

the centre for communication,
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archaeology

and the canadian public's

a report to the
Department of Communications,
Heritage Policy Division
on
the management of
archaeological sites
and resources

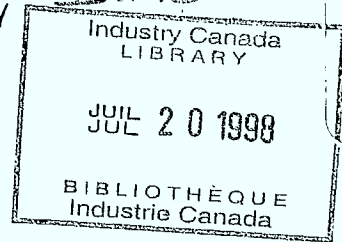
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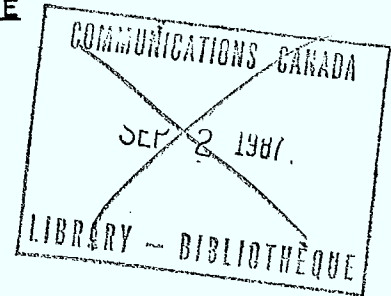
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MANAGEMENT OF ARCHAEOLOGICAL HERITAGE

Organization of Research Areas



PREFACE

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PREFACE

Under the terms of the contract for the study, the Centre for Communication, Culture and Society at Carleton University was allowed seven weeks for the completion of this report. This limited time-frame, more than anything else, necessitated that we had to work mainly from records available in Ottawa or ones which were quickly obtainable. It also limited the number and range of people who could be interviewed and consulted.

The Centre assembled a research team which grew to twelve members by the end of the study. Two of the researchers attended the CAA conference in Toronto in April, and had there the welcome opportunity to interview and learn from professional archaeologists from all parts of Canada. Each member of the research team worked on one section of the report. The responsibility for the report lies, however, with the Centre and the two principal investigators.

The study commenced on April 1st. An interim report was submitted on April 14th, and a draft of this final report on May 23rd.

Ottawa, May 30th, 1986

Ian Taylor
Principal Investigator

Peter A. Bruck
Principal Investigator
and Director of Centre

Section I: INTRODUCTION TO MANAGEMENT OF ARCHAEOLOGICAL
RESOURCES

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SECTION I: INTRODUCTION TO THE MANAGEMENT
OF ARCHAEOLOGICAL RESOURCES

A. The Management of Archaeological Resources

Over the last decades Canadians have become increasingly aware of and concerned with the material remains of the past. This is in part the result of the spreading recognition of the fact that these remains cannot be replaced once destroyed or lost. Their non-renewable character makes material remains particularly vulnerable to the forces of industrialisation and development. As Canadians come more and more to understand that the benefits from these forces are to be paid for - inter alia - with considerable losses regarding the traces and monuments of the past, the requirement for systematic action to their protection and conservation has come to be recognized.

The sum total of such actions, if combined with planning, constitute the first step toward management. By planning we mean here a deliberate process of consideration of 'action choices' in order to achieve specified objectives over some determined amount of time. Management and planning, i.e. consideration in advance of what one wants to do under specified circumstances, are in this sense rational activities. Their rationality, however, flows from cultural choices concerning goals and means.

The material remains of the past are not only non-renewable and sometimes fragile but they are also relatively scarce. This fact, i.e. that they are in short supply, is what makes it sensible to speak of them as resources. In theory, we manage them in their scarcity in order to gain the maximum benefit out of their use.

Archaeological resources, as we will argue in further detail below, are those material remains of the past that are no longer connected to the life of existing communities and about which there is no other directly obtained or obtainable observational evidence which would help us to relate to and to understand them. In this sense, the material remains of the past which are archaeological require specific efforts of interpretation. Archaeology is the discipline which has developed standards and techniques of finding, preserving and interpreting these material remains of the past.

Archaeology and resource management need to go hand in hand. Without legislated and publicly planned conservation and protection, the material remains would not survive the forces of modernization. Without systematic development of techniques of research and methods of interpretation, management efforts would lack standards and objectives.

Archaeological resources are comprised of the geographical sites where material remains of the past are found, of the material objects, and of the relations between objects and objects and sites. These relations are what archaeologists commonly refer to as 'context'.

The understanding of this three component character of archaeological resources is critical. The efforts to conserve and preserve the remains of the past for which no other record than their own material existence is available is successful only if all three components are effectively included.

It is therefore not sufficient just to protect and manage the moveable objects, nor to designate a site after some objects have been found and taken away for inspection. Rather, it is essential that site, object and their relations be protected and managed. A systematic survey and discovery operation has thus to be an integral part of archaeological resource management.

The three component nature of archaeological resources clarifies not only what needs to be done but also what needs not to be done.

What needs to be protected and managed is primarily the combination of the three components. Archaeologically, both site and objects lose in value when their relation is

severed. The good which thus requires foremost protection for the purpose of archaeology is information, that is the knowledge which can be gained from the material remains of the past and the network of spatial associations among them. Since there is no other documentation available about them, the materials and their spatial associations and fragile in-place structures and features are the only sources of knowledge.

This poses the crucial problem for archaeological research, protection and conservation. Any disturbance of site or material before a systematically recorded excavation will result always in an irretrievable loss of some (possibly most significant) information. A re-study of archaeological resources is not possible in the strict sense of attempting to regain that part of information lost .

Apart from the impact that results from human agency, the material remains of the past are continually eroded and obliterated by the forces of nature. Efforts to manage archaeological resources have thus to take them into account as well and devise proper forms of action.

In Canada, awareness and efforts regarding archaeological resource management are largely developments of the last two or three decades. New programs and legislation were undertaken by a majority of provinces in the Seventies and early Eighties, and some initiatives in the federal territories followed.

The present study discusses the parameters and problems of archaeological resource management with particular consideration of the areas of federal jurisdiction.

B. The Notion of Archaeology

The term archaeology is widely used and often with quite different meanings. For example, it is employed when referring to the examination of historical shipwrecks (underwater archaeology), or the reconstruction of the workshops of early industrialisation (industrial archaeology). The term has also been widened semantically by the development of new research interests in ethno-history and the use of oral traditions in archaeological research. But, in addition to the diverse ways in which archaeology is spoken of by people with specialist interests, the term also tends to carry overwhelmingly in the public mind a reference to the classic period and prehistoric times.

The broad uses of the term create conceptual conflicts, and the floating nature and conceptual slippage of the term serve up some difficulties to using it for the purposes of

managing the material remains of the past.

As stated earlier, the Centre uses the term in this report to refer to research and conservation work done largely regarding the material remains of the past about which there is no other direct evidence available than their physical existence and relations to each other. We also use the term for work done regarding remains where there is indirect evidence in the form of various kinds of texts which can be used as supplementary evidence.

This means that the term archaeology is used in this report in a strictly analytical way.

It will be part of the consultation process and a matter of political and tactical judgement to arrive at an administrative/legislative use which will cover all the phenomena and developments considered worthy and feasible of protection and management. Such a decision needs to be carefully prepared, and will have major implications for the scope and effectivity of the new federal policy and legislation. It would have been utterly premature for the Centre to make this decision a priori, and utterly misguided not to recognize the implications of such a decision for this study and the policy development process which is to follow.

C. Policy Publics

The multiple meanings of the term archaeology indicate the different uses which people make of it. The uses thus relate to the purposes and interests different people or groups of people pursue.

Some groups use the term in the exercise of specific mandates and/or the pursuit of specific goals. Archaeology and the management of the material remains of the past matters to them economically, professionally, aesthetically or in terms of their group identity or recreational preoccupations. These groups are those members of Canadian society with a direct stake and concrete interests in the ways of archaeological resource management. We refer to them as 'prime policy publics'. We will analyze their interests in and involvement with the uses of the material remains of the past in section II of this report. We will do so in a descriptive analytical rather than normative prescriptive manner. The objective is to present as complete as possible a picture of the segments of Canadian society interested in archaeology.

Prime policy publics are, therefore, those groups most affected by policy and legislation regarding the archaeological resources of Canada. Their consultation and

Involvement in the development and implementation is, in our judgement, vital to the success of a new policy and eventual federal legislation. This process has obviously to build on an evaluation of the compatibility of their interests and objectives with the overall goals of protection and conservation.

D. The Uses of the Material Remains of the Past

Prime policy publics differ from Canadians at large in that they attribute special meanings to the material remains of the past. Generally, the material remains have no meaning or value in and by themselves.

Meanings are the result of human activities, and the attribution of significance to an object is part of the individual and collective work of cultural and linguistic communities.

It is characteristic of the material remains of the past which are the object of archaeology that we do not have any access to the meanings which they had for their producers or original users, i.e. we do not have any access to their original cultural context or the conventions and codes of their use. In this sense, the material remains of the past are decontextualized.

When the material remains are appropriated in present days by scholars, hobbyists, collectors or museums, they come to have meanings and forms of use that are quite different. Meanings and forms of use are tied to present day purposes and interests. It is these purposes and interests and their larger socio-cultural organization which re-invest the material remains of the past with meanings.

A Halda tobacco mortar, to take one of the more famous cases, has obviously a different meaning and is of different interest to its 1980s American buyer than it had to the original group of producers and users. Within the context of the Canadian debate on heritage this mortar and a seated human figure bowl became in 1983 to many the symbol of a general failure in the system of protection of archaeological artifacts.

The association of something like this tobacco mortar with a generalized notion of 'Canadian national heritage' would have been impossible and unthinkable for its original users. Yet, in the context of present Canadian society it was exactly this association which gave the mortar importance and fresh meaning, and allowed it to be used to initiate a review of federal legislation and policy toward archaeological resources.

The material remains of the past are thus placed into new and contemporary contexts, they are - as we shall discuss in detail in section II - recontextualized. 'Recontextualization' is a strictly analytical term which is used in this report to help the reader organize and understand the multiple forms of work and different interests regarding the material remains of the past. We will present a typology of forms of recontextualization in order to provide a systematic overview.

E. The Notion of Heritage

Problems of protection of material remains of the past are as old as the interest in them. This is particularly true when the remains are considered artistically outstanding, of scientific value or of great symbolic importance. Legal title to the remains in form of possession and ownership was already conceived in Roman law as the ultimate means to protect material remains recontextualized as works of art.

The notion of heritage in the way it is currently used is, however, a mid 20th-century phenomenon (Phillips and Hogan, 1984b). It is tied to an increased valorization of the past in the face of the processes of modernization and their profound transformations of social and cultural life. The notion of heritage has gained positive value through the collective experience of 'progress' as being in part unsettling, dislocating, and destructive. The recognition of the tragic elements of development has generated the social and political will to look at the material remains of the past as treasures for the future rather than the scraps of history.

The notion of heritage and the social uses made of it are full of contradictions (c.f. Federal Cultural Policy Review Committee, 1982a: 63-70). The most obvious one is that in order to preserve something it has to be taken - at least in part - out of the stream of life. It has to be rendered non-perishable. In this sense, the preservation of history, its artifacts and sites is always artificial. It creates the fiction of the 'true old' thing or times, but their meaning and forms of use have changed considerably. New meanings and forms of use are imposed on the remains of the past in the name of their preservation.

This contradiction might appear at first to be a problem only to those who are sensitive to the lies of nostalgia or who pursue academic knowledge. Upon further examination it turns out, however, that this contradiction poses one of the central problems for the management of Canadian archaeological resources.

A considerable share of the material remains of the past which archaeologists consider to fall into their domain are the remains of inhabitation and land use by the aboriginal peoples of this country. Aboriginal people do not share a number of the central assumptions which underlie archaeology and white, Western thought in general.

More specifically, they do not view all of the remains of the past as having lost their original context, but see many of them as living signs for the cultural practices of their communities and as important means in the renewal of their native identity. To use the technical terms introduced earlier, aboriginal people do not see all of the material remains of the past as having lost their context, i.e. as having been decontextualized.

There are spiritual as well as methodological differences which lead to this different view. Archaeology has traditionally as part of the historical sciences created in the enlightenment mind-set only viewed material objects and written records as part of its data-base. For aboriginal people, however, it is the oral tradition which serves as prime data base. The stories of the elders, memorized and retold throughout generations, serve as the valid record base of the past. Material remains have meaning in relationship to them.

Archaeological management faces the contradiction that it has apparently to destroy the living practices of the aboriginal people in order to be able to protect the material traces of these practices as heritage. This contradiction is aggravated further when heritage objects and sites are economically exploited for tourism.

Canadian archaeologists have very recently started to give recognition to this contradiction. At the last meeting of the Canadian Archaeological Association in April in Toronto, archaeologists organized for the first time a special session dealing with the different recontextualization of objects and sites by the native people. In the words of one participant, "archaeology and native oral tradition have different stories to tell". It will be the task of a practical and effective policy to reach an accommodation between these different 'stories'. This can, in the Centre's judgement, only be done if the contradiction underlying the notion of heritage is acknowledged and accepted as an ongoing challenge to any new initiative.

F. Crisis

The most common image of the management of archaeological resources, and heritage resources in general for that matter, is - in the minds of many - associated with the confrontation between the bulldozer and the conservationist. Furthermore, the feasibility of heritage resources protection and management is measured against this backdrop.

This image sets up the forces of progress and development, of land-use for mining, transport or settlement as being straightforwardly antagonistic to the forces of conservation and protection, of heritage conscience and historical awareness.

The Centre wants to counter this image at the very beginning of this report. We understand that it is the very objective of any successful heritage resources management policy to prevent the situation referred to in the above image from occurring. The confrontation between bulldozers and conservation efforts cannot be resolved without considerable costs and losses to both sides. It is part of the objective of this study to prevent confrontation situations like this from occurring. A successful management policy must be able to put in place systems of referral and agency cooperation which prevent last minute salvage operations from being routine.

G. Primary Issues

The present re-assessment of federal action in the area of archaeological management is the result of the almost ten years of lobbying of professional archaeologists. They have opposed the federal Cultural Property Export and Import Act since its introduction on the grounds that it contributes through its evaluation provisions to the creation of a market for archaeological objects. The re-examination and ensuing revision of the Act was made to appear to be the key issue for an improved federal management policy toward archaeological resources (see: CAA brief 1984).

At the beginning of this study, however, it appeared that the lack of protective federal legislation regarding sites was the greatest reason for concern. A new federal initiative would have to focus on providing such legislation and on the appropriate regulations of permit system.

Interviews and conversations held during the course of the study suggested that the greatest damage to archaeological resources results from the land development

activities of federal agencies and departments which do not follow the rules of adequate survey and mitigation work.

This report seeks to consider these statements regarding the primary issues with which a new federal policy should deal in the context of a description of the overall situation of archaeology and resource management. The emphases on different problems is taken as indicator of the complexity and multifaceted character of the situation. They suggest, in addition, that even people with considerable involvement in the issue vary considerably in their judgement as what should be done first.

H. Policy Context

This report presents a summary review of the situation of the management of archaeological resources in Canada. It is to be seen as but one of the steps in the process of developing a federal policy.

As mentioned above, this process began in the fall of 1984 with the presentation of a position paper entitled The Cultural Moveable Property Export and Import Act and Canadian Archaeology by the Canadian Archaeological Association (CCA) to the Department of Communications. This position paper was circulated last summer by the Department to concerned groups and the correspondence received was analysed. The issues raised in this correspondence and in other input necessitated this study as there seemed to be a wide divergence in opinions and information levels among the concerned groups.

This report is designed to present the required information and to investigate the factual evidence concerning the state of archaeological resource management. It attempts to place the issues raised into their appropriate conceptual, legal, social and cultural context.

This report will have succeeded if it helps to establish a shared information base among the individuals and groups concerned with the federal powers and responsibilities to manage the archaeological heritage of Canada.

The report is to be followed by a series of structured consultations which will aim at developing a list of preferred policy options. In a final step, a series of regional colloquia will be held to gain as wide as possible a consensus on the new federal policy and legislative initiative.

I. Organisation of the Report

The report is structured in such a way as to give a picture of the present situation of archaeology and resource management, to hold up, as it were, a mirror.

In section II, we start by examining the conceptual and terminological territory within which archaeology and the management of its resources are spoken of. We ground this analysis by looking at the institutional and practical basis for the conceptual work which people and groups of people do. We distinguish the specialist interests of different segments of Canadian society. Accordingly, seven prime policy publics can be seen to have a stake in the development of a new policy towards archaeological sites and resources in Canada.

