

CHAPTER 17

CULTURAL ARTIFACTS AND HERITAGE

GENERAL

1. The Parties recognize the integral role of Nisga'a artifacts in the continuation of Nisga'a culture, values, and traditions.
2. The Parties recognize the Nisga'a Nation's traditional and sacred connection with Nisga'a artifacts, regardless of whether those artifacts are held by the Nisga'a Nation, a Nisga'a Village, a Nisga'a Corporation, a Nisga'a citizen, the Canadian Museum of Civilization, or the Royal British Columbia Museum.
3. If the Nisga'a Nation or Canada considers that there may be an error in the determination of whether an artifact:
 - a. set out in Appendix L-1; or
 - b. in the permanent collection of the Canadian Museum of Civilization, including an artifact set out in Appendix L-2is a Nisga'a artifact, they will endeavour to determine whether the artifact is a Nisga'a artifact.
4. If the Nisga'a Nation or British Columbia considers that there may be an error in the determination of whether an artifact:
 - a. set out in Appendix L-3; or
 - b. in the permanent collection of the Royal British Columbia Museum, including an artifact set out in Appendix L-4is a Nisga'a artifact, they will endeavour to determine whether the artifact is a Nisga'a artifact.
5. A disagreement in respect of a determination under paragraph 3 or 4 of whether an artifact is a Nisga'a artifact is a disagreement within the meaning of the Dispute Resolution Chapter.
6. An artifact originally obtained from a Nisga'a person, a Nisga'a community, or a Nisga'a heritage site is presumed, in the absence of proof to the contrary, to be a Nisga'a artifact.

RETURN OF NISGA'A ARTIFACTS

Canadian Museum of Civilization

7. Appendix L-1 and Appendix L-2 set out all artifacts in the permanent collection of the Canadian Museum of Civilization on the effective date that have been identified as Nisga'a artifacts.
8. The Canadian Museum of Civilization will transfer to the Nisga'a Nation without condition all its legal interests in, and possession of, the Nisga'a artifacts set out in Appendix L-1:
 - a. as soon as practicable following a request by the Nisga'a Nation;
 - b. if there is no request by the Nisga'a Nation, five years after the effective date or the date that the artifact was included in Appendix L-1, whichever date is later; or
 - c. by any other date agreed to by the Canadian Museum of Civilization and the Nisga'a Nation.

9. The transfer of the legal interests in, and possession of, the Nisga'a artifacts under paragraph 8 is deemed to occur when those artifacts arrive at a location for delivery designated in writing by the Nisga'a Nation.
10. If the Nisga'a Nation does not designate a location for delivery, the Canadian Museum of Civilization will deliver those artifacts to the address for the Nisga'a Nation set out in the General Provisions Chapter.
11. The Canadian Museum of Civilization:
 - a. will continue to hold the Nisga'a artifacts set out in Appendix L-1 under the same terms and conditions as they are held on the effective date, until they are transported to the Nisga'a Nation;
 - b. will not be liable for any loss or damage to those Nisga'a artifacts unless the loss or damage results from dishonesty, gross negligence, or malicious or wilful misconduct of its employees or agents; and
 - c. will determine the transportation arrangements for, and will transport, those Nisga'a artifacts in accordance with the prevailing practices of the Canadian Museum of Civilization for transportation of artifacts to museums.
12. If, after the effective date:
 - a. a Nisga'a artifact is permanently acquired by the Canadian Museum of Civilization; or
 - b. it is determined under paragraph 3 or 5 that another artifact in the collection of the Canadian Museum of Civilization is a Nisga'a artifactthe artifact will be added to Appendix L-2 or, if the Canadian Museum of Civilization and the Nisga'a Nation agree, to Appendix L-1.
13. If it is determined under paragraph 3 or 5 that an artifact set out in Appendix L-1 is not a Nisga'a artifact:
 - a. the artifact will be removed from Appendix L-1; and
 - b. unless the Nisga'a Nation and Canada otherwise agree, the Nisga'a Nation will transfer its legal interests in, and possession of, the artifact to the Canadian Museum of Civilization.
14. If it is determined under paragraph 3 or 5 that an artifact set out in Appendix L-2 is not a Nisga'a artifact, the artifact will be removed from Appendix L-2.
15. The Nisga'a Nation and the Canadian Museum of Civilization will share possession of the Nisga'a artifacts set out in Appendix L-2 in accordance with any custodial agreements negotiated under paragraph 17.
16. The Canadian Museum of Civilization is responsible for the care, maintenance, and preservation of the Nisga'a artifacts listed in Appendix L-2, in accordance with resources available to the Canadian Museum of Civilization for those activities and any custodial agreements negotiated under paragraph 17.
17. From time to time, at the request of the Nisga'a Nation or the Canadian Museum of Civilization, the Nisga'a Nation and the Canadian Museum of Civilization will negotiate and attempt to reach custodial agreements in respect of Nisga'a artifacts listed in Appendix L-2.
18. Custodial agreements under paragraph 17 will:

