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Case G'psgolox Totem Pole – Haisla and Sweden and Museum of Ethnography

Haisla – Sweden – Stockholm Museum of Ethnography – Indigenous object/objet autochtone – Pre 1970 restitution claims/Demandes de restitution pre 1970 – Negotiation/négociation – Settlement agreement/accord transactionnel – Ad hoc facilitator/facilitateur ad hoc – Criminal offence/infraction pénale – Illicit exportation/exportation illicite – Copy/copie – Conditional restitution/restitution sous condition

In 1927, a totem pole belonging to the Haisla tribe in Canada was stolen and brought to the Museum of Ethnography in Stockholm, Sweden. In 1991, the tribe discovered the location of their totem pole, known as the G'psgolox totem pole, and requested that it be returned. After fifteen years of negotiations, the G'psgolox totem pole was formally returned to the tribe in 2006. This is the first known case in which a First Nations' totem pole was repatriated from Europe.

I. Chronology

Pre 1970 restitution claims

- **1872**: Chief G'psgolox, leader of the Eagle Clan of the Haisla tribe, lost all of his children and many members of his clan to smallpox. In his grief, the spirits Tsooda and Zola appeared to him, and guided him through his grief. He then commissioned the carving of a totem pole (hereafter the G'psgolox totem pole) to commemorate his experience interacting with the spirit world. The nine-meter-long G'psgolox totem pole was carved by Humdzeed (Johnny Paul) and Wakas (Solomon Robertson), two members of the Raven clan of the Haisla tribe. Upon its completion, it was erected in the village of Misk'usa.[1]
- **Autumn or Winter, 1927**: The Haisla leave Misk'usa for another location, per their seasonal living patterns. Each year, the Haisla rotate through a series of villages in different locations around British Columbia, based on the seasonal availability of food and game.[2]
- **December 1927**: Olof Hansson, Swedish vice consul to British Columbia, contacted the Canadian Department of Indian Affairs and asked for the G'psgolox totem pole to install in Stockholm's Museum of Ethnography.[3]
- **January 1928**: The Canadian Department of Indian Affairs determined that Misk'usa was uninhabited and granted Hansson's request on the condition that he obtain permission from the Haisla.[4]
- **Spring 1928**: The Haisla returned to Misk'usa for fishing season and discovered the G'psgolox totem pole was missing. They did not know who took it or where it was taken.[5]
- **1980:** The Museum of Ethnography took the G'psgolox totem pole out of storage and put it on display for the first time.[6]
- **1991:** Members of the Haisla discovered the G'psgolox totem pole was on display at the Museum of Ethnography, and some community members travelled to Stockholm to identify and confirm this.[7]
- **1 December 1991:** Several members of the Haisla traveled to Stockholm to ask when the G'psgolox totem pole would be returned.[8]
- **1992:** A representative of the Museum of Ethnography travelled to the Haisla in British Columbia. The Haisla told the representative that the G'psgolox totem pole had been stolen and must be returned. While they believed that the museum had acquired the G'psgolox totem

[1] Hume, Mark, "B.C. totem comes home from Sweden," *The Globe and Mail*, published 27 April 2006, last updated 17 March 2009, accessed 14 July 2017, https://www.theglobeandmail.com/news/national/bc-totem-comes-home-from-sweden/article18161058/. See also Jessiman, Stacey, "The Repatriation of the G'psgolox Totem Pole: A Study of its Context, Process, and Outcome," *International Journal of Cultural Property* 18 (2011): 365-391.
[2] Jessiman, "The Repatriation of the G'psgolox Totem Pole," 369-370.
[3] Jessiman, "The Repatriation of the G'psgolox Totem Pole," 369.
[4] "G'psgolox pole returns home after 77 years, first totem every to be repatriated from overseas," *Ecotrust*, 26 April 2006, accessed 18 July 2017, http://ecotrust.ca/gpsgolox-pole-returns-home-after-77-years-first-totem-ever-be-repatriated-oversea/.
[5] Jessiman, "The Repatriation of the G'psgolox Totem Pole," 370.
[6] "G'psgolox pole returns home after 77 years."
[7] Jessiman, "The Repatriation of the G'psgolox Totem Pole," 371.
[8] "G'psgolox pole returns home after 77 years."