The archaeological activities of institutions involved with archaeological work in one way or another are described further in section III. The empirical data which form the basis of this section were gathered through a survey and structured interviews with responsible officials and managers.

The legislative and administrative situation of archaeological resource management is presented extensively in section IV. After a discussion of federal jurisdictions and departments, we also present the initiatives the provinces have taken in this area. Attention is furthermore given to the specific situation in Canada's North, and to the obligations and responsibilities Canada has entered into through international conventions and recommendations. Special sections on the import of Canadian property law for archaeological management strategies and on the particular situation of underwater archaeology conclude this section.

After having reviewed extensively the concepts, work practices and interests of archaeologists in section II and III, we turn in section V to a discussion of the aboriginal people and archaeological resources. We present the goals and interests of aboriginal groups and organisations, and the political avenues currently opened by the federal government to deal with their claims.

In section VI we assess the ways and dynamics which give archaeological materials value, and which ultimately lead to the attachment of monetary prices to what are otherwise considered heritage objects or scientific specimens.

The effects and specific considerations arising from this integration of moveable archaeological resources into market and property relations are discussed in section VII, and, in particular, the way in which different groups lay claim to archaeological resources as their property (either in law or in custom).

The last section of the report covers the policy and legislative models and the management experiences of other countries. This provides an international context as well as a number of useful suggestions for any new Canadian initiatives.

The report concludes with the presentation of some general observations, and suggestions for further study and the up-coming consultation process.

We have included in the appendices a number of case studies which might help to illustrate in further detail some of the key issues raised in the main text.

Section II: KEY TERMS, DEFINITIONS AND ALTERNATIVE USES OF
ARCHAEOLOGICAL RESOURCES BY PRIME POLICY PUBLICS

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Section II: KEY TERMS, DEFINITIONS, AND ALTERNATIVE USES OF
ARCHAEOLOGICAL RESOURCES BY PRIME POLICY PUBLICS

A. INTRODUCTION

A number of key terms are used to discuss Canada's archaeological resources and their management. Among these, such terms as, "archaeology", "archaeological heritage", and archaeological "objects", "materials", "remains", or "artifacts" are central to the conceptualizing effort. Also used are, "curiosities", "relics", "treasure", "antiquities", and "art" or "primitive art" forms.

This section will deal with the terminological tools and territory of archaeological resource management. In order to be practical and effective, a policy has to secure its conceptual grounding. This section will provide an overview and a discussion of the various key terms, their usage and the contestations surrounding them.

In Part B of this section we provide a set of working definitions that can be used consistently throughout this report, and which can be compared and contrasted with the uses of terms by various individuals and groups interested in Canadian archaeology. Section IV of this report will consider the use of key terms in existing legislation and policy documents.

In Part C, we note that the same archaeological objects or resources (as defined below) may enter into multiple and

potentially overlapping or even conflicting conceptual categories. Thus objects from in situ sites dating to the prehistoric or early historic periods are of scientific interest to the professional archaeologist as s/he attempts to reconstruct cultural adaptive patterns and regional culture histories.

At the same time, these objects may have a recognized aesthetic quality which leads to their assignment by private dealers, collectors and curators of art museums to the categories of "art", "primitive art", "ethnographic art", or "antiquities", and their monetary valuation in the "market". Indeed the same objects may be assignable to several "group categories" in the current Canadian Cultural Property Export Control List.

Furthermore, and importantly, these same objects may be conceptualized and valued by Canada's aboriginal peoples as symbolic forms that are part of a tribal heritage. And, finally, such objects can have profound symbolic meanings as components of a national Canadian heritage.

Part C will thus provide a typology of the various uses made of archaeological resources. Such different uses will be conceptualized here as different "forms of recontextualization". This will provide us with the conceptual framework for considering how and why archaeological resources are of significance to so many segments of Canadian society. This discussion is essential for an assessment of the extent to which the claims of various groups to the use and management of archaeological resources are complimentary, overlapping, or in conflict.

Part D of this section will outline the major groups which make use, in their various ways, of archaeological resources. Such groups will be conceptualized as "Prime Policy Publics", because they are the groups most affected by legislation and policies regarding the management of archaeological resources.

We will note the key terms used by them in their discussions related to archaeological resources; and we will consider how the meanings of these key terms compare to those offered as baseline terms with working definitions in Part I. We will then consider the varying goals and mandates of these prime policy publics, and we will indicate just how they draw on the material remains of the past. Additional discussion and data regarding these prime policy publics will be found in further sections of this report.

By way of concluding this section, Part E will provide a summary table which will graphically illustrate the different ways in which prime policy publics make use of archaeological resources.

This section takes as its rationale the Centre's belief that any policy on the management of archaeological resources will require an innovative approach that takes into account both the multiple meanings of key terms and the different uses of archaeological resources made by different groups and institutions within Canada.

B. Terminological Baseline

The key terms relating to the management of archaeological resources have a multiplicity of uses and meanings. The particular uses of these terms are never neutral but reflect the broader assumptions and goals of various interest groups and institutions. However, it is difficult to consider what different groups and institutions mean by key terms such as "archaeology" without ourselves beginning with a working definition of such a key term. Therefore, while we fully recognize that the uses and meanings of such key terms will vary, we must, ourselves begin with a set of working definitions so that we have a baseline for comparing alternative uses of such terms and related ones.

We will use the following key terms in the following ways:

1. Archaeology

We begin with the crucial term "archaeology". There is no intention here to privilege the claims of any interest group or institution using this term. However, we recognize that this term, like other key terms relevant to this project, has arisen historically within the context of a scientific discipline whose practitioners are generally university trained professionals who call themselves "archaeologists".

There is, then, a well-established professional discipline which calls itself archaeology. There are also avocational, amateur complements to this discipline.

While there is much debate among archaeologists regarding the nature of their enterprise, there are certain understandings that are widely shared. It is these shared understandings which, we believe, can form the basis for working definitions of not only the term "archaeology" but other terms defined in a working way in this part of the section.

Among such shared understandings, is the notion that archaeology is a scientific enterprise which studies cultural behavior and cultural processes through material remains. This is possible because in behaving as cultural beings, humans leave a material residue of their behavior which may become incorporated into the soil, be left on the surface, or become deposited underwater.

At the heart of this discipline is the assumption that such material remains not only result from such cultural behavior, but that this cultural behavior can be "read back" (that is, reconstructed) from these material remains, in the absence of direct observations of the cultural behaviors involved in the production, use and/or deposition of these remains. (How this link between material remains and culture is best theorized and how, methodologically, one is to derive information about culture from these remains are central issues among archaeologists.)

Archaeology shares an interest in the relationship between material forms and cultural practices with other academic fields, including ethnography and contemporary semiotics. However, what is, we believe, unique to archaeology as a discipline is the fact that:

- I) the material remains with which archaeology deals are no longer directly connected to the individuals and societies who produced, used, and/or deposited them; and
- II) there are no previously recorded direct observations or ways of now directly observing the practices involved in the production, use, and/or deposition of the material remains

In many cases, the disciplines of Ethnography and History share with archaeology (I), but not (II) above. However, those branches of archaeology sometimes called "classical archaeology" and "historical archaeology" constitute "grey" areas in that there may be no direct observations of the practices involved in the production, use, and/or deposition of material remains of cultural behavior, but there may be certain kinds of "texts" available that constitute a kind of indirect observational data set. Such archaeology may be designated as "text-linked archaeology" (and see below under D.1.a).

As a working definition of "archaeology", we propose:

Archaeology is a professional discipline, including the practices of its members, whereby culture is studied through its material remains in the absence of directly obtained or obtainable observations of the production, use and/or deposition of such material remains.

Note that the critical feature of this working definition of archaeology is that archaeologists are seen to "reconstruct" culture without the benefit of directly obtained or obtainable observational data. While many archaeologists deal with materials dating to the so-called prehistoric period, when there were no written records at all, such remains may, of course, also date to historic periods. That is, they may date to a period of time for which there are written observational records, but there are no such records that directly relate to them.

Furthermore, many archaeologists are involved in reconstructing the culture's of Canada's aboriginal peoples, but more recent non-aboriginal cultural systems are also of concern to them.

2. Archaeological Objects

As a discipline and a set of practices, archaeology gives a central place to material remains. We propose to use the general term "archaeological objects" to refer to any material remains of culture that (I) are no longer directly connected to the individuals who produced, used and/or deposited them and (II) for which there are no means of obtaining direct observational data on their production, use and/or deposition.

Such archaeological objects include two sub-categories, viz: artifacts and ecofacts.

Artifacts: This term is used widely by many individuals and interest groups and is a particular source of confusion. For our purposes, artifacts are material forms that have been made or modified by human action. We note that professional archaeologists are virtually unanimous regarding such a definition for their purposes. A further distinction may sometimes be usefully made within the sub-category of artifacts: Artifacts which are movable may be thought of as artifacts proper, while those that are not movable (such as hearths or post moulds) may be termed features.

Ecofacts: More difficult to conceptualize and clearly define are other kinds of material remains of the natural world which in some way reflect cultural practices and/or help one arrive at reconstructions of such practices and processes. We propose the term "ecofact", now increasingly used by archaeologists, to refer to the material residue of the environment. This category includes floral and faunal remains and human skeletal material, although burials may also be thought of as artifacts, because they are intentionally produced by humans and bring about a

modification of the natural world.

While archaeological objects, as defined above, include as a major component such artifacts, there are also artifacts, as defined above, which are not archaeological objects. That is, there are objects (I) which are directly connected to the individuals who produce, use and/or deposit them (as is the case, for example, with artifacts now being produced by Canadians and Aboriginal peoples, etc.) and/or (II) for which there are means of obtaining observational data regarding them (as is the case, for example, for objects collected by ethnographers or historians who have made records of their functions, meanings, etc.)

In our discussions in this report we will use the term "artifact" to refer to archaeological objects made or modified by human action. Where we refer to artifacts that are not archaeological objects, we will indicate this by terms such as "ethnographic artifact", "historical artifact", "contemporary artifact", etc.

3. Archaeological Sites

An archaeological site is a geographical place where archaeological objects, as defined above, occur. There are two general kinds of archaeological sites: (I) primary sites, often called in situ sites; archaeological objects occurring there have been left there by their producers and/or users; and (II) secondary sites; objects have been transported there by natural processes from another earlier place.

4. Archaeological Resources

The above three working definitions allow us to move to a general term, namely that of "archaeological resources".

Archaeological resources can be considered in this report to include at least three categories:

- I) Archaeological objects, as defined above, which are still within primary and secondary sites as well as those that have been removed from such sites and are located in public and private collections, or elsewhere.
- II) Archaeological sites, as defined above.
- III) Relational data - the provenience - of archaeological objects, either untapped in archaeological sites or documented in written, photographic and other types

of records.

As the consultative and policy formulation process proceeds, it may be useful to expand this category to include, for example, larger units of land than the one of the site. This would be useful where management of a larger area may be necessary for the protection of archaeological resources.

5. Archaeological Heritage

"Archaeological Heritage" is a term used widely and variously to refer to places, objects and knowledge that are highly valued because they provide people with, among other things, a sense of identity and pride.

We will not offer a distinct working definition. Instead, as will become clear shortly in Part II below, we believe it makes more sense to conceptualize the attachment of the term "heritage" to the term "archaeology" as one of the variable use-forms which we call "recontextualizations of archaeological resources". Any such recontextualization constitutes one of several ways in which archaeological resources are interpreted and made meaningful to communities, or a nation as a whole, and all of humankind. Heritage recontextualizations are of great importance because of the symbolic weight they carry.

C. Forms of Recontextualization of Archaeological Resources

We have established above that archaeological sites are places no longer occupied by the individuals who produced, used and/or deposited its remains. In other words archaeological objects are material forms that have left the hands of their original producers and/or users. We can say that these sites and objects have become decontextualized (c.f. Freedman, 1979).

Consequently, when archaeological resources are appropriated by scholars, collectors, museums and others, they can come to have uses and meanings that are quite different. They gain their meanings by being placed in new contexts, i.e., they are recontextualized. That this is not done in a uniform way is obvious. Indeed, when scholars, collectors, museums and others do appropriate archaeological resources, they place them into the historically specific contexts of their own socio-cultural systems.

Michael Ames, of the University of British Columbia's Museum of Anthropology, has elaborated this concept of

"recontextualization" (Ames 1982). Ames writes of the "social history" of objects which "live beyond their origins, and acquire new meanings, new uses, and new owners along the way" (1982:9). Ames is writing about ethnographic artifacts. However, his comments are particularly appropriate for archaeology because the lack of any direct observations of the functions and meanings of objects or sites in their original contexts means that all interpretations regarding them are contingent and provisional.

Recontextualization, thusly conceptualized, is a process whereby archaeological resources, including objects and sites and provenience data, come to have new functions within present day Canadian society.

To understand the variety of ways in which archaeological resources are "recontextualized" is also to understand that the different social groups with an interest in their use have quite specific, and sometimes quite contradictory, purposes and concerns. It is not that the recontextualizing purposes of one interest group (like professional archaeologists) never overlap with the purposes of another (say, collectors or aboriginal peoples), but it is that the differences in the overall (and often unspoken or implicit) recontextualizing purposes of each interest group must be clarified and understood in the larger process of policy construction by Government.

A pressing concern in this introductory discussion, therefore, is to provide a well-grounded account of the very different purposes, and the routine, taken-for-granted practices that flow from these purposes, of the various "policy publics" with an interest in archaeological resources. Our concern is to provide what social scientists would call a typology of forms of archaeological recontextualization.

This approach also allows us to take into account the fact that the same individual, group or institution may recontextualize archaeological resources in more than one way. And most importantly, this approach permits the mapping of the multiple meanings that attach within Canada to the same archaeological resources. This will make it possible to address overlapping and conflicting claims to such resources.

The following forms of recontextualization of archaeological resources can be identified:

1. Informational Recontextualizations

Archaeological resources can be used to generate information. They can be placed into contexts for the primary

purpose of providing "new" or what is often called "better" knowledge. Such "informational recontextualizations" depend not only on accessibility of archaeological sites and objects, but they are also critically dependant upon data regarding the provenience of such artifacts and sites. There are several ways in which archaeological resources are recontextualized so as to produce certain kinds of understandings or knowledge:

a) Scientific Archaeological Recontextualizations

Archaeological resources can be recontextualized as scientific knowledge. Resources, including sites, artifact, ecofact, and their relationships, are then used by archaeologists to reconstruct the nature of former cultures in the absence of direct observational data. Archaeologists reconstruct former ways of life; they write culture histories of identifiable groups (e.g. ethnic groups, aboriginal tribal groups, etc.); and they attempt to arrive at formulations of cultural processes. Artifacts and ecofacts, for example, allow inferences about technology, economy, social organization and ideology. Objects are used as indicators, through attribute and stylistic analyses, of relationships among different groups.

Archaeologists publish their "knowledge" in scholarly works, textbooks, and in popular works for the public, and their findings are reported by the mass media to the public which has a keen interest in them. Their findings are also reported to exhibition personnel in public and private museums who make use of them in displays and in educational programmes (see below).

b) Art Historical Recontextualizations

Certain objects from archaeological sites and certain sites (e.g. "Rock Art Sites") can also be used as data of the academic discipline of Art History. This discipline has an interest in the history of human aesthetic forms and practices. Archaeologists are interested in reconstructing the functions and meanings of the material remains and behavior patterns of former cultures. Art Historians also undertake this task with particular reference to the aesthetic dimension of human life.

The practices and goals of Art History within Canada will be further elaborated below in Part D.

c) Educational Recontextualizations

Archaeological resources, especially artifacts and ecofacts, but also in situ sites, such as rock art sites, can be recontextualized in educational contexts aimed at disseminating archaeological and/or Art Historical research.

Such educational recontextualizations take the form of exhibits of artifacts and ecofacts in public museums, publically accessible in situ sites, eco museums, lectures, written tables, catalogues, and other such formats.

