

CASE NOTE

Administrative Tribunal of Rouen, Decision No. 702737, December 27, 2007 (Maori Head case)

Translated by Marine Bel and Michael Berger¹

Editorial Notes by Robert K. Paterson²

Background

In October 2007, the mayor of the French city of Rouen agreed to return to New Zealand a preserved tattooed head of a Maori warrior (called *toi moko* by Maori) from that city's Museum of Natural History, whose collection the head had been part of since 1875. The decision to return the head was based on an initiative by the Museum of New Zealand (*Te Papa Tongarewa*), which has successfully secured the return of other such heads from museums in various European countries and the United States. Before the Rouen head could be handed over, however, the French Ministry of Culture intervened, arguing that its return was unauthorized under French law as being part of a French museum collection and thus inalienable.

The following is the text of the December 27, 2007, ruling of the Administrative Tribunal in Rouen in favor of the French Ministry of Culture, setting aside the earlier repatriation agreed to between the city of Rouen and the New Zealand museum.

Decision

Public domain

Synopsis: Controversy over the return of a Maori head from the collection of the museum of the City of Rouen to the government of New Zealand: Is the head a French public good that must be declassified before it can be returned, or is it a body part (and not a work of art) that can be immediately returned in order to be properly buried?

Administrative Tribunal of Rouen, December 27th, 2007, no. 702737, Prefect of Seine-Maritime: Juris-Data no. 2007-350713

(...) After having heard during the public audience of December 11th, 2007:

- The report of Madame Jorda-Lacroq;
- the observations of Mr. Rapetti, representative of the Prefect of Seine-Maritime;
- the observations of Me. Cazin d'Honincthun, representative of the City of Rouen;
- and the conclusions of Madame Guillet-Valette, Commissioner of the Government of France

Considering that,

responding to the request of New Zealand regarding the return of the Maori human remains to their country of origin in order to perform traditional funeral rites on them, the municipal council of the City of Rouen authorized, through a Resolution made on October 19th 2007, the return to the State of New Zealand the Maori head that has been part of the collection of the Museum of Natural History, Ethnography, and Prehistory of the City of Rouen since 1875, and the ratification of an agreement between the City and the Te Papa Museum of New Zealand formalizing the conditions of its return;

the Prefect of Seine-Maritime asks the tribunal to annul this Resolution by reason that Article 16-1 of the Civil Code (*Code civil*) cannot free the City of Rouen from its duty of consultation owed to the National Scientific Commission of Museum Collections of France under Article L. 451-5 of the Heritage Code (*Code de patrimoine*).

Considering that,

under the terms of Article 16-1 of the Civil Code (enacted July 29, 1994) under Law No. 94-653 regarding the treatment of human body parts, “the human body, its elements and its products cannot be the object of proprietary rights”;

under the terms of the subsections of Article 11 of Law No. 2002-5 (enacted January 4, 2002) relating to French Museums, codified in Article L. 451-3 of the Heritage Code, “the collections of the museums of France are inviolable.”;

under the terms of Article L. 451-4 of the Heritage Code, “every cession of all or part of a collection of a museum of France contrary to the provisions of this section is null. Actions or claims to nullify can be exercised at any time by the State or by any legal personality that is the proprietor of the collection.”;

under the terms of Article L. 451-5 of the Heritage Code, “goods constituting collections of the museums of France, and belonging to a legal personality, are in the public domain and are hence inalienable. Any decision to declassify such goods cannot be made without the assent of a scientific body, the composition and functionality of which are to be fixed by executive order.”;

under the terms of Article 16 of the aforementioned executive order made on April 25, 2002, “a National Scientific Commission of Museum Collections of France is hereby established, in order to give assent. . . to declassification requests made under subsection II of Article 11 of the above Law of January 4, 2002.”;

Considering,

what emerged from the file pertaining to the head known as being that of a Maori warrior, given in 1875 by an individual to the city of Rouen, which has since been a part of the municipal collection deposited in the Museum of Natural History, Ethnography, and Prehistory of the City, in which it was exhibited until 1996, the date at which the museum was closed for renovation;

that the museum was given the designation “Museum of France” by Joint Order of the Minister of Youth and National Education, and the Minister of Culture and Communication on September 17, 2003;

that in order to proceed with the repatriation of the Maori head to New Zealand without duly soliciting the prescribed assent pursuant to the aforementioned Article L. 451-5 of the Heritage Code, the Municipal Council of Rouen assumed that Article 16-1 of the Civil Code which was a rule of law and order, and was applicable to these human remains, was an obstacle to the application of the provision requiring assent;

Considering that,

it is up to the administrative jurisdiction to interpret the provisions of Article 16-1 of the Civil Code;

it emerged from the preparatory work behind Law 94-653 of July 29, 1994 that these provisions constitute only one aspect of the superior principle of the protection of human dignity, and have as their object the prohibition of the appropriation or utilization of the human body and its elements and products, for the purposes of monetary gain;

the present circumstances under which the Maori head is conserved as a part of the municipal collection of the museum are not contrary, either in principle or in practice, to Article 16-1 of the Civil Code;

contrary to the arguments of the city of Rouen, the sole fact that the Maori head constitutes human remains is not enough to make this Article an obstacle to the head being subject to the applicable regime regarding elements of the collections of the museums of France, notably the legislative provision quoted above from the Heritage Code, and to benefit from the guarantees that are attached to this regime;

even though the Maori head would not have been registered in the inventory of the municipal collection, it is part of the public domain of the city;

it could only be removed from the collection by the city of Rouen in order to repatriate it to New Zealand, after declassification was done in accordance with assent given by the National Scientific Commission of Museum Collections of France;

it is undisputed that the Resolution of the Municipal Council of the City of Rouen of October 19th, 2007 authorizing the repatriation of the Maori head was adopted without the assent of this Commission;

therefore, this Resolution was marred by a procedural error;

consequently, without the need to refer the matter to the judicial authority for the proper statutory interpretation, the Prefect of Seine-Maritime is entitled to ask for annulment of the Resolution;

It is decided,

Article 1: The Resolution of October 19th, 2007 by which the Municipal Council of the City of Rouen authorized the repatriation to New Zealand of the Maori head which has been in the collection of the Museum of Natural History, Ethnography, and Prehistory of the City since 1875, and the ratification of the agreement formalizing the conditions of this repatriation between the City of Rouen and the Te Papa Museum of New Zealand are hereby annulled.

Article 2: The Prefect of Seine-Maritime and the City of Rouen are to be given notice of this judgement.

Postscript

After this ruling, the city of Rouen and the Museum of New Zealand both said they hoped there would eventually be a resolution of the legal issues raised by the case and that the head would return to New Zealand. The case has placed recent efforts to facilitate the return of ancestral remains to indigenous peoples against perceptions of Western museums as repositories of material from the cultures of all civilizations. It has also revitalized discussions about the permanence of museum collections in the light of the recognition of cultural and minority rights. Meanwhile, the city of Rouen has lodged an appeal of the court ruling and indicated its support for changes to French law to allow similar returns in the future.

ENDNOTES

1. Marine Bel (Master 1 de Droit International, Université Jean Moulin Lyon III, an exchange student at the Faculty of Law, University of British Columbia) and Michael Berger, B.Sc. (Toronto) (a LL.B. candidate at the Faculty of Law, University of British Columbia). The Journal wishes to thank them for their generous efforts in providing this translation of the French decision.

2. Faculty of Law, University of British Columbia. Email: paterson@law.ubc.caat