pole in good faith, Olof Hansson had not – the Haisla offered to create a replica of the totem pole for the museum in return for the return of the original. The representative was enthusiastic about this idea, and returned to Sweden to present this proposal and recommend the return of the G'psgolox totem pole to the government, as the Museum of Ethnography is a state-owned institution.[9]

- **1994:** The government of Sweden granted the Museum of Ethnography official permission to "gift" the G'psgolox totem pole to the Haisla, on the condition that a replacement totem pole be made. The Haisla rejected.[10]
- **October 1997:** A group of Haisla community members traveled again to Stockholm to press their claim. The museum stated that they hesitated to return the G'psgolox totem pole, because they wanted the piece to be preserved in a climate-controlled environment. [11]
- **2000:** While the Haisla community continued its fundraising efforts, Henry Robertson, the grandson of Solomon Robertson (one of the original G'psgolox totem pole carvers) created two replica totem poles.[12] One of these replica totem poles was sent to the Museum of Ethnography, and the other was raised outdoors where the original G'psgolox totem pole had stood in Misk'usa village.[13]
- **14 March 2006:** The Haisla performed a traditional pole raising ceremony for the replica totem pole at the Museum of Ethnography.[14]
- **23 March 2006**: Having received the replica totem pole and the climate-controlled building to house the original G'psgolox totem pole built in Kitimaat Village, the Museum of Ethnography decided to return the G'psgolox totem pole. The G'psgolox totem pole left Gothenburg harbor and was officially returned to the Haisla. It was packed by the Museum of Ethnography and shipped back to Canada.[15]
- **1 July 2006**: The G'psgolox totem pole arrived in Kitimaat Village, British Columbia.[16]

[9] "G'psgolox pole returns home after 77 years," See also, Jessiman, "The Repatriation of the G'psgolox Totem Pole," 372.
[10] "G'psgolox pole returns home after 77 years," See also, Jessiman, "The Repatriation of the G'psgolox Totem Pole," 373.
[11] Jessiman, "The Repatriation of the G'psgolox Totem Pole," 374.
[12] For details, see also Cardinal, "Totem: The Return of the G'psgolox Totem Pole." National Film Board, 2004.
[13] Hume, "B.C. totem comes home from Sweden." See also, Jessiman, "The Repatriation of the G'psgolox Totem Pole," 375.
[14] Jessiman, "The Repatriation of the G'psgolox Totem Pole," 376.
[15] Ibid.
[16] Ibid.

