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## **Case Wasco Sally Bag – American dealer and Paul Cary and the Yakama Nation Museum**

*Yakama Nation Museum – Paul Cary – Private person/personne privée – Indigenous object/objet autochtone – Post 1970 restitution claims/demandes de restitution post 1970 – Ad hoc facilitator/facilitateur ad hoc – Negotiation/négociation – Settlement agreement/accord transactionnel – Ownership/propriété – Conditional restitution/restitution sous condition – Financial compensation/indemnisation*

*In 2007, Paul Cary acquired a Wasco Sally bag, an object from the Native American group, the Yakama Nation, from an American dealer. When Paul Cary learned that the bag was stolen from the Yakama Nation Museum, he returned it to the dealer and informed the museum. Subsequent negotiations initiated between the museum and the dealer would have remained unfruitful, if it was not for the involvement of Paul Cary. He offered the dealer financial compensation for half of his losses should he return the bag to the museum. Moreover, he would attempt to obtain the financing of the second half from the Yakama tribe. The parties agreed.*

*I. Chronology; II. Dispute Resolution Process; III. Legal Issues; IV. Adopted Solution; V. Comment; VI. Sources.*

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## I. Chronology

### Post 1970 restitution claims

- **October 2007: Paul Cary**, an American collector, bought from a **Washington dealer** a **“Wasco Sally Bag”** (also called “Wapaas” or “Sally bags”)<sup>1</sup>, i.e. baskets used by the Native American Yakama Nation based in the Northwest United States.
- **End of 2007 – January 2008:** Wishing to learn more about Wasco Sally bags, Paul Cary’s research led him to the author and Native American basketry expert, Mary Schlick, with whom he had exchanged pictures with of the bag he had acquired. The author informed Cary that his basket had been stolen between **March 2006 and April 2007** from the **Yakama Nation Museum** in Toppendish (Washington). In fact, it had been bequeathed to the museum in **1980** by Nipo Strongheart, an actor from the 30s, who had been raised by a member of the Yakama tribe.
- **February 2008:** Paul Cary returned the basket to the Washington dealer, in exchange for the purchase price. Subsequently, he revealed the dealer’s identity to the Yakama Nation Museum, who asked the dealer for its return.
- **2008 – 2010:** The Museum and the dealer unsuccessfully attempted to find a settlement to their dispute. Paul Cary, who followed the negotiations, finally offered the party a solution, which they accepted.
- **October 2011:** The Wasco Sally bag was rendered to the Yakama Nation Museum.

## II. Dispute Resolution Process

### Ad hoc facilitator (previous owner) – Negotiation – Settlement agreement

- The restitution claim was possible through the voluntary return of the Wasco Sally bag to the Washington dealer by the purchaser, Paul Cary, who then informed the Yakama Nation Museum about its location.<sup>2</sup>
- The Yakama tribal police initiated negotiations with the dealer in Washington. However, over the following two and a half years, a stalemate developed between them.<sup>3</sup>
- Paul Cary intervened as an ad hoc facilitator in the dispute by proposing a solution which interested both parties, namely the financial interest of the dealer and the interest of the museum in the possession of the Wasco Sally bag. Paul Cary’s concern for the bag was due to his fascination for the Yakama tribe. His intervention renewed negotiations between the parties, who had not reached a conclusive result on their own. Both the Yakama Nation Museum and the Washington dealer accepted Cary’s offer, thereby bringing an end to the dispute.

<sup>1</sup> See Jane Gargas, “Tribal bag takes long, winding route home,” *Yakima Herald-Republic*, October 29, 2011, accessed February 21, 2012, <http://www.yakima-herald.com/stories/2011/10/29/tribal-bag-takes-long-winding-route-home>.

<sup>2</sup> Paul Cary obtained a full refund from the dealer.

<sup>3</sup> Menghi Yang, “Columbia man returns rare Native American artifact to Washington state museum,” *Columbia Missourian*, January 8, 2012, accessed February 21, 2012, <http://www.columbiamissourian.com/stories/2012/01/08/columbia-hero-returned-native-american-historical-artifact-home/>.

- Besides being involved as a facilitator, Paul Cary also played the decisive role in reaching the solution, as he partially financed the compensation paid to the dealer.

### III. Legal Issues

#### Ownership

- While we have no information as to the claims raised by either party during negotiations, the legitimacy of the merchant's ownership claim seems problematic. Particularly in view of the principle *Nemo dat quod non habet*, the original owner may reclaim ownership against anyone, even a possessor who has acquired the object in good faith.<sup>4</sup> The original owner may therefore take action against the actual possessor of the object.
- Nonetheless, the dispossessed buyer who acquired the object in good faith has the opportunity to sue the seller of the stolen object for the full market value, subject to the recognition of an implied warranty on the validity of title for breach of this warranty.<sup>5</sup>

### IV. Adopted Solution

#### Conditional restitution – Financial compensation

- The parties agreed to the solution proposed by Paul Cary, namely that the Wasco Sally bag shall be returned by the dealer to the Yakama Nation Museum. In return, Paul Cary compensated the dealer for half of his losses and would attempt to obtain the other half from the Yakama Nation. The Wasco Sally bag is now on display at the museum.
- Nothing was ever said as to whether the dealer was compensated for the remaining amount or not.

### V. Comment

- In view of the prejudicial legal situation to the dealer, the favourable outcome of this case to all involved parties shows one of the main advantages of alternative dispute resolution (ADR) when compared with litigation. The parties considered the concerns of the dealer notwithstanding applicable law and agreed to a solution not provided by applicable law, which benefits each party's interests.
- The case also shows one of the great dangers in the trade of stolen cultural property. As stolen objects are unsaleable pursuant to the law, they are likely to be sold privately. Thus, they may difficultly be traceable for the dispossessed owner and the police. Without action from Paul Cary, the location of the Wasco Sally bag would have very probably remained

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<sup>4</sup> See Marc-André Renold, "Stolen Art: The Ubiquitous Question of Good Faith," in *Witnesses to History – Documents and writings on the return of cultural object*, ed. Lyndel V. Prott (Paris: UNESCO, 2009), 309; Alan Schwartz and Robert E. Scott, "Rethinking the Laws of Good Faith Purchase," Columbia Law and Economics Working Paper No. 393, *Columbia Law Review* 111 (March 1, 2011): 1335.

<sup>5</sup> Cf. article 2-403 of the Uniform Commercial Code, UCC; see also Alessandro Chechi, Raphael Contel, Marc-André Renold, "Case Odalisque painting – Rosenberg and Seattle Art Museum," Platform ArThemis (<http://unige.ch/art-adr>), Art-Law Centre, University of Geneva.

secret. In fact, it was Cary's devotion that brought back the bag to the place where it belongs – the Yakama Nation Museum.<sup>6</sup>

## VI. Sources

### a. Bibliography

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### b. Media

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