johnston, October 4, 2013.

[The British Museum] built the mount there... but it was pretty hideous. It was just a perspective over top of flat, black painted plywood, and so it had a lot of give. The piece was vibrating when people would walk by it and so that wasn't good. And then when we got a chance to get a new case for it because we did the exhibit with Dresden, 'The Power of Giving', we jumped at it, and said yes, yes, we'll take the new case for that. And so now he's quite happy in his new case. He's secure. He's mounted to the wall of the case, not the base of it, and it's a very heavy case, it's all museum quality. The Germans are pretty sticky about that. And they left the case behind when they were done.<sup>564</sup>

Johnston says that every year, someone from the museum arrives to do a condition report on the mask and ascertain conformity with the terms of the loan.<sup>565</sup> While the Museum did pay for transportation of the mask from London to Alert Bay, it provides no funding for the ongoing care of the mask. According to the terms of the loan, U'Mista must write to formally request an extension of the loan nine months before termination of the loan in October 2014. Overall however, Johnston sees some benefit in the current situation: "at least the piece is here and people get to see it."<sup>566</sup> Chief Assu has similarly emphasized, "the most important highlight of this repatriation process, was that all these artifacts came back home where they belong."<sup>567</sup>

### 5.1.3. Financial issues

Other significant challenges that the Kwakwaka'wakw peoples faced during their negotiations with the various museums were the financial obstacles posed by the costs of the repatriation processes, including the cost of travelling to museums to make their repatriation claims, participate in the repatriation negotiations and perform site visits to identify items. Particularly onerous was the requirement of the CMH and British Museum that the regalia be housed in a museum-like facility, and the ongoing costs that that requirement imposed.

On a few occasions, representatives of the Kwakwaka'wakw Nations were able to combine trips to museums with travel sponsored by other sources, and thus were able to visit the museums in person. For example, Chief James Sewid's first visit to the CMH to make the repatriation request was possible because of a trip to participate in the "12 mile limit" fishing conference.<sup>568</sup>

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<sup>564</sup> *Ibid.*

<sup>565</sup> *Ibid.*

<sup>566</sup> *Ibid.*

<sup>567</sup> Interview with Chief Donald Assu, August 6, 2013.

<sup>568</sup> Sewid and Spradley, *supra* note at 308, at 221; Sewid-Smith, *supra* note 185, at 2.

And when Juanita Johnston and Sarah Holland were on a sponsored trip to Leiden recently, they were able to travel to visit the Horniman Museum in London to request repatriation of the *Dzunukwa* mask. But otherwise, as Johnston says, “with no funding, we just did everything through correspondence.”<sup>569</sup>

The condition of building museum-like facilities was harder to overcome. The CMH did, however, fairly quickly acknowledged the financial burden of its condition and through the federal Museums Assistance Program provided half of the funds needed to build the museums at Alert Bay and Cape Mudge (the provincial government ultimately came up with the other half). The CMH also made arrangements with the Royal British Columbia Museum to transport the regalia there, and paid for the shipment costs.<sup>570</sup> CMH director William Taylor then travelled out to Victoria and celebrated the return of the regalia with the people of the Kwakwaka’wakw Nations.<sup>571</sup>

But Daisy Sewid-Smith insists that when the CMH stipulated that a museum must be built to house the regalia, “what they didn’t tell us was, to maintain a museum it costs a lot of money. We have no tax base like a municipality. When we started they did send a little bit of money but that soon stopped.”<sup>572</sup> According to Chief Assu, the federal government agreed through its Museums Assistance Program to provide \$20,000 per year for ten years to assist with operating costs of the Nuyumbalees Cultural Centre, including electricity, insurance, and wages expenses.<sup>573</sup> In 1990, however, the guaranteed funding terminated, and since then the Centre has struggled to raise enough money from member and community donations to cover its \$80,000 per year overhead.<sup>574</sup>

In Alert Bay, the federal Museum Assistance Program similarly provided an annual grant for operating costs, but that funding ended in 2000 when the criteria for funding changed; all funding under that program is now project specific. Andrea Sanborn wrote in 2005: “to suddenly lose our operating funding from the federal government and be expected to generate this from visitor admissions, museum shop sales and membership sales is unreasonable. We are on a very small island dependent on ferry traffic with a ferry too small to service our island during the busy

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<sup>569</sup> Interview with Juanita Johnston, October 4, 2013.

<sup>570</sup> Interview with Chief Donald Assu, August 6, 2013.

<sup>571</sup> *Ibid.*

<sup>572</sup> Interview with Daisy Sewid-Smith, August 7, 2013.

<sup>573</sup> Interview with Chief Donald Assu, August 6, 2013.

<sup>574</sup> Nuyumbalees Case Study, *supra* note 362.



summer months.”<sup>575</sup> Currently U’Mista receives funding from the BC Arts Council, although even that funding is at risk as the Arts Council has indicated a concern about the Centre’s lack of museological programming – a catch 22 situation, as the federal government’s cut to operating funding makes it difficult for the Centre to engage in programming activities.<sup>576</sup> Early on, Gloria Cranmer Webster completed an application for U’Mista to be class A institution so that the Center could receive donations and give cultural property tax receipts for donations. That status regularly comes up for review, however, requiring significant administrative work. Moreover, while the British Museum did pay for transportation of the Transformation Mask from London to Alert Bay, it provides no funding for the ongoing care of the mask.<sup>577</sup>

Another significant financial challenge associated with the repatriations has been the costs associated with shipping the regalia and insuring it. Johnston explains that when the NMAI repatriated the regalia in 1994 there were Sotheby’s appraisals on them, which made insuring them prohibitively expensive.<sup>578</sup> U’Mista therefore asked Peter Macnair to re-appraise them, which resulted in the insurance being more feasible. However, after September 11, 2001 attacks on the World Trade Center, U’Mista’s insurance costs skyrocketed to \$27,000 per year in what Johnston believes was an attempt by the insurance companies to recoup losses from 9/11 related insurance claims. Since 2001, she reports, the insurance rates have decreased.<sup>579</sup>

Still, finding funding to maintain the Cultural Centres has been an ongoing problem – a burden that they bear on their own despite the fact that the Kwakwaka’wakw were required to build their Cultural Centres as a condition of repatriation.

## **5.2. Anatomy of the G’psgolox pole repatriation negotiations**

### **5.2.1. Legal issues**

As in the Potlatch Collection repatriation negotiations, one of the first issues that the parties involved in the negotiations for the repatriation of the G’psgolox pole encountered was the legal

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<sup>575</sup> Andrea Sanborn, “U’Mista: the return of something important”, (2005) 38(3) *British Columbia History* 38.

<sup>576</sup> *Ibid.*

<sup>577</sup> Interview with Juanita Johnston, October 4, 2013.

<sup>578</sup> *Ibid.*

<sup>579</sup> *Ibid.*

issue of valid title -- in other words, whether the pole had been stolen, which the Haisla believed even though they recognized that the Museum had received the pole as a gift from Olof Hanson, or whether the pole had been legally acquired, which the Museum believed.

Former museum director Per Kaks maintained throughout the repatriation negotiations that Olof Hanson negotiated the sale of the pole, although the museum knew that no receipt or other documentary evidence of the date or terms of the sale exists.<sup>580</sup> The only document that exists is the export license from the Canadian government.<sup>581</sup> Olof Hanson himself admitted in an interview with Swedish Press after the pole was removed that “he and the Indian agent had no difficulty in talking the younger members of the Kitlope nation into parting from the totem pole, but that older members had resisted the sale.”<sup>582</sup> There is ongoing conflict over whether the sale eventually was legally concluded.<sup>583</sup> In a 1936 article on the pole, which appeared in the journal of the Ethnological Museum of Sweden, *Ethnos*, Professor Gerhard Lindblom states:

It took a long time before Mr. Hanson was able to dispatch the pole to Sweden. Permission was soon enough obtained from the Canadian Government, although they are known to be rather sparing in granting export permits of this kind. But with the Indians themselves he had a great deal more trouble. A totem pole of this sort cannot be disposed of by any one private individual, but is a matter which concerns the whole family. A single veto suffices to bar any such transaction. The family that owned this pole numbered some 150 individuals, all of whom gave their consent, with the exception of an old woman. She feared that evil consequences would follow upon such a lack of piety towards their ancestors. Not until a year had passed did she too, come round.<sup>584</sup>

According to Haisla oral history, however, the pole “was taken against the will of the family of G’psgolox.”<sup>585</sup> Louise Barbetti has insisted that “We didn’t give the pole away. The pole was taken from where it was originally.”<sup>586</sup> For many Haisla, the legal and ethical nature of the pole’s removal, in view of its historical context, remained a sore point throughout the negotiations.

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<sup>580</sup> blouinartinfo.com, *supra* note 415.

<sup>581</sup> Totem 2003, *supra* note 257.

<sup>582</sup> nordicway.com, *supra* note 414.

<sup>583</sup> A National Post article written on March 21, 2006 entitled “Farewell, but not goodbye” comments that “While a bill of sale has never been found, it’s speculated that some money did change hands; none, however, was shared with the Haisla people”, online: [http://www.canada.com/story\\_print.html?id=6de8bab0-bded-4c69-8dd5-f9786c093a5b&sponsor](http://www.canada.com/story_print.html?id=6de8bab0-bded-4c69-8dd5-f9786c093a5b&sponsor), accessed July 20, 2014

<sup>584</sup> Lindblom, *supra* note 414, at 138.

<sup>585</sup> Totem 2003, *supra* note 257.

<sup>586</sup> *Ibid.*

Another legal issue that hindered the repatriation negotiations was that the Museum considered it necessary to obtain the state's permission for the pole's return, and thus could not immediately respond positively or negatively to the Haisla's repatriation request. As mentioned in Chapter 4 above, Swedish law actually does not contain a specific provision stating that the collections of state museums are part of the public domain and inalienable. However, as Mr. Björklund explains, "Everyone would tell you that this is state property. It's owned by the state."<sup>587</sup> Per Kaks, who was director of the Museum of Ethnography during this early period of the negotiations, admits, "I had to realize that it wasn't a legal discussion, it was an ethical discussion, [namely] who has the better use of it, and for whom does this pole mean something."<sup>588</sup>

The road towards that realization led him to Haisla territory. In 1992, he visited the Haisla in Kitimaat and discussed the issue at length with Gerald Amos, Louisa Smith, Cecil Paul Sr. and the other members of the Haisla community. The trip provided an important opportunity for the parties to air their feelings and for Mr. Kaks to get to know the Haisla in their own context. As he describes,

It was a meeting with the whole village in the basketball hall, and I was sitting with the chiefs up there, and the rest of the people, in a way they accused me of having stolen the pole from them. It was a very tough situation in a way... I remember being very clear about that, saying 'we can't discuss it on those terms, because we don't have the facts, and I don't feel like a thief, and I don't think we should continue to discuss the situation from legal points of view, let's discuss it from human points of view.' And I think the result, as it was, came from that statement. I didn't want to have a legal procedure, you know making lawyers earn a lot of money, or stupidities like that. I said, 'we should talk like you are one part and we are the other, and we both have a common interest in the pole'...<sup>589</sup>

Mr. Kaks also came to understand the meaning of the pole to the Haisla, and their motivation for its return. As he explains, "they wanted to have an object which they could gather the people around, especially youngsters. It was a symbolic thing, related to old times, but also important in the history of especially that group of people up in the fjord, where there was a smallpox epidemic... the smallpox infected blankets that were placed out... How the white man everywhere they came

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<sup>587</sup> Interview with Anders Björklund, September 29, 2014.

<sup>588</sup> Totem 2003, *supra* note 257.