Original artifacts, ecofacts or in situ sites may be employed. Or moulds, copies or visual reproductions of originals may be used. Such objects or sites, or reproductions of them, are used to illustrate information being conveyed. They are also used as components of visual exhibits that attempt to reconstruct the context of the artifacts. And they are used as props to arouse curiosity and lead an audience to seek knowledge about scientific archaeology and/or Art History through other formats.

2. Aesthetic Recontextualizations

Archaeological resources can be recontextualized as aesthetic forms. For example, objects which were not intended as "art objects" in the cultures of origin may come to be defined as art forms in contemporary Canadian settings. They constitute what Maquet calls "art by metamorphosis" (1971).

Such resources are enjoyed for the pleasure they evoke. Indeed many writers have argued that the ability of humans to respond to beauty is universal, and that cultures which did not have distinct categories of non-utilitarian art objects nonetheless produced objects of great aesthetic value.

The pleasure evoked by viewing aesthetic forms from archaeological sites is often complimented by the knowledge of their original functions and meanings that is obtained through a complementary use of archaeological and art historical research.

3. Symbolic Recontextualization

There are a number of ways in which archaeological resources come to have symbolic meanings to various individuals and groups within and outside of Canada.

a) Status Recontextualizations

For example, archaeological resources can take on a range of meanings for individuals: a person with a collection of archaeological artifacts may obtain social status in his or her group in this way. Artifacts may also constitute valued souvenirs of tourists who travel within Canada or are visitors from abroad. Highly valued artifacts of an aesthetic nature may also serve as status symbols and as evidence that one is a cultured person (Bourdieu, 1977).

b) Heritage Recontextualizations

Archaeological resources are frequently recontextualized as symbols of local, regional, national, ethnic or aboriginal groups to provide them with a sense of pride and/or identity. Such symbolic uses of archaeological resources allow a group's sense of pride and identity to be communicated internally to other group members and/or externally, including internationally.

Like aesthetic recontextualizations, heritage recontextualizations can be complemented by knowledge of their original functions and meanings obtained through the researches of scientific archaeologists and art historians and disseminated by museums and through other educational contexts.

Such symbolic recontextualizations, however, can be strongly contested, as is sometimes the case when certain symbols of aboriginal peoples are used to stand for a National Canadian identity. We will return to this below.

As will be further elaborated in section 6 of this report, it is often archaeological remains of an aesthetically pleasing nature that come to be seen as "heritage objects". This results from a two-stage process of recontextualization: archaeological resources are initially recontextualized as aesthetic forms, and then, secondarily, recontextualized as "heritage objects".

c) Religious Recontextualizations

There are also cases where the meanings attributed to archaeological resources can go beyond those of a heritage nature. This occurs when such resources are considered to have transcendent meanings within religious belief systems. Thus a site of an object may be considered sacred.

As will be noted below, in Part D., Number 4 of this

section, archaeological resources are sometimes considered by aboriginal peoples to have such sacred meanings. In some cases, aboriginal people argue that sites or objects have had sacred significance within their cultures since they were produced/occupied/deposited by their ancestors. In these cases, however, outsiders may consider such sites or objects to be "archaeological" in nature, that is, to date to the past and to be incorporated into the soil or under water, and thus to have been "abandoned" and to lack observational data regarding their use and meaning.

In contrast, aboriginal people may claim that the chain of signification of such sites or objects has not been broken but has been maintained by their own aboriginal communities through oral records. In the terminology of this report, aboriginal people sometimes challenge the implicit notion of outsiders that seemingly "archaeological" resources have in fact been "decontextualized".

In other cases, aboriginal people are re-asserting the sacred nature of certain archaeological objects and sites which they link to their own cultural heritages. This process is a part of the current attempt of many aboriginal people to revive their cultures and to assure their survival and self-determination as distinct peoples within Canada. This process will be discussed in detail in Part D of this section as it relates to the recontextualization by aboriginal people of archaeological resources.

4. Economic Recontextualizations

Archaeological resources can be recontextualized as commodities with market values. They circulate in local, national and international markets in which they are bought and sold either for profit and/or for recontextualizations in any of the manners described in Parts 1 through 3 above.

As will be discussed in detail in section 6 of this report, there are different kinds of markets for archaeological objects. One very important market is for archaeological objects considered to be aesthetically pleasing. Another is a market for archaeological objects collected for various purposes by hobbyists. The monetary value of such objects, as will be discussed in section 6, is strongly affected by their informational recontextualizations, especially as these are undertaken in museums and reported in the media (by, in particular, art critics).

Economic recontextualizations are also contested in cases, for example, where archaeologists and art dealers make mutually exclusive claims regarding the same object.

D. Prime Policy Publics

There is a keen interest in archaeology among many members of the Canadian public. There are as well several professions and other types of interest groups which are particularly dependant on archaeological resources for the exercise of their mandates and/or the achievement of their collective goals. Such groups are therefore most affected by policy and legislation regarding such resources and their management.

In his discussion of the Canadian Export-Import Act, Cameron (1980) acknowledges the importance of these "special publics". We will refer here to these groups as Prime Policy Publics.

These Prime Policy Publics make use of archaeological resources in one or more of the four ways indicated in Part II above. In other words, they constitute "agents of recontextualization" with differing goals, differing ways of writing and talking about archaeological resources, and different ways of attributing meaning to such resources. They all have a vested interest in the way in which archaeological resources in Canada are to be protected, mined, and managed.

Seven such Prime Policy Publics may be identified. As indicated in the introduction to this section, each Prime Policy Public will be introduced, its use of key terms and their meanings discussed, and its way(s) of recontextualizing archaeological resources outlined. Additional discussion of these Prime Policy Publics will be found in further sections of this report.

The seven Prime Policy Publics are as follows (see Consultation Chart, next page) :

1. Professional and Avocational Archaeologists
2. Professional Art Historians (particularly Art Historians of "Native" or "Primitive" art)
3. Museologists and Museums
4. Aboriginal Peoples and Organizations
5. Dealers
6. Collectors
7. Developers

It is important to note at the outset that the same individual may belong to more than one of these prime policy publics. Indeed, as we shall see below and in other sections of this report, the links between some of these prime policy publics are often close. In other cases, members of different prime policy publics have competitive claims to the same archaeological resources..

PRIME POLICY PUBLICS
CONSULTATION CHART

ARCHAEOLOGISTS

Professional Academic Archaeologists
and Archaeological Associations - CAA

Avocational Archaeologists

ART HISTORIANS

Native Art Studies Assoc. of Canada

Native American Art Studies
Association

Anthropological Museologists & Museums

Historical Museologists & Museums

MUSEOLOGISTS
& MUSEUMS

Art & "Native Art" Museums

Aboriginal Museums

Heritage Museums & Ecomuseums

Individual Band Councils

Assembly of First Nations

Native Council of Canada

ABORIGINAL PEOPLES
& ORGANIZATIONS

Metis National Council

Inuit Tapirisat of Canada

Native Women's Assoc. of Canada

National Assoc. of Friendship Centres

Provincial/regional/local organizations

DEALERS

Professional Art Dealers Assoc.

The Canadian Antique Dealers Assoc.

Fine Art Collectors

COLLECTORS

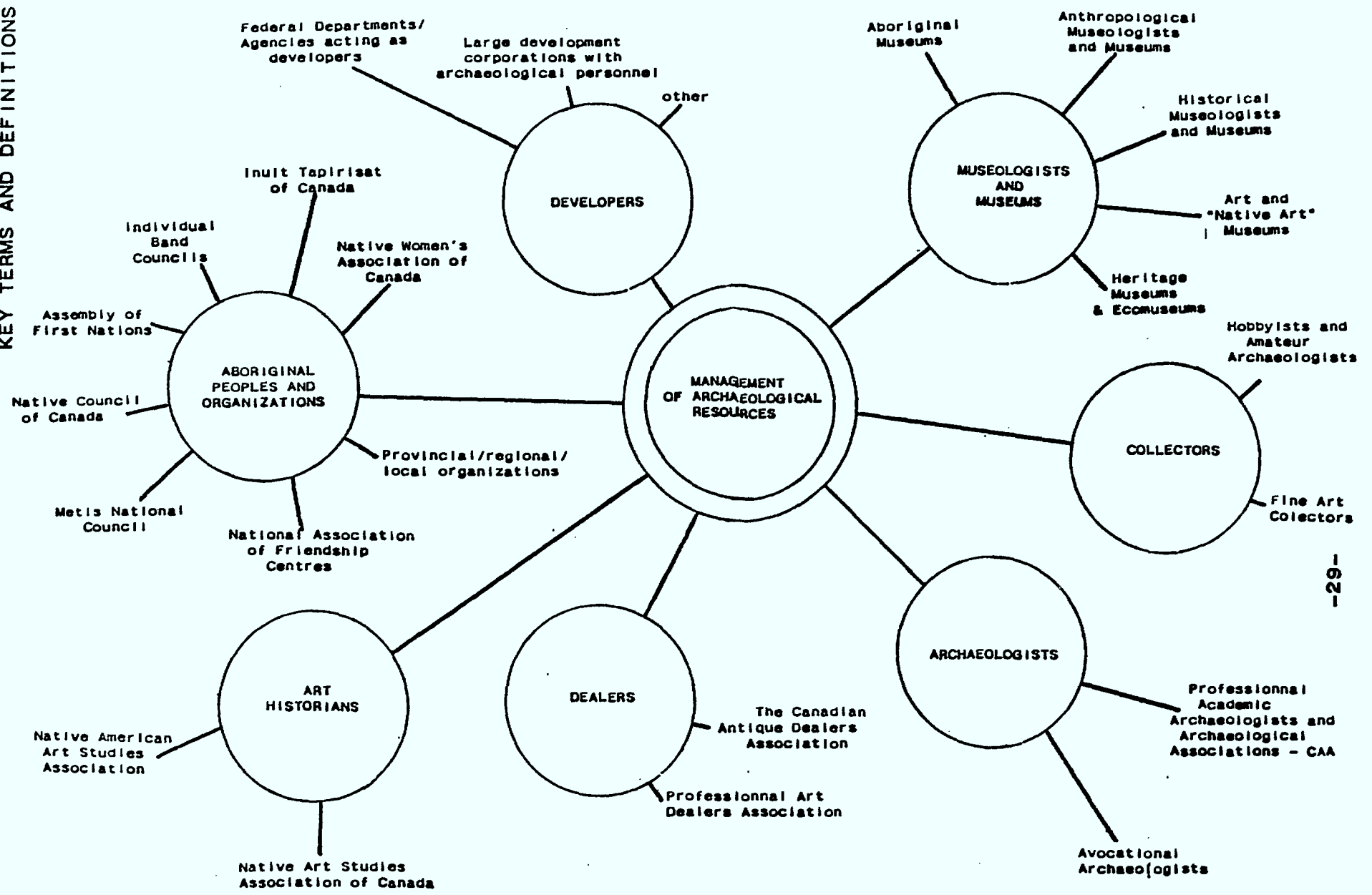
Hobbyists & Amateur Archaeologists

Federal Departments/Agencies acting as
developers

DEVELOPERS

Large development corporations with
archaeological personnel

other



1. Professional and Avocational Archaeologists

a) Background

As a discipline, Canadian archaeology has frequently been seen as one of three branches of the general field of anthropology, along with socio-cultural anthropology (also called ethnography) and physical anthropology. Linguistic anthropology is sometimes considered a fourth branch or subsumed within socio-cultural anthropology.

Anthropology has taken as its mandate the study of all aspects of humankind, in all places at all times. It thus concerns itself with both bio-cultural evolution and with cultural and physical variability.

The emphasis of anthropology has been on non-Western peoples who live in small-scale societies rather than in complex ones such as nation states. Such small-scale societies have often been referred to as "traditional", "tribal", or "primitive" societies, although this last term has come under attack in the last decade or so because of its derogatory connotations.

Prehistoric Archaeology: Archaeology is the branch of anthropology which concerns itself with human cultural behavior in the past. As we have seen above in Part I, this means that knowledge of such behavior must be obtained without the benefit of direct observations on the part of the archaeologists. Furthermore, written records made by others, which could assist archaeologists in understanding these material remains, are not available for most of the societies that have lived on Earth. Indeed, the vast bulk of the record of human occupation of the Earth is assigned to the period of human prehistory, the time before written records came into existence. The discipline of archaeology, is therefore, often referred to as "Prehistoric Archaeology", "Prehistoric Anthropology" or, simply, as "Prehistory".

The prehistoric period gave way, at different times in different parts of the world, to the Historic Period, when written records came into existence. The practices of archaeologists are not, however, limited to human occupations of the prehistoric period. There are, instead, other forms of archaeology which share techniques of recovery and interpretative goals with Prehistoric Archaeology. Indeed, the same individual may be involved in prehistoric archaeological research as well as in these other forms of archaeological research.

Classical and Historical Archaeology: For example, as noted in Part I, there are often cases where there are material remains from the past that are no longer in use but

for which there may be various kinds of indirect evidence that can help in interpreting them. Such indirect evidence takes the form of written, or, in some cases, oral "texts" that relate in some way to the occupations represented by the material remains.

Such texts, however, differ from the careful observations recorded by past and present anthropological ethnographers (and thus allow us to distinguish between Ethnography and Historical Archaeology) in that these texts were not produced for scientific analytical purposes and they did not generally result from directly obtained observations of archaeological remains being produced, used or deposited. Instead, they provide more general kinds of commentary.

For example, a diary of an early European fur trader in the Canadian north may help an archaeologist interpret remains from a site of an Indian hunting group which traded with him; however, the comments in the traders' diary will not be based on direct observation related to the remains in question and, furthermore, they must be critically read keeping in mind the biases that the trader had. Nonetheless, used carefully, such texts can be employed along with the techniques of prehistoric archaeology in order to derive more complete knowledge about past cultures.

In the case of Old World, Meso- and South American Civilizations, which left their own written texts, such archaeological practices are often referred to as "Classical Archaeology". Elsewhere, such practices are called "Historical Archaeology".

In Canada, historical archaeology can be practiced where the remains date to the very earliest period of European occupation, whether sites are those of aboriginal peoples or European colonists. In these cases, the associated written texts may be very limited and very indirectly related to the occupations under study. Here historical archaeology merges with prehistoric archaeology and in the case of aboriginal occupations, constitutes a complement to "ethno-history". (Ethnohistory is an interdisciplinary field which has ties to both Anthropology and History. In Canada, it concerns itself with developments among aboriginal peoples since contact, including their interactions with European colonists.)

In the case of occupations from the more recent past, historical archaeologists often have access to associated written records and oral texts that are abundant and more directly applicable to the occupations in question. Here historical archaeology is a complement to and merges with the discipline of History.

Ethno-archaeology: In the past two decades a sub-branch of archaeology called ethno-archaeology has emerged because archaeologists have found information provided by ethnographers to be inadequate to certain of their interpretative purposes.

Ethno-archaeologists observe material objects being produced/used and/or deposited either by contemporary societies (for example, hunting and gathering peoples) or as a result of their own experiments. Such observations are used to generate models regarding the cultural practices and meanings that leave their mark in material form. Ethno-archaeologists thus address the important theoretical question of just how cultural practices are reflected in material remains and how such practices are to be "read back" when direct observations regarding them can not be obtained (see above discussion in Part B).

For example, ethno-archaeologists have done participant observation research among Canadian aboriginal hunter gatherers to determine how they use artifacts, which social practices lead to which depositional patterns of artifacts, how hunters occupy land, how they arrange themselves in viable economic groups, etc. Ethno-archaeologists have also conducted their own experiments, for example, making stone tools to determine how they may have been made by prehistoric people, butchering animals with these tools to determine, among other things, how certain butchering practices may be reflected in wear patterns on artifacts, marks on bones etc.

Ethno-archaeology has been an exciting theoretical development in archaeology; furthermore, it is an area where collaboration between aboriginal people and professional archaeologists could be very rewarding for both groups (see Part D., c) 1), below).

