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A COMPARATIVE ANALYSIS OF REPATRIATION OF NATIVE AMERICAN
ARTIFACTS AND HUMAN REMAINS LAWS IN MONTANA, USA AND
ALBERTA CANADA

By
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Bachelor of Science in Criminal Justice, Great Falls, Montana, USA, 2006

Thesis presented in partial fulfillment of the requirements
for the degree of

Master of Arts
in Interdisciplinary Studies

The University of Montana
Missoula, MT

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Masters in Interdisciplinary Studies

Anthropology, Native American Studies and Law

A Comparative Analysis of Repatriation of Native American Artifacts and Human Remains
Laws in Montana, USA and Alberta, Canada

Chairperson: Cahoon, Heather

Committee Members: Dr. Beck, David R.M. and Dr. Dixon, Kelly J.

ABSTRACT: Native American and Indigenous communities across the United States and Canada have lost an extensive amount of human remains and sacred artifacts to non-Native people exhuming Native American and Indigenous burial sites that may have been dug up for personal gain, stolen, placed in museums, or left in the hands of non-Native collectors. The repatriation of human remains and sacred artifacts to Native nations can be a lengthy, political, and challenging process yet it is worth the effort for Native people. Native American advocacy and evolving public sentiment toward Native people have led to legislative advancements in the United States and Canada that have made it somewhat easier in certain circumstances to return the skeletal remains of loved ones and invaluable items of cultural patrimony to the original owners. Today, in the United States there is a repatriation law in place to help Native people in this predicament. Unfortunately, there is no across-the-board repatriation laws or legal process in place right now in Canada for Indigenous people. This thesis explains why repatriation laws are urgently needed and provides a review and comparison of the legal process and repatriation laws in the US and Canada. My research concludes that Indigenous Canadians could benefit by working with the Canadian government to adopt and implement repatriation laws similar to those already in place in the US.

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My Committee

Dr. Heather Cahoon, Native American Studies, University of Montana

Dr. Kelly J. Dixon, Department of Anthropology, University of Montana

Dr. Dave Beck, Department of History, University of Illinois

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Thank you all for giving me a chance and trusting in me on my educational endeavors, I couldn't have done this without your support, encouragement and faith that you instilled in me.

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To my family thank you for your support and patience when I needed solitude and space. I want the younger generation to know that if you work hard and concentrate on your goals you will succeed in life, you are never too old to follow your dreams and further your education.

Thank you for your support

Saddle Lake Cree Nation Chief and Council

Saddle Lake Education Authority Department

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PREFACE

When I entered into University, I enrolled in the Master in Interdisciplinary Studies (MIS) program where I chose to study from within the fields of Indigenous Studies, Law, and Anthropology. I have a Criminal Justice Degree and have worked in the Criminal justice field all my life, but for some strong reason, I felt very gravitated, enthusiastic, and motivated to learn what the MIS program had to offer. It was during this time that I was one of the eight selected students to be a Native American scholar and take part in digitizing Native artifacts that were being kept at the Smithsonian Institution in Washington, DC. It was then, when I fully felt the emotional connection that was set in my path and I knew that this was a learning opportunity of a lifetime. I believe that this was the path I was supposed to be on; not only for me but for my people. The title of a “Native American Scholar” who attended the Smithsonian institution in Washington DC, was a proud and privileged honour. Not everyone has access or to be fortunate enough to that kind of exposure. I've always wanted to take part on a mission, so to speak; to me it felt like I was on a secret mission. Probably because in a sense I knew our Native American artifacts had some spiritual significance and criminal nature involved; meaning that it was wrong for anyone to be placed under duress and banned from living a normal life.

Our research took us to the National Museum of the American Indian (NMAI). I was delegated to take part in digitizing the “Cree Artifacts” for the University of Montana. I was immediately connected to the process as most Native American artifacts were still of some underground knowledge, of where they were being held. In the Native American and Indigenous culture there is a story to every artifact, on how and when it was made, so I knew I was in for an extraordinary learning journey. In my mind, I believed that our artifacts and human remains were

wanting to be freed; you could say that was my Criminal Justice mentality kicking in. Native artifacts have been kept in museums or by collectors since they were taken away or stolen. A lot of our Native American relatives in Canada and the United States believe that keeping any artifacts of Native ancestry in museums is wrong; I believe that too. However, I also believe that our ancestors knew what they were doing and they envisioned what was in the future so they needed their sacred items hidden until it was time for them to be found and then brought home. The Native American value system in reference to spirituality is strong and being that our sacred items and human remains have a spiritual cognizance to them is significant.

Upon my discoveries at the NMAI, I truly respected the process of how the NMAI kept the artifacts protected by the process when you enter and when you leave the NMAI. It was a very spiritual awakening to see how the artifacts have been stored safely away. My research was located in a warehouse, where there were twenty-five feet high filing cabinets, each had a drawer full of different sacred items. In fact, we had to use an electric scaffold to get high enough to access some of the sensitive artifacts that were being held at the top. Sensitive meaning artifacts that are held very sacred, such as pipes and bundles. Pipes and bundles are among the most sacred items that Native American people hold godly. What is inside the bundle, only the bundle holder or family to whom it belongs knows. Of course, I did not touch any of the pipes or bundles because I know the protocols and significance it requires to be around such sacred objects. Those kind of sacred spiritual artifacts have a powerful spirit and have spiritual protocols when being around them.

With that being said, I had a mission to complete and that was to digitize the Cree artifacts. Montana has some of the Northern Cree and Cree Chippewa tribes in upper Montana territory; both the Canadian tribes and Montana tribes have a blood lineage to each other, so I was proud to take part and be asked to take part in digitizing the Cree Artifacts located at the Smithsonian in Washington, DC.

In my mind I was thinking, “What am I supposed to do? I can’t touch them, but I’m here to take part in higher education and our ancestors fought for us to learn non-Native education, so if digitizing for our people was set in my path then I am going to take part.” I said a little prayer and asked for permission to take pictures, even asking the museum staff if it was fine to take pictures. I needed that reassurance, and in my heart I felt it was right to take pictures (using the analogy of a spiritual living being living in the artifacts, I knew that the artifacts were alive, so I needed that reassurance.) There I was doing my delegated duties as a student focusing on my work when I was approached by NMAI staff and was asked if I wanted to take pictures of human remains. I did not feel comfortable with that area, as I knew deep down inside that was wrong. Unfortunately, or fortunately, however you want to put it, I was asked to go inside a room. When I entered the room there was a human skeleton on a table. The door closed behind me and I suddenly felt like I was in a sacred place that I did not want to violate. The skeleton read “Cree Warrior” I respected the human remains and just wondered how it got there and what was it doing there. I took notes; I didn’t touch anything as felt a like I was paying my respects at a funeral home or morgue, yet I felt there was a connection to this human skeleton labeled Cree Warrior. I gathered my thoughts and remembered that I was there to see and help open doors for those who could not make it to the NMAI to see what they have inside. In any event, we

completed our mission after that summer and, unfortunately, I had to return home for personal reasons.

It has been a while since I was in school, as I had to take time off school and it took me a while to return, ten years to be exact. Meanwhile, during my whole time away from school, there has been a lot going on in both Canada and the United States, especially where I live in Canada. Political issues pertaining to Indigenous peoples and the atrocities Indigenous peoples endured at the hands of the Canadian government. First of all, the Canadian government apologized to the Indigenous people for taking away their Indigenous rights, cultural ceremonies and forcing them into Indian Residential Schools; then a movement started into the inquiries of Missing and Murdered Women, and why the government was not doing anything for the Indigenous people. There was a lot of misjustice pertaining to racism and discrimination against the Indigenous people; health and water issues on Indigenous land; lawsuits from the “60 Scoop” survivors (Indigenous children who were taken from families and placed in homes all over the world); Indigenous children who were forced into “Day Schools”. There have been numerous lawsuits in the past ten years by the Indigenous people against the Government of Canada and it continues to this day including, for example, the recent discoveries of unmarked graves located at Indian Residential Schools.

History is revealing itself in Canada, especially with over 11,000 grave-sites found at Indian Residential Schools. Furthermore, this is only the discovery process and Indigenous Canadians do not have a repatriation law in place that supports the return of any human remains. My

interest in repatriation is based on the compassion I have for our Indigenous ancestors who endured the horrible attempt of genocide, back when all and any traditional practices and customary laws were banned by the colonial governments. Europeans had forced Native American and Indigenous people onto reservations and took away anything that had value to them, their personal belongings, ceremonies, language and cultural identity. The whole value system of the Native nations was stripped away from them. I am a product of this era and I strongly believe that all that was taken away from our ancestors should be returned home. It was unfair for Europeans to force their way into Native American and Indigenous communities across US and Canada; the question now is how do we, in a diplomatic way, achieve the return of all that was taken away.

My thesis focuses on this question as it relates to repatriating Native American and Indigenous artifacts and human remains. Unfortunately, there is no across-the-board repatriation laws or legal process in place right now in Canada for Indigenous people. In the United States, there is a legal process for all tribal affiliations on repatriation of Native artifacts and human remains. My research is a comparison of the repatriation laws in United States and Canada. I hope my paper will shed some light on the legal process and repatriation laws in the US and Canada. I envision that Indigenous Canadians can benefit from the Native American repatriation laws already in place in the US or perhaps Indigenous Canadians can work with the Canadian government to develop a similar law.

Chapter 1

INTRODUCTION

The repatriation of human remains and sacred artifacts to Native nations can be a lengthy, political, and challenging process yet it is worth the effort for Native people. Native American advocacy and evolving public sentiment toward Native people have led to legislative advancements in the United States and Canada that have made it somewhat easier in certain circumstances to return the skeletal remains of loved ones and invaluable items of cultural patrimony to the original owners. These items hold significant meaning to Native Americans and may have been given to museums, stolen, lost, or left behind when Native American people were forced under duress to stop their ceremonial practices and ways of life. The forced removal of Native people, the suppression of Native spiritual beliefs and practices, and efforts to acculturate and assimilate Natives into mainstream society were common federal policies in both the United States and Canada (Native American History, 2022).

Pride, perseverance, and motivation describe how Native Americans of Montana from the United States and the First Nation people of Alberta, Canada feel about Native artifacts and human remains and their desire for a process of repatriating valuable cultural property, human remains, and sacred objects to their rightful owners. There are many historical accounts of how human remains, cultural artifacts, and sacred objects were lost or stolen. To fully appreciate the significance of repatriation, it is first necessary to review some of the terms used in this paper as well as some context on Native views of spirituality, death, and the sacredness of repatriation.

Indigenous Canadians are no longer using the term “Aboriginal” the terminology used now is “First Nations” or “Indigenous People of Canada.” First Nation or Indigenous peoples is the politically correct term to use. In the United States, the politically correct terminology for Native Americans is “Native American” or “American Indian.” Native people prefer to be called by their specific tribal name. In the United States, Native American has been widely used but is falling out of favor with some groups, and the terms American Indian or Indigenous American are preferred by many Native people. Native peoples often have individual preference on how they would like to be addressed. When talking about Native groups or people, they use the terminology of the members of the community that is used to describe themselves collectively (Smithsonian 360, 2022). Nonetheless, in this paper Native Americans in the USA will remain Native American and Native Canadians will be identified as Indigenous Nations or First Nations people.

Indigenous peoples in Canada and the Native American people in the United States have been here in North America since time immemorial. The term, “time immemorial” has been used by Native American people and the Indigenous people as a discourse of colonization. Carrying out an act of a genealogical meaning in the creation of ancient times and lawful memory, “time immemorial” is in relation to Settler and Indigenous discourses of time (Weir, Lorraine, Accessed, 2022). Time immemorial in simpler terms is also called a time out of mind, time that is far in the distance, that time is beyond memory or record. Native Americans and Indigenous peoples lived by traditional, customary law, before any written law came into effect. This was a time before written legal laws, time immemorial is what Indigenous people say when they talk about long ago when there was no man made laws, but it was an understanding and way

of life. History books, oral story tellers, mass media, the world of journalism all have a story, although, not all similar stories, but they all tell a story of how native people lived. There are so many sides to what has been reported and recorded. To some degree, stories, legends, and myths have different views; however, not all are factual when it comes to the importance to Native people of spirituality, human remains, and sacred objects. Furthermore, Native Americans in the United States and the Indigenous Peoples of Canada share the same concept when it comes to spirituality and on the other hand, non-Natives may have a different concept when it comes to spirituality. Overall, Indigenous Nations of Canada and the Native American people in the United States have the utmost respect when it comes to the concept of spirituality of any human remains and cultural property. Native Nations from both Canada and the United States refer to spirituality as alive or not alive, animate and inanimate. This is a whole new topic of having to differentiate what is alive and not alive, but we can all assume all things sacred are alive in the spiritual cognizance. When it comes to the spiritual part of a historical object, spirituality tells the story. Native Americans and Indigenous people refer to spirituality as sacred and absolute, yet not in this world; especially, when a person is deceased. Spiritually and spiritual artifacts are very much like humans living in the physical world but you do not see them. When humans no longer walk on this earth, they become human remains that now live in the spiritual world. The laws of Canada and the United States do not recognize or understand this concept; therefore, making it challenging for Native American and Indigenous Nations to repatriate any cultural patrimony without proving lineage. Thus, they are forced to formally and legally repatriate through a challenging process.

Both Native Nations have lost an extensive amount of artifacts to people exhuming Native American and Indigenous burial sites that may have been dug up for personal gain, stolen, placed in museums, or left in the hands of non-Native collectors. These were artifacts that were considered very sacred to the Native people. In those days it was referred to their personal belongings when a person was deceased they placed these sacred objects inside with the person who was buried. Fortunately, in the United States there is a repatriation law in place to help Native people in this predicament.

CHAPTER 2

NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT

(NAGPRA)

In the United States, the Native American people have a strong binding law called the Native American Graves Protection and Repatriation Act (NAGPRA). Since 1990, this federal law has provided a systematic repatriation and disposition process for Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony that were wrongfully obtained from pre-contact, post-contact, former, and current Native American homelands. Any federal agency or institution receiving federal funding such as museums, universities, state agencies and local governments is required to abide by NAGPRA. By enacting NAGPRA, Congress recognized that human remains of any ancestry must all times be treated with dignity and respect. Congress also acknowledged that human remains and other cultural items removed from federal or tribal lands belong to lineal descendants, Indian tribes, and Native Hawaiian organizations (NHO) and are protected by this law. With NAGPRA, Congress sought to encourage and continue dialogue between museums and Indian tribes and NHO in order to promote a greater understanding between the groups, while at the same time recognizing the important functions that museums play in preserving the past (United States, Accountability Office, Senate Report 101-473, Accessed: November, 2022).