<sup>589</sup> Interview with Per Kaks, October 5, 2014.

were spreading diseases that were unknown before...”<sup>590</sup>

Indeed, unlike the legal issue of whether the pole had been stolen, the ethical issue of “better use” was not a point of contention between the parties; in fact, according to Mr. Kaks, in fairly short order most of the Museum of Ethnography staff and the Swedish public thought the pole should be returned.<sup>591</sup> As Mr. Kaks commented that, “I think that the Swedish population was convinced. We got a lot of support from school kids and organizations, scouts and whatever. ‘Give it back,’ they said. ‘Give it back.’”<sup>592</sup>

It seems that the Museum’s decision to recommend to the government of Sweden that the pole be returned was also facilitated by certain proactive steps taken by Haisla representatives. First, they acknowledged to the Museum that the Swedish had an attachment to the totem pole and that the museum had been designed around the pole.<sup>593</sup> As Museum education officer Karin Westberg confirms, the museum staff had “spent years and years looking after it and preserving it. So this is a very complex project, it has a long, long history and it contains a lot of opinions and emotions. And it’s very, very difficult and complex.”<sup>594</sup> The Haisla representatives also emphasized that they believed that the Museum (as opposed to Olof Hanson) received the pole in good faith. Then they offered a replica pole.<sup>595</sup> Mr. Amos explained that they did this because “our belief is that if someone spits in your face, you don’t spit back.”<sup>596</sup>

The Museum was enthusiastic about the idea. Mr. Björklund says that another important factor in the Museum’s decision to recommend the return of the pole was the impressiveness of the Haisla as negotiators: “They were fantastic speakers. They made ceremonial speeches, interesting, soulful and grand speeches. The Swedes weren’t accustomed to that kind of arguing.... the

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<sup>590</sup> *Ibid.*

<sup>591</sup> *Ibid.*

<sup>592</sup> *Ibid.*

<sup>593</sup> Karin Westberg, education officer at the Museum of Ethnography, commented in 2001 that “Children often ask: ‘Are there any Indians today? Are they still alive?’ We can tell them this is a living culture.”: Maria Cook, “A native treasure returns home”, *The Ottawa Citizen*, May 13, 2001, online:

<http://indian.malmborg.info/stammar/haisla/010513.htm>, accessed September 14, 2014.

<sup>594</sup> Totem 2003.

<sup>595</sup> *Ibid.* For a discussion of the issue of replicas, see Gwyneira Isaac, “Whose idea was this?”, (2011) 52(2) *Current Anthropology* at 211.

<sup>596</sup> Cherry, *supra* note 330.

solemn way in which they spoke was a convincing and not familiar way of posing questions for Swedes. They were very good in making arguments in this way.”<sup>597</sup>

Ultimately, after the Museum recommended to the Swedish government that the pole be returned to the Haisla, in February 1994 the Swedish Minister of Culture granted permission for the pole to be presented as a gift to the Haisla Nation, at the same time directing the Museum to ensure that the Haisla would preserve the pole in a climate-controlled facility upon its return. As Per Kaks describes,

The Minister of Culture, it was her last day in office, when she gave the totem pole to the Haisla representatives, and I think she was very happy, very proud to do that. She had all the background material, she had read it, and we had talked... She knew that she had done a good thing. They were very careful saying ‘this is not a kind of free giving back of objects from museums. This is an event and we do it because this is the Year of Aboriginal Peoples so this is a unique thing.’ But I think she was happy and proud. She even got a print from one of their artists as a gift for the Ministry of Culture.<sup>598</sup>

Mr. Björklund has acknowledged that the state’s permission to “gift” the pole did not sit well with the Haisla: “In the Haisla view, the Swedes stole a totem pole, and then gave it back. That’s not a gift. That’s giving back stolen property...carving a replica, that’s a real gift.”<sup>599</sup> Louisa Smith confirms that nonetheless, the Haisla “continued to negotiate and let the museum know that when we give a gift there is no attachment.”<sup>600</sup> Despite painful conflict within their community, the Haisla decided to act in accordance with their *nuyem*, which privileges relationship building and sharing, and maintained their offer of a carved replica. And so, beginning in May 2000, renowned Haisla carvers Henry Robertson, his nephews Derek and Barry Wilson, and granddaughter Tricia Wilson began to carve two replica poles, one to be sent as a gift to Sweden and the other to be erected at Misk'usa.

Getting to that point, however, had raised within the negotiation a crucial issue that needed to be addressed, which I discuss further below, namely an important difference between the parties in term of the way they viewed the future of the pole upon its return home, springing from their

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<sup>597</sup> Interview with Anders Björklund, September 29, 2014.

<sup>598</sup> Interview with Per Kaks, October 5, 2014.

<sup>599</sup> *Ibid.*

<sup>600</sup> blouinartinfo.com, *supra* note 266.

divergent cultural values and beliefs with respect to preservation and use of cultural objects, and with respect to their views on who “owns” the cultural heritage of Indigenous peoples.

### 5.2.2. Cultural issues

Disagreement between museums and Indigenous peoples over the future preservation and use of a repatriated object, arising from differences in cultural values, is an issue that has arisen in many indigenous cultural heritage repatriation negotiations. In the negotiations between the Haisla and the Swedish Museum of Ethnography, this disagreement was especially painful for the Haisla as a community to contend with, for numerous reasons related to their history, beliefs and cultural traditions. It was also a difficult issue for the museum staff who had cared for the pole for many years and become attached to the pole.

During an October 1997 trip to Sweden, the Haisla representatives had discussed the terms of the pole’s return, particularly the Swedish government’s repatriation condition that it be housed indoors in a museum-like facility. Mr. Kaks and the Swedish Museum of Ethnography’s curator of the American Department felt strongly that the pole should be preserved indoors to ensure its preservation for future generations.<sup>601</sup> Indeed, Mr. Kaks saw the pole as belonging not *only* to the Haisla, but also to mankind.<sup>602</sup> He had been especially marked by seeing red cedar poles disintegrating in a gravesite during his visit to the Kitlope Valley, and hoped to prevent this happening to the totem pole that had been in his care at the Swedish museum for many years. His opinion at the time was that “an object that is destroyed is destroyed, and it’s gone, and you can’t go back to it... By destroying it, in a few years, nobody would remember it. But if it still was standing there, or lying there, it could still be used in the way they wanted it, as a symbol of the history of the group, of the Haisla.”<sup>603</sup>

There is still some lack of clarity, however, about how the condition of building a museum-like facility was understood by all parties. Mr. Björklund has clarified that the condition was imposed by the government at the time it offered the pole as a gift, not by the Museum of

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<sup>601</sup> Interview with Per Kaks, October 5, 2014.

<sup>602</sup> Totem 2003, *supra* note 257.

<sup>603</sup> Interview with Per Kaks, October 5, 2014.

Ethnography.<sup>604</sup> Per Kaks confirms that rather than speaking about the necessity of the Haisla meeting the condition, “I was reasoning with them all the time.”<sup>605</sup> He knew from MOA director Michael Ames that certain First Nations artists were spending time at MOA, documenting in drawings and photos as much as they could about their culture, and he felt that the pole offered similar learning opportunities for the Haisla.<sup>606</sup> He thus tried to convince the Haisla of the value of “seeing the old things as something that brings history to them, brings tradition to them.”<sup>607</sup>

The Haisla, however, understood that meeting the condition was necessary for securing the poles’ return. This posed several problems. First, housing the pole in a museum was a contentious issue among the Haisla, as that action violated traditions associated with totem poles. According to Haisla tradition, totem poles are eventually meant to fall naturally to the ground and decompose. Indeed, the traditional belief among many Northwest Coast communities was that the deterioration of a pole represents the “natural processes of decay and death that occur with all living things, and attempts to prevent this are seen as somehow denying or ignoring the nature of the world.”<sup>608</sup> In the words of Dan Paul Sr., hereditary Chief G’psgolox, “if it falls you don’t lift it, you let it go back to Mother Earth.”<sup>609</sup> Thus, re-erecting the pole in a museum was out of the question for the Haisla.

The question then became whether they could accept displaying it lying down in a facility that they would build for that purpose, or whether they had to return it to Mother Nature as tradition demanded. The Haisla were divided on this issue. Dan Paul Sr, hereditary Chief G’psgolox, Cecil Paul Sr. and Henry Robertson, the grandson of the carver of the original pole, wanted the pole to be taken to Misk’usa and returned to the earth.<sup>610</sup> Gerald Amos and Chief G’psgolox’s descendent Louisa Smith were in favour of building a cultural facility to house the pole, one that could be used also as a centre for children to learn about their cultural traditions. As

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<sup>604</sup> Interview with Anders Björklund, September 29, 2014.

<sup>605</sup> Interview with Per Kaks, October 5, 2014.

<sup>606</sup> *Ibid.*

<sup>607</sup> *Ibid.*

<sup>608</sup> See online: [http://en.wikipedia.org/wiki/Totem\\_pole](http://en.wikipedia.org/wiki/Totem_pole), accessed August 6, 2013. However, there are exceptions to that rule. According to Nisga’a artist Norman Tait, the Nisga’a did not allow totem poles to fall down; instead they kept a pole propped up for as long as possible, and then held a ceremony to take it down, after which they transported it to a totem pole “burial ground”: see Aldona Jonaitis and Aaron Glass, *The Totem Pole: An Intercultural History*, (Seattle: University of Washington Press, 2010) at 47.

<sup>609</sup> Totem 2003, supra note 257.

<sup>610</sup> Henry Robertson recounts that “My father said to me, when the pole comes back from Sweden take it back to Misk’usa and lay it on the ground and leave it there. But the totem pole committee wants it to be preserved in the cultural centre.” *Ibid.*

Louisa Smith said, “I really want the pole to tell the story of our ancestors. And if we put it in a museum, our children can see it and know about our ancestors.”<sup>611</sup>

Ultimately, the Haisla community decided to house the pole horizontally indoors and use it as a means of cultural education and revival. During the period that Gerald Amos was Chief Councillor of the Haisla Nation, architectural plans for a cultural facility were developed by MOA architect Arthur Erickson<sup>612</sup>, but a facility was never built in part due to insufficient funding. Eventually, a decision was taken to house the pole in the Kitimat City Center Mall, a 10-minute drive from Kitimaat Village, where local Indigenous and non-Indigenous populations meet on a daily basis. Prominent Haisla author Eden Robinson explains how that decision was made:

Some from our community had wanted the pole to be temporarily housed at [MOA] ... until we can raise enough funds to build a cultural centre on our reserve (some time in the next three to five years, we hope.) But other members, especially those on the influential Totem Pole Committee -- which invested 15 years as the main negotiators for its return from the Swedish government -- had insisted that G’psgolox come home after 77 years of exile and rest as near as possible to its traditional territory. The mall was an uneasy compromise.<sup>613</sup>

From Mr. Björklund’s perspective, the Museum of Ethnography also helped creatively resolve the dispute over meeting the government’s condition; in 2005, the Museum of Ethnography designed and built a large, state-of-the-art storage box with a removable top in which the pole could be safely shipped to Canada and stored indefinitely if necessary, which at least met the state’s requirement for a museum-like storage facility for the pole.<sup>614</sup> The pole stayed in the box that the Museum of Ethnography had built during its time at the mall.

For six years, in its new cross-cultural contact zone, the pole acted as a mediator between cultures, recounting the story of its creation, its journey to a distant land and the persistence of those who worked to bring it home, while providing a means for Haisla elders to pass on their traditional knowledge to Haisla children eager to learn about their culture and history. Still, the decision to house the pole indoors caused grief to certain Haisla. For example, Cecil Paul Sr. commented that: “our culture is that when it falls, let it go, Mother Earth will cover it. When that

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<sup>611</sup> Louisa Smith, *ibid.*

<sup>612</sup> Interview with Gerald Amos, September 16, 2014.

<sup>613</sup> Eden Robinson, “G’psgolox at the Mall”. *Canadian Tourism Commission*, March 15, 2007.