Underwater Archaeology: One frequently encounters reference to "underwater archaeology". Strictly speaking, underwater archaeology is practiced by professional archaeologists (working perhaps in collaboration with avocational archaeologists) who recover material remains and information from sites that are underwater. Their goals are those of academic archaeology.

However, there are individuals who may loosely refer to themselves, or be referred to by others, as practitioners of underwater archaeology. These are, in fact, sport divers looking for shipwrecks or professional treasure salvagers looking for wrecks or other economically valuable remains (c.f. Glesecke 1985). The potential destruction by such non-professionals of valuable scientific information is of great concern to archaeologists. This issue will be discussed in section IV, J. below).

Amateur Archaeology: Throughout Canada there are avocational archaeologists who work with professional archaeologists to undertake scientific research. Such avocational archaeologists belong to various regional associations.

Archaeologists are members of a discipline which over the past century has developed sophisticated techniques for both recovering and interpreting the material remains of past human cultures. These techniques of recovery include forms of surface recovery, excavation of remains that have become incorporated into the soil or another form of matrix, and recovery of remains from underwater sites.

Any recovery can, by definition, only be undertaken once, for ironically -but unavoidably - archaeologists destroy sites in the very process of recovering remains and information from them! The impossibility of re-excavating archaeological sites is one critical aspect of archaeological practice.

Another aspect of no less importance is the fact that archaeological objects derive their significance from their particular positions (horizontally and vertically) within a site, from their in situ associations with other archaeological objects and the surrounding soil or matrix, and from characteristics from sites themselves and in relation to characteristics of other sites. This context, or provenience, of archaeological objects and sites is an essential part of their signification. The entire knowledge process of the discipline and the heritage value of particular material objects depend upon the execution of scientific procedures of recovery.

As a scientific discipline, then, archaeology is distinct among the social sciences and the humanities because the resources upon which it depends are non-renewable. Archaeology is uniquely vulnerable both to inadequate procedures on the part of its own practitioners, and to illicit and destructive practices on the part of others.

This is the reason why archaeologists are particularly outraged when sites are looted and plundered for remains by individuals who thereby destroy irrecoverable provenience data. Thus archaeologists feel a particular need for a policy and legislation that will prevent such occurrences. The precarious data base of archaeology makes it particularly dependent on public understanding for support.

Canadian archaeologists belong to national organizations, viz. the Canadian archaeological association and the Canadian Association for Archaeology abroad. There are also local and provincial associations of both professional and amateur archaeologists.

The discipline of archaeology in Canada and the practices of its members will be discussed in detail in Section III of this report.

b) Key Terms and Definitions

In Part I of this section, key terms of professional archaeology were adopted to provide a terminological baseline for this report. Archaeologists generally do not use the terms "curiosities", "treasures", "relics", or "antiquities". However, they are well aware of the aesthetic quality of artifacts from the past and may refer to them as art forms.

c) Forms of Recontextualization by Archaeologists

While we do not wish to suggest that the claims made to archaeological resources by archaeologists are necessarily any more legitimate than those made by members of other prime policy publics, it is clear that at present archaeologists are most skilled in recovering such remains from in situ sites and interpreting them as forms of scientific knowledge within the Western tradition of positivistic epistemology.

1) Informational Recontextualization:

- Scientific archaeological recontextualizations: As has been made clear in the Introduction and Part I to this section, the major way in which archaeologists recontextualize archaeological resources is as forms of scientific knowledge. Archaeologists often produce three kinds of such knowledge about people for whom they have no direct observational data.

Firstly, they reconstruct the nature of the way of life, often referred to as a cultural adaptation. This is part of a general goal aimed at reconstructing the range of ways of life that have occurred on Earth since humans first emerged. In the case of Canada, the record of human occupation may be as old as 30,000 years.

Secondly, archaeologists reconstruct the culture histories of identified groups, some of whom can be linked to historically identified aboriginal people and other people (such as the Vikings).

Finally, archaeologists make general statements about the nature of human evolution and human

variability and the processes of cultural adaptation and change. For example, many archaeologists are interested in principles regarding human-environment relationships. Many assert that there are fundamental similarities among the prehistoric hunting and gathering societies of the world.

- Art Historical Recontextualizations: Some archaeologists have a keen interest in the aesthetic practices of former cultures and thus follow the lead of art historians in attempting to understand such practices. Recently, for example, archaeologists interested in rock art have argued that such meanings can be decoded in the absence of associated ethnographic/observational data, that is, that the rock art images can be read as cultural texts whose meanings emerge from the inter-relationships of their various images.
- Educational Recontextualizations: Archaeologists provide information of a scientific nature to museum personnel and to other educators who popularize their work and present it in formats such as exhibits (see below under Museologists and Museums).

II) Aesthetic Recontextualizations:

While archaeologists may individually find pleasure in viewing certain archaeological objects, aesthetic recontextualizations as defined above are not generally undertaken by them. Indeed, as will be elaborated shortly, archaeologists take issue with such recontextualizations because they invariably involve a monetary valuation of artifacts which archaeologists see as antithetical to their primary goal of scientific recontextualization.

III) Symbolic Recontextualizations:

The material remains of the past, and the knowledge which they attach to them, are also often thought and written about by archaeologists as components of the heritage of all humankind, that is, as part of the record of human adaptations and achievements throughout human prehistory.

Such remains are also put forward by archaeologists as components of a local, regional or national heritage.

Some archaeologists have argued that the heritage value of archaeological resources for all humankind should take precedence over the heritage values attached to them by local, regional, national or aboriginal groups (see below). However, other archaeologists consider the heritage claims of specific groups, particularly those of the nation of Canada, to have either priority or equal validity to the claims made by humankind as a whole or by specific groups within Canada. Thus they argue strongly for the retention within Canada of archaeological objects and the protection of in situ archaeological resources by (and for) the state.

In countries such as Canada which have long records of occupation by aboriginal peoples, archaeological (and ethnographic) remains of such aboriginal cultures are often presented to the public as components of the Canadian national identity. This constitutes an example of what anthropologist Nelson Graburn has called "borrowed identity" (1976). However, as we shall see further along in this section and in Section V of this report, aboriginal people in Canada often regard the remains of their ancestors as components of their distinct aboriginal heritages and challenge their symbolic appropriation by their colonizers.

IV) Economic Recontextualizations:

Archaeologists eschew such a form of recontextualization. They do not believe a monetary value should be placed on archaeological resources, which they consider irreplaceable and therefore priceless. Their position has been articulated through their national association, the Canadian Archaeological Association, in a position paper regarding the Canadian Export Import Act (1984). This Act will be discussed in Section IV of this report.

Finally, archaeologists share with aboriginal peoples an abhorrence for the destructive practices of some developers, because they believe that irreplaceable archaeological resources are sacrificed in the name of economic development.

2. Professional Art Historians

a) Background

Art history arose in the West as a humanistic discipline concerned with the chronological development of and interpretation of meaning in visual aesthetic forms. Its focus was initially on Western art. More recently, the aesthetic qualities of objects produced in small-scale non-Western societies have been recognized by this discipline. As will be discussed in Section VI of this report, such recognition occurred first for objects from African and Oceanic societies. More recently, the aesthetic forms of aboriginal Americans, including archaeological objects, have received the attention of Art History.

As Joan Vastokas points out in a recent paper (1984), the past neglect of aboriginal American societies has also been due to a belief among Art Historians that their aesthetic forms have been relatively unchanging in nature. This view has now been challenged, and Art Historians are increasingly analyzing aboriginal American aesthetic forms in the same ways they analyze Western art forms.

Along with anthropologists, including archaeologists interested in the aesthetic forms and practices of past societies, Art Historians are interested in documenting stylistic developments of aesthetic forms in time and space, and in reconstructing meanings of such forms.

b) Key Terms

The terminology of art historians centres on the aesthetic aspects of objects. Therefore, the term 'art object' or 'work of art' is used rather than artifact. Generally, there is very little overlap between the terms used by archaeologists and those used by art historians.

c) Forms of Recontextualization

1) Informational

Art historians derive three major types of information from their study of aesthetic forms. Firstly, they group similar objects in order to identify individual or regional stylistic traditions. Secondly, they place objects in chronological sequences in order to trace stylistic development. Thirdly, they interpret the meaning of specific motifs and images by studying these iconographic features against a specific cultural context. In the case of

aesthetically pleasing artifacts from archaeological sites, art historians turn to archaeological interpretations of such cultural contexts.

II) Aesthetic

Although, as will be discussed in Section VI, the concept of 'art' is Western in origin, art historians identify objects made by members of non-Western cultures as having developed techniques of connoisseurship which allow them to make judgements about the relative merits of these aesthetic qualities and to distinguish fine examples from ordinary ones. They also identify ideas of beauty held by particular cultural groups at particular historic periods.

III) Symbolic

Art historians consider the aesthetic dimension universal and that objects identified as aesthetically pleasing are the legitimate heritage of all world populations. To this end they often collaborate with museums in mounting exhibitions of particular traditions of aesthetic objects including archaeological objects.

IV) Economic

Art historians recognize that a connection exists between aesthetically pleasing objects and monetary value in Western societies as well as in many non-Western societies. Historically, in their role as authenticators of aesthetic objects, they have often directly or indirectly affected the market value attributed to particular objects or object types.

3. Museologists and Museums

a) Background

Museums are very popular among members of the Canadian public. According to the Canadian Museums Association, there are in Canada 158 museums of human history, archaeology, anthropology or ethnography (see Section III of this report). A survey carried out ten years ago by the Secretary of State concluded that over twenty million visits per year are paid to Canadian museums, and more than half the Canadian population visits museums (Dixon, Courtney and Bailey 1974). More recent data confirm this. The construction of new museums in Ottawa indicates a recognition of this by the federal government.

Many museums in Canada are involved in one or more ways with archaeological resources. They may have programmes of recovery, study, preservation or exhibition. Furthermore, they may have programmes of an educational nature that popularize scientific knowledge about such resources and point to their heritage and aesthetic characteristics. A number of Canadian museums have a critical role as repositories of archaeological objects obtained through scientific surveys and excavation and as repositories of the records of provenience data so critical for such scientific interpretation. These practices of museums as "collecting agencies" will be elaborated in Section III of this report.

Many Canadian archaeologists are employed by museums, or they work on contract for them. They thus may belong to both the prime policy publics of Museologists/Museums and Professional Archaeology. In most museums, however, research and curatorial/exhibition activities are undertaken by different individuals. Individuals responsible for curation and exhibitions generally have received training in programmes of museology rather than academic archaeology. Thus situation can create certain tensions between the museum's goals of recovery and scientific analysis and its goals of popularizing information and producing pleasing exhibitions for the public (McFeat 1976:155).

b) Key Terms and Definitions

Key terms employed and their meanings will vary according to the type of museum and the way in which it recontextualizes archaeological resources. For example, anthropological, historical, art, heritage and aboriginal-run museums all include archaeological objects within their collections.

The same museums often curate and exhibit artifacts from both archaeological sites and from ethnographic and/or historic contexts. Thus, as noted in Part I above, confusion can occur when the term "artifact" is not qualified. In some cases, museums may not know whether an artifact came from an archaeological or an ethnographic/historic context.

Museum personnel often use the more general term "material culture" to refer to artifactual remains, whether they are from archaeological, ethnographic, historical or even contemporary contexts.

As will become clear shortly, museum exhibits which recontextualize archaeological objects as art forms and/or heritage objects also use these terms to refer to archaeological artifacts.

c) Forms of Recontextualization of Museologists/Museums:
The Museum Exhibit

Although professional archaeologists are employed by museums to undertake scientific research, we will be concerned here with museum personnel and practices which present archaeological resources to the public. The discussion in this section will therefore proceed in a somewhat different way than is the case for the other prime policy publics identified in this report.

Our focus here will be on the museum exhibit, a distinctive format which has been developed by museums over the past two centuries. The exhibit is a visual format, which is generally accompanied by written and/or acoustic explanations. In preparing exhibits, museologists attempt to make sense of the material remains obtained through the techniques of professional archaeology. Such exhibits thus "structure the ways we think about and look at objects", including objects from other cultures (Ames 1983:93). In other words, through exhibits museum personnel recontextualize archaeological resources in one or more ways.

We will consider here exhibition practices in anthropological museums. Ames has outlined five such practices which present different "point of view or perspectives" on objects (1983: 94).

- 1) Objects displayed as artificial curiosities: As will be discussed in detail in Section VI of this report, the earliest Europeans to visit the New World collected archaeological and ethnographic materials along with natural history specimens. As Ames explains, such items were "viewed as objects of wonder and delight, to be collected as trophies, souvenirs, or amusing curiosities during one's travels to far and distant lands" (1983:94). Displayed in "cabinets of curiosities" or "houses of curios", these collections were amassed by royal and noble households throughout Europe during the sixteenth and seventeenth centuries. Indeed, these "strange and wonderful objects" were intended to "reflect upon the daring exploits, special knowledge, or privileged status of the collector" (1983:94).

Although such collections were unsystematic and ideosyncratic in nature, they became the basis for major museum collections in Europe as museums came into being as public institutions (1983:94). According to Ames, early North American museums operated by people such as P.T. Barnum, displayed the material products of aboriginal Americans as curiosities.

Such collections, however, aroused the attention of the founders of emerging disciplines such as anthropology who transformed the "cabinets of curiosities" into "organized museums as museum staff professionalized themselves and their conditions of work" (1983:94 - Ames also cites the work of Baxi, 1973 and Frese, 1960).

- II) Objects displayed as natural history specimens and components of presumed evolutionary sequences: As anthropology museums took form in the late 19th Century, they introduced more systematic procedures for collecting, analyzing, classifying and displaying objects. According to Ames, a "typical objective of early anthropological displays was to present artifacts from /so-called/ primitive societies as if they were specimens akin to those of natural history. Primitive peoples were considered to be parts of nature like the flora and fauna" (1983:95). Their material productions were classified and displayed "according to similarity of form, evolutionary stage of development, or geographical origin" (1983:95). Ames continues that some museums of natural and human history still adhere to this early anthropological perspective.

- III) Objects displayed in contextual exhibits: According to Ames, it was Franz Boas, the founder of professional anthropology in North America, who "popularized a different form of anthropological display" (1983:95). Artifacts came to be exhibited "in fabricated settings that simulated the original cultural contexts from which they came, rather than as natural history specimens representing some typology or evolutionary sequences. Artifacts should be grouped together to illustrate a way of life..." (1983:95). Such exhibits attempt to reconstruct the way objects were used in their original cultural contexts and thus to present, in the case of the material remains of both archaeological and ethnographically known American aboriginal peoples, a "native point of view" (1983:95).

This third form of exhibit, according to Ames, is now the most popular one in anthropology museums.

In regard to the approach to recontextualization of archaeological resources adopted in this report, such "contextual" exhibits are often of both an informational and heritage nature. Along with schools and

universities, anthropology museums are the major institutions within Canada which educate the public about the cultures of Canada's aboriginal peoples. The objects displayed in the museum exhibits, along with information attached to them, are presented as part of the heritage of all Canadians, a heritage which is valued and which sets us apart from other nations.

- IV) Objects displayed as "fine art" by "formalists": A fourth way of displaying objects focuses on their aesthetic qualities. This perspective will be elaborated with regard to archaeological objects more fully in Section VI of this report. As Ames writes, such displays look to "the material culture of primitive societies for examples of fine art; form becomes more important than content" (1983:96). Such "formalist" exhibits clearly result from what we have referred to in Part II of this section as aesthetic recontextualizations.