- a. respect Nisga'a laws and practices relating to Nisga'a artifacts; and
 - b. comply with federal and provincial laws of general application and the statutory mandate of the Canadian Museum of Civilization.
- 19.** Custodial agreements under paragraph 17 may set out:
- a. the Nisga'a artifacts to be in the possession of the Nisga'a Nation and those to be in the possession of the Canadian Museum of Civilization;
 - b. conditions of maintenance, storage, and handling of the Nisga'a artifacts;
 - c. conditions of access to and use, including study, display, and reproduction, of the Nisga'a artifacts and associated records by the public, researchers, and scholars;
 - d. provisions for incorporating new information into catalogue records and displays of the Nisga'a artifacts; and
 - e. provisions for enhancing public knowledge about the Nisga'a Nation through the participation of Nisga'a citizens in public programs and activities at the Canadian Museum of Civilization.
- 20.** The Nisga'a Nation and the Canadian Museum of Civilization:
- a. will consult each other if either of them proposes to transfer its legal interest in a Nisga'a artifact set out in Appendix L-1 or L-2 respectively; and
 - b. may exercise a right of first refusal to acquire the Nisga'a artifact on the proposed terms of the transfer.

Royal British Columbia Museum

- 21.** Appendix L-3 and Appendix L-4 set out all artifacts in the permanent collection of the Royal British Columbia Museum on the effective date, that have been identified as Nisga'a artifacts.
- 22.** British Columbia will transfer to the Nisga'a Nation without condition all its legal interests in, and possession of, the Nisga'a artifacts set out in Appendix L-3:
- a. as soon as practicable following a request by the Nisga'a Nation;
 - b. if there is no request by the Nisga'a Nation, five years after the effective date or the date that the artifact was included in Appendix L-3, whichever date is later; or
 - c. by any other date agreed to by British Columbia and the Nisga'a Nation.
- 23.** The transfer of the legal interests in, and possession of, the Nisga'a artifacts under paragraph 22 is deemed to occur when those artifacts arrive at a location for delivery designated in writing by the Nisga'a Nation.
- 24.** If the Nisga'a Nation does not designate a location for delivery, the Royal British Columbia Museum will deliver those artifacts to the address for the Nisga'a Nation set out in the General Provisions Chapter.
- 25.** The Royal British Columbia Museum:
- a. will continue to hold the Nisga'a artifacts set out in Appendix L-3 under the same terms and conditions as they are held on the effective date, until they are transported to the Nisga'a Nation;