NAGPRA includes provisions for unclaimed and culturally unidentifiable Native American cultural items, whether it be intentional and inadvertent discovery of Native American cultural items that were found on federal and tribal lands. NAGPRA also authorizes federal

grants to Indian tribes, NHO, and museums to assist with the documentation, consultation and repatriation of Native American cultural items. Congress also established a Review Committee to help monitor the NAGPRA process and facilitate the resolution of disputes that may arise concerning repatriation under NAGPRA (Native American Graves Protection Repatriation Act, NAGPRA, 2009).

The repatriation process can be very challenging; however, the consultation process helps with this. The first step is to share relevant information. This is often initiated by NAGPRA Project staff. In-person consultations are an important part of exchanging information, establishing a dialogue, and discussing the next steps in the repatriation process. Topics typically discussed during consultation meetings include establishing the tribe's geographic area of interest or priority areas, gathering relevant information regarding cultural affiliation, discussing the designation of funerary objects, and other topics. Human remains and materials meeting the definitions of cultural items under NAGPRA can be formally claimed by tribal representatives at any time. Formal written claim letters or requests for repatriation or disposition are required prior to any transfer. NAGPRA Project staff review claims and submit notices of inventory completion or notices of intent to repatriation to national NAGPRA for review and publication in the Federal Register. Once published, NAGPRA notifies all tribes consulted or invites them to consult the publication of Federal Register notices for a mandatory 30-day waiting period. Upon successful completion of NAGPRA the Project staff will coordinate with the claimant tribe or tribes to arrange transfer of control and physical transfer. As noted earlier, NAGPRA grants are also available to help fund repatriations (National Park Service, 2019).

NAGPRA also established civil penalties for any museum that fails to comply and criminal penalties for any person who does not comply with NAGPRA. The amount of the penalties is determined by: (1) the archaeological, historical, or commercial value of the item involved; (2) the economic and non-economic damages suffered by a party; and (3) the number of violations (Trope and Echo-Hawk, November 2022). Essentially, this means that NAGPRA provides the aggrieved party a legal clause in the NAGPRA provisions where federal courts have the right to use necessary orders such as state laws, public trust, or fiduciary duty. In terms of progress, two years after the passage of NAGPRA, in 1993, all federally funded universities and museums were required to send a summary of Native American sacred and ceremonial objects to Indian tribes that were associated with those artifacts. In 1995, those institutions were required to file inventories of Indian remains (NAGPRA, 2009). In addition, federally recognized Indian tribes could request the remains if they belonged to them and could request the artifacts' return. There is no single source for how many human remains and cultural items have been repatriated under NAGPRA. Museums and federal agencies keep their own records, but NAGPRA must publish notices in the Federal Register when they have determined items are eligible for repatriation. The national NAGPRA program compiles annual statistics based on those notices (NAGPRA, 2009).

According to NAGPRA the registered inventories as of October 1, 2020-September 30, 2021 included 110,931 individual human remains, 788,240 associated funerary objects, and 281,088 un-associated funerary objects held at the Native American Holding and Collections site. These Native American Holding and Collection sites are located in various institutions across the US. For Example, the National Museum of the American Indian (NMAI) has one of the most

extensive collections of Native American arts and artifacts in the world with approximately 266,000 catalog records (825,000 items) representing over 12,000 years of history and more than 1,200 indigenous cultures throughout the Americas. The NMAI continues to focus actively on modern and contemporary arts, relying on donations for the expansion of earlier ethnographic collections. The collections also hold photographic archive, images from the 1860s to the present; the media archive including film and audiovisual collections such as wax cylinders, phonograph discs, 16mm and 35mm motion picture film, magnetic media of many varieties, and optical and digital media recorded from the late 1800s through the present; not to mention the paper archive records dating from the 1860s these collection sites continue to keep updated records of their inventories (National Museum of the American Indian (NMAI), 2019, Accessed: December, 2022.)

NAGPRA Fiscal year report 1990-2021

NAGPRA accomplishments for fiscal year 1990 to fiscal year 2021 include:

- 90.5% of culturally affiliated human remains have completed the NAGPRA process;
- Over 1.8 million associated funerary objects have been transferred with human remains;
- 21% of museums subject to NAGPRA have resolved all Native American human remains under their control;
- More than 349,000 un-associated funerary objects have been repatriated;
- About 21,600 other cultural items have been repatriated;
- 72 Review Committee meetings have been held;
- \$59,111 has been collected in civil penalties for failure to comply;
- \$53.92 million has been awarded in NAGPRA grants.

NAGPRA is an important law that finally ensures equal protection of Native American human remains, cultural patrimony, sacred objects, and sites. Such legal protections have long been in place to protect the grave sites of any human remains; now, when it comes to Native Americans, there is a process that needs to be followed and that acknowledges Native spiritual beliefs and practices regarding their deceased. For example, Native American people have lived a lifetime of stories to share, but when they are deceased, Native American people say they have journeyed into a new world, a spiritual world where they are on a new journey with a new story; in addition, they are not dead, rather, they are in the spirit world. Cree elders have said that when a deceased person is traveling in the spiritual realm, it is like existing in a paranormal domain. Native American tribes in the US, similarly to Canada, highly honor their deceased relatives

when they have passed onto the spiritual world. Native American people respectfully honor and gift personal sacred possessions when a loved one is deceased. Native American people in the United States and Canada believe that when you pass on (die) into the spirit world, your soul, your spirit leaves your body and enters into a sacred space and anything that you have on you when you enter this sacred space, you take with you to use into the spiritual world. When a person passes into the spiritual world, the Native American people, their families gift the deceased with sacred objects. These store are passed down from generation to generation when a person is deceased, as these objects are meant to protect them while they are on a spiritual journey. This action is where Native American customary laws and unwritten traditional practices fall into place. To some Native American and Indigenous people these are known as unwritten laws; traditional customary laws known throughout Native American culture and are said to be lawful and binding in their eyes. Native American people use the clique “time immemorial” to describe the duration of time where this cultural practice was done, meaning from as far back as they can recall; an unwritten rule, before written laws came into effect for Native American people (Weir, Lorraine, 2022).

Some elders say that the sacred items that are sent with the deceased enter into a sacred space with the deceased. These sacred items are personal belongings to the deceased, as this deceased person had them while they lived in the physical world; furthermore, any objects the family of the deceased wanted to include in the burial with the deceased would be made by hand and gifted to the deceased as an honoring to the deceased person. Native Americans’ sacred objects and funerary objects are sacred and carry honorable significance. To the Native American people, the deceased person is not dead, they still live as a spirit. In fact, it is said by

the elders that the human body is just a vessel and what lives in the vessel is a spiritual being. However, this physical body that is left behind still remains sacred to Native people and should be left alone. Likewise, Native Americans commonly believe that anything left with this human remain should not be bothered as legend states that it could bring a bad omen. According to oral histories from Native American people, if these items were disturbed it would cause the deceased person to be disturbed while on his/her sacred journey in the spiritual world. It also said by the Elders that in the spiritual world a deceased person is making a new journey and while on this spiritual journey the deceased should be prepared to use those sacred objects given to them, as the items are meant for healing, for protection, and for surviving in the Spiritual World. These sacred objects are meant to help and protect the deceased on the other side into the spirit world (Ian, Anderson, January 2023).

Native Americans and First Nations people have the same concept when it comes to the sacred objects buried with the deceased. Although different Native American peoples have diverse ceremonies and not all practice the same rights of passage for the dead, they still believe in the same spiritual concept and give their deceased the most respected burial and/or resting place in the most honorable way including sending them off with sacred objects that they possessed in the physical world. In this modern-day world, Native American stories have diminished, losing the value and traditions of the real meaning of why sacred items were placed with the deceased. These stories were so inspirational to Native American and First Nations people; not only are the stories largely lost in today's modern world, but these sacred items were being dug up. Throughout history, people purposely destroyed and dug up Native human remains for commercial use, knowingly possessing these items to sell, buy, transport, barter, or display

the human skeletal remains for personal gain (Mihesuah, 405, 1988). This was a violation of Native American traditional law, the sacred laws. In this modern-day world, Native American people understand the need for federal laws, not only to protect their burial sites, but to voice and repatriate what was lost. However, trying to retrieve them is still very complicated and political. Although the NAGPRA Review Committee is trying their best to work with Native American tribes and NHO, the fact remains that there are still the state laws and tribal laws that come into play regarding private and public lands and repatriation issues.

CHAPTER 3

REPATRIATION IN MONTANA, UNITED STATES OF AMERICA

According to the Montana State Laws on repatriation and the United States Code of annotations regarding Montana State and cultural patrimony and burial sites; in 1991, Montana joined approximately thirty-five states in establishing a policy and procedure in protecting the disturbance or destruction of all human remains, burial sites, and burial materials in marked or unmarked graves or burial sites. These laws on Cultural Patrimony, Sacred Objects apply to public and private lands. Additionally, the Human Skeletal Remains and Burial Site Protection Act (Title 22, chapter 3, part 8, MCA) protects burial sites on state and private land and provides a procedure to be followed upon the accidental discovery of all human remains regardless of ethnic origin, burial context, or age. This act attempts to recognize and balance the cultural, tribal, or religious concerns with the interests of scientists, landowners, and developers. However, the act only applies to discoveries after 1991. In 2001, the Montana Legislature adopted the Montana Repatriation Act (Title 22, chapter 3, part 9, MCA) to address the discovery and disturbance of burial sites and the removal of human remains that occurred before 1991. The Repatriation Act (House Bill No. 165, 2022) was requested by the Law, Justice, and Indian Affairs Committee. Similar to federal law, the Repatriation Act requires state agencies and museums that receive state funding to create and maintain an inventory of human skeletal remains or funerary objects within their possession or control. A claim for repatriation of any of those items, inventoried or not, may be made by filing a written claim and providing a proof or power of evidence of the claimant's cultural affiliation to the remains or objects and that the possessing entity does not have the right of possession (Montana Burial Site Protection Act, 2022). This means that

whomever found any funerary objects or human remains must prove they have a lineage and right to claim the objects. Claims are reviewed by a hearings examiner, who makes a recommendation to the Burial Preservation Board. The board then decides whether to support or deny a claimant's request (United States Code, "Montana Burial Site Protection Act," 2006).

There are legal penalties regarding finding any human skeletal remains and burial sites in Montana. These laws were placed for any person that may conduct ground-disturbing activities, any person who discovers human skeletal remains, a burial site, or burial material. Should anyone find any human skeletal remains and burial sites in Montana they need to immediately notify the county coroner; if this process is not followed then there are legal penalties that follow. For example, below are some State penalties in the United States when finding any human remains, and burial sites as stated in the (Montana Code Annotated (MCA), 2021).

First offense in Montana Code Annotated (MCA):

Purposely or knowingly pilfer, disturb, destroy, or permit pilferage, disturbance, or destruction of a marked, unmarked, unrecorded, registered, or unregistered grave or burial ground or burial material

Up to \$1,000 fine, up to 6 months in jail, or both + Civil penalty up to \$2,000 Up to \$20,000 fine, up to 5 years in jail, or both + Civil penalty up to \$10,000.

For commercial use, knowingly possess, buy, sell, transport, barter, or display human skeletal remains or burial material acquired in violation of Title 22, chapter 3, part 8 Up to \$50,000 fine, up to 20 years in jail, or both + Civil penalty up to \$2,000 Up to \$50,000 fine, up to 20 years in jail, or both + Civil penalty up to \$10,000.

Purposely or knowingly disclose information knowing that it is highly probable that the disclosure will lead to pilferage, disturbance, or destruction of a burial site Up to \$500 fine, up to 6 months in jail, or both + Civil penalty up to \$2,000 Up to \$10,000 fine, up to 5 years in jail, or both + Civil penalty up to \$10,000.

Knowingly fail to notify coroner of a discovery pursuant to 22-3-805, MCA \$100 - \$500 fine + Civil penalty up to \$2,000 \$100 - \$500 fine + Civil penalty up to \$10,000.

Violation of the conditions of a scientific analysis permit issued under 22-3-806, MCA Civil penalty up to \$2,000 Civil penalty up to \$10,000 2 22-3-916, MCA.

Ground-disturbing activities include archaeological excavation and agricultural, mining, construction, and other activities.

Federal Laws Antiquities Act

According to the U.S. Department of Justice (USDOJ), the first significant protection for archaeological and Native American cultural resources came about in the Antiquities Act of 1906. 16 U.S.C. §§ 431- 433 (2009). The Antiquities Act is the federal mechanism for establishing national monuments. Its purpose was to establish historic and prehistoric structures and other objects of historic or scientific interest on federal lands as national monuments. It was an attempt to prevent looting, but it also played a major role in the professionalization of American archaeology by restricting excavation to professionals and requiring a permit for excavation which is issued only by the Smithsonian. For better or worse, the Antiquities Act vested control over Native American sites in the museum establishment. After the Ninth Circuit found the Antiquities Act to be unconstitutional because certain terms were not clearly defined, *U.S. v. Diaz*, 499 F.2d 113, 115 (9th Cir. 1974), additional legislation was deemed necessary (U.S.C., Antiquities Act of 1906).

Archaeological Resource Protection Act

This Act applies to federal, public, and Indian lands. The United States Department of Justice (USDOJ) says the Archaeological Resources Protection Act (ARPA) is likely the most-used enforcement tool for the protection of cultural resources. Enacted in October 1979, the purpose of the ARPA is “to protect irreplaceable archaeological resources and sites on federal, public, and Indian lands.” ARPA violations can be “either a felony or a misdemeanor, depending upon the severity of the violation. It can also be pursued civilly when deemed appropriate or necessary. Below are violations laws extracted from (U.S.C., “Archaeological Resources Protection Act,” (ARPA), 1979):

The elements of an ARPA violation include the following:

The act must involve an archaeological resource more than 100 years old.

‘Archaeological resource’ is defined as:

- (1) material remains of past human life of
- (2) archaeological interest
- (3) over 100 years old
- (4) including, but not limited to, pottery, basketry, bottles, weapons, projectiles, tools, structures, pit houses, rock paintings, graves, and human skeletal materials.

With the exception of the trafficking provisions of United States Code (USC), 16 U.S.C. § 470ee(c), the act must occur on public lands for ARPA jurisdiction to attach. Such lands include lands owned and administered by the United States as part of the National Park Service,

National Wildlife Refuge System or National Forest System; all other lands to which fee title is held by the United States; Indian lands; land held in trust by the United States; and land subject to the restriction against alienation imposed by the United States.

Cultural Patrimony, Sacred Objects and Sites.