Such formalist displays are frequently criticized by anthropologists, however, who are more comfortable with "contextual" displays. They argue that taking such objects "out of context" by displaying them as art objects (defined thusly on the basis of Western aesthetic standards) is arbitrary and indeed "immoral" (Ames 1983:96). Proponents of such aesthetic recontextualizations, in their turn, argue that the more common anthropological "contextual" exhibits:

"are no less an arbitrary arrangement than the old curiosity cabinet, because the simulated context of the exhibition represents the mental reconstruction of the anthropologist further elaborated by the technical artistry of the exhibit designer. Such exhibits, formalists suggest, only tell us more about our own exhibit technology and fashionable theories than about the cultures contextualized therein." (1983:96)

According to Ames, such formalists and contextualists:

"are usually willing to tolerate differences providing the formalists remain in art museums and the contextualists remain in their museums of anthropology and natural history. Only when boundaries are crossed do people get agitated or confused. If a museum of anthropology displays the material workings of a tribal society as fine art, for example, then a boundary is violated and categories become mixed." (Ames 1983:96-97).

- v) The insider's point of view: Ames argues that all four of the above types of exhibit constitute the

views of outsider's looking at the past of another people. According to Ames: "Even contextualists who claim they represent the native point of view are still outsiders who are attempting through their reconstructions to stimulate someone else's point of view" (1983:97).

What is missing as a way of thinking about objects in museums is the aboriginal people's own views of their own pasts, what Ames refers to as the "insider's point of view". Ames relates comments made to him by an Indian visitor to an anthropology museum:

" 'You know', he said, 'you haven't done a damn thing for Indians. We don't feel at home in your museums -any of them - because they don't tell us our story.' 'When you talk about origins you refer to archaeology and the Bering Straits, and "origin myths". We don't know anything about the Bering Straits or about myths and legends. We know who we are and where we come from. Our elders tell us that. We speak in truths, not in myths'. His people, he continued, always had their history, which anthropologists would occasionally try and record and to describe as 'mythology', 'legends' or 'folklore'. Their own history, their insider view, increasingly has had to contend with the outsider view propagated by missionaries, Indian agents, teachers, and anthropologists. He admitted that some Indians eventually succumbed to the outsider views and incorporated them as their own. But others are trying to preserve, to recover, and even to rediscover their own perspectives. These are more personal views of history than any portrayal by museums. The source of true knowledge is derived from the memories of elders rather than from the 'facts' of social scientists." (Ames 1983:98, emphasis in original)

Comments: Ames does not see exhibits based on insider perspectives as necessarily incompatible with those based on outsider views. The question instead is, "how the insider and outsider perspectives might interact and build upon one another in the process of truth-seeking and understanding..." (1983:98).

It is a recommendation of this study that further research consider how this process might be facilitated

by policy related to the management of archaeological resources. A related recommendation is that further research consider the way aboriginal people are presently attempting to present their "insider views" of their past through exhibits of archaeological objects and other resources, and how they think they can link to the practices of anthropological museums. Further discussion relevant to this issue is found in Section IV of this report

As well, it is recommended that alternative ways of presenting archaeological resources to the public be researched. One such example is the Kootenay Ecomuseum, an innovative approach developed by the Kootenay Cultural Heritage Centre (Choquette 1985).

4. Aboriginal Peoples and Organizations

a) Background

Unlike other groups whose ancestors were immigrants to the New World, the Indians and the Inuit are indigenous peoples whose ancestors lived on this continent for many thousands of years. This fact alone means that aboriginal peoples have both distinct cultural heritages and a unique position within Canadian society.

In contrast to the many groups of immigrants to North America who made deliberate decisions to adopt a new life style in a "New World", the aboriginal peoples of this continent have consistently rejected total assimilation into a Euro-Canadian way of life. Instead, aboriginal peoples have struggled to retain values and behaviors that are often not only different than those of Euro-Canadians, but sometimes in direct conflict with them.

However, Canada's aboriginal peoples do not constitute a homogeneous group. They have always lived in distinct societies in environments ranging from those of the arctic north to the milder ones of the Northwest coast and the Southeast of Canada. Each aboriginal society has had its own language, history, cultural identity and patterns of interactions with Euro-Canadian colonists. It is Europeans, not aboriginal peoples, who have invented the concept of the Indians, the name itself based upon the mistaken belief of Christopher Columbus that he had reached the Far East.

As the historian E. Palmer Patterson (1962) has argued, European immigrants have now made themselves the natives of Canada, and the aboriginal peoples have been transformed into minority groups who have most often lost control of the

political and economic shaping of their lives and become dependent on Euro-Canadian institutions. One result is that aboriginal peoples often view Euro-Canadians as usurpers of their lands and destroyers of their rights and heritage.

The attempts of the dominant culture to extinguish the traditional ways of life and assimilate aboriginal peoples into the Euro-Canadian mainstream have been persistently resisted by many aboriginal peoples. And, as we shall see shortly, aboriginal organizations have arisen to press claims of aboriginal people for cultural survival and self-determination.

As will be discussed in detail in Section V of this report, one result of aboriginal persistence in putting forward their claims has been the recent entrenchment of aboriginal rights in the Canadian Constitution and the initiation of settlements of their land claims.

We believe that the ways in which aboriginal peoples recontextualize archaeological resources must be understood with reference to their goals and aspirations for cultural survival and self-determination. Yet such goals and aspirations are frequently thwarted because of misunderstandings held by members of the general public regarding aboriginal peoples and their history. (See, for example, Cook 1984 on persistence of stereotypical treatments of Canadian aboriginal peoples.)

Because some individual aboriginal people have become assimilated into Canadian society, and because aboriginal cultures have clearly changed from what they were at the time of the earliest European contact, non-aboriginals have assumed that all aboriginals are being assimilated, and that such assimilation is the only viable option for aboriginal peoples. This understanding on the part of non-aboriginal Canadians has also arisen from their view of aboriginal cultures as static remnants of a more primitive (though perhaps more noble) past way of life. Berger suggests that these Euro-Canadian attitudes have locked aboriginal peoples into the past:

"... the assumption that aboriginal cultures are static and unchanging becomes "self-fulfilling". By not allowing them the means to deal with their present problems in their own terms, their culture does, in fact, tend to become degraded and static." (Berger 1981)

What non-aboriginal Canadians have missed is the cohesiveness and tenacity of aboriginal peoples who have retained the capacity to adapt to changing conditions without loss of identity as Indian, Metis and Inuit or loss of many of their traditional values. While non-aboriginal Canadians have often interpreted all change in aboriginal societies as

evolution toward assimilation of a Euro-Canadian way of life, aboriginal peoples have in fact been creating new syntheses which, though different than their own traditional cultures, have continued to be distinctly aboriginal in nature. (See, for example, Brody's excellent studies of the Inuit and the Beaver Indians, 1975 and 1981, in this regard.)

For many Canadian aboriginal communities, the adoption of white technology and economic pursuits has been synthesized with a continuation of many traditional values, including, as Berger has noted, "decision-making by consensus, their respect for the wisdom of their elders, their concept of the extended family, their belief in a special relationship with the land, their regard for the environment, (and) their willingness to share, (Berger 1981:7), despite, Berger continues, unremitting pressure on aboriginals to abandon them.

Economic systems which continue to rely on the harvesting of natural species have evolved since contact, having been particularly influenced by the participation of aboriginal peoples during the historical period in the fur trade. Such systems are changed from prehistoric ones but nonetheless continue to be distinctively aboriginal in nature. Such economic systems characterize many contemporary aboriginal communities, despite the view of outsiders that native economies are extinct. (See Brody, 1975 and 1981 and Cox 1985.)

In the past decades, aboriginal peoples have developed a vocal leadership and new self-perceptions as many seek independence from what they consider to be continued colonial rule. They are trying to bring to the attention of the non-aboriginal public such issues as the status of their treaties, claims to land, hunting and fishing rights, and their attempts to preserve traditional customs and religious practices.

Yet many non-aboriginal Canadians continue to misunderstand aboriginal history, and to see the "revitalistic" efforts of modern aboriginal peoples as attempts to return to the past. However, as Berger points out, the most fundamental goal of aboriginal peoples is to substitute self-determination for the long centuries of enforced dependence:

"Native people do not wish to return to the past. They do not wish to be the mere objects of sentimentality. Native culture, native communities, and the native economy should not be preserved in amber for our amusement and edification. Rather, they wish to ensure that their culture can continue to grow and change in directions they choose for themselves.

At bottom, native claims are founded on something as important to the urban native as it is to the rural native. Their determination to remain distinct peoples is based on their conviction that individual identity depends on collective identity - knowing who you are means knowing who your people are, where your home is.

Man is a social animal. He can only define himself by knowing his people, his language, his race, his customs, his traditions. This applies to all of us. But a search for one's identity, for one's people, for one's homeland, acquires a compelling dimension among indigenous minorities, of the Fourth World...

Their determination to retain their identity as native people does not mean that they want to return to live in tents and igloos. Because the native people use the technology of the dominant society does not mean that they must learn no language in school except English, and learn of no one's past but ours, and be governed by no institutions except those of our sole devising."
(1981:10)

There may well be over one million Canadians of aboriginal ancestry, although the legal status and the degree to which such individuals aspire to distinctly aboriginal beliefs and ways of life varies.

The aboriginal peoples of Canada have been categorized as status (or "registered") Indians, non-status Indians, Metis or Inuit as the result of legislation, judicial decisions, government policies, and revisions to the Indian Act (c.f. Allen 1982:68).

In the past decades, several aboriginal organizations have arisen at both the national and regional levels to represent the interests of these groups by attempting to ensure the continued recognition and/or entrenchment of treaty and aboriginal rights and to preserve and improve the cultural identity and economic well-being of aboriginal peoples (Allen 1982:68).

Such organizations, therefore, have a concern with the use and management of archaeological resources which are linked to the occupation of Canada by the ancestors of contemporary aboriginal peoples.

Political Organizations: The formation of political associations by aboriginal peoples has given them access to various levels of the Canadian political structure. Four major organizations, at present, represent the political interests of aboriginal peoples at the national level.

i) The Assembly of First Nations (AFN) represents most of Canada's status Indians, who number some 300,000 individuals (Frideres 1983: Fig. 1.1, p. 10). Status Indians are legally defined as individuals who are registered or entitled to be registered as Indians under the Indian Act. Most status Indians belong to bands and have collective rights to reserve lands. There are approximately 550 such bands in Canada with rights to some 2241 reserves, of varying sizes (Frideres 1983:84 and 140).

ii-iii) Two organizations presently represent the interests of non-status Indians and Metis at the national level. Such individuals may number as many as one million. Non-status Indians are individuals who have lost their Indian status for various reasons (see Brascoupe 1981:118 and Frideres 1983:10). Metis are often defined as aboriginal people of mixed ancestry, particularly those of Indian and French ancestry. Many Metis people think of themselves as offspring of the fur trade and "are now engaged in an ongoing process of self-definition and a search for continuity as a distinct historical people" (Brascoupe 1981:118, see also Frideres 1983:12).

The Native Council of Canada (NCC) represents non-status Indians and those Metis who are not located in the Prairie provinces (Victor Valentine, personal communication). Although non-status Indians and Metis lack the special legal position of status Indians, the Council believes that the government of Canada has a responsibility to acknowledge that all native people have a special claim based on aboriginal title. The Council, therefore, works to promote and achieve, on behalf of the Metis and those Indians excluded from the Indian Act, a recognition by the federal government of the validity of aboriginal rights (Allen 1982:78).

The Metis National Council represents Metis in the Prairie provinces of Manitoba, Saskatchewan and Alberta (Victor Valentine, personal communication) with goals similar to those of the AFN and NCC.

iv) The Inuit Tapirisat of Canada (ITC) represents some 25,000 Inuit in the Northwest Territories, northern Quebec and Labrador (Allen 1982:83). According to Frideres (1982:12-13) the category "Inuit" has been redefined several times. The Inuit were placed under the control of the Indian Act just after Confederation, but they are now under the direct jurisdiction of the federal government under the BNA Act.

Each of the four major national political organizations also has provincial and/or regional affiliates (see Allen 1982 for a listing of these). The aboriginal peoples in Newfoundland/Labrador are also represented by provincial associations which are not affiliated with these four national associations (Victor Valentine, personal communication). There are also several tribal councils, usually of status Indians, in B.C., Ontario and Quebec, which do not have a formal affiliation with the AFN (Allen 1982).

Other Aboriginal Organizations: In addition to the above four national political organizations, two additional national organizations promote the rights and interests of Canada's aboriginal peoples.

The first is the Native Women's Association of Canada, which concerns itself with the interests of all aboriginal women, be they status or non-status Indians, Metis or Inuit. The Association has a particular interest in the arts, crafts, folklore and cultural traditions of Canada's aboriginal peoples (Allen 1982:86).

The second is the National Association of Friendship Centres which represents some one hundred friendship centres located in urban communities throughout the country. These centres address the needs and concerns of aboriginal people in urban settings and include in their mandates an interest in issues of aboriginal identity, culture and heritage (Allen 1982:90).

b) Key Terms and Definitions

Generally, aboriginal peoples and organizations use the vocabulary of professional archaeologists, including terms such as "artifact" and "site". However, the meanings they ascribe to these terms may be quite different than those ascribed by professional archaeology. For example, aboriginal people may understand archaeological sites as whole areas, say a whole river, rather than a more limited area where actual remains are found (Mohs 1986). As will become clear below, aboriginal people generally consider the remains of their ancestors to be part of their "cultural traditions" and their own distinct aboriginal "heritages", and they increasingly speak of the need for "cultural clauses" in agreements between governments and aboriginal peoples.

Aboriginal people often eschew terms such as "curiosities", "relics", or "primitive" art as derogatory in nature because they reflect demeaning and/or stereotypical attitudes toward them and their cultural remains of their past.

c) How Aboriginal Peoples Recontextualize Archaeological Resources

Because many archaeological resources in Canada have come from or are still within sites that were occupied by the ancestors of contemporary Indians, Metis or Inuit, such aboriginal peoples believe that they have a right to be consulted in the way such resources are protected, mined and managed. This view of aboriginal peoples and the ways they have attempted to take part in the management of Canada's archaeological resources is discussed in detail in Section V of this report. Therefore, only some general remarks will be made here.

In some circumstances, aboriginal people believe that their rights to such resources are preeminent, as, for example, in the case of certain burial sites which are still considered sacred and are thus components of functioning aboriginal peoples cultural belief systems. In other words, aboriginal peoples sometimes claim that resources considered "archaeological" by outsiders have, in fact, not been decontextualized in the sense that this concept was elaborated in Part I of this section. This is a critical point because it indicates that professional archaeologists and aboriginal people can have a very different definition of what constitutes an archaeological site!

There is no question that many archaeological objects have been removed from sites without any consultation with aboriginal peoples. Aboriginal peoples have repeatedly expressed dismay at the removal of both archaeological and ethnographic objects from them without their consent and their incorporation into museums and private collections throughout the world. (For one study of the removal of such objects from Aboriginal people see Cole 1985.) Aboriginal groups have made frequent calls for the repatriation of such objects to their own communities.

Aboriginal peoples are also concerned with the management of archaeological resources on their reserves and on the more extensive lands (and under the water of these areas) upon which they depend for their economic pursuits. They are thus concerned that archaeological activities undertaken on such lands, or in such waters, do not infringe upon the uses of these lands and their desire to protect and manage these lands for future generations (see, for example, Jacobs 1986).

Aboriginal peoples may recontextualize archaeological resources in informational, aesthetic, symbolic or economic ways.

I) Informational Recontextualizations

Aboriginal peoples are keenly interested in their own pasts which, as we have seen, are both ancient and varied. Although aboriginal peoples provide complex accounts of their history through their oral traditions, they are increasingly interested in synthesizing such knowledge with knowledge gained by interpretation of their material remains.

However, as noted in the above discussion of forms of museum exhibits, aboriginal people may offer their own interpretations of archaeological remains - they do not always adhere to the theories arrived at by professional archaeologists. Indeed, aboriginal people have often claimed that they can provide a better understanding than the professional archaeologist of the function and meaning of certain sites and artifacts because their own life styles are more similar to those of their ancestors than are the life styles of most professional archaeologists. In this sense, aboriginal people are creating their own version of "ethno-archaeology".

Aboriginal people are also keenly interested in the information that can be provided by archaeological resources regarding their past use and occupancy of lands to which they lay claim (see Section V below).