II. Dispute Resolution Process

Negotiation – Settlement agreement – Ad hoc facilitator

- This is the first voluntary repatriation of a North American aboriginal totem pole to that aboriginal community, by a foreign museum. The ultimate repatriation of the object in July 2006 marked the end of a long negotiation process started in 1991.[17]
- In 1992, negotiations formally began. First, the Haisla offered to carve a replacement pole in exchange for the return of the original.[18]
- In 1994, the Swedish government gave permission to the museum to "gift" the G'psgolox totem pole back to the Haisla. The choice of the word "gift," and the condition of the new pole, created an issue. First, the Haisla maintained that one cannot "gift" someone their own stolen property. Second, the Haisla noted that the return of the G'psgolox totem pole could not be considered a true "gift" if they were required to pay for it with the replacement totem pole.[19]
- In 1997, negotiations continued. The museum maintained that they would return the G'psgolox totem pole in exchange for a new, replacement totem pole, and added the condition that the original be displayed and housed in a temperature-controlled space. The Haisla intended to display the G'psgolox totem pole outside in accordance with their traditions, and the requirement to display the G'psgolox totem pole indoors was contrary to their cultural practices. Further, they contended that creating an indoor, climate-controlled environment for the G'psgolox totem pole would be financially impossible as they have been given no funding from the Swedish or Canadian governments to do so. Nevertheless, the Haisla decided to raise money to create the indoor display. They also agreed to create a second totem pole, which would be displayed outside where the original G'psgolox totem pole had stood, and agreed to place the original in a climate-controlled facility.[20]
- From 2000-2006, the Haisla community continued fundraising for the climate-controlled display. Meanwhile, Solomon Robertson, the grandson of one of the original G'psgolox totem pole carvers created two replacement totem poles. One of these totem poles was sent to Sweden in a partially completed state, and Robertson travelled to Stockholm to finish the carving process in the Museum of Ethnography so that the public could see the carving process. This took a month to complete. The second totem pole was created to be displayed outside, in the space the original G'psgolox totem pole had stood. The original G'psgolox totem pole would be displayed in a climate-controlled facility.[21]

[17] Ibid., 366-367.
[18] Ibid., 375.
[19] "Canadians Rejoice over Return of Totem Pole from Sweden after 77 Years," *ARTINFO*, 27 April 2006, accessed 19 July 2017, http://www.artinfo.com/news/story/15287/canadians-rejoice-over-return-of-totem-polefrom-sweden-after-77-years/?page=1.
[20] Jessiman, "The Repatriation of the G'psgolox Totem Pole," 374-376.
[21] Hume, "B.C. totem comes home from Sweden."

III. Legal Issues

Criminal offense (theft) – Illicit exportation

- The only document that the Museum of Ethnography possessed that supported their claim of legal ownership of the G'psgolox totem pole was a Canadian export license – they had no receipt of sale nor any other form of documentation of the Haisla granting Hansson permission to take the pole. This would mean that not only had Hansson illegally taken the pole from the Haisla, but that the Canadian export license had been illegally granted. This could have been legal grounds for the Haisla to contest the museum's ownership and title to the totem pole, but ultimately, the parties proceeded to negotiate based on the ethical nature of the pole's removal.[22]

IV. Adopted Solution

Conditional restitution – Copy

- In 2006, with the Kitimaat facility completed and replacement totem pole in the Museum of Ethnography's collection, the museum returned the original G'psgolox totem pole to the Haisla. The Haisla community performed a formal raising ceremony for the museum's replacement pole.

V. Comment

- Touching on the importance of returning a cultural object to the rightful owners, Gerald Amos, chairman of the Haisla Totem Committee, stated "After 15 years of negotiations, discussions and delays, we are overjoyed to have the G'psgolox totem pole return to the Haisla, its rightful owners. All those involved, especially the Swedish museum, must be commended for showing how an historical injustice can be overcome through respect, cultural exchange, and friendship."[23] Louisa Smith, a Haisla spokesperson, stated "The repatriation of the G'psgolox totem pole has been a journey of a hundred years and thousands of miles. It has become a catalyst for cultural revival and renewal. In celebration of its return, Chief G'psgolox has presented this pole to the Haisla community for safe keeping. Our children and future generations will be able to see, touch, and feel a piece of their history, reclaimed by a nation against all odds."[24] These statements reflect the importance of these cultural objects to a living culture, and for the healing of past wounds resulting from the brutal colonization of the Americas.

[22] Jessiman, "The Repatriation of the G'psgolox Totem Pole," 370.
[23] "G'psgolox pole returns home after 77 years."
[24] Ibid.