<sup>614</sup> Interview with Anders Björklund, September 29, 2014.



thing is no longer there, then a new world will come. So in my journey I have a heaviness [because] I have broken that, I have agreed we will put it in a museum, the white man way of thinking. I have broken something here, it won't go back to the womb of Mother Earth now."<sup>615</sup>

Indeed, as the health of the current Chief G'psgolox, Dan Paul Sr., declined, he and others worried about whether the spirits of their ancestors were not pleased with the pole's placement, and they wanted the pole returned to Mother Earth in traditional Kitlope territory.<sup>616</sup> Others within the community, however, felt strongly about continuing to preserve the pole as a means of fostering knowledge about Haisla traditions, history and identity. One problem, however, was that a cultural centre had not yet been built. Ultimately, in late 2012, the old pole was removed from the mall and subsequently transported back to traditional Kitlope territory, where it now rests, exposed to the elements. A Mark's Work Wearhouse store occupies the pole's former home. According to Louisa Smith, the decision was made "to do what is right in the eyes of our customs, our culture, that the pole that pole belongs to G'psgolox. Today, the circle is complete."<sup>617</sup> Certain Haisla believe that the pole is now where it should be, and that the spirits are pleased.

One might expect that some professionals working in Western museums would be distressed by this outcome. Jonathan King, for example, expressed concern about how the Haisla community's decision to return the pole to nature might affect museums' relationships with Indigenous communities, which he has dedicated much of his professional life to fostering.<sup>618</sup> Other museum professionals, however, do not see the outcome as negative. Richard West Jr. believes that when cultural objects are repatriated, "they should be treated according to the cultural prerogatives and standards of the community to which they are being returned."<sup>619</sup> Anders Björklund says that although he and his colleagues at the museum were surprised at first by the news of the pole's removal to the Kitlope Valley because of the agreements and friendships they had made with the Haisla, they decided to fly to Kitimaat Village to see the pole for themselves. He says,

It was extremely moving, the whole thing, to see the pole again. To realize that it's going back to nature was very moving, but not in a way that... we weren't

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<sup>615</sup> Totem 2003, *supra* note 257.

<sup>616</sup> Interview with Anders Björklund, September 29, 2014.

<sup>617</sup> Walter McFarlane, "A Monument Returned, An Earth Shaking Event", *Kitimat Daily*, November 11, 2012.

<sup>618</sup> Interview with Jonathan King, August 7, 2014.

<sup>619</sup> Interview with Richard West Jr., January 28, 2014.

distraught actually. I could cite what Louise Barbetti said when we were there. She said, “There is nothing we can do about all the atrocities that were done to our people, but... we can prevent the same thing happening again. That’s the importance of the G’psgolox pole coming home.” For them, the G’psgolox pole was a reminder of the historic feel of holocaust situations. Once the totem pole was brought back there, in a way they thought it had done its duty... We were very moved by that and quite confident with the situation. The pole was transferred to the Haisla on the basis of a decision from the Swedish government, so why should we oppose when the Haisla decided to do what they did with their own pole that was in their possession? I think it was actually their choice. We have the replica pole, which has great authenticity. It’s fulfilling the task for us. If they chose to put the old one, the regular one, at rest in a graveyard in Kitlope, I think that’s their choice.<sup>620</sup>

Similarly, Per Kaks believes that returning the old pole to nature is a positive outcome: “the totem pole that we now have in Stockholm and the new totem pole standing in Misk’usa has another more interesting story than the old one... I think that’s fantastic really how things developed like that...”<sup>621</sup>

The pole’s return to nature is not, however, without its local complexities. Some Haisla believe that by returning to Mother Earth, the pole continues to act as a teaching tool by reinforcing traditional ways of understanding spiritual and cultural renewal. As Cecil Paul Sr. once said, “as old poles fall, then new ones spring up in their place.”<sup>622</sup> The replica pole outside the Museum of Ethnography carries on the work of the old pole mediating between colonizer and colonized cultures at in Sweden, while the other replica pole in Misk’usa stands as a reminder of the endurance of Haisla peoples’ cultural traditions. However, the current locations of the original and replica poles are not easily accessible for Haisla Nation people now living together in Kitimaat Village. The replica pole in Misk’usa is a four-hour boat journey from Kitimaat Village. The original pole – which in the Kitimat City Center Mall acted as a tangible reminder of the Haisla Nation’s joint efforts to preserve stolen cultural heritage -- is now also back in Kitlope territory. Meanwhile, the Kitimaat peoples’ cultural treasures that missionary George Raley removed in the late 19<sup>th</sup> and early 20<sup>th</sup> centuries are 600 km away at MOA in Vancouver. As Jennifer Kramer has pointed out, “the physical repatriation of cultural objects has been perceived as a panacea for the many ills of Native/non-Native relations, a way to erase the negative history of colonization, salvage anthropology, and museum collecting... but we are learning that objects “sent home” do

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<sup>620</sup> Interview with Anders Björklund, September 29, 2014.

<sup>621</sup> Interview with Per Kaks, October 5, 2014.

<sup>622</sup> Totem 2003, *supra* note 257.

not end the trickiness of ownership issues.”<sup>623</sup>

Ultimately, the story of the G’psgolo pole’s repatriation demonstrates that to fully understand what lies underneath the behaviour of parties in repatriation disputes, including their goals for the future, requires consideration of the history, values, and sometimes complex modern realities of the peoples affected by those disputes.

### 5.2.3. Financial issues

The Swedish government’s repatriation condition of building a museum-like facility also posed significant financial challenges for the Haisla community. Having received no offer of financial aid to build a museum-like facility from either the Swedish or Canadian governments, quickly meeting the condition was impossible. The lack of governmental financial assistance to help build a facility to house the pole was frustrating to the Haisla, who believed “the Canadian government had a duty to help, given that it had granted an export license for the pole after the local Swedish consul cut it down without [our] permission.”<sup>624</sup> Louise Barbetti, a member of the Pole Repatriation Committee, said, “to give this replacement pole is a gesture of forgiveness. But I really feel that the Swedes need to do more to help us bring the pole home. We didn’t give the pole away. The pole was taken from where it was originally. And for the Swedes to be waiting for us to finance this, that’s very wrong. Because that’s what’s holding everything up.”<sup>625</sup> As Louisa Smith commented, “all we wanted was the pole to come home. But finances were always the obstacle.”<sup>626</sup>

Carving replicas also necessitated significant fund-raising. With the help of Ecotrust Canada, the Haisla launched a website for their repatriation project and raised funds from the David Suzuki Foundation, the Rockefeller Brothers Fund and the Endswell Foundation to assist with travel, salaries for the project’s coordinators and the carving of the replicas.<sup>627</sup> Certain companies also helped with the effort of carving the replicas. West Fraser Lumber donated the logs to be used for both replicas. Lufthansa Cargo then flew one partially completed replica pole to

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<sup>623</sup> Jennifer Kramer, *Switchbacks: Art, Ownership, and Nuxalk National Identity* (Seattle: University of Washington Press, 2006) at 90.

<sup>624</sup> Reuters, *supra* note 335.

<sup>625</sup> Totem 2003, *supra* note 257.

<sup>626</sup> Louisa Smith, *ibid.*

<sup>627</sup> Bell et al, *supra* note 169, at 381.

Sweden. In September 2000, with the help of funding provided by the Museum of Ethnography, carvers Henry Robertson and Derek and Barry Wilson travelled to Sweden and spent two months carving the replica pole in front of visitors to the museum, sharing with them their pride in their culture and their repatriation story.

Certain financial assistance also resulted from public interest in the repatriation project provoked by a 2003 National Film Board of Canada documentary by Gil Cardinal, “Totem: The Return of the G’psgolox Pole”, which recounted the story of the Haisla’s repatriation struggles. Ultimately, the Canadian Embassy in Stockholm spent \$12,000 on events in Stockholm relating to the repatriation, while the Department of Canadian Heritage contributed \$27,000. The sale of T-shirts through the museum and by the Haisla raised another \$5,700.<sup>628</sup> Another meaningful contribution was the 10-metre wooden case that the Museum of Ethnography designed and built to ensure the safe transport of the pole. A Swedish/Norwegian transport company, Wallenius Wilhelmsen Logistics, then shipped the pole back to its “spiritual home.”<sup>629</sup>

Despite the fact that certain public and private entities offered support to the Haisla in their repatriation quest, still the frustration of the financial challenges they experienced during their repatriation story have left a lasting mark on some Haisla community members. Moreover, the fact that the Haisla never received federal or provincial funding to build a cultural centre as the Kwakwaka’wakw peoples did raises an important practical question with potentially ethical aspects, which needs to be discussed up front in repatriation negotiations, namely, what will the real costs of repatriation be, and who should pay for them? According to Jonathan King,

if you take a province like BC and coastal communities, the question really is, what are the economic opportunities for keeping these small Indian villages going? And one of those possibilities is the whole business of tourism, so if at Cape Mudge and Alert Bay you have museums with wonderful collections, then there is a reason for tourists to go and visit those communities to engage in, should we say, high-end sports fishing, to engage in an environmental understanding of the landscape, and to visit the U'mista Museum. So it's an economic question, and I would argue that that's primarily a question for the federal and provincial governments in BC, that in the long term they have to

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<sup>628</sup> Jeff Lee, “A totem pole comes home”, *The Vancouver Sun*, March 1, 2006.

<sup>629</sup> Wallenius Wilhelmsen Logistics, “Totem Pole Reunited With Canadian Indian Community”, April 26, 2006.

decide how to invest in creating permanent meaning for all of British Columbia, not just First Nations.<sup>630</sup>

### **5.3. Analysis of the process and outcome of the repatriation negotiations**

The repatriation negotiation case studies in this thesis highlight a number of key process and outcome considerations, many of which confirm the importance of engaging early in a Relationship Building phase during which parties explore and work to understand how their histories, values, beliefs, goals and constraints may affect their behaviour in the negotiations and the outcome.

Clearly, a fundamental consideration -- relevant to both process and outcome -- is that the negotiations over repatriation of the Kwakwaka'wakw and Haisla cultural objects removed by colonial forces under questionable circumstances at the behest or benefit of the museums involved occurred against a backdrop of numerous other colonial takings -- land, resources, children, childhoods, languages, cultural ceremonies, among many others -- that left lasting scars on the Kwakwaka'wakw and Haisla peoples. As a result, an important need and goal of many Kwakwaka'wakw and Haisla peoples in the repatriation negotiation processes and outcomes was healing those scars. The case studies also underscore that such healing is not possible to accomplish in an atmosphere of legal positioning and autocratic decision-making, but is more possible if there was a genuine attempt by the museum early in the negotiation process to acknowledge the traumatic colonial circumstances surrounding the objects' removal, as well as the cultural values and beliefs of the Indigenous party relating to the objects. It also seems clear that the representatives of the museums and Indigenous parties in the negotiations benefitted not only from trying to understand each other's cultural values, but also from engaging in collaborative design of process and solution, which allowed divergent beliefs and needs to be accommodated, and constructive relationships to be built.<sup>631</sup>

For example, the negotiations between the Kwakwaka'wakw and the CMH, ROM, NMAI and British Museum show the negative consequences of a museum allowing legal positioning to

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<sup>630</sup> Interview with Jonathan King, August 7, 2014.