II) Aesthetic Recontextualization

Aboriginal peoples have also looked to the aesthetic qualities of the material remains of their pasts as part of their attempts to retain their aboriginal identities and revitalize their cultures. This has especially been the case for certain ethnographic objects (as, for example, on the Northwest Coast), but archaeological remains have also been important sources of inspiration for aboriginal peoples.

In particular, contemporary artists of aboriginal ancestry have been involved in linking their contemporary art forms to their goals of cultural revival (see Blundell and Phillips 1982 and 1983). Such artists are in the process of creating artistic syntheses of Western and traditional aesthetic elements.

For example, images from prehistoric sites of rock art have been incorporated into the styles of certain contemporary artists of aboriginal ancestry. Such styles of

art symbolize to aboriginal peoples the importance of their aboriginal identity. By symbolizing their link with the traditions of their own people, such styles thus serve as symbols of aboriginal goals of cultural survival and self-determination.

Unfortunately, such contemporary art forms are often misinterpreted by outsiders as forms of "primitive art" that have survived from some distant past rather than as contemporary works that address current issues regarding aboriginal life in Canada (see Blundell and Phillips 1983).

ii) Symbolic Recontextualizations

As was discussed above in the section on museum exhibits, aboriginal people are increasingly contesting the sole use of the material remains of their ancestors as symbols of a national Canadian identity.

Instead, they see such remains as symbols of their own valued and distinct Indian, Metis and Inuit heritages. Such resources provide them with a sense of identity and pride in the accomplishments of their cultures. This is of great importance to them given that their cultures continue to be misunderstood and denigrated by the dominant culture and given the low self-esteem that many aboriginal people continue to experience.

Aboriginal people also recontextualize archaeological resources as sacred objects, again as part of their effort to renew their cultural traditions and assure their cultural survival and self-determination.

As to be noted in Section V below, aboriginal groups have expressed a willingness to share archaeological resources with non-aboriginal groups and institutions which wish to recontextualize them in their own informational, aesthetic and symbolic ways. What they demand, however, is that such cooperative undertakings be consistent with their needs as self-determining communities.

iv) Economic Recontextualizations

Aboriginal people wish to have control over the way archaeological resources from their own cultural pasts are economically recontextualized. When resources are displayed for tourists and other members of the public, they wish their own communities to partake of any economic benefits. Where archaeological excavations are undertaken, they wish employment opportunities to accrue to them. And, above all, they do not want their heritage to be sold to outsiders who

profit from such transactions at the cost of their own goals and needs.

5. Dealers

Private dealers buy and sell archaeological resources, generally artifacts. In other words, they recontextualize archaeological resources as commodities which have attached economic values.

Two associations in Canada represent the commercial interests of such dealers. These are the Canadian Antique Dealers Association and the Professional Art Dealers Association of Canada (PADAC).

The process by which archaeological resources come to have a monetary value is a complex one. It will therefore be discussed separately in Section VI of this report. We may note here, however, that economic recontextualizations are of a secondary nature, in that archaeological resources are bought, sold, or donated to public institutions because they have already been recontextualized in informational, aesthetic and/or symbolic ways.

Dealers have been criticized by both archaeologists and aboriginal peoples. As we have seen above, archaeologists consider the attachment of an economic value to such resources to be antithetical to their use for informational and heritage purposes. Aboriginal people have seen the economic appropriation of what they consider their heritage objects as yet another example of the way they are exploited and the lack of concern of outsiders for their own perceived needs.

In response to their archaeological critics, the Canadian Antique Dealers Association asserts that archaeological objects do have a commercial value. At the same time, they endorse government legislation that will control the export of "important objects" and allow government "to purchase them at a fair international value" (Letter from the Association to the DOC, June 17, 1985).

The Professional Art Dealers Association of Canada has also responded to the position of the Canadian Archaeological Association regarding the Canadian Export Import Act. PADAC refers to the position of the archaeologists as "admirably utopian, yet totally unrealistic given today's society" (Letter from PADAC to the DOC, June 28, 1985). In this same letter PADAC notes that the position of the CAA has produced the opposite effect to that intended:

We refer to the export of two Northwest Coast Indian artifacts - a Haida Frog Tobacco Mortar and a Salish Human Seated Figure Bowl - in 1983. By recommending the approval of the export permit so as not to establish official sanction of the commercial value for any artifact, Canada, and the Province of British Columbia lost two, undoubtedly, culturally significant artifacts."

This case will be further discussed in Section VI and the Conclusion to this report.

6. Collectors

We can identify another "public" interested in the recontextualization of archaeological objects, the collectors, as a general category at least in the sense that all collectors engage in the discovery, purchase or trade of such objects. But, beyond this common involvement in some kind of market in archaeological objects, generalizations are difficult.

Collecting is, of course, one of the primary activities of museums. Museum-based collectors engage in the ostensibly public practice of assembling selections of archaeological objects, which they ultimately intend to exhibit to the public. The recontextualization taking place here involves the exhibition, or display, of such objects in ways that are thought to make sense aesthetically or by reference to some idea of the "scientific" significance of particular items. This is a contextualization of archaeological objects in public space but it is a very particular, aesthetic or scientific, kind of display (the rationale for which is by no means uncontested, for example, by aboriginal people).

The two other forms of collecting activity in respect of archaeological objects differ from museum collecting in that, at least in a formal sense, they involve the transfer of archaeological objects from their point of discovery (where they may be thought to be the property of "the public" - the State - of "a people" or "a culture") into private possession. We will see later (for example, in our discussions of "hobbyists" in Section VI of this Report) that this private retention of archaeological objects (in a "relic room" or wherever) may still be thought of by some collectors, as a means of conserving for future generations prehistoric objects (which otherwise might have been lost to "the public"). The point remains that a general characteristic or consequence of the activity of collection is the transfer of such objects into private hands.

The private collector may obtain archaeological objects and display them in his or her own home, for essentially aesthetic purposes (as examples of fine art). This "aesthetic recontextualization", however, may be indistinguishable in practice from the economic process of investment in a piece of valuable cultural property, as well as involving an assertion by the collector of his or her status within a social group in which the character of an art collection is an important interpersonal reference. The collection of art objects in this way has been described by the French cultural theorist, Pierre Bourdieu, as a process of accumulation of cultural capital.

Individuals who assemble their own "art collections" of archaeological objects may also have an authentic curiosity as to the role of these objects in the material functioning of aboriginal cultures or non-contemporary cultures; in these instances, the recontextualization of archaeological objects into private collections can be thought of as having an educational or informational character rather similar to the recontextualization taking place in museums.

A third type of collector of archaeological objects is the individual we are referring to as "a hobbyist". This group certainly includes, probably in a large majority of the cases, those who are referred to by archaeologists as "looters" and/or "pot-hunters". Usually these individuals obtain their archaeological objects, in what is certainly an illegal fashion in a formal sense, by taking them from sites (either by surface collection or, in some cases, by excavation). Alternatively, they may obtain the objects by trading with other hobbyists or, much less frequently, in public sales of archaeological artifacts (see Case Study No. 2 in the Appendix of this Report). There is no question that this kind of hobbyist can subtract from the total set of objects available to archaeologists (in particular, making the collection of "provenience data" with respect to these objects impossible) and that also the hobbyists are known actually to have destroyed important sites. set against this, in some observers' perspectives, is the fact that these hobbyists do preserve the objects they find and trade with considerable care, if not in accordance with the procedures that would be adopted in museums. We discuss these issues further, and their implications for policy and legislation, in Section VIII of this Report.

7. Developers

Developers are unlike all the other prime policy publics. They have no direct, positive interest in archaeological resources. Rather, archaeological materials are recontextualized as physical matter sedimented with other materials on construction sites.

Developers have no interest in and are not engaged in forms of use which recontextualize archaeological resources either in informational, aesthetic or symbolic ways. In economic terms, archaeological materials are sources of costs and causes of restrictions and regulations on the behaviour and plans of developers.

For the management of archaeological resources the size of the development company and of development projects in general may be of relevance. A number of large companies which are routinely involved in so called mega projects have in order to save costs and facilitate their general planning process hired archaeologists as employees or even established their own archaeology departments (see Hydro Quebec).

For companies of the size of Hydro utilities or pipeline corporations, it is part of their good corporate behaviour to undertake the necessary survey and mitigation work.

These companies have to be distinguished from those who do not have their own archaeological staff, and, furthermore, from those that treat archaeological resources solely as obstacles to their project execution.

We have been made aware by a number of archaeologists that federal agencies and departments when acting as developers often do not undertake the most basic provisions regarding survey and mitigation. The time frame of this project did not allow any more detailed research in this important area. More study will definitely have to be undertaken in the next phase of the policy development process.

SECTION II
KEY TERMS AND DEFINITIONS

PRIME POLICY PUBLICS	FORMS OF RECONTEXTUALIZATION	FORMS
	<u>Informational</u>	<u>Aesthetic</u>
1. Archaeologists	1. -sites/objects and provenience data generate scientific knowledge about cultures and cultural processes	1. -not undertaken and often criticized
2. Art Historians	2. -aesthetic artifacts/sites generate scientific knowledge about human aesthetic forms and practices	2. -aesthetically pleasing artifacts/sites recontextualized as art forms
3. Museologists/ Museums	3. -objects/sites as components of informational exhibits: "contextual" or "insider" views presented	3. -aesthetically pleasing artifacts/sites recontextualized as art forms and displayed in "formalist" exhibits
4. Aboriginal People/ Organizations	4. -objects/sites provide "insider" information which may conflict with scientific knowledge	4. -aesthetically pleasing artifacts are source of pride and inspire contemporary art forms as part of cultural revival
5. Dealers	5. -scientific or art/historical knowledge about an artifact increases its monetary value	5. -aesthetic quality increase monetary value of artifact sold as art form and/or heritage object
6. Collectors	6. -scientific or art/historical knowledge about an artifact adds to its value	6. -aesthetically pleasing artifacts valued as art forms or for craftsmanship
7. Developers	7. -not undertaken except where required by law	7. -not undertaken

SECTION III
KEY TERMS AND DEFINITIONS

OF RECONTEXTUALIZATION

FORMS OF RECONTEXTUALIZATION

Symbolic

Economic

Potential Conflicts With:

- | | | |
|---|--|--|
| <p>1. -archaeological resources considered components of heritage of all humankind local or national groups</p> | <p>1. -not undertaken and usually criticized</p> | <p>1. -some museum exhibit formats
-aboriginal people/
organization
-dealers
-some collectors
-developers</p> |
| <p>2. -archaeological resources considered components of aesthetic heritage of all humankind, local or national groups</p> | <p>2. -may assess monetary value of artifacts for museums, dealers or collectors</p> | <p>2. -some exhibit formats
-aboriginal people
-developers</p> |
| <p>3. -heritage objects exhibited to give groups sense of pride and identity</p> | <p>3. -many will not buy or provide tax credit evaluation for donated artifacts but must provide monetary evaluation of collection for insurance purposes</p> | <p>3. -some exhibit formats may be challenged by archaeologists, art historians or aboriginal peoples</p> |
| <p>4. -objects/sites considered components of aboriginal heritages; some artifacts considered sacred components of religious system</p> | <p>4. -most do not want artifacts of their heritage sold to "outsiders"; want economic benefits from touristic interests; want economic opportunities from archaeology research projects</p> | <p>4. -exhibit formats that use aboriginal heritage objects as national symbols
-developers
-archaeologists and art historians
-collectors</p> |
| <p>5. -status and heritage uses increase monetary value of artifact</p> | <p>5. -monetary value attached to artifacts sold for informational, aesthetic and/or investment</p> | <p>5. -archaeologists
-aboriginal people
-developers</p> |
| <p>6. -status uses</p> | <p>6. -purchase artifacts for informational, aesthetic and/or symbolic use, for investment, or as part of hobby; trade for objects</p> | <p>6. -archaeologists
-aboriginal people</p> |
| <p>7. -not undertaken</p> | <p>7. -resources not economically valued but constitute liability where laws require mitigation and recovery.</p> | <p>7. -archaeologists
-art historians
-aboriginal people</p> |

E. Summary Table of Forms of Recontextualization by Prime Policy Publics - Elaboration

Table 1 presents in summary form the major ways in which prime policy publics recontextualize archaeological resources.

This table indicates where there are potential conflicts among members of these prime policy publics and therefore where consultation is required.

The following generalizations and recommendations emerge from reviewing this table and the associated discussion in this section of the report.

1. With the exception of developers, all of the prime policy publics discussed in this section rely upon archaeological resources in order to exercise their mandates and achieve their goals. Therefore, a first requirement of policy and legislation must be the protection of such resources.
2. Archaeologists, Art Historians and Aboriginal Peoples share a concern with the potentially damaging effects of development, whether it is undertaken by private companies or sponsored by various levels of government. Therefore, models must be sought that minimize the risks to archaeological resources engendered by development projects.
3. The activities of professional archaeologists and members of the public, including amateur archaeologists, collectors and so-called "hobbyists", can be mutually beneficial or they can lead to claims of "looting" by archaeologists and counter-claims against them of scientific monopolization. Further research is recommended to consider how mutual cooperation between archaeologists and interested members of the public can be achieved, either through policy and legislation or through forms of public education.
4. There are potential areas of contestation between archaeologists and aboriginal people. We have seen, firstly, that in some cases aboriginal peoples contest what constitutes an "archaeological resource", that is, they question whether resources have, in fact, been "abandoned" and thus, in our terms, "decontextualized". Secondly, their own informational, aesthetic and symbolic uses of archaeological resources may overlap or be in conflict with those of archaeologists. Therefore, it is recommended that consultation be undertaken with these two prime policy

publics in order to determine how multiple-use strategies regarding such resources can be effected. A case study in the Conclusion of this report provides one such model of cooperative research between archaeologists and an aboriginal community. Other such cases should be investigated.

5. Museum exhibits play a significant role in presenting archaeological resources to the public. Museum personnel are now in a period of creative reflection regarding how they are making sense of such resources. Consultation between museum people, archaeologists, art historians and aboriginal peoples should be encouraged in order to explore strategies for such presentations to the public, including, for example, strategies that make the public more aware of the multiple meanings and uses within Canada of archaeological resources. More research regarding innovative exhibit strategies is therefore recommended. In particular, the ways in which aboriginal people "exhibit" archaeological resources should be further documented.

6. As in situ sections of parks and ecomuseums or as ex situ components of museum exhibits, archaeological resources are important attractions for tourists. Therefore, there are economic benefits associated with the display of such resources that go beyond those considered earlier. If the state is to facilitate the presentation of such resources to the public, then it must consider who is to benefit financially and how such benefits are to be negotiated given the multiple claims that have been made regarding archaeological resources in Canada.

Section III: ARCHAEOLOGICAL ACTIVITIES

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SECTION III: ARCHAEOLOGICAL ACTIVITIES

A. Introduction

New initiatives in the management of archaeological resources have to build on existing activities regarding archaeology. This section will present an overview of the various forms of archaeological work. It has two functions:

I) to provide an overview of the various agencies and professional associations that are involved in Canadian archaeology. This overview is based on interviews with or data received from various sources.

II) to provide the reader with a sense of the concerns of individual archaeologists involved in these organizations with respect to the current situation. The discussion of these concerns is derived from a telephone survey conducted during April and May 1986 with spokespersons for a significant number of museums and other institutions involved with Canadian archaeology.

Some qualifications are necessary:

a) We would like to have conducted an in-detail survey of this kind with our various prime policy publics (particularly the aboriginal peoples, collectors and hobbyists) regarding their respective orientations to archaeology, but such a project would have been impossible within the six to seven weeks of this initial research.

b) We did, in fact, conduct additional survey work over and above that reported here. Members of the project team attended the annual meeting of the Canadian Archaeological Association, held in Toronto on 25-27 April 1986, and distributed a questionnaire, comprising some 17 open-ended items, to all people attending the conference. To date, 38 questionnaires have been returned, with very thoughtful and detailed answers on the whole field of professional and amateur archaeology. The careful analysis that these very detailed responses deserve has not been possible within the time limits of this project. We very much hope to receive more responses and that the analysis of these surveys will be possible at a later date.

c) Our concern in this section has been to provide information that is as comprehensive and up-to-date as possible. We would obviously be pleased to hear from any professional or amateur institution or organization not identified or adequately covered in this section.