The act must be one prohibited by ARPA as listed under: 16 U.S.C. § 470ee(a): Excavate, remove, damage ... alter or deface an archaeological resource or attempt to do so o 16 U.S.C. § 470ee(b): Sell, purchase, exchange, transport, receive, or ... offer to do so o 16 U.S.C. § 470ee(c): Sell, purchase, exchange, transport, receive, or offer to ... in interstate or foreign commerce any archaeological resource ... in violation of any provision, rule, regulation, ordinance, or permit in effect under State or local law o 16 U.S.C. § 470ee(d): Violates, counsels, procures, solicits, or employs any other person to violate any provision in subsection (a), (b), or ©. Penalties for a violation of ARPA include a fine of up to \$10,000, up to 1 year in jail, or both. If the commercial or archaeological value of the archaeological resources involved and the cost of restoration and repair of such resources exceeds the sum of \$500, the person shall be fined up to \$20,000 or imprisoned for up to 2 years, or both. In the case of a second or subsequent violation, the person shall be fined up to \$100,000 or imprisoned up to 5 years, or both (U.S.C., 2006).

Under ARPA's Excavation and Removal provision, a permit is required, notification must be sent to any tribes that may consider the site as having religious or cultural importance (§ 470cc), and the consent of the tribes involved must be received when the site is on Indian Land (§ 470cc(g)(2)). ARPA excludes coins, bullets, un-worked minerals, and rocks, unless they are found in direct physical relationship with another archaeological resource; arrowheads found on the surface (defined as any projectile point designed for use with an arrow, 43 C.F.R. § 7.3(5)(b) (2010); items found on private lands; and items in one's lawful possession prior to October 31, 1979. 16 U.S.C. § 470kk (2009) (U.S.C., 2006).

Charges are used in ARPA cases and can be sought criminally and civilly. In a criminal case, the penalty will be in the indictment or information and may be part of any plea negotiations. The penalty may also be used as part of civil proceedings or initiated after assessment of a criminal or civil penalty. In an in rem proceeding, no individual defendant is identified, so the penalty does not have the same comprehensiveness as it does in other areas of law enforcement, and is limited to objects, vehicles, and tools (U.S.C., 2006).

National Historic Preservation Act

Section 106

The National Historic Preservation Act (NHPA) (54 U.S.C. §300101, et seq.) was signed into law on October 15, 1966. It establishes a national preservation program and a system of procedural protections, which encourage both the identification and protection of historic resources, including archaeological resources, at the federal level and indirectly at the state and local level. NHPA represents the most extensive preservation legislation ever enacted in the US. NHPA was created in the mid 1960's for federally-funded infrastructure and urban renewal projects that had resulted in the rapid destruction of places significant in the nation's history. Congress recognized that the federal government's historic preservation program was inadequate to ensure that future generations could appreciate and enjoy the rich heritage of the nation. NHPA was enacted in recognition that historic places were being lost or altered, and that preservation was in the public's interest. Section 106 of the NHPA requires federal agencies to consult with Indian tribes and NHO when places of religious and cultural significance to them might be affected by a proposed undertaking. While the statute explicitly references "historic property of religious and cultural significance to an Indian tribe or Native Hawaiian organization," these places are often called sacred places or sites by Indigenous peoples and constitute historic properties under the NHPA when they meet certain criteria discussed below. Section 106 of the NHPA requires federal agencies to do two things: take into account the effects of undertakings they carry out, license, permit, or fund on historic properties and provide the ACHP an opportunity to comment on the undertaking. Section 106 regulations outline the decision-making process by which federal agencies must consider effects to historic properties

and consult with others in doing so. The requirements include consultation with Indian tribes and NHO throughout the process. All federal agencies under the executive branch of the U.S. government are required to comply with Section 106, including independent regulatory agencies. The regulations require federal agencies to respect their government-to-government relationships with Indian tribes and clarify that the federal agency is responsible for making a reasonable and good faith effort to identify those Indian tribes and NHO that shall be consulted. The regulations require that federal agencies ensure consultation in the Section 106 process provides a reasonable opportunity for Indian tribes and NHO to identify their concerns about historic properties; and advise them on the identification and evaluation process. The regulations remind federal agencies of their unique legal relationship with Indian tribes and suggest that consultation be respectful of tribal sovereignty. In fact, there is a difference in the Section 106 process for undertakings that would occur on or affect historic properties on tribal lands, notably, that the federal agency must attempt to seek agreement with the Indian tribe on its Section 106 determinations and findings to support the Section 106 process (U.S.C., “National Historic Preservation Act,” 2016).

Code of Federal Regulations (CFR)

According to NAGPRA records in the Code of Federal Regulations (CFR), there are over 117, 576 Native individuals still in collections in the United States. This happens when the report is unsure of nationality or cultural affiliation and this happens because no one knows how these individuals were exhumed. When cultural items are exposed on federal lands the federal agency does not want any more activity in the area of the exposed to the items, so all forms of activity, in reference to researching or digging comes to a halt. NAGPRA regulations (43 C.F.R. 10.3 and 10.5) require the agency to complete a plan of action (POA). Under the POA, the items can be excavated, removed, or left in place. The CFR states that exposing or finding already-exposed cultural items without a POA is known as a “discovery”. When a discovery occurs, any activity taking place in the area of the discovery must cease for 30 days (NAGPRA, 2009). The responsible agency must then initiate a consultation on the discovery, followed by the completion of a POA, even if no ongoing activity is to occur. Anyone who discovers any already exposed cultural items and does not follow the law will and can face legal consequences. NAGPRA enforcement, specifically related to trafficking, is found under 18 U.S.C. § 1170. The penalties for trafficking are similar to those for violating ARPA in that the first offense is generally considered a misdemeanor, whereas the second is an automatic felony. 8 U.S.C. § 1170(a) addresses the trafficking of Native American remains, and defines a trafficker as one who knowingly sells, purchases, uses for profit, or transports for sale or profit the human remains of a Native American without the right of possession to those remains as provided in the Native American Graves Protection and Repatriation Act. 8 U.S.C. § 1170(b) addresses the trafficking of Native American cultural items and defines a trafficker as one who knowingly sells, purchases,

uses for profit, or transports for sale or profit any Native American cultural items obtained in violation of the Native American Graves Protection and Repatriation Act. For purposes of this Act, anyone found guilty of any cultural related items, cultural of patrimony, sacred objects and human sites remains, associated funerary items, associated funerary items, objects of cultural patrimony, and sacred objects will be charged (NAGPRA, 2009).

Other Relevant Federal Statutes

Prior to the passage of NAGPRA, Native people in the United States had the American Indian Religious Freedom Act (AIRFA) of 1978. This act protects Native people in many important ways including their right as a human being in today's world. The AIRFA "protects and preserves for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites." (American Indian Religious Freedom Act (AIRFA), 1978).

There should not have to be a law when it comes to Native American people practicing ceremony; Native American people should have the right to practice any ceremony of their choice at any time and place as this was an inherent right. The laws for the Native American Nations in the United States have transpired over the years giving Native Americans the right for ceremonial use. Laws are enacted for Native American people and written down for others to see and follow (U.S.C., The Indian Sacred Sites. Title 25, 2006). The Indian Sacred Sites (Executive Order No. 13007) enacted in 1996 protects and preserves. "Indian religious practices, orders agencies managing Federal lands to accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and avoid adversely affecting the physical integrity of such sacred sites. Where appropriate, the agency is to maintain the confidentiality of sacred sites." (Museum of Plains Indians, 1996).

In the United States, the laws are different from Canadian law, not to mention that all state laws are different from state to state. However, there are some examples of other Cultural Patrimony, Sacred Objects, and Sacred Sites laws that show the differences in statutes by state listed in Appendix B: A Comparison of Different U.S. State Laws on Human Remains and Sacred Objects.

CHAPTER 4

REPATRIATION IN ALBERTA, CANADA

The word Canada is actually an indigenous term for “Ka-Kan-na-Ta” which means clean, in the Anishinaabe and Cree language, as both First Nations have similar dialects. Indigenous people told these stories time and time again, since time immemorial; that was how traditions, customs, laws and life was lived. According to oral Indigenous history, the Indigenous people told the European explorers that the land they were standing on was clean land. Canada was a clean land and that they, the Indigenous people welcomed them, telling them that they could stay and visit. The Europeans could not pronounce the word so they called it Canada. Canada became a Country, July 1, 1867. The British Parliament passed the British North American act in 1867 the Dominion of Canada, and Canada was officially born on July 1, 1867 (Lothamer, Hailey, 2021).

Canada has ten provinces and three territories and each province and territory has its own capital city. New Brunswick, Nova Scotia, Ontario, Québec, Manitoba, British Columbia, Prince Edward Island, Saskatchewan, Alberta, Newfoundland and Labrador. There are three territories in Canada. They are the Northwest Territories, the Yukon and Nunavut. Alberta became a province in 1905 (Bumstead, J.M., 2008).

The Canadian government is made up of the following three parts: the Crown known as the King of England, the Senate, and the House of Commons, which means that Canadians recognize the Queen or King as the Head of State, while the Prime Minister is the Head of

government. The Canadian government breaks into three branches: the executive, legislative, and judicial branches. These Canadian legislative bodies assemble in the house of parliament in Ottawa, Ontario and make laws that govern Canada and its provinces (Parliament of Canada, 2022).

When England took over the lands, they established a treaty with the First Nations people in Canada. These treaties are between the Crown and the First Nations people. Treaties are agreements made between the government of Canada, Indigenous people and often provinces and territories that define ongoing rights and obligations on all sides. These agreements set out continuing treaty rights and benefits for each group (Lothamer, Section 35 of the Constitution Act, 1982).

There are eleven numbered treaties across Canada referred as Treaty number one to eleven. Although it was said that Europeans landed on the East Coast there is no geographical order of the treaties. The province of Alberta has treaty agreements with the Crown numbered 6, 7 and 8. The three numbered treaties cover areas across Alberta: Treaty 7, covers the southern part of Alberta, Treaty 6 area covers the central part of Alberta and the Treaty 8 covers the upper part of Alberta (Appendix-D).

Alberta has 138 registered First Nation reserves and eight Métis settlements (see Appendix E). Métis is another term used in Canada for individuals or people having mixed-race parents and ancestries. “As French Canadians followed the North American fur trade to the west, some of the settlers made unions with different Indigenous women, including the Cree.

Descendants of English or Scottish and Natives were in some cases historically called “half-breeds” or “country born.” They sometimes adopted a more agrarian culture of subsistence farming and tended to be reared in Protestant denominations.” (James E. Foster, 1988).

The First Nations located in Alberta First Nations are also known as reservations (reserves) and are located throughout Treaties 6, 7 and 8. The First Nations and Indigenous Nations in Alberta are the Blackfoot, Cree, Chippewa, and Nakoda Sioux. The treaty agreements with the Crown and these First Nations are not all the same; the agreements with Treaty 6, 7 and 8 have different clauses within their own treaty agreements. Inside these treaty agreements are legal clauses that both parties agree to certain obligations that benefit both parties (Indian and Northern Affairs Canada (INAC) 1990). (On a side note, according to the oral history of the First Nation people, not all treaty agreements were agreed in a neutrally composed manner; most if not all treaties were signed under duress.) In essence, the treaty is about sharing the land and resources; the treaty was also agreed on through Native traditional ceremony, which to Indigenous people is a sacred agreement. This was part of the common law practice of the Indigenous people.

According to the Treaty 6 clause, “it is the spirit and intent for the treaties, as long as the sunshine's grass flows under River flows.” (Indian and Northern Affairs Canada (INAC), Treaty-6, September, 2022.) To the Indigenous people that is what is binding in the eyes of spiritualism, as long as the sun shines, river flows and the green grass grows. The Crown and the First Nation people have a “Nation-to-Nation” relationship, which is where Canadian politics come into play and make things challenging for First Nations people.

Parliament is Canada's legislative federal institution, where sits the power to make laws on all levels of the federal government. The federal level of this government deals with the Constitution Act of 1867; this Act effects the whole country and the laws of Canada. The next level of government is the provincial level. At the provincial level, officials take care of the responsibilities given to them by the federal government; from that point on it is known as the municipal level. At the Municipal level, authorized governments make decisions that are usually based in the city and the surrounding districts. Unfortunately, the treaties do not fall under any of the Provincial and Municipal levels of government. First Nations people have been trying for decades to keep the Nation-to-Nation agreement with the Canadian government and today is no different as the battle to keep the treaties still exists. The Canadian government has been trying for years and years to amend the treaties with the Indigenous people but has not prevailed. In any event, Treaty 6, 7, and 8 in Alberta still remain a Nation-to-Nation government with the Canadian government. This is important to note, as this is where the politics get lost in translation and make it hard for First Nations to try challenge any kind of laws in Canada (Treaties of Canada, 1957).

When it comes to “repatriation,” First Nations that are trying to apply for repatriation have to go through significant red tape, when in fact there is supposed to be an ongoing Nation-to-Nation relationship. Unfortunately, the government will not honour it because there is nothing in the treaties written about repatriation. At the time of the signing of the treaties there were no museums, trading posts, collectors and therefore, there was nothing to note in the treaty agreement about repatriation. Canada was a clean land with no disruption so there was no plan of

future action. Indigenous peoples did not know their sacred items, human remains would be exhumed and stolen for personal and private gain when they signed the treaties. Repatriation practices did not exist. There was no written law, there was no formal legal documentation. As stated earlier, there were treaties that were signed under duress so even with that being said we can assume that First Nations did not write the laws.

Repatriation of cultural belongings in Canada and the First Nations communities is very complicated, as there is nothing in writing. Repatriation of cultural belongings in Canada is currently subject to few governmental regulations, which may seem favorable, as it allows First Nations and Indigenous communities to negotiate the return of their belongings based on their Indigenous rights and sovereignty (Nation-to-Nation) relationship, rather than an official policy. However, this is a challenge that First Nations peoples are finding difficult to protest, as “Acts and Policies” build a barrier for First Nations people, not to mention First Nations are having a hard time seeking funds to challenge any kind of claims against the Canadian government.

The Canadian governmental system has the right to pass laws by the House of Commons, by the Senate. Any laws enacted fall under the governmental structure and are known as Acts and Policies. When it comes to repatriation and cultural heritage regulations, they are usually included in either an act or a policy. An Act is law set out in the legal written document that has been enacted by the federal legislative body. A policy does not carry as much legal weight as an Act but it is a document that outlines the principles and intentions of the governing level. A policy may be adopted by an administration to interpret and carry on the requirements of the legislative act, but it is not necessarily backed by legal force (University of Alberta. Accessed,

2022). The difference between an act and a policy matters since acts take precedent over policies. “In cases of repatriation cultural heritage acts that do not mention repatriation and that gave ownership to the government could make returning belongings legally difficult, even if the museum has a repatriation policy.” (University of Alberta. Accessed, 2022).

The only federal level repatriation policies in Canada that are already in place are with two federal museums: the Canadian Museum of history and the Canadian War Museum. The collections of the Canadian War Museum originated from the collections of the Cartier Square Military Museum, established through a general order on 5 November 1880. Established with the intention to be a museum of national interest, the institution sought to preserve historical records and materials relating to the Canadian Militia, and any of its colonial predecessors (Canadian War Museum. 1967).