<sup>631</sup> See Michelle LeBaron, "Cross-Cultural Communication", online at <http://www.beyondintractability.org/bi-essay/cross-cultural-communication>.

dominate the early stages of negotiations and showing insensitivity to an Indigenous party's cultural loss by refusing access to the objects. Because those museums all initially responded to the repatriation request by repeatedly asserting valid title and refusing access to the regalia, and because in some cases the Kwakwaka'wakw were forced to rely on media pressure and/or third party intervention to gain access to their regalia, the Kwakwaka'wakw experienced frustration, confusion and anger. Given the historical injustices that the Kwakwaka'wakw had already endured, and the legal and ethical question as to whether the CMH and George Heye acquired the regalia in good faith, their reactions are understandable. Another negative consequence of the museums' initial response was the bad publicity that such behaviour generated. As CMH Chief Ethnologist Barrie Reynolds recognized in a letter to William Taylor in 1971, the Potlatch Collection "provide[s] the museum with continual bad publicity and is indeed perhaps the largest skeleton in our ethnological closet. For these reasons I am in favour of giving positive consideration to the return of the collection, under suitable safeguards to the Kwakiutl people."<sup>632</sup>

Another key factor that seems to have decreased the Haisla and Kwakwaka'wakw peoples' satisfaction with process and outcome in the repatriation negotiations was when a solution was imposed by the museum rather than designed collaboratively by the parties.<sup>633</sup> For example, although the 'Namgis transformation mask did eventually travel home from the British Museum accompanied by Jonathan King, and although the Kwakwaka'wakw speak highly of Mr. King personally, they are not happy that the museum refused to transfer title and insisted on a long-term loan. The same could be said of the loan by MOA of the three *Hamsaml* bird masks. Indeed, in view of the manner of the masks removal from the Kwakwaka'wakw, the fact that the museums have loaned the masks rather than transferring title calls for consideration of Tracey Nicholl's observation that "[First Nations] live with the lingering wounds of colonization and we persist in seeing as special privileges the paltry band-aids given to them to cover up the marks of their suffering."<sup>634</sup>

In addition, many Kwakwaka'wakw and Haisla peoples expressed anger and frustration when the obligation to build a museum-like facility was made a condition of repatriation. While some members of those Nations ultimately recognized the benefit of preserving objects for future

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<sup>632</sup> CMH Archives VII-E-35M B465 F-3, *ibid*.

<sup>633</sup> *Ibid*.

<sup>634</sup> Tracey Nicholls, "Speaking Justice, Performing Reconciliation: Twin Challenges for a Postcolonial Ethics", (2010) 6(1) *Critical Studies in Improvisation/Etudes critiques en improvisation* 1 at 5.

generations, others were distressed that building a museum-like facility and placing their treasures in it would violate cultural traditions and remind them of colonial approaches to their cultures. For example, some Kwakwaka'wakw "expressed an appreciation for the role museums have played in protecting cultural items as repositories of cultural information."<sup>635</sup> Gloria Cranmer Webster explained that "I think because of contact with museums and conservators and people like that, we began to look at things in a different way. You know there's a pole by Willie Seaweed. We know there's never going to be another by Willie Seaweed, and maybe it's not right if we allow that to fall down and rot away"<sup>636</sup> Certain Haisla also saw the benefit of continuing to preserve the old pole indoors and using it as a teaching tool for future generations, particularly in light of the removal of so many cultural treasures from their community by colonial actors such as missionary George Raley. However, others such as Haisla Elder Cecil Paul Sr. experienced the process of agreeing to house their treasures in a museum-like facility as a capitulation under duress to the White Man's demands. Ultimately, what the G'psgolox pole's ultimate return to nature tells us is that traditional views about how indigenous cultural objects should be treated have ongoing power and meaning in indigenous communities, and museum professionals need to be sensitive to those meanings.

Another salient feature of the Potlatch Collection repatriation case study is that the communities in Alert Bay and Cape Mudge were, and remain, concerned about the significant ongoing financial obligations that the CMH's condition imposed on them, which affected both their opinion of the CMH and the outcome of the repatriation negotiations. In Jonathan King's opinion, the financial implications of building and maintaining museums in First Nations communities to house repatriated cultural objects should be addressed by the Canadian federal and provincial governments, which have a vested interest in the vitality of First Nations communities. While that approach seems logical when a federally-owned museum such as the CMH imposes the obligation to construct and maintain a museum-like facility as a condition for repatriation, it may be a harder argument to make when a foreign government or museum imposes the obligation. In any event, in view of Daisy Sewid-Smith's complaint during my interview with her that the CMH was not clear when it imposed its condition about the costs of maintaining a museum-like facility, clearly the question of who should and will bear the immediate and long-term costs of building and

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<sup>635</sup> Bell, Raven, McCuaig and Sanborn, *supra* note 42, at 74.

<sup>636</sup> Gloria Cranmer Webster, cited in Clavir, *supra* note 452, at 156.

maintaining such a facility, and what those costs will be, should be discussed earlier rather than later by the parties.

Another notable aspect of the Potlatch Collection repatriation case study is that the eventual involvement of museum professionals who were knowledgeable about the histories and cultural values of the Kwakwaka'wakw peoples facilitated more speedy resolution of the dispute and improved the Kwakwaka'wakw peoples' perceptions of the process. For example, once Inuit archaeologist William Taylor became director of the CMH, the museum moved away from tough legal stances and began working more proactively with the Kwakwaka'wakw to repatriate the potlatch regalia, and ultimately transferred legal title to the regalia. The advent of Native American director Richard West Jr. at the NMAI similarly accelerated the return of regalia from that museum, and reduced the Kwakwaka'wakw peoples' feelings of frustration and anger about the repatriation process. The Kwakwaka'wakw speak highly of their experience dealing with Richard West Jr. and the NMAI after he became director.

Also notable is the benefit for not only the Kwakwaka'wakw but also the NMAI of the advent in 1990 of a legislative framework in the United States for repatriation of Indigenous cultural objects. Richard West Jr. explains that the fact the museum placed no conditions on the potlatch regalia's repatriation was a result not only of his familiarity as a Native American with colonial history but also the decolonizing impact of NAGPRA. He explains that at the time NAGPRA was being drafted, certain members of Congress tried to table the question "well what's going to happen to it when it goes back? Shouldn't there be conditions?" Ultimately, however, he said, "Congress' premise was... that 'this is material that should never have been in a museum to begin with, so it is backwards to be talking at this point about whether we impose conditions on it'."<sup>637</sup>

Another factor that seems to have played a part in the resolution of the repatriation disputes involving the CMH and NMAI was the background and training of Gloria Cranmer Webster. According to Professor Michael Jackson:

It was Gloria's ability to move in an intercultural way with museum professionals because she was one of them, and also someone who had intimate knowledge not

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<sup>637</sup> Interview with Richard West Jr., January 28, 2014.



just of the potlatch but of this particular potlatch collection... Gloria Webster was in this enviable position: she was the daughter of a hereditary chief, she was the daughter of Dan Cranmer whose potlatch was the biggest potlatch ever held on the coast in the 20<sup>th</sup> century, and she was an insider in the museum world, and she was Kwakwaka'wakw. She had enormous influence both as a First Nation person and as someone who understood museums and the concerns museums had and knew the players, and they were sympathetic.<sup>638</sup>

What seems apparent then from my case study of the repatriation negotiations between the four different museums and the Kwakwaka'wakw is that in every case, the relationship of the parties suffered from immediate legal positioning and a lack of early Relationship Building, and that ultimately solutions were found when people who were willing to engage in Relationship Building with the Kwakwaka'wakw – William Taylor, Richard West Jr. and Jonathan King – were involved in the dispute.

My case study of the negotiations between the Haisla and Swedish Museum of Ethnography confirms that when parties work early in negotiations to communicate and bridge cross-cultural divides, the effort has long-lasting benefits for both parties. For example, when the Haisla delegates first arrived at the museum in 1991, museum director Per Kaks immediately brought them to see the G'psgolox pole. Soon after, he travelled to Kitimaat Village in Haisla territory to learn more about the Haisla people, their historical context and their cultural values – a trip that allowed him to begin to develop a human relationship with the Haisla, and helped the parties understand each other better. Per Kaks says of his trip, “I remember especially from that meeting with the whole group of people in front of me, I saw so much similarities in faces and things with people from my part of the world. I was thinking, that could be my aunt.”<sup>639</sup> He also realized that there were some similarities between the history of First Nations living under oppression and the history of some peoples in Sweden: “In parts of Sweden we had landlords or factory owners who treated their people more or less in the same way as the white Canada treated their Aboriginal group of people. There were a lot of similarities in the attitude and awareness of things.”<sup>640</sup>

Thus, even though Mr. Kaks did not immediately agree to the Haisla peoples' repatriation request because of his concern that he needed the Swedish government's consent to any repatriation, it does not seem that the Haisla experienced the same level of re-traumatization over

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<sup>638</sup> Personal communication by Professor Jackson.

<sup>639</sup> Interview with Per Kaks, October 5, 2014.

<sup>640</sup> *Ibid.*

the loss of their cultural treasure in the early phase of their negotiations that the Kwakwaka'wakw did as a result of being refused access to their treasures during their first encounters with the CMH, ROM, NMAI and British Museum. In fact, according Mr. Amos, ultimately the Haisla "made some wonderful relationships which we would otherwise not have had."<sup>641</sup>

The Haisla peoples' subsequent efforts to follow their *nuyem* and offer a replica to the Museum was more than a negotiating tactic; it was a recognition that there could be concrete benefits to early Relationship Building. Indeed, their offer prompted a fruitful cultural exchange with the Haisla carvers travelling to Sweden in 2000 to carve the replica at the museum. When they arrived at the museum, museum education officer Karin Westberg sat with them during their emotional first encounter with the pole. Then, the process of carving the replica in the museum benefitted both the Haisla and Swedish peoples in meaningful ways: the museum's visitors learned a great deal about the Haisla people and their traditions, and as Derek Wilson emphasized, the Haisla were happy to be able to demonstrate and assert the vitality of their cultural traditions to an enthusiastic audience. In the words of James Clifford, they made clear that "Native American populations whose cultures were officially declared moribund, who were "converted" to Christianity, whose cultural traditions were "salvaged" in textual collections such as that of Boas and Hunt, whose "authentic" artifacts were massively collected a century ago, have not disappeared."<sup>642</sup>

These concrete Relationship Building efforts by both parties not only resulted in the pole's repatriation but also created a long-lasting friendship between the parties. In 2006, when a 15-member Haisla delegation travelled to Sweden to participate in traditional ceremonies accompanying the raising of the replica pole outside the Museum of Ethnography and the transport of the original pole home, Louisa Smith told the Swedes gathered for the ceremonies:

Today the old pole has been set free. It is no longer in shackles. It is very symbolic of First Nations people, whose history has not been kind. But things are changing... We are all the same, we are all of one creation. We are brothers and sisters as the creator intended us to be. As the eagle down is soft, so shall our friendship be.<sup>643</sup>

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<sup>641</sup> Cherry, *supra* note 330.

<sup>642</sup> Clifford, *supra* note 205 at 145.

<sup>643</sup> Totem 2007, *supra* note 350.

Afterwards, three hundred Swedes joined the Haisla to see the original pole, packed in its special padded case built and paid for by the Museum, leave on its journey home via the Panama Canal. Museum Director Anders Björklund flew to Vancouver to witness the original pole's arrival at MOA. Gerald Amos told the large crowd that had gathered to witness the historic event, "we are here today to recognize friendship that has evolved between the Haisla and the Museum."<sup>644</sup> And once the pole arrived home in Haisla Territory, Mr. Amos said proudly that the repatriation was

an epic story of historical wrongs finally acknowledged, and now corrected (by Sweden) resulting in a friendship between two nations, thousands of miles apart; but now tied close at the heart. Many people, nations and general public we have met see and feel the power of it, and we have been proud to share this with the world.<sup>645</sup>

Since that time, there has been a constant stream of Museum visitors learning from the replica pole about Haisla Nation culture and about this new, enduring friendship between nations. Indeed, seven years later, when the old pole made its final journey to Kitlope territory in the spring of 2013, Mr. Björklund travelled to Kitimaat Village in order to be able to participate in that ceremony.

Due to the extraordinary determination of the Haisla peoples, their adherence to their *nuyem* from their very first encounter with the Museum of Ethnography, and the genuine efforts by museum directors Per Kaks and Anders Björklund early in the dispute resolution process to engage in Relationship Building by acknowledging the painful aspects of the Haisla peoples' history and the museum's ethical obligations towards the Haisla, and by demonstrating interest in learning about the Haisla peoples' beliefs and traditions, the two parties were able to forge a relationship based on mutual respect that continues to this day. When one considers that Sweden is half way around the world from Haisla Territory, it is all the more remarkable that this happened. Another remarkable outcome of the parties' Relationship Building efforts was the Swedish museum directors' development of a profound understanding of Haisla cultural beliefs that enabled them to see some logic and beauty in the pole's ultimate return to nature.