- b. will not be liable for any loss or damage to those Nisga'a artifacts unless the loss or damage results from dishonesty, gross negligence, or malicious or wilful misconduct of its employees or agents; and
 - c. will determine the transportation arrangements for, and will transport, those Nisga'a artifacts in accordance with the prevailing practices of the Royal British Columbia Museum for transportation of artifacts to museums.
- 26.** British Columbia will not be liable for any loss or damage to Nisga'a artifacts set out in Appendix L-3 unless the loss or damage results from dishonesty, gross negligence, or malicious or wilful misconduct of its employees or agents.
- 27.** If, after the effective date, a Nisga'a artifact is permanently acquired by the Royal British Columbia Museum, the artifact will be included in Appendix L-4 or, where the Royal British Columbia Museum and Nisga'a Nation agree, will be transferred to Nisga'a Nation in accordance with this Chapter.
- 28.** If it is determined under paragraph 4 or 5 of this Chapter that another artifact in the collection of the Royal British Columbia Museum on the effective date is a Nisga'a artifact, the artifact will be included in Appendix L-4, or transferred to Nisga'a Nation in accordance with this Chapter, in order to maintain the representative division of the Nisga'a artifacts in Appendix L-3 and Appendix L-4.
- 29.** If it is determined under paragraph 4 or 5 that an artifact listed in Appendix L-3 is not a Nisga'a artifact:
 - a. the artifact will be removed from Appendix L-3; and
 - b. unless the Nisga'a Nation and British Columbia otherwise agree, the Nisga'a Nation will transfer its legal interests in, and possession of, the artifact to the Royal British Columbia Museum.
- 30.** If it is determined under paragraph 4 or 5 that an artifact listed in Appendix L-4 is not a Nisga'a artifact, the artifact will be removed from Appendix L-4.
- 31.** From time to time, at the request of the Nisga'a Nation or British Columbia, the Nisga'a Nation and British Columbia will negotiate and attempt to reach custodial agreements in respect of the Nisga'a artifacts listed in Appendix L-4.
- 32.** Custodial agreements under paragraph 31 will:
 - a. respect Nisga'a laws and practices relating to Nisga'a artifacts; and
 - b. comply with federal and provincial laws of general application, and the statutory mandate of the Royal British Columbia Museum.
- 33.** Custodial agreements under paragraph 31 may set out:
 - a. conditions of maintenance, storage, and handling of the Nisga'a artifacts;
 - b. conditions of access to and use, including study, display, and reproduction, of the Nisga'a artifacts and associated records by the public, researchers, and scholars;
 - c. provisions for incorporating new information into catalogue records and displays of the Nisga'a artifacts; and
 - d. conditions under which Nisga'a artifacts may be permanently removed from the collection of the Royal British Columbia Museum.

34. The Nisga'a Nation and British Columbia may negotiate agreements that:
- a. establish processes for lending Nisga'a artifacts;
 - b. provide for replication of Nisga'a artifacts;
 - c. provide for professional and technical training for Nisga'a citizens in museum skills and conservation expertise;
 - d. provide for enhancing public knowledge about the Nisga'a Nation through the participation of Nisga'a citizens in public programs and activities at the Royal British Columbia Museum; and
 - e. provide for other matters.

ACCESS TO OTHER COLLECTIONS

35. From time to time, at the request of the Nisga'a Nation, Canada and British Columbia will use reasonable efforts to facilitate the Nisga'a Nation's access to Nisga'a artifacts and human remains of Nisga'a ancestry that are held in other public and private collections.

PROTECTION OF HERITAGE SITES

36. Nisga'a Government will develop processes to manage heritage sites on Nisga'a Lands in order to preserve the heritage values associated with those sites from proposed land and resource activities that may affect those sites.
37. British Columbia will develop or continue processes to manage heritage sites in order to preserve the heritage values associated with those sites from proposed land and resource activities that may affect those sites.
38. The processes under paragraphs 36 and 37 will include measures designed to:
- a. identify heritage sites;
 - b. provide notice to each other of heritage sites;
 - c. assess the significance of heritage sites;
 - d. ensure appropriate protective or management measures are taken to protect, or, if necessary, to mitigate the effects of unavoidable impacts on, heritage sites and associated material; and
 - e. ensure that the appropriate person takes those measures and bears the associated costs.
39. Until Nisga'a Government establishes the processes referred to in paragraph 36, British Columbia's processes will apply on Nisga'a Lands.

OTHER NISGA'A ARTIFACTS

40. The Nisga'a Nation owns any Nisga'a artifact discovered within Nisga'a Lands or Category A Lands after the effective date, unless another person establishes their ownership of the artifact.
41. If any Nisga'a artifact discovered in British Columbia outside Nisga'a Lands and Category A lands comes into the permanent possession, or under the control, of British Columbia, British Columbia will lend the artifact to the Nisga'a Nation in accordance with any agreements negotiated under paragraph 31 or 34, and British Columbia may transfer the artifact to the Nisga'a Nation.

42. If any Nisga'a artifact discovered outside Nisga'a Lands and Category A lands comes into the permanent possession, or under the control, of Canada, Canada may lend the artifact to the Nisga'a Nation in accordance with any agreements negotiated with the Nisga'a Nation, and Canada may transfer the artifact to Nisga'a Nation.

HUMAN REMAINS

43. Subject to federal and provincial laws, any human remains of individuals of Nisga'a ancestry that are removed from a heritage site will be delivered to the Nisga'a Nation.