Most provincial cultural heritage acts do not mention repatriation; therefore, some repatriation claims fall outside the federal government level. Federal and provincial acts and policies do not typically address repatriation claims, especially when it comes to First Nations claims. Returning First Nations cultural belongings can create legal difficulties; therefore, they get swept under the rug so to speak. Repatriation claims depend on the relationships between governmental levels and Indigenous communities; however, most claims have to go through a court process before a decision is made. To avoid court, the legal term is called “consultation” between the courts and the First Nation people, this practice is a legal stepping stone to any said claim. Consultation is a tricky concept as the government uses this terminology as a binding agreement in trying to amend an agreement such as the treaty agreement. First Nations are

hesitant to use consultation practices because they go beyond negotiations and sovereignty status. Essentially, there needs to be a written legal document at the federal level that opens doors for repatriation claims from Indigenous Nations throughout Canada. On a brighter note, there is only one Act in Canada and that is in the Province of Alberta with the Blackfoot Nations (Appendix F).

FIRST NATION SACRED AND CEREMONIAL ACT.

The Blackfoot Confederacy, sometimes referred to as the Blackfoot Nation or Siksikaitsitapi, is comprised of three Indigenous nations, the Kainai, Piikani and Siksika. People of the Blackfoot Nation refer to themselves as Niitsitapi, meaning “the real people,” a generic term for all Indigenous people, or Siksikaitsitapi, meaning “Blackfoot-speaking real people.” The Confederacy’s traditional territory spans parts of southern Alberta and Saskatchewan, as well as northern Montana. In the 2016 census, 22,490 people identified as having Blackfoot ancestry. The traditional territory of the Blackfoot Confederacy has been described as roughly the southern half of Alberta and Saskatchewan, and the northern portion of Montana (Queens Printer, 2017).

The First Nation Sacred Ceremonial Objects Repatriation Act is about the Canadian government, which represents the Crown (Nation-to-Nation), acknowledging the rights of the Blackfoot Nations in returning artifacts and human remains back to the Blackfoot Nations. It also has clauses that point out that the Alberta museums have held sacred ceremonial objects that are of spiritual significance to First Nations whether it be for safe keeping or to that effect. This Act is a legally binding acknowledgement that the Blackfoot Nations want the return of sacred ceremonial objects, as all cultural items and human remains are vital to the practice of their sacred ceremonial traditions.

Provincial museums have repatriation policies and over half of the provincial territorial museums in Canada have repatriation policies. Alberta museums follow the Alberta Provincial Repatriation Act. Furthermore, there are three Canadian universities that have repatriation

policies; this includes the University of Alberta, University of British Columbia, and the University of Toronto. According to the repatriation process, when it comes to requesting any artifacts back from a museum, a request has to be made in writing from any First Nation individual(s), or with the First Nations Leadership (Chief and Council). This is a practice that does not go very far, as there are legal applications that need to be made when making claims between Canada and the Indigenous people. One of the challenges is the term of a First Nation government official—when their term is up and then a new leader is chosen, it makes it hard for a legal claim to move forward. The second challenge is the court process, as it can sometimes take more than two to three years. Most claims fail as there is lack of funding and the change of leadership for First Nation People. However, many museums provincial and federal, such as parks Canada or the library archives in Canada acknowledge their duty to return Indigenous cultural belongings within their collections but there is no written policy in place to return anything back to Indigenous people as returning anything back is not written in stone. In any event, it is important to have a policy in place in order to ensure repatriation. Any repatriation requests that are submitted need to be backed up by a policy or an act (University of Alberta, Accessed, 2022).

There is an Alberta Act for preservation of Alberta's natural heritage and ecological integrity but it does not contain anything regarding First Nations and it's called the Provincial Parks Act. "Provincial Parks Act. Description. The Act provides for the establishment, protection, management, planning and control of provincial parks, wild land parks and provincial recreation areas, for the preservation of Alberta's natural heritage and ecological integrity, as well as for the benefit and enjoyment of current and future generations (King's Printer. 2022).

Canada does have some case law when it comes to repatriation of Native artifacts. For Example, “The Spirit Sings” is a court case that happened during the 1988 Olympics in Calgary, Alberta. The Spirit Sings case was an exhibition of Indigenous artifacts and human remains that were going on display at the Glenbow Museum located in Calgary, Alberta. During this time, an Alberta First Nation Chief decided to take this opportunity to voice his concerns about how oil companies were not consulting First Nations on where and when they planned on drilling for oil. Drilling for oil in Alberta was starting to boom in the early 1980’s and it was usually kept quiet by the provincial and federal government. First Nations communities were trying to voice their right but were never heard. Apparently, one of these oil companies was sponsoring the Olympic Games and the Spirit Sings Exhibition. This particular oil company ignored the chief’s pleas and concerns and continued to drill on his First Nation land. The chief decided to utilize the media and the Olympic Games to reach out to people and to other First Nations communities. Once the story reached across Canada, other First Nations communities discovered that there was going to be an exhibition of Native artifacts on display. First Nations communities had no knowledge of any artifacts that were going to be on display during the Calgary Olympic Games. Other First Nations stepped up to support the chief and his reserve. Upon the discoveries of “The Spirit Sings” exhibition, it was found that certain artifacts were being showcased that should not be on exhibition. Most if not all the artifacts were of sacred significance based on spirituality. The museum neither understood the spiritual significance nor did they care. Glenbow Museum was challenged in court by an Eastern Canadian First Nation. Unfortunately, the First Nation lost the court battle; eventually, the exhibition went on display (The Spirit Sings, 1988).

Archaeological Site vs Human Remains in Alberta

The “Archaeological Heritage Policy Framework” developed in 1990 states that archaeological sites and artifacts base their relationship to the people who have lived in Canada over the last 20,000 years. Legislation states that all federal environmental assessment and review process must be planned with the government of Canada. It is the government of Canada’s mandate to support, protect and manage Canadian identity, and archaeological resources. Archaeological resources and programs are based on any archaeological findings which are managed through legislation and policies. The general practice is that the provinces, the private sector and individuals must share any archaeological findings with the government of Canada, as the government has developed agreements with provinces, territories, and Indigenous peoples in matters pertaining to archeology findings. These agreements have to be developed with the understanding that legislation or policy is mandated to protect and manage the archaeology findings, once that is developed the government may transfer responsibility to the territorial governments (Archaeological Heritage Policy Framework, 1990).

When it comes to human remains and legislation in Canada there is a law in place for all Canadians to follow. The Cemeteries Act addresses the need to protect human burials, both marked and unmarked. However, burial locations uncovered on archaeological sites constitute “unregistered cemeteries” that are, in essence, in violation of the Cemeteries Act (Kings Printer, 2022).

As discussed above, when it comes to human remains and archaeological sites there has to be a specific law or policy in place. Among other things, an archaeology site can consist of human remains that are of prehistoric, historic, cultural or scientific significance. These sites in Alberta are protected under the Historical Resource Act in Alberta. The act provides a mechanism for designating provincial or municipal historic resources and establishes provincial or municipal historic areas for naming geographical features. This act governs research permits, title to archaeological, palaeontological resources, and transport historic resources out of Alberta (Queens Printer, “Historical Resource Act,” 2022).

Some Indigenous archaeology sites that are found in Alberta include stone circles medicine wheels, and pictographs. Human remains will not be recorded at a site as they have their own category and their own way of recording archeology findings, which is discussed below. However, Alberta archaeological sites inventory shows that currently there are archaeology records for over 40,000 sites with approximately 500 new recorded sites added each year (Robert, Magne, 1986).

When human remains are found new or old, they need to be reported to the authorities in Canada. The Royal Canadian Mounted Police (RCMP) serve as agents to the Crown and enforce the laws of the land here in Canada. Any discoveries of human remains would be reported to the RCMP being that the matters are more sensitive when a discovery is made. Most discovery cases would be by accidental nature, usually the result of an excavation done at a construction site. There is no recorded file information on ancient burial sites, perhaps because of the Nation-to-Nation relationship and how politics come into play. However, when human remains

are discovered, the area is secured and the police notified. The RCMP then determine if the site is of archaeology nature or a crime scene. If it is of archaeological nature, they will contact the relevant archaeologist to take over the site. If the human remains are of a criminal nature they would call the coroner's office. The coroner's office would either take it for autopsy or research further into the circumstance of the discoveries (Royal Canadian Mounted Police, (RCMP), 2019).

Archaeological research can depend on a number of different circumstances. Many discoveries occur within the context of pre-planned archaeological research. These pre-planned archaeological research projects are conducted by professionals under the pre-requisite of a provincial territorial that authorized such research. The steps can depend on the landowner and the laws and policies of that area. Otherwise, the archaeologist would also notify any of the provincial territorial archaeologists and local authorities to continue the research. Technically, there could be many fundamental ways the researchers handle the discoveries of human remains. If there was an accidental discovery of human remains, this may trigger a complex series of legal requirements under both federal and provincial laws. Fundamentally, there is a difference when federal and provincial laws handle matters of human discoveries. The federal laws are more straightforward, as it could be a potential criminal site if recent human remains are found. Alberta Provincial laws on the other hand have the Heritage and Cultural Act on archaeological sites; hence, if the discovery of any human remains was of an archaeological nature, it then should be reported immediately to the police and archaeologist who then they report it upwards on the governmental system (Royal Canadian Mounted police (RCMP), 2019).

If there is any disturbance on any discoveries of archaeological nature or of human remains, Canada does have legislation called the Criminal Code of Canada (CCC). This CCC governs the laws of all of Canada, each and every person can be charged with an offense under the CCC. The RCMP would be the enforcers who make the charge. Below is a section extracted from the CCC regarding human remains (Martins, J., *The Criminal Code of Canada*, 1985).

Section 182 of the Criminal Code of Canada (CCC)

Canadian federal legislation rules that any improper interference with human remains is an indictable offense under Section 182 of the Criminal Code of Canada:

“**182** Every person is guilty of an indictable offence and liable to imprisonment for a term of not more than five years or is guilty of an offence punishable on summary conviction who neglects, without lawful excuse, to perform any duty that is imposed on him by law or that he undertakes with reference to the burial of a dead human body or human remains, or improperly or indecently interferes with or offers any indignity to a dead human body or human remains, whether buried or not.” (Sec.182 CCC, 2022).

If archaeological services determined that the human remains are not associated with archaeological features but still have to be removed then certificates of removal are required from both the coroner's office and Medical Examiner's Office. The investigations may determine if living relatives exist and an appropriate burial location will have to be identified and arrangements to be made. If the RCMP determined the situation is not to be associated with a criminal matter then archaeological services will be consulted to determine the proper course of action.

Anthropologists will be called by the RCMP who will take possession of the bones and artifacts and comply with all provincial acts. The archeologist will record the site and they will properly handle any human remains. Other sites such as human remains found on Indigenous land fall under the federal Archaeological Heritage Protection and Management Act. They

negotiated with Native or Native interest groups, the archeologist will then go with discoveries by a case by case means of federal legislation; making it hard for First Nations to financially support the investigation. Furthermore, Alberta historic sites are protected by the Provincial Heritage Property Act, but First Nation do not fall under this category.

Indigenous Nations in Canada have different views concerning burial excavation study and disposition. They do not share common views with federal or provincial legislation. The excavations are not communicated to the First Nations people. The concern that Indigenous communities have with the government concerns how are they going to repair the loss of land, the damage done to land and the environment and how will they repair it for future generations. Additionally, it has always been a concern to have a law in place to return artifacts and human remains taken for scientific purposes and never returned. Most if not all Native Nations despise any study of human remains even if they are exhumed by accident or exhumed for scientific discovery. Usually, Indigenous Nations want human remains buried immediately, even if the remains were discovered accidentally. Natives believe that disturbing a burial site is a bad omen, not to mention disrespectful to Native people. Currently, there is no law in place that protects any discoveries of an archaeological nature and of human remains for the Indigenous people of Canada. However, there is a “living” document in place made for the Indigenous People in Canada on repatriation. This document is a proposed bill written by a collective committee and task force that is trying to provide a voice for Indigenous Nations when it comes to human remains, artifacts and any cultural patrimony.

BILL C-391 INDIGENOUS HUMAN REMAINS AND CULTURAL PROPERTY ACT

Bill C-391 is a legal document made for the Indigenous Peoples across Canada by Indigenous people across Canada. This proposed bill was a plan of action for the Indigenous peoples across Canada to establish a repatriation act. Unfortunately, this document only made it to the Senate's 2nd reading. In order for this document to pass as an "Act" and be made into law it must be passed by the Senate on the 3rd and final reading (Ligisinfo, 2022).

To this day, Bill-C-391 remains dormant in Canada's House of Commons, Parliament Hill. When Bill C-391 was proposed and presented in the House of Commons on November 28, 2018, the deliberations and discussions related primarily to provincial museums and federal museums and how it would affect their collections or how they would return them back to the Indigenous communities. There were discussions on what would happen if the discoveries were found on provincial lands and Federal land (Indigenous land). The discussions were not about working with the Indigenous Nations, rather the debate turned into how it would affect the laws already in place for museums and how it would affect future discoveries. The reading of Bill C-391 became a debate among the Senate. The bill was delayed and was never passed. Some Senate members looked for flaws in the bill, stating that it did not clearly specify whether the bill applied to national or international requests or if the bill applied to property held in public or private institutions. Some Senators relied on the Canadian Museum of History report and not the real issue of repatriation for the First people of Canada.

CHAPTER 5

CONCLUSION

Indigenous peoples in Canada and the Native American people of the United States have been here in North America since time immemorial. History books, oral story tellers, mass media, the world of journalism all have a story, although, not all similar stories, but they all tell a story of how native people lived. Native Americans in the United States and the Indigenous Peoples of Canada share the same concept when it comes to spirituality; however, on the other hand, non-Natives may have a different concept when it comes to spirituality. Spirituality is very significant in the Native culture, both in the United States and in Canada, especially when it comes to the loss of a loved one, loss of sacred items during burial to honor the loved one, loss of cultural property in some sort of spiritual passage; in fact, anything that held any great honor to the Native nations was desecrated. These sacred items held significant importance to Native Americans and Indigenous Nations. History states that human remains were exhumed, sacred items stolen, items of cultural patrimony were stolen, lost, or may have been given to museums were ignored by law makers for decades and centuries. Laws did not exist to protect Native people; the Native Nations had no voice in the eyes of the law.

In today's society, there is evidence that historically as well as contemporaneity both the Canadian and United States governments did not recognize the context and spiritual views of the Native American and the Indigenous people. The spiritual aspects of both Native Americans and First Nations of Canada have been disregarded in the eyes of the law; especially, when it comes to repatriation. Although there was no such word as "repatriation" back in the day, we can

assume it was never even a thought in the eyes of the Native American people. Not to mention, the fact that the Native Nations would eventually be challenging the government in returning sacred artifacts and human remains.