B. Overview of Institutions Involved in Archaeology

1. Federal Authorities:

The two federal authorities which are actively involved in archaeology are the National Museum of Man through the Archaeological Survey of Canada (ASC), and the Department of the Environment through Parks Canada. Both federal agencies will be discussed in greater detail in the "Legislation and Policies" section below.

The ASC has a mandate which emphasizes research (Janes, Arnold, 1983: 43). Although the ASC conducts research across Canada, the bulk of its work is carried out north of the 60th parallel.

The Canadian Heritage Information Network (CHIN), which is an on-line system listing information on archaeological sites, collections and reports of field activities, is one of the information systems which is used by the ASC.

According to information gathered from the CHIN system, the ASC conducted fieldwork on 33 sites in Yukon and 14 sites in the Northwest Territories in 1983.* (It must be noted that a "site" recorded on the CHIN system can range in size from a handful of artifacts to a prehistoric village.) In 1984, the ASC staff visited or recorded a total of 37 sites in the two territories.

The ASC is also involved in collection activities. It has been, until recently, the central repository for all archaeological artifacts recovered from federal lands and still houses a significant collection.

Parks Canada has five regional offices which are active in archaeological fieldwork on lands, primarily federal, across Canada. Table III.1 summarizes the number of archaeological projects undertaken in 1983 and 1984 according to region.

Table III.1: Archaeological Projects Undertaken by Parks Canada in 1983 and 1984

	1983	1984
Western region	2	3
Prairie and Northern region	6	11
Ontario	11	7
Quebec	10	11
Atlantic region	3	1
TOTAL PROJECTS	32	33

*This subsection is based on data from 1983 and 1984. Comprehensive data for 1985 were not available.

The majority of these projects were salvage excavations and resource assessments. According to a Parks Canada official, there has been a general increase in smaller specialized projects over the past several years. An excavation manual and recording system has been designed to be used uniformly by all Parks Canada archaeological staff. Results are written and deposited in federal and provincial archives.

2. Provincial Authorities:

As further discussed in the section on Legislation and Policies below, each province requires that certain kinds of archaeological work on provincial land be conducted under permit issued by the provincial authority.

The number of permits issued by province in 1983 and 1984, based on information derived from annual reports and interviews with provincial authorities, is indicated in Table III.2.

Table III.2: Number of Archaeological Permits Issued By Province 1983 and 1984

Province	<u>1983</u>	<u>1984</u>
British Columbia	46	41
Alberta	114	105*
Saskatchewan	25	43
Manitoba	23**	20
Ontario	104	93
Quebec	47	52
New Brunswick	5	(not available)
Nova Scotia	6	11
Prince Edward Island	2	2
Newfoundland	11	19

*Includes 5 subsequent cancellations.

**Includes 1 subsequent cancellation.

Table III.2 shows a concentration of regulated archaeological activity in Western and Central Canada, with a relatively low level of activity in the Atlantic region.

a) Types of Projects Conducted and Recipients of Permits

Due to the fact that each provincial authority has its own method of information gathering and recording, and its own system of definitions and typologies, the data presented in this subsection are not comparable among provinces on a qualitative level. (For example, each province has its own method of classifying types of archaeological projects).

BRITISH COLUMBIA

A bibliography, compiled by the Heritage Conservation Branch, Resource Management Division in British Columbia, lists archaeological field reports in the province according to three types: I) excavations; II) areal surveys; and, III) limited surveys. However, reports for the 1983 and 1984 seasons have not been completed and therefore are not all listed in the bibliography. Based on the reports which have been filed, it can be stated that all three types of projects were undertaken in 1983 and 1984. The 46 permits issued in 1983 and the 41 in 1984 were issued to heritage resource consultants, provincial government departments, museums and universities.

ALBERTA

In 1983, 114 permits were issued by the Archaeological Survey of Alberta, of which 88 were heritage resource impact assessments; ten projects were mitigative excavations; and 16 were research-oriented projects. (Donahue, 1984:1).

According to Archaeology In Alberta 1984,

Eleven percent of the 100 permits issued in 1984 were not directed at proposed development related activities. Of the 90 development related projects, 58 involved private sector developments and 32 were necessitated by government construction. (Donahue, 1985:1)

As evidence of the extent to which heritage resource consultants are active in the province, the lists of abstracts in the annual reports indicate that 74 of the 1983 projects and 64 of the 1984 projects were conducted by consultants.

SASKATCHEWAN

As Table III.2 shows, Saskatchewan is one of the provinces which saw a considerable increase in the number of permits issued from 1983 to 1984. In 1983, the Archaeological Resources Management Section of Saskatchewan Culture and Recreation issued eleven permits to private consultants, researchers and individuals, 7 permits to universities and 7 to provincial authorities and Crown Corporations.

In 1984, consultants, researchers and individuals received 26 permits, universities 7, and provincial authorities and Crown Corporations 10. The types of projects defined by the Archaeological Resources Management Section include: impact assessment, impact mitigation, monitoring, academic research and avocational research. In terms of these types, the highest number of projects conducted in 1983 and 1984 was in the impact assessment and avocational research categories.

MANITOBA

The Historic Resources Branch of the Department of Culture, Heritage and Recreation in Manitoba conducted 15 archaeological projects in-house in 1983 and issued 3 permits to universities, one to the provincial museum, one to a consultant and 2 to unaffiliated individuals.

In the following year, 15 in-house projects were undertaken, and other permits went to one consultant, two avocationalists, one university and to Parks Canada.

ONTARIO

In 1983-84, "the Archaeology unit (of the Ministry of Citizenship and Culture in Ontario) carried out 29 major field projects, 204 site inspections and 29 archaeological rescue projects" (Heritage Branch, 1985: 59).

As well, in both years, permits were issued to universities, museums and a large number of heritage resource consultants among others. A total of 15 underwater projects over the two year period were conducted.

QUEBEC

Out of the 47 permits issued in 1983 and the 52 permits issued in 1984 by the Ministère des Affaires Culturelles in Quebec, 27% went to independent archaeologists, 25% to heritage resource consulting firms, 14% to public authorities and 19% to universities (AAQ, 1986: 4).

The percentage breakdowns for the types of activity conducted in both years are: 38% for research, 37% for inventory and 27% for impact assessment.

NEW BRUNSWICK

In 1983, all five archaeological projects were conducted by staff of the Department of Historical and Cultural Resources. No data were received for 1984.

NOVA SCOTIA

The Nova Scotia Museum conducted archaeological fieldwork requiring two permits in 1983 and issued three permits to universities and one to the city of Halifax.

In the following year, 11 projects were undertaken; one by the Nova Scotia Museum; one by Parks Canada; 7 by St. Mary's University; one by Cumberland County Museum; and one by an unaffiliated individual.

PRINCE EDWARD ISLAND

The Public Archives of the Department of Education issued 2 permits in each of 1983 and 1984.

Archaeological fieldwork was conducted by Parks Canada, the Archaeological Survey of Canada and Council of Maritime Premiers.

NEWFOUNDLAND AND LABRADOR

According to Archaeology in Newfoundland and Labrador 1983, of the 11 permits issued by the Newfoundland Museum, universities received the majority. Other projects were conducted by the Smithsonian Institution, Newfoundland Marine Archaeology Society and Labrador Environmental Services.

The number of permits issued increased in 1984. Of the 19 permits issued, 13 were research-related and 6 were environmental assessments (Newfoundland Museum, 1985: 1). Universities, federal authorities, the Smithsonian Institution and a private consultant received permits.

3. Territorial Authorities:

The territorial authorities responsible for issuing permits for archaeological investigations are the Prince of Wales Northern Heritage Centre in the Northwest Territories and the Yukon Heritage Branch.

Table III.3 summarizes the number of archaeological sites which were recorded and/or active in 1983 and 1984 in the Territories, according to information derived from the CHIN system. As mentioned previously, sites on the CHIN system can greatly range in size.

Table III.3: Number of Active Sites in the Territories 1983 and 1984

	<u>1983</u>	<u>1984</u>
Northwest Territories	211	117
Yukon	66	55
Other	--	12*

*(Undetermined location)

NORTHWEST TERRITORIES

In 1983, nineteen permits were issued for archaeological work in the Northwest Territories (Arnold, 1983: 16). Research was undertaken by the Prince of Wales Northern Heritage Centre, Archaeological Survey of Canada, Parks Canada, University of Alberta, University of Calgary, Northern Heritage Society, University of Toronto, and private heritage resource consultants.

In the following year, archaeological permits were issued to 16 researchers for work in the Northwest Territories (Arnold, 1984: 9).

YUKON

Projects undertaken in 1983 in the Yukon Territory were conducted by the Archaeological Survey of Canada, University

of Toronto, Council for Yukon Indians, Parks Canada and a private consultant (Greer, 1984:2).

Data for activity in Yukon in 1984 could not be gathered in time for the publication of this report.

4. Museums:

According to data received from the Canadian Museums Association, there are 1,846 museums in Canada. One hundred and fifty-eight of these are classified as museums of human history, archaeology, anthropology or ethnology. A number of these museums have archaeological collections, and a still smaller percentage are involved with archaeological fieldwork.

Museums involved with archaeology can range in size from large provincial museums such as the Royal Ontario Museum, to smaller or more specialized museums such as the Musée d'Odanak in Quebec.

The museums with archaeological collections which responded to our questionnaire (discussed later in this section) are:

- | | |
|----------------------|--|
| In British Columbia: | -British Columbia Provincial Museum
-Campbell River Museum |
| In Alberta: | -Provincial Museum of Alberta
-Fort Calgary
-Fort Museum
-Red Deer and District Museum and Archives |
| In Saskatchewan: | -Saskatchewan Museum of Natural History |
| In Manitoba: | -Manitoba Museum of Man and Nature
-Eskimo Museum |
| In Ontario: | -Bruce County Historical Museum
-Huronla Museum
-Macaulay Heritage Park
-Museum of Indian Archaeology
-Sainte-Marie Among the Hurons
-Thunder Bay Historical Society Museum
-Woodland Indian Cultural Education Centre |

- In Quebec: -Musée d'Odanak
 -Musée d'archéologie, Université
 du Québec à Trois Rivières
- In Nova Scotia: -Nova Scotia Museum
- In Prince Edward Island: -Confederation Centre Art Gallery
 and Museum
- In Newfoundland: -Newfoundland Museum
- In Northwest
Territories: -Nunatta Sunaqtangit

5. Universities:

Universities are involved with archaeological research across Canada. The extent of involvement can range from a course in archaeology to a doctoral degree. Some university departments have their own archaeology museums.

Two universities, Simon Fraser University, and University of Calgary, offer degrees in archaeology.

Other universities offer degrees or certificates in Anthropology, Sociology/Anthropology or Native Studies with specialized study in archaeology. Some of these universities are listed, by province, in Table III.4.

Table III.4: Canadian Universities Offering Degrees
Courses or Certificates in Archaeology

PROVINCE	UNIVERSITY
British Columbia	University of British Columbia Simon Fraser University University of Victoria
Alberta	University of Alberta University of Calgary
Saskatchewan	University of Regina University of Saskatchewan
Manitoba	University of Manitoba University of Winnipeg
Ontario	Brock University Carleton University Lakehead University Laurentian University McMaster University Sir Wilfrid Laurier University Trent University University of Toronto University of Waterloo University of Western Ontario University of Windsor
Quebec	Concordia University Laval University McGill University Universite du Quebec a Montreal Universite du Quebec a Trois Rivieres
New Brunswick	University of New Brunswick
Nova Scotia	St. Mary's University
Newfoundland	Memorial University

6. Archaeological Associations:

There are 16 archaeological associations in Canada which have been brought to our attention during the course of our research. The memberships of these associations range anywhere from approximately 25 to 350. These associations are:

- Canadian Archaeological Association
- Canadian Association for Archaeology Abroad
- British Columbia Archaeological Association
- Alberta Archaeological Association
- Saskatchewan Archaeological Association
- Saskatchewan Professional Archaeologists' Group
- Manitoba Archaeological Society
- Association of Manitoba Archaeologists
- Ontario Archaeological Society
- Save Ontario's Shipwrecks
- L'association des archeologues du Quebec
- La societe d'archeologie de la Nouvelle-France
- Comite d'histoire et d'archeologie subaquatique
- Societe de numismatique et d'archeologie
- Newfoundland Marine Archaeological Society
- Newfoundland and Labrador Amateur Archaeological Association

Types of activity can vary according to each association. One important function of most of these associations is their involvement in a "warden" or "site-watch" system. Provincial authorities, which are often centralized in the provincial capital, have difficulties

monitoring all the sites in the province simultaneously. The archaeological associations with chapters across the province act as "watch-dogs" to ensure that sites are not being disturbed or looted and report any site disturbances to the appropriate authority.

They can also be involved in what may be called "public education": groups like Save Ontario's Shipwrecks are actively involved in educating local citizens and amateur divers about the elements of archaeological site protection.

Archaeological associations also serve as lobby groups, in that many have influenced policy and legislative decisions.

In most cases, these associations are involved in archaeological fieldwork through local chapters and through other organizations such as universities and museums.

The level of activity varies among associations and provinces. For example, in the course of our study the Saskatchewan Archaeological Society was mentioned as being one of the most active, organized and well-funded archaeological associations in Canada with a strong amateur membership. The S.A.S. has approximately 350 members and is directly involved archaeological fieldwork. One of the reasons for the S.A.S.'s high level of activity can be attributed to the province's legislation, which allows the granting of permits to amateurs.

In addition, there is great public interest in archaeology in Saskatchewan because, relative to most other provinces, it is common for residents to find artifacts on their property either due to agricultural activity or meteorological phenomena (e.g. 'blowouts'). Increased public awareness and familiarity with archaeology has led to more amateur involvement.

7. Aboriginal Organizations:

There has been an increasing level of involvement of aboriginal peoples in archaeological activity. Although there are numerous groups involved in archaeology, only the "institutional" organizations are being considered in this section of the study.

Aboriginal organizations which are involved in archaeology include: the Walpole Island Research Centre (see

appendix for a case study of this research), the Inuit Cultural Institute and the Avataq Cultural Institute.

The type of activity in which these institutions may be involved can range from hiring archaeologists for specific contracts to employing a full time archaeologist and establishing a field school for aboriginal students.

8. Developers:

Because of the strengthening of provincial policies regarding the preservation and management of archaeological resources, (see Section 4) developers have had to increase the amount of attention they pay to these resources that are encountered either in preparation for or during the course of their development projects.

Developers include provincial and federal authorities, Crown Corporations and private companies with interests in forestry, energy, transportation, mineral resources and fisheries. A number of developers have their own archaeologists on staff while others hire outside agencies to carry out archaeological work.

9. Heritage Resource/Private Consultants:

Table III.5 lists the number of heritage resource consultants on file with each of the provincial authorities across Canada, according to data received for this study.

It must be noted that inclusion on these lists does not always carry with it the provincial authority's guarantee that each person or company listed is qualified to work as a consultant in that province. (For example, out of over 50 entries on the Quebec list, 38 are considered to be qualified archaeologists).

Table III.5: Number of Heritage Resource Consultants Listed With Provincial Authority

PROVINCE	NUMBER OF CONSULTANTS LISTED WITH PROVINCIAL AUTHORITY
British Columbia	13
Alberta	16
Saskatchewan	12
Manitoba	12
Ontario	17
Quebec	50+
New Brunswick	0
Nova Scotia	0
Prince Edward Island	0
Newfoundland	1

C. Institutional Survey

1. Selection of Potential Respondents

As mentioned in the introduction to this section, we were able to conduct a telephone survey of some of the institutions and individuals playing key roles in contemporary Canadian archaeology.