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<sup>644</sup> *Ibid.*

<sup>645</sup> Turtle Island Native Network, *supra* note 363.

## CHAPTER 6. CONCLUSION

Negotiations over repatriation of Indigenous cultural objects often occur against a backdrop of wide-ranging colonial takings and prohibitions on cultural practices by church and government forces that have left lasting scars on the Indigenous party. Another key part of that historical backdrop is that for over two centuries, the Western museum as an institution perpetuated Eurocentric attitudes towards Indigenous peoples and re-presented their allegedly dead cultures from a Western-collector perspective. Righting these historic wrongs, healing colonial traumas and losses, reinvigorating cultural practices, and ensuring transmission of histories and cultural continuity through repatriation of cultural objects are often key goals of Indigenous peoples in repatriation negotiations.

Disputes over repatriation of Indigenous cultural objects also often involve numerous complex legal and cultural issues related to, for example, difficulties in establishing proof of ownership and validity of title, impediments to repatriation arising from legislation and museum managers' concerns about their fiduciary duties, and divergent cultural values relating to dispute resolution paradigms and the preservation of objects following their repatriation.

It would seem that current institutional ADR processes such as ICPRCP's mediation and conciliation procedures and the WIPO/ICOM mediation process may not sufficiently meet the needs of parties to Indigenous cultural heritage repatriation disputes. For example, Indigenous peoples' access to the ICPRCP process depends on the willingness of a UNESCO Member State to file a claim on their behalf. Also, in privileging efficiency rather than Relationship Building, the WIPO/ICOM mediation process risks aggravating rather than healing colonial harms while potentially failing to bridge differences in dispute resolution paradigms. While Friedman and Himmelstein's non-institutional Understanding-Based Mediation model provides a useful framework for understanding the benefits of Relationship Building, the process is based on a Western paradigm of alternative dispute resolution, and the involvement of an "independent" neutral as facilitator may not accord with certain Indigenous dispute resolution paradigms. And, of course, there remains the thorny issue of who can and should pay the costs of involving a third-party neutral in a repatriation dispute.

Thus, with respect to Indigenous cultural heritage, it seems that, at least for now, museums and Indigenous parties should seek to resolve their repatriation disputes by engaging in negotiations rather than a more formal process. In view of the fact that many if not all of the complex issues and challenges listed above underlie and affect the behaviour of parties in such negotiations, an early period of Relationship Building between the parties should occur in order to establish understanding of each other's histories, values and goals, and the trust and negotiation framework needed to resolve the dispute in a way that maximizes their often shared goal of creating decolonized, mutually beneficial relationships.

Indeed, as my case study of the repatriation negotiations involving the Kwakwak'wakw peoples confirmed, it is damaging to the Indigenous party's experience of the negotiation process, and to long-term collaborative relationships between museums and Indigenous peoples, when museums resort to legal positioning, deny access to cultural objects and refuse to transfer legal title. On the other hand, the involvement of museum professionals that are sensitive to the colonial-era cultural losses of the Kwakwaka'wakw peoples' and their traditions and values can improve both parties' experience of the dispute process and outcome.

Another key issue that this thesis addressed is the impact on disputes and parties of the difference between the Western preservationist paradigm and the traditional value of certain Indigenous peoples that privileges use of cultural objects over their preservation, and the constant renewal of traditions by allowing objects to return to nature and be replaced by new creations. As we saw, the Western preservationist paradigm resulted in the CMH and Swedish government imposing on the Kwakwaka'wakw and Haisla peoples, respectively, an obligation to build museum-like facilities as a condition of repatriation. However, the Haisla were not able to raise the money needed to build the facility, and neither the Swedish nor Canadian government offered assistance for that undertaking. Meanwhile, the building of the Nuyumbalees Cultural Centre and U'Mista Cultural Centre in order to ensure repatriation of the Potlatch Collection had significant financial consequences for the Kwakwaka'wakw peoples that remain a burden to this day.

As the G'psgolox pole repatriation case study demonstrated, there has been some evolution in the thinking of certain museum professionals about the need to preserve objects, and about who should have the right to determine an object's fate. Still, it seems likely that the preservation of repatriated objects will remain a concern of many museum professionals for the foreseeable future,

and that therefore building a museum-like facility may form part of a negotiated solution to repatriation disputes. When that is the case, parties should address early in a Relationship Building phase the financial realities of building and maintaining a museum-like facility, and determine an ethical and realistic means of resolving that issue early in the dispute. As Jonathan King recommended, the Canadian federal and provincial governments should consider the real benefits to both Indigenous and non-Indigenous Canadians of supporting the building, maintenance and advertising of cultural centres that celebrate Canada's ancient history and provide potential tourist income to the Indigenous communities. Indeed, making such an investment would result in cultural objects gaining valuable cultural context and arguably enhance the federal government's proposed program of museums across Canada sharing their collections.<sup>646</sup>

Ultimately, as the G'psgolox pole repatriation case study demonstrated, even when parties are not initially familiar with each others' histories and cultural values, if they work hard on Relationship Building early in their repatriation negotiation and make a genuine effort to discuss and understand the differences and similarities in their histories, values and goals, it is possible for them to create lasting, mutually beneficial and transformative relationships.

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<sup>646</sup> Canadian Heritage Standing Committee Minutes, November 29, 2012.

## BIBLIOGRAPHY

### MONOGRAPHS (AND ESSAYS WITHIN)

Aboriginal Healing Foundation. "Residential Schools and the Intergenerational Legacy of Abuse" in Wanda McCaslin, ed, *Justice as Healing: Indigenous Ways* (St. Paul: Living Justice Press, 2005).

Ames, Michael. *Cannibal Tours and Glass Boxes: The Anthropology of Museums* (Vancouver: UBC Press, 1992).

Assu, Harry and Joy Inglis. *Assu of Cape Mudge: Recollections of a Coastal Indian Chief* (Vancouver: the University of British Columbia Press, 1989).

Atkinson, Henry. "The Meanings and Values of Repatriation" in Paul Turnbull and Michael Pickering, eds. *The Long Way Home: The Meaning and Values of Repatriation* (New York: Berghahn Books, 2010).

Barbeau, Marius. *Totem Poles: According to Location*, Bulletin No. 19, Volume II, Anthropological Series No.30 (Ottawa: National Museum of Canada, 1950).

Barbetti Louise and Jay Powell. *Haisla! We Are Our History* (Kitimaat: Kitimaat Village Council, 2005).

Behrendt, Larissa. "Cultural Conflict in Colonial Legal Systems: An Australian Perspective" in Catherine Bell and David Kahane, eds, *Intercultural Dispute Resolution in Aboriginal Contexts* (Vancouver: UBC Press, 2004).

Behrendt, Larissa and Loretta Kelly. *Resolving Indigenous Disputes: Land Conflict and Beyond* (Sydney: The Federation Press, 2008).

Bell, Catherine and David Kahane, eds. *Intercultural Dispute Resolution in Aboriginal Contexts* (Vancouver: UBC Press, 2004).

Bell, Catherine and Heather McCuaig. "Protection and Repatriation of Ktunaxa/Kinbasket Cultural Resources: Perspectives of Community Members" in Catherine Bell and Val Napoleon, eds. *First Nations Cultural Heritage and Law: Case Studies, Voices and Perspectives* (Vancouver: UBC Press, 2008).

Bell, Catherine and Val Napoleon, eds. *First Nations Cultural Heritage and Law: Case Studies, Voices and Perspectives* (Vancouver: UBC Press, 2008).

Bell, Catherine and Robert Paterson, eds. *Protection of First Nations Cultural Heritage: Laws, Policy and Reform*, (Vancouver: UBC Press, 2009).

Bell, Catherine, Heather Raven, Heather McCuaig and Andrea Sanborn. "Recovering from Colonization: Perspectives of Community Members on Protection and Repatriation of

Kwakwaka'wakw Cultural Heritage" in Catherine Bell and Val Napoleon, eds. *First Nations Cultural Heritage and Law: Case Studies, Voices and Perspectives* (Vancouver: UBC Press, 2008).

Bell, Catherine, Graham Statt, Michael Solowan, Allyson Jeffs, and Emily Snyder. "First Nations Cultural Heritage: A Selected Survey of Issues and Initiatives", in Catherine Bell and Val Napoleon, eds. *First Nations Cultural Heritage and Law: Case Studies, Voices and Perspectives* (UBC Press, 2008).

Brown, Alison K. *First Nations, Museums, Narrations: Stories of the 1929 Franklin Motor Expedition to the Canadian Prairies* (Vancouver: UBC Press, 2014).

Bryce, Peter. *The Story of a National Crime, being an appeal for justice to the Indians of Canada, the wards of the nation, our allies in the Revolutionary War, our Brothers-in-Arms in the Great War* (Ottawa: James Hope and Sons, 1922).

Butcher, Margaret. *The Letters of Margaret Butcher: Missionary Imperialism on the Pacific Northwest Coast* (Calgary: University of Calgary Press, 2006).

Champagne, Duane. "Indigenous Self-government, Cultural Heritage and International Trade: a Sociological Perspective", in Christoph Graber, Karolina Kuprecht and Jessica Lai, eds, *International Trade in Indigenous Cultural Heritage* (Cheltenham: Edward Elgar Publishing, 2012).

Cechi, Alessandro. *The Settlement of International Cultural Heritage Disputes* (Oxford: Oxford University Press, 2014).

Clavir, Miriam. *Preserving What is Valued: Museums, Conservation, and First Nations* (Vancouver: UBC Press, 2002).

Clifford, James. *The Predicament of Culture* (Cambridge: Harvard University Press, 1988).

Clifford, James. *Returns: Becoming Indigenous in the Twenty-First Century* (Cambridge: Harvard University Press, 2013).

Clifford, James. *Routes: Travel and Translation in the Late Twentieth Century* (Cambridge: Harvard University Press, 1997).

Cole, Douglas. *Captured Heritage: The Scramble for Northwest Coast Artifacts* (Vancouver: Douglas and McIntyre, 1985).

Cole, Douglas and Ira Chaikin. *An Iron Hand Upon the People: The Law against the potlatch on the Northwest Coast* (Vancouver: Douglas and McIntyre, 1990).

Davison, Patricia. "Museums and the Reshaping of Memory", in Gerald Corsane, ed. *Museums, Heritage and Galleries: an introductory reader* (London: Routledge, 2005).

Durkheim, Emile, Marcel Mauss and Rodney Needham. *Primitive Classification* (Chicago: University of Chicago Press, 1963).



Ferguson, T.J., Roger Anyon and Edmund J. Ladd, "Repatriation at the Pueblo of Zuni: Diverse Solutions to Complex Problems" in Devon Mihesua, ed. *Repatriation Reader: who owns American Indian remains?* (Lincoln: University of Nebraska Press, 2000).

Fisher, Robin. *Contact and Conflict: Indian-European Relations in British Columbia, 1774–1890* (Vancouver: University of British Columbia Press, 1977).

Fontaine, Theodore. *Broken Circle: The Dark Legacy of Indian Residential Schools: A Memoir* (Victoria: Heritage House Publishing, 2010).

Fournier, Suzanne, and Ernie Crey. *Stolen From Our Embrace: the Abduction of First Nations Children and the Restoration of Aboriginal Communities* (Vancouver: Douglas and McIntyre, 1997).

Friedman, Gary, and Jack Himmelstein. *Challenging conflict: mediation through understanding* (Chicago: American Bar Association, 2009).

Fumoleau, René. *As Long as this Land Shall Last: A History of Treaty 8 and Treaty 11, 1870-1939* (Calgary: University of Calgary Press, 2002).

Ghostkeeper, Elmer. "Weche Teachings: Aboriginal Wisdom and Dispute Resolution" in Catherine Bell and David Kahane, eds, *Intercultural Dispute Resolution in Aboriginal Contexts* (Vancouver: UBC Press, 2004).

Gillam, Robyn. *Hall of Mirrors: Museums and the Canadian Public* (Banff: Banff Centre Press, 2001).