- The new pole in the Museum of Ethnography is perhaps an even more interesting and useful object for science and education than the original G'psgolox totem pole. The new pole has provided the museum with additional knowledge on the traditional methods and materials of Haisla totem pole construction through the work Henry Robertson did in Stockholm completing the replacement pole. Additionally, the process of repatriation provides insight and a blueprint for other institutions facing similar requests from First Nations and Native American tribes. Most importantly, it is an important step forward for European institutions seeking to respect the cultural heritage of indigenous peoples and work in cooperation with indigenous peoples in the present day. Lessons in word choice, negotiation, and cooperation have been learned on both sides and these can be considered in future instances of repatriation.
- Per Kaks, the former director of the Museum of Ethnography, speaking on the Museum of Ethnography's insistence on the Haisla tribe providing a temperature controlled environment for the original G'psgolox totem pole, emphasized that the pole belonged to all of humanity and stated that "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 very unhappy if [they] put the pole back according to [their] traditions because it would be destroyed."[25] This strikes me as insensitive. There is an inherent tension and conflict between the desire to preserve cultural heritage for future generations and respecting the traditions and values of a living culture. Given that the G'psgolox totem pole had been stolen, it seems to me that the Museum of Ethnography had no right to make this stipulation- despite the good intentions and interest in preservation behind it. In this instance, I believe the value of respecting the cultural interests of the Haisla is most important.
- There is no international legal standing for the return of a First Nations cultural object such as the G'psgolox totem pole. However, the Haisla were working in a time when governmental institutions and museums were becoming increasingly favorable towards repatriation:
    - 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. However, this convention, like the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, does not apply to objects stolen before ratification. Likewise, Canada's 1985 Cultural Property Export and Import Act did not apply to objects stolen before ratification.[26] As a result, neither convention works towards repatriation or restitution of cultural objects stolen from aboriginal communities during colonization of the Americas or Australia.[27]
    - In **1989**, the Task Force on Museums and First Peoples was developed by the Canadian Museums Association and the Assembly of First Nations. The Task Force prompted

[25] Cardinal, "Totem: The Return of the G'psgolox Totem Pole." Minute 19:10.
[26] R.S.C. 1985, c. C-51.
[27] UNESCO attempted to address this issue by establishing the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation in 1978, which included a mandate work towards repatriation of objects taken during colonization and eras of European expansion and settlement overseas. That same year, the Director-general of UNESCO delivered the Plea for the Return of an Irreplaceable Cultural Heritage to those who Created It, which called on museums to facilitate the return of objects to their countries of origin. See also UNESCO 1970 Convention, article 7(b)(2) and UNIDROIT 1995 Convention, article 10.

Canadian museums to publish protocol for dealing with requests for repatriation and return of cultural objects to First Nations peoples.

- In **1993**, the first international conference on the cultural and intellectual property rights of indigenous peoples was held in New Zealand, with 14 countries represented by 150 delegates. These delegates signed a declaration that urged the United Nations to take action to protect indigenous cultural property.[28]
- In **1994**, the UN General Assembly declared the beginning of the International Decade of the World's Indigenous People.[29]
- In **1995**, the United Nations published the Final Report on the Protection of Indigenous Cultural Heritage. This report recommended that governments "assist indigenous peoples and communities in recovering control and possession of their moveable cultural property and other heritage" and that "moveable cultural property should be returned wherever possible to its traditional owners, particularly if shown to be of significant cultural, religious or historical value to them."[30]

VI. Sources

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[28] First International Conference on the Cultural & Intellectual Property Rights of Indigenous Peoples, "The Mataatua Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples," June 1993, Aotearoa, New Zealand.
[29] United Nations General Assembly, 86th Plenary Meeting, 21 December 1993.
[30] United Nations Commission on Human Rights, 45th session, "Principles and Guidelines for the Protection of the Heritage of Indigenous People."

c. Media

- "Canadians Rejoice over Return of Totem Pole from Sweden after 77 Years." *ARTINFO*, 27 April 2006. Accessed 19 July 2017. http://www.artinfo.com/news/story/15287/canadians-rejoice-over-return-of-totem-polefrom-sweden-after-77-years/?page=1.
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