During the times of colonization, laws were formulated to control the First peoples of the land. The main idea was to control and segregate Native Nations to designated areas, called reservations and reserves in hopes of assimilation. Historically, policymakers did not consult with Native American and Indigenous Nations or ask them to take part in developing laws, particularly when they were being segregated.

Today, we recognize repatriation as a law that needs to be implemented for Native Nations in the United States and Canada. In the Native American and Indigenous cognizance, repatriation is returning ceremonial practices, human remains, cultural patrimony, and sacred back to its place of origin. The significance of repatriation, is based on the Native spirituality concept, and the sacredness that Native Nations depend on. The repatriation challenges are currently ongoing for Native Nations when trying to attain some form of identity over the artifacts. Fortunately, in the United States a repatriation law is presently in place to help Native people in this predicament.

In the United States, the Native American people have a strong binding law called the Native American Graves Protection Repatriation Act (NAGPRA). Since 1990, this federal law has provided a systematic repatriation and disposition process for Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony; that were wrongfully

obtained from pre-contact, and post-contact. Furthermore, any federal agency or institution receiving federal funding such as museums, universities, state agencies and local governments are now required to abide by NAGPRA.

NAGPRA also authorizes federal grants to Indian tribes, Native Hawaiian Organizations, and museums to assist with the documentation, consultation and repatriation of Native American cultural items. The term “consultation” is a legal term the government and its organizations use to make governmental documents legally binding in the law-making process. Topics during consultation typically include the geographic area of interest or priority areas, gathering relevant information regarding cultural affiliation, discussing the designation of funerary objects, and other topics. NAGPRA also established civil penalties for any museum that fails to comply and criminal penalties for any person who do not comply with NAGPRA. In the United States human remains and materials of definitions of cultural items under NAGPRA can be formally claimed by tribal representatives at any time.

NAGPRA is an important law that ensures equal protection of Native American human remains, cultural patrimony, sacred objects and sites for the Native American people living in the United States. Although, the NAGPRA review committee is trying their best to work with Native American tribes and NHO, fact still remains that there are still state laws and tribal laws that come into play in regards to private and public lands on repatriation issues.

The state of Montana has joined approximately thirty-five states in establishing a policy and procedure to protect the disturbance or destruction of all human remains, burial sites, and

burial materials in marked or unmarked graves or burial sites. These laws on cultural patrimony, sacred objects apply to public and private lands. Although, Native American and the Indigenous Peoples of Canada have similar historical stories, the laws are very different. The facts of law still remain true, that Canadian laws are far from being equal in terms of repatriation.

When England took over the lands in Canada, they established treaties agreements between the government of Canada and the First Nations people. There are eleven numbered treaties across Canada referred as Treaty 1 to 11. The province of Alberta has three treaty agreements with the Crown, they are Treaties 6, 7 and 8. The three numbered treaties cover areas across Alberta. These treaties are supposed to have a special relationship with the “Crown” and the agents of the Crown. The Crown is referred to the Queen or King of England, the European country that took over the Indigenous land in Ka Kan Na Ta. The Crown runs the country through its government in Canada’s Parliament.

Parliament is Canada's legislative federal institution, where sits the power to make laws on all levels of the federal government. The next level of government is the provincial level. At the provincial level, officials take care of the responsibilities given to them by the federal government; from that point on it is known as the municipal level. At the Municipal level, authorized governments make decisions that are usually based in the city and the surrounding districts. Unfortunately, the treaties do not fall under any of the Provincial and Municipal levels of government.

First Nations people have been trying for decades to keep the Nation-to-Nation agreement with the Canadian government and today is no different as the battle to keep the treaties still exists. In any event, Treaty 6, 7, and 8 in Alberta still remain a Nation-to-Nation government with the Canadian government. However, when it comes to “repatriation,” any First Nations applying for repatriation have to go through a significant amount of red tape; when in fact there is supposed to be an ongoing Nation-to-Nation relationship. Unfortunately, the government will not honor any application because there is nothing in the treaties written about repatriation. At the signing of the treaties there were no museums, trading posts, collectors and therefore, there was nothing to note in the treaty agreement about repatriation.

Repatriation of cultural belongings in Canada is currently subject to numerous governmental regulations, which may seem favorable for museums; however, the acts and policies that stand in front of the repatriation process is very challenging for First Nation people. For years First Nations and Indigenous communities have been trying to negotiate the return of their belongings based on their Indigenous rights and sovereignty (Nation-to-Nation) relationship with the government; however, these barriers fall in the cracks of trials and tribulations of the laws of Canada.

The Canadian governmental system has the right to pass laws, but it is very difficult as the government would rather try amend the existing treaty. The challenges for the Indigenous people are based on the Acts and policies imposed by the federal government. These acts and policies sit at the provincial and municipal level and they have no legal position on First Nation people. For Example, the federal level repatriation policies that currently exist in Canada, are

with the Canadian Museum of history, the Canadian War Museum and the First Nations Ceremonial Act with the Blackfoot people in southern Alberta. Furthermore, most provincial cultural heritage acts do not mention repatriation; therefore, some repatriation claims fall outside the federal government level. Federal, provincial acts and policies do not typically address repatriation claims when it comes to First Nations claims. In addition, returning First Nations cultural belongings can create legal difficulties that are not addressed at any governmental level. Fundamentally, repatriation claims for First Nations people depend on the relationships at the federal level. Unfortunately, most claims have to go through a court process before a decision is made.

When it comes to human remains and archaeological sites there has to be a specific law or policy in place. Certain sites are protected under the Historical Resource Act in Alberta. As defined, an archaeology site can be of human remains that are of prehistoric, historic, cultural or scientific significance. Some Indigenous archaeology sites that are found in Alberta include stone circles medicine wheels, and pictographs. When human remains are found new or old, they need to be reported to the Royal Canadian Mounted Police (RCMP), who have their own documentation process; thus, these discoveries depend on the circumstance of the findings and prompt the proper specialists. A number of questions arise, and it makes one wonder what happened to all the human remains that were left behind during the 1800's; surely there had to be human remains left after battles, during building or road construction, etc.—why were the Indigenous communities not informed?

Archaeological research can depend on a number of different circumstances. Many discoveries occur within the context of pre-planned archaeological research. These pre-planned archaeological research projects are conducted by professionals under the pre-requisite of a provincial territorial that authorized such research. The steps can depend on the landowner and the laws and policies of that area. Otherwise, the archaeologist would also notify any of the provincial territorial archaeologists and local authorities to continue the research.

Canada does have legislation called the Criminal Code of Canada (CCC). The Criminal Code of Canada takes precedent over any laws and it governs all the laws of all of Canada. Any person can be charged with an offense under the CCC for violating human remains and archeology sites. The RCMP would be the enforcers who make the charge; however, where is advocacy for First Nation people, as there is no law supporting them.

As you can see repatriation of human remains, cultural artifacts and sacred items in the United States has brought about collaboration with tribes and has worked for the Native American people to a certain degree. Although there are laws in place like NAGPRA giving some legal access and power to Native American people, there is a significant challenge in that political arena, as the process can be seen as repetitive, biased and controlled by the United States government. Nonetheless, Native Americans in the United States have made positive milestones when it comes to the repatriation of their ancestors' human remains, cultural patrimony, and sacred objects. Optimistically, there can be changes in the future to the repatriations process. Perhaps laws in the United States will be challenged to amend those repatriation laws, making the legal process more beneficial for Native American people.

Canadian First Nations still have not passed more than one federal law pertaining to the repatriation of Native artifacts, human remains, sacred items and sacred sites. The future can still change that, as there is still a “living” document (Bill-C391) specifically made for the Indigenous People of Canada that is currently sitting idle waiting to be passed. Now that there are currently over 11,000 unmarked grave sites found at Indian Residential Schools across Canada, there will be more action in the political arena. Some recommendations that could help First Nations in Canada include adopting a similar law like NAGPRA or other laws already enacted by the United States government. Human remains, cultural patrimony, sacred sites and sacred items are very sensitive issues to Indigenous people. The fact that the terminology “spirituality” is not understood but rather undermined in today’s world and is disturbing. First Nations should continue to mandate and vision with new proposed initiatives, specifically for this purpose. It could happen, perhaps by developing a committee, and a task force for repatriation issues.

Indigenous people do not have to sit at the provincial or municipal level, as they have a Nation-to-Nation relationship with the federal government. Furthermore, it is the government of Canada’s fiduciary duty to provide a direct relationship with Indigenous peoples and provide support at all levels of government, as this is currently still the law in Canada. Section 35 of the Constitution Act of 1982 states that duty to consult and accommodate the rights and claims of Indigenous people is a duty of the federal government, the Crown. It is not the third parties, such as the province and municipalities, that have the right to pass laws with the Indigenous communities. Indigenous peoples have traditionally pointed to three principal arguments to establish their rights: international law, the Royal Proclamation of 1763 (as well as treaties that

have since followed) and common law as defined in Canadian courts. Now that Canada's real history of outlawing First Nations' spiritual beliefs and practices, of mandatory attendance of Indigenous children at Residential Schools where thousands lost their lives, and the theft of sacred artifacts and items of cultural patrimony, and many other unfolding, the Canadian government has no choice but to implement their fiduciary duty that is in existence with First Nations in Today's modern day world.

APPENDIX A**NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT (NAGPRA)**

104 STAT. 3048

PUBLIC LAW 101-601—NOV. 16, 1990

Public Law 101-601
101st Congress

An Act

Nov. 16, 1990
[H.R. 5237]

To provide for the protection of Native American graves, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Native American Graves Protection and Repatriation Act".

SEC. 2. DEFINITIONS.

For purposes of this Act, the term—

(1) "burial site" means any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which as a part of the death rite or ceremony of a culture, individual human remains are deposited.

(2) "cultural affiliation" means that there is a relationship of shared group identity which can be reasonably traced historically or prehistorically between a present day Indian tribe or Native Hawaiian organization and an identifiable earlier group.

(3) "cultural items" means human remains and—

(A) "associated funerary objects" which shall mean objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, and both the human remains and associated funerary objects are presently in the possession or control of a Federal agency or museum, except that other items exclusively made for burial purposes or to contain human remains shall be considered as associated funerary objects.

(B) "unassociated funerary objects" which shall mean objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, where the remains are not in the possession or control of the Federal agency or museum and the objects can be identified by a preponderance of the evidence as related to specific individuals or families or to known human remains or, by a preponderance of the evidence, as having been removed from a specific burial site of an individual culturally affiliated with a particular Indian tribe,

(C) "sacred objects" which shall mean specific ceremonial objects which are needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present day adherents, and

(D) "cultural patrimony" which shall mean an object having ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual Native

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Historic
preservation.
25 USC 3001
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25 USC 3001.

American, and which, therefore, cannot be alienated, appropriated, or conveyed by any individual regardless of whether or not the individual is a member of the Indian tribe or Native Hawaiian organization and such object shall have been considered inalienable by such Native American group at the time the object was separated from such group.

(4) "Federal agency" means any department, agency, or instrumentality of the United States. Such term does not include the Smithsonian Institution.

(5) "Federal lands" means any land other than tribal lands which are controlled or owned by the United States, including lands selected by but not yet conveyed to Alaska Native Corporations and groups organized pursuant to the Alaska Native Claims Settlement Act of 1971.

(6) "Hui Malama I Na Kupuna O Hawai'i Nei" means the nonprofit, Native Hawaiian organization incorporated under the laws of the State of Hawaii by that name on April 17, 1989, for the purpose of providing guidance and expertise in decisions dealing with Native Hawaiian cultural issues, particularly burial issues.

(7) "Indian tribe" means any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(8) "museum" means any institution or State or local government agency (including any institution of higher learning) that receives Federal funds and has possession of, or control over, Native American cultural items. Such term does not include the Smithsonian Institution or any other Federal agency.

(9) "Native American" means of, or relating to, a tribe, people, or culture that is indigenous to the United States.

(10) "Native Hawaiian" means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

(11) "Native Hawaiian organization" means any organization which—

(A) serves and represents the interests of Native Hawaiians,

(B) has as a primary and stated purpose the provision of services to Native Hawaiians, and

(C) has expertise in Native Hawaiian Affairs, and

shall include the Office of Hawaiian Affairs and Hui Malama I Na Kupuna O Hawai'i Nei.

(12) "Office of Hawaiian Affairs" means the Office of Hawaiian Affairs established by the constitution of the State of Hawaii.

(13) "right of possession" means possession obtained with the voluntary consent of an individual or group that had authority of alienation. The original acquisition of a Native American unassociated funerary object, sacred object or object of cultural patrimony from an Indian tribe or Native Hawaiian organization with the voluntary consent of an individual or group with authority to alienate such object is deemed to give right of possession of that object, unless the phrase so defined would, as

applied in section 7(c), result in a Fifth Amendment taking by the United States as determined by the United States Claims Court pursuant to 28 U.S.C. 1491 in which event the "right of possession" shall be as provided under otherwise applicable property law. The original acquisition of Native American human remains and associated funerary objects which were excavated, exhumed, or otherwise obtained with full knowledge and consent of the next of kin or the official governing body of the appropriate culturally affiliated Indian tribe or Native Hawaiian organization is deemed to give right of possession to those remains.

(14) "Secretary" means the Secretary of the Interior.

(15) "tribal land" means—

(A) all lands within the exterior boundaries of any Indian reservation;

(B) all dependent Indian communities;

(C) any lands administered for the benefit of Native Hawaiians pursuant to the Hawaiian Homes Commission Act, 1920, and section 4 of Public Law 86-3.

25 USC 3002.

SEC. 3. OWNERSHIP.

(a) **NATIVE AMERICAN HUMAN REMAINS AND OBJECTS.**—The ownership or control of Native American cultural items which are excavated or discovered on Federal or tribal lands after the date of enactment of this Act shall be (with priority given in the order listed)—

(1) in the case of Native American human remains and associated funerary objects, in the lineal descendants of the Native American; or

(2) in any case in which such lineal descendants cannot be ascertained, and in the case of unassociated funerary objects, sacred objects, and objects of cultural patrimony—

(A) in the Indian tribe or Native Hawaiian organization on whose tribal land such objects or remains were discovered;

(B) in the Indian tribe or Native Hawaiian organization which has the closest cultural affiliation with such remains or objects and which, upon notice, states a claim for such remains or objects; or

(C) if the cultural affiliation of the objects cannot be reasonably ascertained and if the objects were discovered on Federal land that is recognized by a final judgment of the Indian Claims Commission or the United States Court of Claims as the aboriginal land of some Indian tribe—

(1) in the Indian tribe that is recognized as aboriginally occupying the area in which the objects were discovered, if upon notice, such tribe states a claim for such remains or objects, or

(2) if it can be shown by a preponderance of the evidence that a different tribe has a stronger cultural relationship with the remains or objects than the tribe or organization specified in paragraph (1), in the Indian tribe that has the strongest demonstrated relationship, if upon notice, such tribe states a claim for such remains or objects.