Graber, Christopher, Karolina Kuprecht, and Jessica Lai, eds. *International Trade in Indigenous Cultural Heritage: Legal and Policy Issues* (Cheltenham: Edward Elgar Publishing Limited, 2013).

Greenfield, Jeannette. *The Return of Cultural Treasures* (Cambridge: Cambridge University Press, 2007).

Haacke, Hans. "Museums: Managers of Consciousness" in *Hans Haacke: Unfinished Business* (Cambridge: MIT Press, 1987).

Hawker, Ronald. *Tales of Ghosts: First Nations in British Columbia, 1922-61* (Vancouver: UBC Press, 2003).

Henderson, James Sa'ke'j Youngblood. "The Context of the State of Nature", in Marie Battiste, ed. *Reclaiming Indigenous Voice and Vision* (Vancouver: UBC Press, 2000).

Jonaitis, Aldona and Aaron Glass. *The Totem Pole: An Intercultural History* (Seattle: University of Washington Press, 2010).

Kramer, Jennifer. *Switchbacks: Art, Ownership, and Nuxalk National Identity* (Seattle: University of Washington Press, 2006).

Kramer, Pat. *Totem Poles* (Canmore: Altitude Publishing Canada, 1995).

Krompotich, Cara. *The Force of Family: Repatriation, Kinship, and Memory on Haida Gwaii* (Toronto: University of Toronto Press, 2014).

LeBaron, Michelle. "Learning New Dances: Finding Effective Ways to Address Intercultural Disputes" in Catherine Bell and David Kahane, eds. *Intercultural Dispute Resolution in Aboriginal Contexts* (Vancouver: UBC Press, 2004).

LeBaron, Michelle and Venashri Pillay. *Conflict Across Cultures* (Boston: Intercultural Press, 2006).

Lonetree, Amy. *Decolonizing Museums: Representing Native America in National and Tribal Museums* (Chapel Hill: The University of North Carolina Press, 2012).

Love, Morris Te Whiti. "The Waitangi Tribunal's Roles in the Dispute Resolution of Indigenous Treaty Claims" in Catherine Bell and David Kahane, eds. *Intercultural Dispute Resolution in Aboriginal Contexts* (Vancouver: UBC Press, 2004).

MacKenzie, John. *Museums and Empire: natural history, human cultures and colonial identities* (Manchester: Manchester University Press, 2009)

Malin, Edward. *Totem Poles of the Pacific Northwest Coast* (Portland: Timber Press, 1986).

McKeown, Timothy C. *In the Smaller Scope of Conscience: The Struggle for National Repatriation Legislation, 1986–1990* (Tucson: University of Arizona Press, 2014).

Mihesua, Devon ed. *Repatriation Reader: who owns American Indian remains?* (Lincoln: University of Nebraska Press, 2000).

Nafziger, James. "The Protection and Repatriation of Indigenous Cultural Heritage in the United States" in Catherine Bell and Robert Paterson, eds. *Protection of First Nations Cultural Heritage: Laws, Policy and Reform* (Vancouver: UBC Press, 2009).

Nafziger, James and Robert Paterson, eds. *Handbook on the Law of Cultural Heritage and International Trade* (Cheltenham: Edward Elgar Publishing, 2014).

Nafziger, James, Robert Paterson, and Alison Renteln. *Cultural Law: International, Comparative, and Indigenous* (Cambridge: Cambridge University Press, 2010).

Neel, David. *Our Chiefs and Elders: Words and Photographs of Native Leaders* (Vancouver: UBC Press, 1992).

Paterson, Robert. "The Art of the Sale: Museums and Deaccessioning", in Valentina Vadi and Hildegaard Schneider, eds. *Art, Cultural Heritage and the Market: Ethical and Legal Issues* (New York: Springer Heidelberg, 2014).

Paterson, Robert. "Canada", in James Nafziger and Robert Paterson, eds. *Handbook on the Law of Cultural Heritage and International Trade* (Cheltenham: Edward Elgar Publishing, 2014).

Phillips, Ruth. *Museum Pieces: Towards the Indigenization of Canadian Museums* (Montreal and Kingston: McGill-Queen's University Press, 2011).

Sellars, Bev. *They Called Me Number One: Secrets and Survival at an Indian Residential School* (Vancouver: Talonbooks, 2013).

Sewid, James, and James Spradley. *Guests Never Leave Hungry: the Autobiography of James Sewid, a Kwakiutl Indian* (New Haven: Yale University Press, 1969).

Sewid-Smith, Daisy. *Persecution or Prosecution* (Cape Mudge: Nu-Yum-Baleess Society, 1979).

Stewart, Hilary. *Looking at Totem Poles* (Seattle: University of Washington Press, 1993).

Sully, Dean (ed). *Decolonizing Conservation: caring for Maori meeting houses outside Europe* (Walnut Creek: Left Coast Press, 2007).

Tennant, Paul. *Aboriginal Peoples and Politics: The Indian Land Question in British Columbia, 1849-1989* (Vancouver: UBC Press, 1990).

Tuhawai-Smith, Linda. *Decolonizing Methodologies: Research and Indigenous Peoples* (London: University of Otago Press, 1999).

Vrdoljak, Ana. *International Law, Museums and Cultural Heritage* (Cambridge: Cambridge University Press, 2006).

Vrdoljak, Ana. "Reparations for Cultural Loss" in F Lenzerini, ed. *Reparations for Indigenous Peoples: International and Comparative Law Perspectives* (Oxford: Oxford University Press, 2008).

Warry, Wayne. *Ending Denial: Understanding Aboriginal Issues* (Peterborough: Broadview Press, 2007).

Webber, Jeremy. "Commentary: Indigenous Dispute Settlement, Self-Governance, and the Second Generation of Indigenous Rights" in Catherine Bell and David Kahane, eds. *Intercultural Dispute Resolution in Aboriginal Contexts* (Vancouver: UBC Press, 2004).

Webster, Gloria Cranmer. "From Colonization to Repatriation" in Gerald McMaster and Lee Ann Martin, *Indigena: Contemporary Native Perspectives* (Vancouver: Douglas and McIntyre, 1992).

Whitby-Last, Kathryn. "Legal Impediments to the Repatriation of Cultural Objects to Indigenous Peoples", in Paul Turnbull and Michael Pickering, eds. *The Long Way Home: The Meaning and Values of Repatriation* (New York: Berghahn Books, 2010).

Wilson, Donna and Herbert Northcott. *Dying and Death in Canada* (Toronto: University of Toronto Press, 2008).

Yazzie, Robert. "Navajo Peacemaking and Intercultural Dispute Resolution" in Catherine Bell and David Kahane, eds. *Intercultural Dispute Resolution in Aboriginal Contexts* (Vancouver: UBC Press, 2004).

## **JOURNAL ARTICLES**

Ashley, Susan. "State Authority and the Public Sphere: Ideas on the Changing Role of the Museum as a Canadian Social Institution" (2005) 3(1) *museum and society* 5.

Bell, Lucy. "Kwakwaka'wakw Laws and Perspectives Regarding 'Property'" (2006) 5 *Indigenous Law Journal* 119.

Butler, Shelley R. "The Politics of Exhibiting Culture: Legacies and Possibilities" (2000) 23(3) *Museum Anthropology* 74.

Cherrington, Mark. "O Canada!" (2007) 31(3) *Cultural Survival*.

Clavir, Miriam. "Heritage Preservation: Museum Conservation and First Nations Perspectives" (2002) 24(2) *Ethnologies* 33.

Dodson, Mick. "Power and Cultural Difference in Native Title Mediation" (1996) 3(84) *Aboriginal Law Bulletin* 8.

Foucault, Michel. "Of Other Spaces (1967) Heterotopias", (1984) *Architecture/Mouvement/Continuité*.

Gerstenblith, Patty. "Acquisition and Deacquisition of Museum Collections and the Fiduciary Obligations of Museums to the Public" (2004) 11 *Cardozo J. Int'l & Comp. L.* 409.

Harrison, Julia. "Ideas of Museums in the 1990s" (1993) 13 *Museum Management and Curatorship* 160.

Henderson, Jennifer, and Pauline Wakeham, "Colonial Reckoning, National Reconciliation?: Aboriginal Peoples and the Culture of Redress in Canada" (2009) 35(1) *ESC* 1.

Henry, Diana. "Back from the Brink: Canada's First Nations' Right to Preserve Canadian Heritage", 1995 *Special Issue U.B.C. L. Rev.* 8.

Isaac, Gwyneira. "Whose idea was this?" (2011) 52(2) *Current Anthropology* 211.

Jacknis, Ira. "Repatriation as Social Drama: The Kwakiutl Indians of British Columbia, 1922-1980" (1996) 20(2) *American Indian Quarterly* 274.

Lindblom, Gerhard. "A Kwakiutl Totem Pole in Sweden" (1936) 1(6) *Ethnos*.

Loo, Tina. "Dan Cranmer's Potlatch: Law as Coercion, Symbol, and Rhetoric in British Columbia, 1884-1951" (1992) 73(2) *Canadian Historical Review* 125.

Sewid-Smith, Daisy. "In Time Immemorial", (1991) 89 *BC Studies* 16.

Merryman, John Henry. "Cultural Property Internationalism" (2005) 12 *International Journal of Cultural Property* 11.

Mosby, Ian. "Administering Colonial Science: Nutrition Research and Human Biomedical Experimentation in Aboriginal Communities and Residential Schools, 1942-1952" (2013) 46(1) *Histoire sociale/Social history* 145.

Nafziger, James. "The New Fiduciary Duty of United States Museum to Repatriate Cultural Heritage: the Oregon Experience" (1995) *Special Issue U.B.C. L. Rev.* 37.

Nicholls, Tracey. "Speaking Justice, Performing Reconciliation: Twin Challenges for a Postcolonial Ethics" (2010) 6(1) *Critical Studies in Improvisation/Etudes critiques en improvisation* 1.

Paterson, Robert. "Heading Home: French Law Enables the Return of Maori Heads to New Zealand" (2010) 17 *International Journal of Cultural Property* 643.

Paterson, Robert. "New Principles for Cooperation in the Mutual Protection and Transfer of Cultural Material", Proceedings of the Annual Meeting, American Society of International Law, Vol. 100 (March 29-April 1, 2006).

Paterson, Robert. "Resolving Material Cultural Disputes: Human Rights, Property Rights and Crimes Against Humanity", (2006) 14 *Willamette J. Int'l L. and Dis. Res.* 155.

Paterson, Robert. "Totems and Teapots" (2007) 40(1) *UBC Law Rev.* 421.

Phillips, Ruth. "Beyond Difficult Histories: First Nations, the Right to Culture and the Obligation of Redress" (forthcoming).

Phillips, Ruth. "Making sense out/of the visual: Aboriginal presentations and representations in nineteenth-century Canada" (2004) 27(4) *Art History* 593.

Sanborn, Andrea. "The reunification of the Kwakwaka'wakw mask with its cultural soul" (2009) 61 *Museum International* 81.

Sanborn, Andrea. "U'Mista: the return of something important" (2005) 38(3) *British Columbia History* 38.

Victor, Wenona. "Alternative Dispute Resolution (ADR) in Aboriginal Contexts: A Critical Review" *Canadian Human Rights Commission*, 2007.

Webster, Gloria Cranmer. "The Potlatch Collection Repatriation" 1995 *Special Issue U.B.C. L. Rev.* 137.

Webster, Gloria Cranmer. "The 'R' Word" (1988) 6 *Muse* 43.

Webster, Gloria Cranmer. "The U'Mista Cultural Centre" (1990) 31(1/2) *The Massachusetts Review* 132.

## **THESES**

Gang, Melissa. "Culture, Conflict Resolution and the Legacy of Colonialism", Master of Arts Thesis, Faculty of the School of International Service, American University, 2010.

Hunt, Dale. "'We Are All Different, Still Living Under the Same Culture': A Kwakwaka'wakw Perspective on Dispute Resolution and Relationship Building", Master of Arts Thesis, Faculty of Human and Social Development Institute for Dispute Resolution, University of Victoria, 2005.