Claims.

Regulations.

(b) **UNCLAIMED NATIVE AMERICAN HUMAN REMAINS AND OBJECTS.**—Native American cultural items not claimed under subsec-

tion (a) shall be disposed of in accordance with regulations promulgated by the Secretary in consultation with the review committee established under section 8, Native American groups, representatives of museums and the scientific community.

(c) **INTENTIONAL EXCAVATION AND REMOVAL OF NATIVE AMERICAN HUMAN REMAINS AND OBJECTS.**—The intentional removal from or excavation of Native American cultural items from Federal or tribal lands for purposes of discovery, study, or removal of such items is permitted only if—

(1) such items are excavated or removed pursuant to a permit issued under section 4 of the Archaeological Resources Protection Act of 1979 (93 Stat. 721; 16 U.S.C. 470aa et seq.) which shall be consistent with this Act;

(2) such items are excavated or removed after consultation with or, in the case of tribal lands, consent of the appropriate (if any) Indian tribe or Native Hawaiian organization;

(3) the ownership and right of control of the disposition of such items shall be as provided in subsections (a) and (b); and

(4) proof of consultation or consent under paragraph (2) is shown.

(d) **INADVERTENT DISCOVERY OF NATIVE AMERICAN REMAINS AND OBJECTS.**—(1) Any person who knows, or has reason to know, that such person has discovered Native American cultural items on Federal or tribal lands after the date of enactment of this Act shall notify, in writing, the Secretary of the Department, or head of any other agency or instrumentality of the United States, having primary management authority with respect to Federal lands and the appropriate Indian tribe or Native Hawaiian organization with respect to tribal lands, if known or readily ascertainable, and, in the case of lands that have been selected by an Alaska Native Corporation or group organized pursuant to the Alaska Native Claims Settlement Act of 1971, the appropriate corporation or group. If the discovery occurred in connection with an activity, including (but not limited to) construction, mining, logging, and agriculture, the person shall cease the activity in the area of the discovery, make a reasonable effort to protect the items discovered before resuming such activity, and provide notice under this subsection. Following the notification under this subsection, and upon certification by the Secretary of the department or the head of any agency or instrumentality of the United States or the appropriate Indian tribe or Native Hawaiian organization that notification has been received, the activity may resume after 30 days of such certification.

(2) The disposition of and control over any cultural items excavated or removed under this subsection shall be determined as provided for in this section.

(3) If the Secretary of the Interior consents, the responsibilities (in whole or in part) under paragraphs (1) and (2) of the Secretary of any department (other than the Department of the Interior) or the head of any other agency or instrumentality may be delegated to the Secretary with respect to any land managed by such other Secretary or agency head.

(e) **RELINQUISHMENT.**—Nothing in this section shall prevent the governing body of an Indian tribe or Native Hawaiian organization from expressly relinquishing control over any Native American human remains, or title to or control over any funerary object, or sacred object.

SEC. 4. ILLEGAL TRAFFICKING.

(a) **ILLEGAL TRAFFICKING.**—Chapter 53 of title 18, United States Code, is amended by adding at the end thereof the following new section:

“§ 1170. Illegal Trafficking in Native American Human Remains and Cultural Items

“(a) Whoever knowingly sells, purchases, uses for profit, or transports for sale or profit, the human remains of a Native American without the right of possession to those remains as provided in the Native American Graves Protection and Repatriation Act shall be fined in accordance with this title, or imprisoned not more than 12 months, or both, and in the case of a second or subsequent violation, be fined in accordance with this title, or imprisoned not more than 5 years, or both.

“(b) Whoever knowingly sells, purchases, uses for profit, or transports for sale or profit any Native American cultural items obtained in violation of the Native American Grave Protection and Repatriation Act shall be fined in accordance with this title, imprisoned not more than one year, or both, and in the case of a second or subsequent violation, be fined in accordance with this title, imprisoned not more than 5 years, or both.”

(b) **TABLE OF CONTENTS.**—The table of contents for chapter 53 of title 18, United States Code, is amended by adding at the end thereof the following new item:

“1170. Illegal Trafficking in Native American Human Remains and Cultural Items.”

Museums.
25 USC 3003.

SEC. 5. INVENTORY FOR HUMAN REMAINS AND ASSOCIATED FUNERARY OBJECTS.

(a) **IN GENERAL.**—Each Federal agency and each museum which has possession or control over holdings or collections of Native American human remains and associated funerary objects shall compile an inventory of such items and, to the extent possible based on information possessed by such museum or Federal agency, identify the geographical and cultural affiliation of such item.

(b) **REQUIREMENTS.**—(1) The inventories and identifications required under subsection (a) shall be—

(A) completed in consultation with tribal government and Native Hawaiian organization officials and traditional religious leaders;

(B) completed by not later than the date that is 5 years after the date of enactment of this Act, and

(C) made available both during the time they are being conducted and afterward to a review committee established under section 8.

(2) Upon request by an Indian tribe or Native Hawaiian organization which receives or should have received notice, a museum or Federal agency shall supply additional available documentation to supplement the information required by subsection (a) of this section. The term “documentation” means a summary of existing museum or Federal agency records, including inventories or catalogues, relevant studies, or other pertinent data for the limited purpose of determining the geographical origin, cultural affiliation, and basic facts surrounding acquisition and accession of Native American human remains and associated funerary objects subject to this section. Such term does not mean, and this Act shall not be

construed to be an authorization for, the initiation of new scientific studies of such remains and associated funerary objects or other means of acquiring or preserving additional scientific information from such remains and objects.

(c) **EXTENSION OF TIME FOR INVENTORY.**—Any museum which has made a good faith effort to carry out an inventory and identification under this section, but which has been unable to complete the process, may appeal to the Secretary for an extension of the time requirements set forth in subsection (b)(1)(B). The Secretary may extend such time requirements for any such museum upon a finding of good faith effort. An indication of good faith shall include the development of a plan to carry out the inventory and identification process.

(d) **NOTIFICATION.**—(1) If the cultural affiliation of any particular Native American human remains or associated funerary objects is determined pursuant to this section, the Federal agency or museum concerned shall, not later than 6 months after the completion of the inventory, notify the affected Indian tribes or Native Hawaiian organizations.

(2) The notice required by paragraph (1) shall include information—

(A) which identifies each Native American human remains or associated funerary objects and the circumstances surrounding its acquisition;

(B) which lists the human remains or associated funerary objects that are clearly identifiable as to tribal origin; and

(C) which lists the Native American human remains and associated funerary objects that are not clearly identifiable as being culturally affiliated with that Indian tribe or Native Hawaiian organization, but which, given the totality of circumstances surrounding acquisition of the remains or objects, are determined by a reasonable belief to be remains or objects culturally affiliated with the Indian tribe or Native Hawaiian organization.

(3) A copy of each notice provided under paragraph (1) shall be sent to the Secretary who shall publish each notice in the Federal Register.

Federal
Register,
publication.

(e) **INVENTORY.**—For the purposes of this section, the term “inventory” means a simple itemized list that summarizes the information called for by this section.

SEC. 6. SUMMARY FOR UNASSOCIATED FUNERARY OBJECTS, SACRED OBJECTS, AND CULTURAL PATRIMONY.

25 USC 3004.

(a) **IN GENERAL.**—Each Federal agency or museum which has possession or control over holdings or collections of Native American unassociated funerary objects, sacred objects, or objects of cultural patrimony shall provide a written summary of such objects based upon available information held by such agency or museum. The summary shall describe the scope of the collection, kinds of objects included, reference to geographical location, means and period of acquisition and cultural affiliation, where readily ascertainable.

Museums.

(b) **REQUIREMENTS.**—(1) The summary required under subsection (a) shall be—

(A) in lieu of an object-by-object inventory;

(B) followed by consultation with tribal government and Native Hawaiian organization officials and traditional religious leaders; and

(C) completed by not later than the date that is 3 years after the date of enactment of this Act.

(2) Upon request, Indian Tribes and Native Hawaiian organizations shall have access to records, catalogues, relevant studies or other pertinent data for the limited purposes of determining the geographic origin, cultural affiliation, and basic facts surrounding acquisition and accession of Native American objects subject to this section. Such information shall be provided in a reasonable manner to be agreed upon by all parties.

25 USC 3005.

SEC. 7. REPATRIATION.

(a) REPATRIATION OF NATIVE AMERICAN HUMAN REMAINS AND OBJECTS POSSESSED OR CONTROLLED BY FEDERAL AGENCIES AND MUSEUMS.—(1) If, pursuant to section 5, the cultural affiliation of Native American human remains and associated funerary objects with a particular Indian tribe or Native Hawaiian organization is established, then the Federal agency or museum, upon the request of a known lineal descendant of the Native American or of the tribe or organization and pursuant to subsections (b) and (e) of this section, shall expeditiously return such remains and associated funerary objects.

(2) If, pursuant to section 6, the cultural affiliation with a particular Indian tribe or Native Hawaiian organization is shown with respect to unassociated funerary objects, sacred objects or objects of cultural patrimony, then the Federal agency or museum, upon the request of the Indian tribe or Native Hawaiian organization and pursuant to subsections (b), (c) and (e) of this section, shall expeditiously return such objects.

(3) The return of cultural items covered by this Act shall be in consultation with the requesting lineal descendant or tribe or organization to determine the place and manner of delivery of such items.

(4) Where cultural affiliation of Native American human remains and funerary objects has not been established in an inventory prepared pursuant to section 5, or the summary pursuant to section 6, or where Native American human remains and funerary objects are not included upon any such inventory, then, upon request and pursuant to subsections (b) and (e) and, in the case of unassociated funerary objects, subsection (c), such Native American human remains and funerary objects shall be expeditiously returned where the requesting Indian tribe or Native Hawaiian organization can show cultural affiliation by a preponderance of the evidence based upon geographical, kinship, biological, archaeological, anthropological, linguistic, folkloric, oral traditional, historical, or other relevant information or expert opinion.

(5) Upon request and pursuant to subsections (b), (c) and (e), sacred objects and objects of cultural patrimony shall be expeditiously returned where—

(A) the requesting party is the direct lineal descendant of an individual who owned the sacred object;

(B) the requesting Indian tribe or Native Hawaiian organization can show that the object was owned or controlled by the tribe or organization; or

(C) the requesting Indian tribe or Native Hawaiian organization can show that the sacred object was owned or controlled by a member thereof, provided that in the case where a sacred object was owned by a member thereof, there are no identifiable

lineal descendants of said member or the lineal descendants, upon notice, have failed to make a claim for the object under this Act.

(b) **SCIENTIFIC STUDY.**—If the lineal descendant, Indian tribe, or Native Hawaiian organization requests the return of culturally affiliated Native American cultural items, the Federal agency or museum shall expeditiously return such items unless such items are indispensable for completion of a specific scientific study, the outcome of which would be of major benefit to the United States. Such items shall be returned by no later than 90 days after the date on which the scientific study is completed.

(c) **STANDARD OF REPATRIATION.**—If a known lineal descendant or an Indian tribe or Native Hawaiian organization requests the return of Native American unassociated funerary objects, sacred objects or objects of cultural patrimony pursuant to this Act and presents evidence which, if standing alone before the introduction of evidence to the contrary, would support a finding that the Federal agency or museum did not have the right of possession, then such agency or museum shall return such objects unless it can overcome such inference and prove that it has a right of possession to the objects.

(d) **SHARING OF INFORMATION BY FEDERAL AGENCIES AND MUSEUMS.**—Any Federal agency or museum shall share what information it does possess regarding the object in question with the known lineal descendant, Indian tribe, or Native Hawaiian organization to assist in making a claim under this section.

(e) **COMPETING CLAIMS.**—Where there are multiple requests for repatriation of any cultural item and, after complying with the requirements of this Act, the Federal agency or museum cannot clearly determine which requesting party is the most appropriate claimant, the agency or museum may retain such item until the requesting parties agree upon its disposition or the dispute is otherwise resolved pursuant to the provisions of this Act or by a court of competent jurisdiction.

(f) **MUSEUM OBLIGATION.**—Any museum which repatriates any item in good faith pursuant to this Act shall not be liable for claims by an aggrieved party or for claims of breach of fiduciary duty, public trust, or violations of state law that are inconsistent with the provisions of this Act.

SEC. 8. REVIEW COMMITTEE.

25 USC 3006.

(a) **ESTABLISHMENT.**—Within 120 days after the date of enactment of this Act, the Secretary shall establish a committee to monitor and review the implementation of the inventory and identification process and repatriation activities required under sections 5, 6 and 7.

(b) **MEMBERSHIP.**—(1) The Committee established under subsection (a) shall be composed of 7 members,

(A) 3 of whom shall be appointed by the Secretary from nominations submitted by Indian tribes, Native Hawaiian organizations, and traditional Native American religious leaders with at least 2 of such persons being traditional Indian religious leaders;

(B) 3 of whom shall be appointed by the Secretary from nominations submitted by national museum organizations and scientific organizations; and

(C) 1 who shall be appointed by the Secretary from a list of persons developed and consented to by all of the members appointed pursuant to subparagraphs (A) and (B).

(2) The Secretary may not appoint Federal officers or employees to the committee.

(3) In the event vacancies shall occur, such vacancies shall be filled by the Secretary in the same manner as the original appointment within 90 days of the occurrence of such vacancy.

(4) Members of the committee established under subsection (a) shall serve without pay, but shall be reimbursed at a rate equal to the daily rate for GS-18 of the General Schedule for each day (including travel time) for which the member is actually engaged in committee business. Each member shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(c) RESPONSIBILITIES.—The committee established under subsection (a) shall be responsible for—

(1) designating one of the members of the committee as chairman;

(2) monitoring the inventory and identification process conducted under sections 5 and 6 to ensure a fair, objective consideration and assessment of all available relevant information and evidence;

(3) upon the request of any affected party, reviewing and making findings related to—

(A) the identity or cultural affiliation of cultural items, or

(B) the return of such items;

(4) facilitating the resolution of any disputes among Indian tribes, Native Hawaiian organizations, or lineal descendants and Federal agencies or museums relating to the return of such items including convening the parties to the dispute if deemed desirable;

(5) compiling an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum and recommending specific actions for developing a process for disposition of such remains;

(6) consulting with Indian tribes and Native Hawaiian organizations and museums on matters within the scope of the work of the committee affecting such tribes or organizations;

(7) consulting with the Secretary in the development of regulations to carry out this Act;

(8) performing such other related functions as the Secretary may assign to the committee; and

(9) making recommendations, if appropriate, regarding future care of cultural items which are to be repatriated.