Kablys, Victoria. "Repatriation, Conservation, and Pre-Repatriation Conservation: Entanglement and Contemporary Practice", unpublished Master of Arts Honors Thesis, University of British Columbia Department of Anthropology, 2013.

Knight, Emma Louise. "The Potlatch Collection and its Many Social Contexts: Constructing a Collection's Object Biography", Masters of Museum Studies Thesis, Faculty of Information, University of Toronto, 2013.

Nicolson, Marianne. *The Conceptualization of Space in Kwakwaka'wakw Language and Culture*, UVIC PhD Dissertation, 2013.

Pritchard, John. "Economic Development and the Disintegration of Traditional Culture Among the Haisla", unpublished UBC PhD dissertation, 1977.

## **FILMS**

Cardinal, Gil. *Totem: The Return of the G'psgolox Pole*. Directed by Gil Cardinal. Film. 2003. The National Film Board of Canada.

Cardinal, Gil. *Totem: Return and Renewal*. Directed by Gil Cardinal. Film. 2007. The National Film Board of Canada.

Joseph, Robert. "Chief Robert Joseph - Part 1: Culture and Ancestry", SFU Centre for Dialogue. February 3, 2014, online: [https://www.youtube.com/watch?v=ge\\_pM9k1CPs](https://www.youtube.com/watch?v=ge_pM9k1CPs), accessed July 13, 2014.

Joseph, Robert. "Chief Robert Joseph - Part 2: Residential School Experience", SFU Centre for Dialogue. February 13, 2014, online: [https://www.youtube.com/watch?v=\\_D2hk7JEQtl](https://www.youtube.com/watch?v=_D2hk7JEQtl), accessed July 13, 2014.

Olin, Chuck. *Box of Treasures*. Directed by Chuck Olin. Film. 1983. U'Mista Cultural Society.

Vovo Productions. "Chief Dr. Robert Joseph and Dr. David Suzuki - Speaking the Language of Reconciliation", online: <http://vimeo.com/67170414>.

Wheeler, Dennis. *Potlatch: a strict law bids us dance*. Directed by Dennis Wheeler. Film. 1975. U'Mista Cultural Society.

## **NEWSPAPER ARTICLES AND INTERNET SOURCES**

The Aboriginal Healing Foundation. "Vision, Mission, Values", online: <http://www.ahf.ca/about-us/mission>, accessed August 6, 2013.

Adams, James. "The Hunt is now on for Nazi-Looted Art in Canada." *The Globe and Mail*, February 9, 2014.

Alfred, Agnes. "Cranmer Potlatch Trial and Elders Comments." 'Namgis First Nation Council Hall History, online: [www.namgis.bc.ca/pages/council-hall-history.aspx](http://www.namgis.bc.ca/pages/council-hall-history.aspx), accessed September 2, 2013.

Anderson, Robert. "The Elgin Marbles are staying put in London", *The Times*, January 15, 2002, online: <http://www.info-world.com/elgin.marbles/times/>, accessed January 20, 2014.

Associated Press. "Canadians Rejoice over Return of Totem Pole from Sweden after 77 Years", *blouinartinfo.com*, April 27, 2006, online: <http://www.blouinartinfo.com/news/story/15287/canadians-rejoice-over-return-of-totem-pole-from-sweden-after-77-years/?page=1>, accessed October 10, 2014.

Ball, David. "Reconciliation Week Envisions 'New Way Forward'", *The Tyee*, September 5, 2013, online: <http://thetyee.ca/Presents/2013/09/05/Reconciliation-Week/>, accessed August 13, 2014.

The British Museum. "Request for Repatriation of Human Remains to New Zealand, Minutes of meeting of the Trustees - April 2008", online: [http://www.britishmuseum.org/about\\_us/management/human\\_remains/repatriation\\_to\\_new\\_zealand.aspx](http://www.britishmuseum.org/about_us/management/human_remains/repatriation_to_new_zealand.aspx), accessed September 3, 2014.

Canadian Heritage - Government of Canada. "Harper Government Invests in the Nuyumbalees Society's Liqwala/Kwak'wala Language Preservation Initiative", August 20, 2012, online: <http://www.pch.gc.ca/eng/1345484900051/1345485645058>, accessed August 26, 2014.

The Canadian Press. "Former politicians and aboriginal leaders announce new partnership", *cbcnews.com*, September 4, 2014, online: <http://www.cbc.ca/news/aboriginal/former-politicians-and-aboriginal-leaders-announce-new-partnership-1.2754758>, accessed September 7, 2014.

The Canadian Press. "Museum of Vancouver returns Sasquatch mask to Sts'ailes People", *The Vancouver Sun*, May 15, 2014, online: <http://www.vancouversun.com/news/Mask+associated+with+sasquatch+lore+returned+First+Nation/9839263/story.html>, accessed July 26, 2014.

CBC News. "Aboriginal leaders, PM meet following healing foundation debate", *CBC News*, March 31, 2010, online: <http://www.cbc.ca/news/canada/north/story/2010/03/31/north-aboriginal-healing-foundation.html>, accessed August 7, 2013.

Cherry, Kathleen. "G'psgolox pole comes home", *Northword Magazine*, June 7, 2006, online: <http://northword.ca/summer-2006/haisla-totem>, accessed October 7, 2014.

Ciric, Pierre. "Opinion, Hopi and Navajo Masks Auction Precedent in Paris is dangerous", *artnetnews*, July 25, 2014, online: <http://news.artnet.com/art-world/opinion-hopi-and-navajo-masks-auction-precedent-in-france-is-dangerous-66975>, accessed August 9, 2014.

Cook, Maria, "A native treasure returns home", *The Ottawa Citizen*, May 13, 2001, online: <http://indian.malmborg.info/stammar/haisla/010513.htm>, accessed September 14, 2014.

CTV News Staff. "Pope apologizes for abuse at native schools", *CTV News*, April 29, 2009, online: <http://www.ctvnews.ca/pope-apologizes-for-abuse-at-native-schools-1.393911>, accessed October 28, 2014.

Curry, Bill. "No residential school apology, Tories say", *The Globe and Mail*, March 27, 2007, online: <http://www.theglobeandmail.com/news/national/no-residential-school-apology-tories-say/article681921/>, accessed October 28, 2014.

Curry, Bill and Karen Howlett. "Natives died in droves as Ottawa ignored warnings", *The Globe and Mail*, April 24, 2007, online: <http://www.globeadvisor.com/servlet/ArticleNews/story/gam/20070424/SCHOOLS24> accessed August 30, 2013.

Donadio, Rachel. "Visions of Home: repatriated works back in their countries of origin", *The New York Times*, April 17, 2014, online: [http://www.nytimes.com/2014/04/20/arts/design/repatriated-works-back-in-their-countries-of-origin.html?\\_r=0](http://www.nytimes.com/2014/04/20/arts/design/repatriated-works-back-in-their-countries-of-origin.html?_r=0), accessed June 27, 2014

Donadio, Rachel. "Zuni ask Europe to return sacred art", *The New York Times*, April 8, 2014, online: <http://www.nytimes.com/2014/04/09/arts/design/zuni-petition-european-museums-to-return-sacred-objects.html>, accessed June 27, 2014.

Eakin, Hugh. "The Great Giveback", *The New York Times*, January 26, 2013, , online: <http://www.nytimes.com/2013/01/27/sunday-review/the-great-giveback.html?pagewanted=all>, accessed June 27, 2014.

Follington, Kate. "When Museum Artifacts Go Home", *The Tyee*, July 8, 2011, online: <http://thetyee.ca/Life/2011/07/08/ArtifactsGoHome/> accessed July 26, 2014.

Gebhard, Ron. "Potlatch regalia must be returned to natives", *North Island Gazette*, October 14, 1987.

Godreche, Dominique. "Hopi Katsinam and Nazi Art Theft: An Expert Discusses Principles of Repatriation", *Indian Country Today Media Network*, April 17, 2013, online: <http://indiancountrytodaymedianetwork.com/2013/04/17/hopi-katsinam-and-nazi-art-theft-expert-discusses-principles-repatriation-148789>, accessed July 23, 2014.

Griffin, Kevin. "St. Michael's Residential School at Alert Bay", *The Vancouver Sun*, March 1, 2014, online: <http://www2.canada.com/vancouversun/features/apology/story.html?id=b5bda8e8-2e57-438c-937a-b8ef308adccc>, accessed March 1, 2014.

Haisla First Nation, "Location", online: <http://haisla.ca/community/location/>, accessed September 6, 2014.



Haisla Totem Pole Committee. "Chronology of the G'psgolox Totem Pole Journey", online: <http://www.turtleisland.org/culture/haisla.pdf>, accessed October 3, 2013.

Hume, Stephen. "Return of the Spirit Pole", *The Vancouver Sun*, June 5, 2000.

ICTNM Staff. "Hopi Seek to Prevent Paris Auction of Katsinam", *Indian Country Today Media Network*, April 4, 2013, online: <http://indiancountrytodaymedianetwork.com/2013/04/04/hopi-seek-prevent-paris-auction-katsinam-148602>, accessed August 9, 2014.

Knox, Jack. "A Crime Unmasked", *The Times-Colonist*, November 5, 2005.

Knox, Jack. "Exposed by a mask", *Edmonton Journal*, August 11, 2002.

Knox, Jack. "Native mask hides a dark secret", *Calgary Herald*, July 12, 2002.

Knox, Jack. "Potlatch treasure returned from France", *The Vancouver Sun*, September 22, 2003.

Krauss, Clifford. "Reclaiming the Stolen Faces of their Forefathers", *The New York Times*, September 18, 2003.

Lafleur, Linda. "Kitlope people share repatriation experience", *Prince Rupert Daily News*, August 6, 2004.

LeBaron, Michelle. "Cross-Cultural Communication", *Beyond Intractability*, July 2003, online: <http://www.beyondintractability.org/essay/cross-cultural-communication>, accessed August 27, 2014.

LeBaron, Michelle. "Culture and Conflict", *Beyond Intractability*, July 2003, online: <http://www.beyondintractability.org/essay/culture-conflict>, accessed August 27, 2014.

LeBaron, Michelle. "Culture-Based Negotiation Styles", *Beyond Intractability*, July 2003, online: <http://www.beyondintractability.org/essay/culture-negotiation>, accessed August 27, 2014.

Lee, Jeff. "A totem pole comes home", *The Vancouver Sun*, March 1, 2006.

MacGregor, Neil. "Oi, Hands Off Our Marbles", *The Sunday Times*, January 18, 2004.

Mashberg, Tom. "Despite Legal Challenges, Sale of Hopi Religious Artifacts Continues in France", *The New York Times*, June 29, 2014, online: [http://www.nytimes.com/2014/06/30/arts/design/sale-of-hopi-religious-items-continues-despite-us-embassys-efforts.html?\\_r=0](http://www.nytimes.com/2014/06/30/arts/design/sale-of-hopi-religious-items-continues-despite-us-embassys-efforts.html?_r=0), accessed August 9, 2014.

McFarlane, Waltar. "A Monument Returned, An Earth Shaking Event", *Kitimat Daily*, November 11, 2012.

'Namgis First Nation Council Hall History, "Cranmer Potlatch Trial and Elders Comments", online: [www.namgis.bc.ca/pages/council-hall-history.aspx](http://www.namgis.bc.ca/pages/council-hall-history.aspx), accessed July 13, 2013.

National Post, "Farewell, but not goodbye", *The National Post*, March 21, 2006, online: [http://www.canada.com/story\\_print.html?id=6de8bab0-bded-4c69-8dd5-f9786c093a5bandsponsor](http://www.canada.com/story_print.html?id=6de8bab0-bded-4c69-8dd5-f9786c093a5bandsponsor), accessed July 20, 2014.

Nuyumbalees Cultural Centre. "Nuyumbalees Mission", online: <http://www.museumatcapemudge.com/#!/missionstatement/c1dor>, accessed September 29, 2014.