(d) Any records and findings made by the review committee pursuant to this Act relating to the identity or cultural affiliation of any cultural items and the return of such items may be admissible in any action brought under section 15 of this Act.

(e) RECOMMENDATIONS AND REPORT.—The committee shall make the recommendations under paragraph (c)(5) in consultation with Indian tribes and Native Hawaiian organizations and appropriate scientific and museum groups.

(f) ACCESS.—The Secretary shall ensure that the committee established under subsection (a) and the members of the committee have reasonable access to Native American cultural items under review and to associated scientific and historical documents.

(g) DUTIES OF SECRETARY.—The Secretary shall—

(1) establish such rules and regulations for the committee as may be necessary, and

Regulations.

(2) provide reasonable administrative and staff support necessary for the deliberations of the committee.

(h) **ANNUAL REPORT.**—The committee established under subsection (a) shall submit an annual report to the Congress on the progress made, and any barriers encountered, in implementing this section during the previous year.

(i) **TERMINATION.**—The committee established under subsection (a) shall terminate at the end of the 120-day period beginning on the day the Secretary certifies, in a report submitted to Congress, that the work of the committee has been completed.

SEC. 9. PENALTY.

(a) **PENALTY.**—Any museum that fails to comply with the requirements of this Act may be assessed a civil penalty by the Secretary of the Interior pursuant to procedures established by the Secretary through regulation. A penalty assessed under this subsection shall be determined on the record after opportunity for an agency hearing. Each violation under this subsection shall be a separate offense.

(b) **AMOUNT OF PENALTY.**—The amount of a penalty assessed under subsection (a) shall be determined under regulations promulgated pursuant to this Act, taking into account, in addition to other factors—

- (1) the archaeological, historical, or commercial value of the item involved;
- (2) the damages suffered, both economic and noneconomic, by an aggrieved party, and
- (3) the number of violations that have occurred.

(c) **ACTIONS TO RECOVER PENALTIES.**—If any museum fails to pay an assessment of a civil penalty pursuant to a final order of the Secretary that has been issued under subsection (a) and not appealed or after a final judgment has been rendered on appeal of such order, the Attorney General may institute a civil action in an appropriate district court of the United States to collect the penalty. In such action, the validity and amount of such penalty shall not be subject to review.

(d) **SUBPOENAS.**—In hearings held pursuant to subsection (a), subpoenas may be issued for the attendance and testimony of witnesses and the production of relevant papers, books, and documents. Witnesses so summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States.

SEC. 10. GRANTS.

(a) **INDIAN TRIBES AND NATIVE HAWAIIAN ORGANIZATIONS.**—The Secretary is authorized to make grants to Indian tribes and Native Hawaiian organizations for the purpose of assisting such tribes and organizations in the repatriation of Native American cultural items.

(b) **MUSEUMS.**—The Secretary is authorized to make grants to museums for the purpose of assisting the museums in conducting the inventories and identification required under sections 5 and 6.

SEC. 11. SAVINGS PROVISIONS.

Nothing in this Act shall be construed to—

- (1) limit the authority of any Federal agency or museum to—
 - (A) return or repatriate Native American cultural items to Indian tribes, Native Hawaiian organizations, or individuals, and

Museums.
25 USC 3007.

Courts.

25 USC 3008.

25 USC 3009.

- (B) enter into any other agreement with the consent of the culturally affiliated tribe or organization as to the disposition of, or control over, items covered by this Act;
- (2) delay actions on repatriation requests that are pending on the date of enactment of this Act;
- (3) deny or otherwise affect access to any court;
- (4) limit any procedural or substantive right which may otherwise be secured to individuals or Indian tribes or Native Hawaiian organizations; or
- (5) limit the application of any State or Federal law pertaining to theft or stolen property.

25 USC 3010.

SEC. 12. SPECIAL RELATIONSHIP BETWEEN FEDERAL GOVERNMENT AND INDIAN TRIBES.

This Act reflects the unique relationship between the Federal Government and Indian tribes and Native Hawaiian organizations and should not be construed to establish a precedent with respect to any other individual, organization or foreign government.

25 USC 3011.

SEC. 13. REGULATIONS.

The Secretary shall promulgate regulations to carry out this Act within 12 months of enactment.

25 USC 3012.

SEC. 14. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated such sums as may be necessary to carry out this Act.

25 USC 3013.

SEC. 15. ENFORCEMENT.

Courts.

The United States district courts shall have jurisdiction over any action brought by any person alleging a violation of this Act and shall have the authority to issue such orders as may be necessary to enforce the provisions of this Act.

Approved November 16, 1990.

LEGISLATIVE HISTORY—H.R. 5237:

HOUSE REPORTS: No. 101-877 (Comm. on Interior and Insular Affairs).
CONGRESSIONAL RECORD, Vol. 136 (1990):

- Oct. 22, considered and passed House.
Oct. 25, considered and passed Senate; passage vitiated.
Oct. 26, reconsidered and passed Senate, amended.
Oct. 27, House concurred in Senate amendments.



APPENDIX B

A Comparison of Different U.S. State Laws on Human Remains and Sacred Objects.

Arizona State, applies to public and private lands “Human remains and associated funerary objects in unmarked graves and abandoned cemeteries that exceed 50 years in age are protected on State, county, city and municipal lands in Arizona under Arizona Revised Statute 41-844. This statute also protects sacred ceremonial objects and objects of national or cultural patrimony on State lands that have special importance to American Indians. On private lands, Arizona Revised Statute §41-865 provides similar protection to human remains and associated funerary objects that also exceed 50 years in age. These laws were adopted in 1990 and are similar to federal laws protecting human remains on federal lands.” (Arizona Statue SS41-865, 2022). The laws provide for the repatriation of human remains, funerary objects, sacred ceremonial materials, and items of tribal patrimony. The statutes confer repatriation rights on the governments of Indian tribes that have cultural or religious affinity to the materials.

California State, applies to public and private lands California law (Section 5097.9, et seq. and Section 7050.5) “prohibits severe or irreparable damage to any Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine located on public property, except on a clear and convincing showing that the public interest and necessity so require. The public property of all cities and counties located within the limits of the city and county, except for all parklands in excess of 100 acres, are exempt. It is state policy that Native American remains and associated grave artifacts be repatriated. When remains are discovered,

the persons believed to be most likely descended from the deceased are contacted. They may, with the permission of the landowner, inspect the site and may recommend means for treatment or disposition, with appropriate dignity, of the remains and any associated grave goods.

California law prohibits obtaining or possessing any Native American artifacts or human remains that are taken from a Native American grave or cairn on or after January 1, 1984, except as otherwise provided by law or agreement.” (California Law Section 5097.9, 2022).

Nebraska State, applies to public and private lands Nebraska Revised Statutes (12-1201 through 12-1212) “require the discovery of human skeletal remains or burial goods associated with an unmarked human burial to be reported. If the remains or burial goods are determined to be of American Indian origin, known relatives or Indian tribes.” (NEBRASKA Statue 12-1201, 2022). According to Richard Katz, California Assemblyman, 1991 “Cultural Patrimony & Sacred Objects and Sites that may be tribal linked to the remains or goods are contacted regarding reburial or other disposition. Nebraska enacted the nation's first general repatriation statute in 1989, requiring all state-funded or state-recognized museums to repatriate "reasonably identifiable" remains and grave goods to tribes of origin upon request.”

Oregon State, applies to public and private lands Oregon’s Indian Graves and Protected Objects laws (ORS 97.740-97.760) “protect all Native American cairns and graves and associated cultural items. Oregon’s laws regarding archaeological objects and sites (ORS 358.905-358.961) define archaeological sites as those 75 years of age or older that are part of the physical record of an indigenous or other culture and are material remains of past human life or activity that are of archaeological significance including, but not limited to, monuments, symbols,

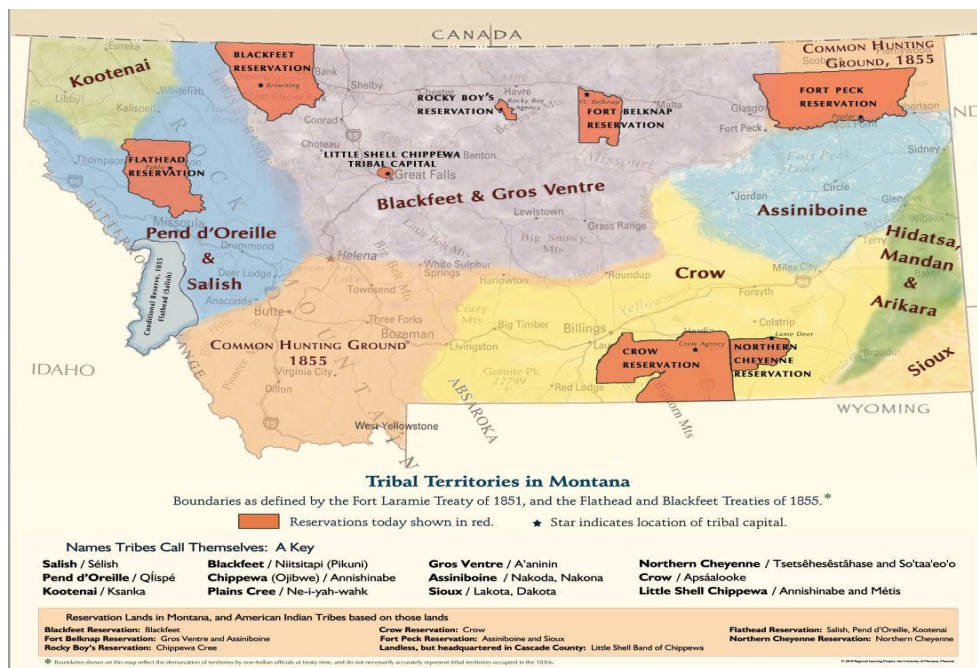
tools, facilities, technological by-products and dietary byproducts. Sites of archaeological significance are defined as any archaeological site on, or eligible for inclusion on, the National Register of Historic Places as determined in writing by the State Historic Preservation Officer or any archaeological site that has been determined significant in writing by an Indian tribe. The laws prohibit. The sale and exchange of cultural items or damage to archaeological sites on public and private lands. Items of cultural patrimony or associated with human remains are protected everywhere, unless the activity is authorized by an archaeological excavation permit.” (OREGONORS 97.740-97.760, 2022).

APPENDIX C

Map of the 7 Indian Reservations in Montana State:

Crow, Northern Cheyenne, Fort Peck, Fort Belknap, Rocky Boy's, Blackfeet and Flathead Reservations.

(Montana Tribes, December, 2022)



APPENDIX D

Map of First Nation Treaties in Canada

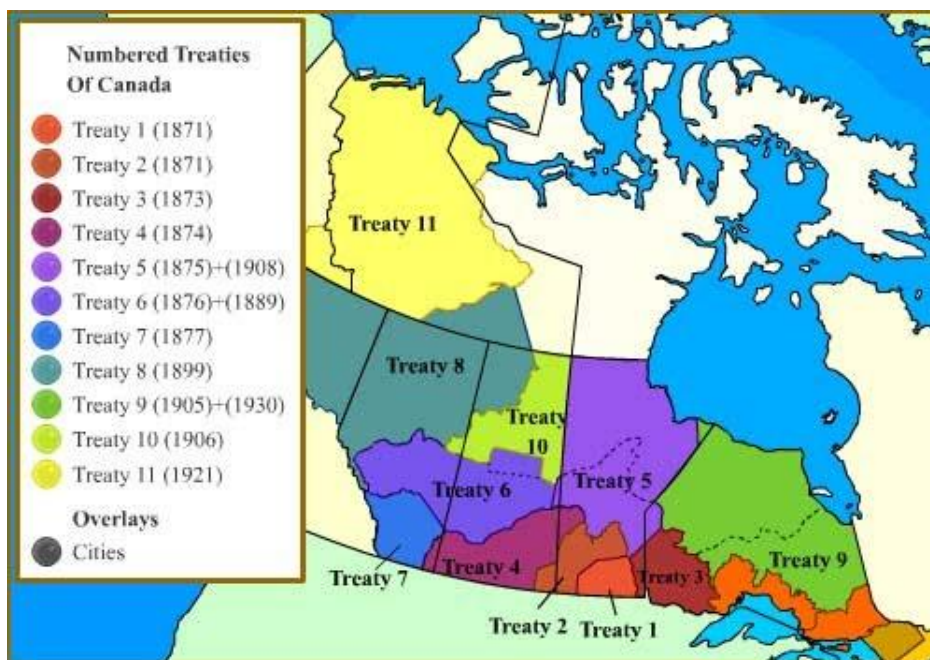
(Government of Canada-Treaties in Canada December 2022)



APPENDIX D-2

Map of First Nation Treaties in Canada

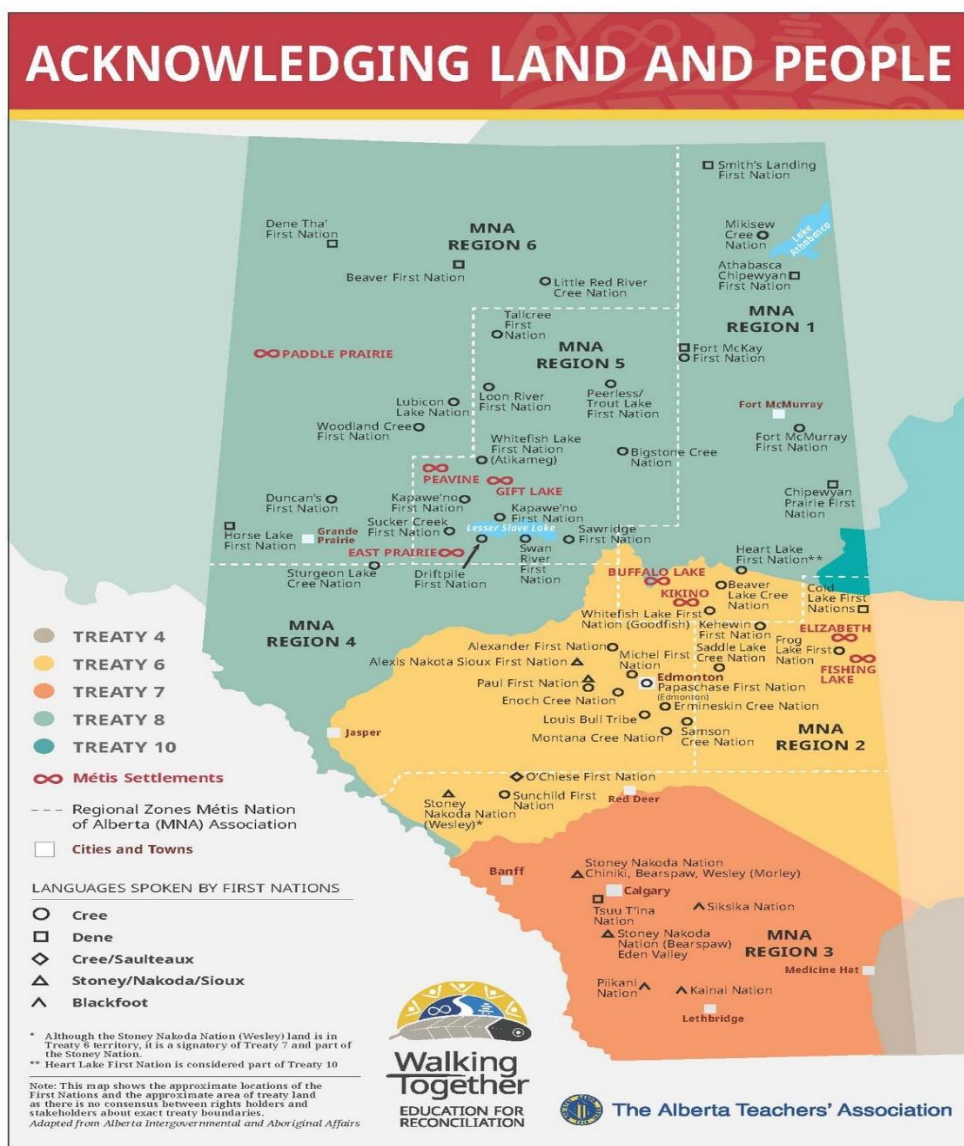
(Canadian Treaties Map; Understanding the Treaties, December 2022)