Nuyumbalees Cultural Centre. "Visit", online: <http://www.museumatcapemudge.com/#!/page2/cjg9>, accessed September 29, 2014.

O'Neil, Peter, and Linda Nguyen. "Pope's statement of remorse pleases native leader", *The Vancouver Sun*, April 30, 2009.

Pritchard, John, and Anne-Marie Pederson. "Haisla (Kitimaat)", *The Canadian Encyclopedia*, online: <http://www.thecanadianencyclopedia.com/index.cfm?PgNm=TCEandParams=A1ARTA0004334>, accessed September 2, 2013.

Reuters, "Canadian Indians want totem pole back from Sweden", October 28, 2003, online: <http://www.ecotrustcan.org/canadian-indians-want-totem-pole-back-sweden>, accessed September 23, 2014.

Robinson, Eden. "G'psgolox at the Mall", *Canadian Tourism Commission*, March 15, 2007.

Sanborn, Andrea. "Special Projects Update", *U'Mista News*, Winter 2002.

Seidl, Joan. "The Joy of Giving Back", *The Tyee*, June 12, 2012, online: <http://thetyee.ca/Life/2012/06/12/Petroglyph-Repatriation/>, accessed August 20, 2014.

Stueck, Wendy. "For Nisga'a artifacts, a homecoming", *The Globe and Mail*, September 4, 2010, online: <http://www.theglobeandmail.com/news/british-columbia/for-nisgaa-artifacts-a-homecoming/article4389045/>, accessed August 23, 2014.

Todd, Douglas. "Profits without honour: returning aboriginal artifacts", *The Vancouver Sun*, June 6, 2012, online: <http://blogs.vancouversun.com/2012/06/06/profits-without-honour-returning-aboriginal-artifacts/>, accessed June 28, 2014.

"Totem Pole." *Wikipedia*. [http://en.wikipedia.org/wiki/Totem\\_pole](http://en.wikipedia.org/wiki/Totem_pole), accessed August 6, 2013.

Truth and Reconciliation Commission of Canada, online: <http://www.trc.ca/websites/trcinstitution/index.php?p=4>, accessed August 6, 2013.

Turpin, Mark. "The Heroic Journey of Social Change", online: [http://www.kessels-smit.com/files/The\\_Heroic\\_Journey\\_of\\_Social\\_Change.pdf](http://www.kessels-smit.com/files/The_Heroic_Journey_of_Social_Change.pdf), accessed September 3, 2013.

Turtle Island Native Network, "The Haisla Prepare to Welcome Their Totem Pole Back Home", *turtleisland.org*, June 27, 2006, online: <http://www.turtleisland.org/culture/culture-haisla.htm>, accessed October 7, 2014.

UBC Museum of Anthropology. "Returning the Past: Repatriation of First Nations Cultural Property", 2008, online: <http://moa.ubc.ca/learn/resources/pdf/Repatriation%20Case%20Studies.pdf>, accessed September 4, 2014.

U'mista Cultural Society. *Newsletter*. January 2013.

U'mista Cultural Society. "The Potlatch Collection History", online <http://www.umista.org/collections/> accessed August 15, 2013.

The Vancouver Sun, "Reactions to the Apology", *The Vancouver Sun*. June 11, 2008, online: <http://www2.canada.com/vancouversun/features/apology/story.html?id=68be7402-4918-41ae-9b09-3402df6e028f>, accessed August 13, 2014.

Ward, Candice. "Calgary artifact auction stirs First Nations furore", *Metro news*, September 29, 2011, online: <http://metronews.ca/news/calgary/27285/calgary-artifact-auction-stirs-first-nations-furore/> accessed June 26, 2014.

Waugh, Basil. "UBC Anthropologists help return iconic rock art to B.C. First Nation", June 11, 2012, online: <http://aboriginal.ubc.ca/2012/06/11/ubc-anthropologists-help-return-iconic-rock-art-to-b-c-first-nation/> accessed August 20, 2014.

## **LETTERS, MEMORANDA AND SPEECHES**

Anderson, Robert (Director, British Museum), letter to Mr. William T. Cranmer (Chairman, U'mista Cultural Society), January 16, 1996.

Daes, Erica-Irene. "Defending Indigenous Peoples' Heritage." Keynote Address at *Protecting Knowledge: Traditional Resource Rights in the New Millenium*, Vancouver, BC, February 23, 2000.

Deputy Superintendent General of the Department of Indian Affairs, letter to Iver Fougner, January 11, 1928, Public Archives, Indian Affairs (RG10, Volume 4087 file 507,787 -2B).

Halliday, William, letter to Duncan Campbell Scott, April 10, 1922, in Daisy Sewid-Smith, *Persecution or Prosecution* (Cape Mudge: Nu-Yum-Baleess Society, 1979).

Halliday, William, letter to W.E. Ditchburn, February 12, 1931, in Daisy Sewid-Smith, *Persecution or Prosecution* (Cape Mudge: Nu-Yum-Baleess Society, 1979)

Harper, Stephen. Speech in the House of Commons, Ottawa, Canada, June 11, 2008, online: <http://www.pm.gc.ca/eng/media.asp?id=2149>, accessed June 12, 2013.

Hoffman, Barbara. "Beyond the Adversarial Model: Using Mediation to Create Value in the Resolution of Disputes in the Art and Heritage Sector", ICOM/WIPO Workshop for Mediators in Art and Cultural Heritage, Paris, October 17-18, 2011.

Joseph, Robert. UBC Honorary Doctorate of Law Speech, 27 May 2003, online: [http://www.library.ubc.ca/archives/speeches/chief\\_robert\\_joseph.html](http://www.library.ubc.ca/archives/speeches/chief_robert_joseph.html), accessed July 13, 2014.

Ministry of Aboriginal Relations and Reconciliation. "Aboriginal Celebration Marks Historic Repatriation", June 21, 2006, News Release, Office of the Premier, online: [http://www2.news.gov.bc.ca/news\\_releases\\_2005-2009/2006OTP0108-000836.htm](http://www2.news.gov.bc.ca/news_releases_2005-2009/2006OTP0108-000836.htm), accessed September 4, 2014.

Paterson, Robert. "The 1970 UNESCO Convention: the Canadian Experience", UNESCO Mexican Seminar on the Globalization of the Protection of Cultural Heritage: The 1970 Convention: New Challenges, online: <http://biblio.juridicas.unam.mx/libros/7/3457/15.pdf>, accessed August 20, 2014.

Scott, Duncan Campbell, letter to BC Indian Agent General Major D. MacKay, online: <http://learningcircle.ubc.ca/files/2013/08/IRS-Colonialism-History-Impacts-2013.pdf>, accessed September 15, 2015.

Scott, Duncan Campbell. Testimony before the Special Committee of the House of Commons, 1920. National Archives of Canada, Record Group 10, volume 6810, file 470-2-3, volume 7, pp. 55 (L-3) and 63 (N-3), cited in RCAP report, Volume 1, Part Two, Chapter 13, "Conclusions", online: <http://caid.ca/RRCAP1.13.pdf>, accessed September 7, 2014.

Webster, Gloria Cranmer. "The care and preservation of ethnological materials." Speech at the 1986 symposium of the Canadian Conservation Institute. Cited in Charles Rhyne, "Recent Approaches to the Conservation of Northwest Coast Totem Poles" (2003) 17(1) *Zeitschrift für Kunsttechnologie und Konservierung*.

## **REPORTS (GOVERNMENTAL AND NON-GOVERNMENTAL)**

Canada's Statement of Support on the United Nations Declaration on the Rights of Indigenous Peoples, online: <http://www.aadnc-aandc.gc.ca/eng/1309374239861/1309374546142>, accessed July 14, 2013.

Canadian Heritage Standing Committee Minutes, November 29, 2012.

Macnair, Peter. "Documentation and Identification of the George G. Heye and B.E. Angermann Collections", Stewart Macnair Consultants, May 1988.

Nadine C., Ana P., Sachiko I., Julia K and Nazreat E. "Case Study on the Nuyumbalees Cultural Centre", prepared for Dan McDonald, Aboriginal Tourism, 2011.

Powell, Jay. *Stewards of the Land: Haisla Ownership and Use of their Traditional Territory, and their Concerns regarding the Northern Gateway Project and Proposed Tanker Traffic in the Douglas Channel and Kitimat Arm* (2011), online: <http://www.ceaa-acee.gc.ca/050/documents/p21799/80479E.pdf>, accessed September 5, 2014.

“Report of Commissioners for Treaty No.8”, September 22, 1899, online: <http://www.aadnc-aandc.gc.ca/eng/1100100028813/1100100028853#chp2>, accessed August 14, 2013.

Royal Commission on Aboriginal Peoples. *Bridging the Cultural Divide: A Report on Aboriginal People and Criminal Justice in Canada* (Ottawa: Canada Communication Group Publishing, 1996).

The Royal Proclamation of October 7, 1763, online: <http://www.bloorstreet.com/200block/rp1763.htm>, accessed August 9, 2013.

Stewart, Hon. Jane. “Statement of Reconciliation”, January 7, 1998, online: <https://www.itk.ca/historical-event/statement-reconciliation>, accessed September 27, 2014.

Task Force on Museums and First Peoples, “Turning the Page: Forging New Partnerships Between Museums and First Peoples”, Ottawa, 1992.

UK Department for Culture, Media and Sport. “Guidance for the Care of Human Remains in Museums” (London: DCMS, 2005).

## **LEGISLATION**

*An Act to Encourage the Gradual Civilization of Indian Tribes in this Province, and to Amend the Laws Relating to Indians*, 3<sup>rd</sup> session, 5<sup>th</sup> parliament, 1857.

*An Act for the gradual enfranchisement of Indians, the better management of Indian affairs, and to extend the provisions of the Act*, R.S.C. 1869, 31<sup>st</sup> Vic., c.42.

*British Museum Act 1963*, 1963 c.24

*Cultural Property Export and Import Act*, R.S.C. 1985, c. C-51.

*First Nations Sacred Ceremonial Objects Repatriation Act*, R.S.A. 2000, c. F-17.

*Human Tissue Act 2004*, c.30 (UK)

*Indian Act 1876*, S.C. 1876, c.18; *An Act to further to amend “The Indian Act, 1880”*, S.C. 1884, c.27, and subsequent amendments: R.S.C. 1886, c.43; S.C. 1894, c. 32; R.S.C. 1906, c.81; S.C. 1919-1920, C.50; R.S.C. 1927, c. 98.

*Museums Act*, S.C. 1990, c.3.

*Museums and Galleries Act 1992*, 1992 c.44 (UK)

*Native American Graves Protection and Repatriation Act*, Pub. L. 101-601, 25 U.S.C. 3001 et seq. (1990)

## **ETHICS CODES AND PROCEDURAL RULES**

Canadian Museums Association, Ethical Guidelines 1999

CMCC Repatriation Policy

ICPRCP Rules of Procedure for Mediation and Conciliation, online:  
<http://unesdoc.unesco.org/images/0019/001925/192534E.pdf>, accessed August 25, 2014.

ICPRCP Statutes, online: <http://unesdoc.unesco.org/images/0014/001459/145960e.pdf>, accessed August 25, 2014.

ICOM-WIPO Mediation Rules, <http://www.wipo.int/amc/en/center/specific-sectors/art/icom/rules/>, accessed August 22, 2014.

UBC Museum of Anthropology. “UBC Museum of Anthropology Repatriation Guidelines”, online: <http://moa.ubc.ca/research/collections/repatriation.php>, accessed August 20, 2014.

## **CONVENTIONS AND DECLARATIONS**

1948 *United Nations Convention on the Prevention and Punishment of Genocide*.

1970 UNESCO *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*

1989 *Vermillion Accord on Human Remains*

1995 UNIDROIT *Convention on Stolen or Illegally Exported Cultural Objects*

1998 Washington Conference Principles on Nazi-Confiscated Art

2007 *United Nations Declaration of the Rights of Indigenous People*

2009 Terezin Declaration