APPENDIX E

MAP OF 138 ALBERTA INDIGENOUS AND 8 METIS COMMUNITIES IN ALBERTA CANADALOCATED ON TREATY 6, 7 AND 8 TERRITORY

(Land Acknowledgement, Alberta, December 2022)



APPENDIX F

FIRST NATIONS SACRED CEREMONIAL OBJECTS REPATRIATION ACT



Province of Alberta

FIRST NATIONS SACRED CEREMONIAL OBJECTS REPATRIATION ACT

Revised Statutes of Alberta 2000
Chapter F-14

Current as of December 13, 2016

Office Consolidation

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Note

All persons making use of this consolidation are reminded that it has no legislative sanction, that amendments have been embodied for convenience of reference only. The official Statutes and Regulations should be consulted for all purposes of interpreting and applying the law.

Regulations

The following is a list of the regulations made under the *First Nations Sacred Ceremonial Objects Repatriation Act* that are filed as Alberta Regulations under the Regulations Act

	Alta. Reg.	Amendments
First Nations Sacred Ceremonial Objects Repatriation Act		
Blackfoot First Nations Sacred Ceremonial Objects Repatriation		
Objects Repatriation.....	96/2004	35/2007, 68/2008, 31/2012, 170/2012, 59/2013

FIRST NATIONS SACRED CEREMONIAL OBJECTS REPATRIATION ACT

Chapter F-14

Table of Contents

- 1 Definitions
- 2 General right to apply for repatriation
- 3 Effect of repatriation
- 4 Protection from liability
- 5 Regulations
- 6 Blackfoot agreements
- 7 Coming into force

Schedule

Preamble

WHEREAS Alberta museums have for several decades held sacred ceremonial objects of great spiritual value to First Nations, preserving them for the benefit of future generations;

WHEREAS First Nations desire the return of sacred ceremonial objects that are vital to the practice of their sacred ceremonial traditions; and

WHEREAS the Crown desires to harmonize the role museums play in the preservation of human heritage with the aspirations of First Nations to support traditional values in strong, confident First Nations communities;

THEREFORE HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

Definitions

1 In this Act,

(a) “Blackfoot agreements” means the following agreements:

(i) the agreement entered into on January 14, 2000 by

- (A) Her Majesty the Queen in right of Alberta, as represented by the Premier,
- (B) Blood Tribe, Peigan Nation and Siksika Nation, as represented by the Chief and Councillors of those First Nations, and
- (C) Glenbow-Alberta Institute;
- (ii) the agreements referred to in the Schedule to this Act;
- (b) “First Nation” has the meaning given to it in the regulations;
- (c) “Minister” means the Minister responsible for this Act as determined under section 16 of the *Government Organization Act*;
- (d) “repatriation” means
 - (i) the transfer to a First Nation by the Crown of the Crown’s title to a sacred ceremonial object, and
 - (ii) the acceptance by the First Nation of that transfer;
- (e) “sacred ceremonial object” means an object, the title to which is vested in the Crown, that
 - (i) was used by a First Nation in the practice of sacred ceremonial traditions,
 - (ii) is in the possession and care of the Royal Alberta Museum or the Glenbow-Alberta Institute or on loan from one of those institutions to a First Nation, or is otherwise in the possession and care of the Crown, and
 - (iii) is vital to the practice of the First Nation’s sacred ceremonial traditions.

RSA 2000 cF-14 s1;2008 c17 s2

General right to apply for repatriation

2(1) A First Nation may apply to the Minister in accordance with the regulations for the repatriation of a sacred ceremonial object.

(2) The Minister must agree to the repatriation of a sacred ceremonial object unless, in the Minister’s opinion, repatriation would not be appropriate.

(3) Repatriation may occur under this section only after consultations have been completed in accordance with the regulations.

2000 cF-11.2 s2

Effect of repatriation

3 On the repatriation of a sacred ceremonial object under this Act, the First Nation holds the repatriated sacred ceremonial object on behalf of the people of that First Nation.

2000 cF-11.2 s3

Protection from liability

4 No action lies against the Crown or the Glenbow-Alberta Institute in respect of any loss or damage arising out of the repatriation of any sacred ceremonial object pursuant to this Act, the regulations or the Blackfoot agreements, or in respect of anything done or omitted to be done in good faith pursuant to this Act, the regulations or the Blackfoot agreements.

RSA 2000 cF-14 s4; 2008 c17 s3

Regulations

5 The Lieutenant Governor in Council may make regulations

- (a) defining "First Nation";
- (b) respecting the process and procedures to be followed in repatriating a sacred ceremonial object under section 2;
- (c) respecting who is to represent a First Nation for any purpose relating to the repatriation of a sacred ceremonial object under section 2;
- (d) respecting the consultations with a First Nation that must be completed for the purpose of section 2(3);
- (e) respecting the process by which input may be obtained by the Minister from persons other than a First Nation that applies for repatriation under section 2 before a decision is made by the Minister in respect of that application.

2000 cF-11.2 s5

Blackfoot agreements

6 The Minister agrees

- (a) to the repatriation to the Blood Tribe of each sacred ceremonial object listed in Schedule A to the Blackfoot agreement referred to in section 1(a)(i) and each sacred ceremonial object listed in the agreements referred to in Part 1 of the Schedule to this Act,

- (b) to the repatriation to the Peigan Nation of each sacred ceremonial object listed in Schedule B to the Blackfoot agreement referred to in section 1(a)(i) and each sacred ceremonial object listed in the agreements referred to in Part 2 of the Schedule to this Act, and
- (c) to the repatriation to the Siksika Nation of each sacred ceremonial object listed in Schedule C to the Blackfoot agreement referred to in section 1(a)(i) and each sacred ceremonial object listed in the agreements referred to in Part 3 of the Schedule to this Act.

RSA 2000 cF-14 s6;2008 c17 s4

Coming into force

7 Section 2 comes into force on Proclamation.

2000 cF-11.2 s7

*(NOTE: Section 2 proclaimed in force December 13, 2016.)***Schedule****Part 1**

The agreements entered into on the following dates by the Provincial Museum of Alberta, and the Mookaakin Cultural and Heritage Society, representing the Blood Tribe:

June 18, 1998;
 November 26, 1998;
 July 24, 1999;
 September 8, 2000;
 March 1, 2001;
 May 10, 2001;
 July 6, 2001;
 July 30, 2001;
 August 20, 2001.

Part 2

The agreement entered into on June 11, 2001 by the Provincial Museum of Alberta, and the Long Time Trail Historical Society, representing the Peigan Nation.

Part 3

The agreements entered into on the following dates by the Provincial Museum of Alberta, and the Siksika Nation Museum, representing the Siksika Nation:

Schedule	FIRST NATIONS SACRED CEREMONIAL OBJECTS REPATRIATION ACT	RSA 2000 Chapter F-14
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June 5, 1998;
April 21, 1999;
May 11, 1999;
February 14, 2001;
July 10, 2001.

2008 c17 s5

APPENDIX G

CANADA'S PROPOSED BILL C 391

An Act respecting a national strategy for the repatriation of indigenous human remains and cultural property

1st Session, 42nd Parliament,
64-65-66-67-68 Elizabeth II, 2015-2016-2017-2018-2019

HOUSE OF COMMONS OF CANADA

1^{re} session, 42^e législature,
64-65-66-67-68 Elizabeth II, 2015-2016-2017-2018-2019

CHAMBRE DES COMMUNES DU CANADA

BILL C-391

An Act respecting a national strategy for the repatriation of Indigenous human remains and cultural property

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Short Title

Short title

1 This Act may be cited as the *Indigenous Human Remains and Cultural Property Repatriation Act*. 5

Interpretation

Definition of Minister

2 In this Act, *Minister* means the Minister of Canadian Heritage.

National Strategy on Indigenous Human Remains and Cultural Property Repatriation

National strategy

3 The Minister, in cooperation with representatives of First Nations, Inuit and Métis peoples of Canada, and of the provinces and territories, in accordance with the United Nations Declaration on the Rights of Indigenous Peoples, including Article 31 of that text, must develop and implement a comprehensive national strategy to promote and support the return of Indigenous human remains and cultural property, wherever situated, to the Indigenous peoples of Canada. The strategy must include measures that seek to

PROJET DE LOI C-391

Loi concernant une stratégie nationale sur le rapatriement de restes humains et de biens culturels autochtones

Sa Majesté, sur l'avis et avec le consentement du Sénat et de la Chambre des communes du Canada, édicte :

Titre abrégé

Titre abrégé

1 *Loi sur le rapatriement de restes humains et de biens culturels autochtones*. 5

Définition

Définition de ministre

2 Dans la présente loi, *ministre* s'entend du ministre du Patrimoine canadien.

Stratégie nationale sur le rapatriement de restes humains et de biens culturels autochtones

Stratégie nationale

3 Le ministre, en coopération avec des représentants des Premières Nations, des Inuits et des Métis ainsi que des représentants des provinces et des territoires, et en conformité avec la Déclaration des Nations Unies sur les droits des peuples autochtones, notamment l'article 31 de celle-ci, élabore et met en œuvre une stratégie nationale globale visant à promouvoir et à soutenir la restitution de restes humains ou de biens culturels autochtones, peu importe où ils se trouvent, aux peuples autochtones du Canada. La stratégie prévoit notamment des mesures visant à :

421487

(a) implement a mechanism by which any First Nation, Inuit or Métis community or organization may acquire or reacquire Indigenous human remains or cultural property;

(b) encourage owners, custodians or trustees of Indigenous human remains or cultural property to return such material to Indigenous peoples and support them in the process;

(c) support the recognition that preservation of Indigenous human remains and cultural property and of access to that material for educational and ceremonial purposes are principles of equal importance;

(d) encourage consideration of traditional ways of knowing rather than relying on strict documentary evidence in relation to the repatriation of Indigenous human remains and cultural property; and

(e) resolve any conflicting claims to Indigenous human remains or cultural property, whether within or between Indigenous communities or organizations, in a manner that is respectful of Indigenous traditional processes and forms of ownership and that allows claimants to be self-represented.

a) mettre en œuvre un mécanisme permettant aux communautés et aux organisations de membres des Premières Nations, d'Inuits et de Métis d'acquérir ou de réacquérir des restes humains ou des biens culturels autochtones;

b) inciter les propriétaires, les gardiens et les fiduciaires de restes humains ou de biens culturels autochtones à les restituer aux peuples autochtones et soutenir ceux-ci dans le processus;

c) favoriser la reconnaissance que la préservation des restes humains et des biens culturels autochtones et que leur accès à des fins éducatives ou cérémonielles sont des principes d'égale importance;

d) dans le cadre du rapatriement des restes humains ou des biens culturels autochtones, inciter les parties prenantes à tenir compte du savoir traditionnel et non uniquement de la preuve documentaire;

e) résoudre des revendications contradictoires de communautés ou d'organisations autochtones, ou parmi leurs membres, à l'égard de restes humains ou de biens culturels autochtones, d'une manière qui respecte les traditions autochtones et les différents régimes de propriété autochtones et qui permet aux demandeurs de se représenter eux-mêmes.

Report and publication

Report to Parliament

4 (1) Within three years after the day on which this Act comes into force, the Minister must prepare a report setting out the national strategy and cause the report to be laid before each House of Parliament on any of the first 15 days on which that House is sitting after the report is completed.

Publication of report

(2) The Minister must publish the report on the Department of Canadian Heritage website within 10 days after the day on which the report is tabled in Parliament and ensure its dissemination to First Nations, Inuit and Métis communities and organizations in Canada.

Review and report

Review and report

5 (1) Within two years after the tabling of the report referred to in section 4, the Minister must prepare a report on the effectiveness of the national strategy. The report must include the Minister's conclusions and recommendations regarding the strategy and any outcomes that re-

Rapport et publication

Rapport au Parlement

4 (1) Dans les trois ans suivant la date d'entrée en vigueur de la présente loi, le ministre établit un rapport énonçant la stratégie nationale et le fait déposer devant chaque chambre du Parlement dans les quinze premiers jours de séance de celle-ci suivant son achèvement.

Publication du rapport

(2) Dans les dix jours suivant la date de dépôt du rapport au Parlement, le ministre le publie sur le site Web du ministère du Patrimoine canadien et le diffuse dans les communautés et organisations de membres des Premières Nations, d'Inuits et de Métis du Canada.

Examen et rapport

Examen et rapport

5 (1) Dans les deux ans suivant le dépôt du rapport visé à l'article 4, le ministre établit un rapport sur l'efficacité de la stratégie nationale qui comporte des renseignements sur les résultats qui découleraient de sa mise en œuvre ainsi que ses conclusions et recommandations sur

sult from its implementation and it may include appropriate information on repatriated Indigenous human remains and cultural property and any repatriation efforts currently under way.

Tabling of report

(2) The Minister must cause the report referred to in subsection (1) to be laid before each House of Parliament on any of the first 15 days on which that House is sitting after the report is completed. 5

celle-ci. Le rapport peut notamment comporter des renseignements appropriés sur les restes humains et les biens culturels autochtones qui ont été rapatriés et sur les efforts de rapatriement qui sont actuellement déployés.

Dépôt du rapport

(2) Le ministre fait déposer le rapport visé au paragraphe (1) devant chaque chambre du Parlement dans les quinze premiers jours de séance de celle-ci après son achèvement.

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