The procedure adopted in administering this survey was to identify a significant number of the primary institutions involved in archaeology in Canada, to circulate a questionnaire among these institutions, and then to telephone the person or the section of the institution which would be most centrally involved with archaeology in each institution.

In total, 163 surveys were distributed (see appendix for Disposition of Survey). Of these, 64 were completed; 20 were dismissed as being non-applicable to the institutions to which they were addressed; twelve were not completed because the prospective respondent was not contactable due either to an address or telephone number change; and the remaining 67 were not completed either because of our inability to reach the proper people at certain institutions, or because their completed questionnaires were received in the mail too late for processing.

Given the short time allotted for the completion of the survey, we had to rely on the cooperation of our respondents for the survey to succeed. We feel that most of the 64 institutions and individuals who participated exhibited a genuine commitment and attempted to answer our questions in as much detail as possible. We are very grateful for their help.

The specific procedures that we used with the various institutions were as follows:

a) Federal Authorities

Eight individual federal government offices involved in archaeology were approached. Five of these approaches were to regional offices of Parks Canada; but only one overall reply was eventually received from the central office in Ottawa, intended to speak for Parks Canada across the country.

b) Provincial/Territorial Authorities

Our concern with provincial and territorial authorities was to contact the office responsible for issuing archaeological permits in each province or territory. We were successful in surveying all twelve of the relevant authorities.

c) Museums

The eight provincial museums in Canada were contacted and a further 58 museums from across the country were selected from the Canadian Museums Association's Official Directory of Canadian Museums and Related Institutions (1984-5 edition). These museums were selected according to our interpretation, from the descriptions in the Directory, of the extent to which individual museums appeared to have archaeological artifacts on deposit or on exhibit.

Twenty museums completed this institutional survey; a further 31 were unobtainable or did not respond before the deadline we set for analysis of replies; and, despite the indications of the C.M.A. Directory, some fifteen museums asserted, on being contacted, that they did not, in fact, have archaeological objects in their collections.

d) Universities

Twenty-six university departments were selected from the Guide to Departments of Sociology, Anthropology and Archaeology in Universities and Museums in Canada, published by the National Museum of Man. Each of these was approached through its current chairperson. Due to the limited time frame of the survey and the fact that it was conducted during a peak work period for many of the respondents, we were able to complete only fourteen interviews.

e) Archaeological Associations

Our selection of archaeological associations was made from the briefs gathered by the Department of Communications in the course of its review of the Cultural Property Export and Import Act and from information received in the course of our study. Because of the unavailability of an up-to-date listing of these associations, we were unable to counteract difficulties such as changed telephone numbers or addresses in the allotted time. This resulted in a low response rate, with only three of eleven interviews being completed.

f) Aboriginal Organizations

Some attempt was made to use the questionnaire sent to archaeologists to gather the views and opinions of spokespersons for some of Canada's aboriginal groups. This selection was derived from a personal attendance at the C.A.A. conference and from a list provided by the Department of Indian and Northern Affairs of native organizations thought to be doing archaeological research. It will be seen from the questionnaire appended to this report that the survey was not specifically designed for aboriginal representatives, but nonetheless two very helpful replies were received.

g) Heritage Resource/Private Consultants

Our selection of private consultants was made from lists provided by several provincial authorities and from information gathered in the course of our interviews. These data show that while there is a market for this kind of service in Central and Western Canada, there is only one consultant operating in the Atlantic provinces.

From the 22 surveys sent out, seven very detailed replies were received. The remaining respondents were either not contactable or submitted their replies too late for analysis.

h) Others

In this category we placed those respondents who could have fallen into more than one of our primary categories; provincial offices other than those responsible for the issuing of permits; and special cases such as the Archaeological Survey of Laurentian University. Three responses were obtained from this group.

It must be noted that no claim is being made that the 64 completed surveys constitute a representative sample of a larger population. However, this survey provides an up-to-date assessment of commonly held views amongst contemporary Canadian archaeologists on the actual practices and key issues facing archaeology. Archaeologists constitute a key policy public for management policy. It is thus justified to give considerable space to the presentation of their views and opinions. Although the respondents included a number of other prime policy publics, they were not surveyed to a comparable extent.

2. Discussion of Findings

The data gathered through the Institutional Survey were analyzed on three levels:

(I) The various archaeological activities were divided into three main categories (see C.2.a below); then, with the institutions involved in archaeology being treated as a group, the overall distribution of activities was considered.

(II) The institutions were differentiated by type (e.g. museums, federal authorities etc.) and the distribution of archaeological activities by the various institutional types was observed.

(III) The broad activities categories were subdivided into their component tasks and the distribution of these tasks among institutional types was assessed.

In the course of the discussion of findings, the reader will note two kinds of statistics: the first of these are purely quantitative--a tally of how many of the respondents indicated that they are involved in a particular activity. The second set of statistics are more qualitative, involving the percentage of workload that the institutions dedicate to a given activity or task. For the purposes of this study, the quantitative statistics are the more important as they permit the creation of a rough inventory of 'who' is doing 'what' in Canadian archaeology. The percentages serve to demonstrate that there is a range of involvement in the various tasks to be found not only between, but also within institutional types.

The focus here, then, is less on pinpointing how the individual institutions divide their time but more on the degree of attention accorded each archaeological activity by the various institutional types.

Also to be kept in mind are the facts that:

(I) In the survey questions discussed in part C.2.a, respondents were not given the opportunity to answer 'none' when asked to estimate the percentage of their institutions' overall workload that was dedicated to the various archaeological activities. It must, therefore, be noted that, in several cases, the reply of '0-25%' involvement might indicate an answer closer to zero than to 25%.

(II) In the discussion of the distribution of component tasks by institutional type, the percentages used indicate the percentage of the institutions' efforts in that particular activities category that is devoted to the task in question. For example, a museum representative who states that 1-25% of his/her institution's overall workload is dedicated to archaeological activities and, later, that 95% is devoted to cataloguing, is saying that of all their curatorial efforts, cataloguing accounts for 95%.

a) Overall Distribution of Activities

The first step in our survey (see appendix for copy of questionnaire) was to operationalize the central term, 'archaeological activities' into three sub-categories:

- (I) the discovery of archaeological sites and the recovery of remains from them
- (II) curatorial activities regarding archaeological remains
- (III) interpretive or, more formally, recontextualization activities, such as the writing of reports, the production of exhibits and educational materials, the conducting of courses, and so on.

By asking each respondent to approximate the percentage of his/her institution's workload that is dedicated to each of these activities, we produced the following, very broad picture of the state of archaeological activities as they are practised by our respondents:

- (I) of the 61 respondents replying to question two regarding discovery/recovery, 43 respondents indicated that these activities occupied no more than 25% of their institution's time. A further 13 reported their institutions spent one-quarter to one-half of their time in this area.
- (II) of the 63 respondents replying to question three regarding the curating of archaeological resources, 47 indicated a workload expenditure of no more than 25% in this area. An additional 11 respondents said that between one-quarter and one-half of their overall workload involved these activities.

(III) of the 64 respondents to question four regarding the recontextualization process, 33 replied that interpretive activities occupied up to 25% of their institution's workload; and another 22 respondents said that between one-quarter and one-half of their efforts was concentrated in this area.

The most basic observation to be made from this least differentiated level of data is that while archaeology does not constitute a large component of the overall workload of the surveyed institutions as a group, time is spent to a greater degree on recontextualization than curatorial or discovery/recovery activities.

Information received in the course of our interviews suggests that this alignment is not historic but may be considered to be somewhat evolutionary: for example, certain of the representatives of museums indicated that their participation in discovery/recovery activities has declined gradually due to the lack of adequate funding and the accompanying lack of qualified personnel. Some also reported a lessening of their involvement in curatorial work, again because of funding and personnel problems, but also, in some cases, because the institution has taken advantage of the existence of outside agencies such as the Canadian Conservation Institute and has contracted out work in areas such as conservation and restoration.

Furthermore, the lead enjoyed by the recontextualization process can be seen to reflect the increased efforts on the part of several respondents to 'open up' the field of archaeology to a larger proportion of the general public, either to educate it about the importance of conserving and preserving these fragile resources, or for the much more pragmatic reasons of attracting tourists or encouraging support--in the form, perhaps, of funding or volunteer labour--for the various institutions' efforts.

b) Distribution of Activities by Institutional Type

We proceed here to a second level of analysis and consider the percentage of workload involved in each of the three sub-categories of archaeological activities according to institutional type. This information is provided in chart form (see appendix) and in summary form below:

- (i) museums comprised the largest group of institutions surveyed, with a total of twenty interviews completed. Of the nineteen respondents who replied to question two, all indicated no more than a fifty per cent expenditure of workload on discovery/recovery, with seventeen of those respondents reporting no more than 25% involvement. In answer to the question on curatorial activities, twenty responses were received, with 13 falling below or at a 25% involvement; 17 below or at a 50% involvement; and only three respondents indicating that they spend between 51 and 75% of their time so involved.

In keeping with the broad picture suggested above, museums were somewhat more involved in recontextualization, with 10 of the institutions questioned reporting up to a 25% workload expenditure; a total of 17 up to 50% involvement; and with two respondents indicating a participation rate of between 51 and 75% and a third respondent reporting between 76 and 100%.

- (ii) We received responses from three federal authorities, including: the Archaeological Survey of Canada who indicated a commitment per category of 26-50% and Parks Canada, with a per-category allotment of 0-25%.
- (iii) Provincial and territorial authorities overall logged almost equal amounts of time on curatorial and interpretive efforts with, again, the majority of the respondents indicating no more than 25% involvement in either capacity; and, in line with the broad pattern established above, discovery/recovery commanded the least attention, with eight of eleven respondents reporting less than 25% involvement.
- (iv) The data received from private consultants showed, as might be expected, that the major part of their efforts is concentrated on discovery/recovery activities (six of seven respondents reporting between 26-75% involvement), with considerably less being spent on interpretation and virtually none on curatorial work.
- (v) Again as was to be expected, universities reported focusing most of their efforts on recontextualization, with discovery/recovery placing second, slightly ahead of curatorial activities.

(VI) Among the other respondents were:

- representatives of two aboriginal organizations who reported minimal involvement in all three categories, with a slight advantage going to interpretive activities.
- two amateur archaeological associations which, while virtually inactive in discovery/recovery, were somewhat more involved in curatorial activities; also, one of these associations reported a 51-75% involvement in interpretive activities.
- one professional association which also was more involved in recontextualization, rating it at between 26 and 50% as opposed to no more than 25% for the other two categories.

c) Distribution of Component Tasks within the
Broader Categories by Institutional Type

On this level of analysis, we were interested in the priority given to the different tasks that fall within the broader activities categories by the various institutions. To determine this, we subdivided each of the three categories into its primary components:

I) discovery/recovery activities:

- land or underwater archaeology
- research or resource management

II) curatorial activities:

- cataloguing
- conservation
- restoration
- storage
- other

III) interpretive activities:

- scholarly publications
- educational programmes
- written educational materials
- displays and exhibits
- other

The results of this analysis are provided in chart form (see appendix) and in summary form below:

1) Discovery/Recovery Activities

Overall, of the 57 institutions that classified their work as either land or underwater archaeology, 70.2% indicated that they were totally land-oriented and 91.4% reported at least a 75% involvement with land resources. Only two institutions among our respondents showed a high level of involvement with underwater archaeology: a private consulting firm in Ontario whose archaeological involvement consists of a 7:1 ratio between underwater and land work; and an amateur association involved primarily with shipwrecks. Generally, the other institutions had minimal involvement with underwater archaeology, some of them mainly offering advice regarding these resources. Several respondents did, however, indicate a desire to become more involved in this area.

Regarding the distinction between research-related archaeology and archaeological resource management: of the 50 respondents making this distinction, 19 indicated that research-related archaeology constituted at least 76% of their workload, with eight respondents reporting that research-related archaeology was their sole archaeological concern. This particular category is somewhat skewed, given that eleven of the thirteen responding universities fall within the 76-100% division. Of the non-university respondents, 64.8% reported that research comprises less than one-half of their archaeological activities.

As might be expected, universities as a group rank lowest in terms of workload concerned with archaeological resource management, with 12 of 13 respondents reporting no more than 25% involvement in this area, and five of these indicating no involvement at all.

Statistically, the highest involvement in resource management is reported by two museums which, with a negligible involvement in discovery/recovery overall, do only resource management: for example, one of them functions solely in an advisory capacity with an underwater association, but plays no active role. More realistically, however, the highest rankings in this area belong to three

provincial authorities, two of which report a 0-25% involvement in discovery/recovery generally, the third a 26-50% involvement, and all three indicating a 9:1 ratio between resource management and research activities.

II) Curatorial Activities

The information concerning the distribution of curatorial tasks is available in chart form (see appendix) and is presented, by institution, in summary form below:

Over all institutional types, the individual tasks designated as curatorial rank as shown in Table III.7.

Table III.7 Distribution of Curatorial Tasks among Institutions as Group

	none	1-25%	26-50%	51-75%	76-100%	(total no. responses)
cataloguing	12*	12	14	5	13	(56)
storage	17	19	14	5	2	(57)
conservation	26	19	8	1	0	(54)
restoration	41	11	2	1	1	(56)

*number of respondents

museums: The museums' main involvement in terms of curatorial work was in the area of storage. Of nineteen respondents, only one claimed no involvement at all; five others indicated up to a 25% participation rate; ten fell into the 26-50% category; and the remaining three respondents reported better than 51% involvement.

The curatorial task that ranked second among the museum representatives was cataloguing. Here, of eighteen respondents, three had no involvement; nine reported up to

25%; five ranked between 26-50% participation; and one indicated a participation rate above 51%.

The remaining activities, conservation and restoration, rated much lower with museums: only eight of eighteen respondents were involved in conservation, five reported up to 25% and the remaining three were spread between 26 and 75%. Restoration was the least performed task among museums, with eleven of eighteen respondents indicating no involvement, and the remaining seven falling below 25%.

federal authorities: The curatorial task-ranking for Parks Canada and the Archaeological Survey of Canada saw them placing most emphasis on cataloguing, which, in each case, comprises between 51 and 75% of their workload.

Of the remaining activities, the ASC indicated a 26-50% rate for storage and no involvement in either conservation or restoration, both of which, they report, are undertaken for them by 'another component of the National Museums.' The data for Parks Canada on these other three tasks was unavailable.

provincial/territorial authorities: As was the case for the federal authorities, the top-ranking curatorial task for this institutional type is also cataloguing: with three respondents indicating no involvement, the remaining authorities are spread relatively evenly over the four response categories.

The task that ranked second for provincial/territorial authorities was storage. For example, one of the provincial authorities ranked highest among our respondents in this area, devoting 60% of its overall commitment to curatorial activities to this task.

As a group, the provincial and territorial authorities showed a minor degree of involvement in conservation: four respondents said they were not involved; five set their participation rate at between 1-25%; and two fell between 26-50%.

Only one respondent of this institutional type reported any activity in the area of restoration.

private consultants: As was expected, considering their minimal involvement in curatorial activities in general, private consultants reported little involvement in the individual curatorial tasks. The inclusion of five respondents in the 76-100% category for cataloguing is ultimately misleading, because, while it does point out that these companies have some involvement, it must be kept in mind that it is their only function in an overall low expenditure of effort in curatorial activities.

universities: Overall, universities reported little involvement in curatorial work, sometimes comprising only the care of a small study collection. What curatorial work they do perform centres, then, mainly around cataloguing: while four respondents indicated that they were not involved with it at all, two reported that it comprised up to 25% of their workload in terms of curatorial work; another six assigned it to the 26-50% category; and one respondent said that it was the subject of 76-100% of his institution's curatorial workload.

The second most performed task in this category among universities is storage: of 13 respondents, four report no involvement, five say that this task occupies up to 25% of the time they spend on the curating of archaeological resources, while an additional three respondents see storage as occupying over fifty percent of their time.

others:

a) Of the two aboriginal groups contacted, only one reported any involvement in curatorial work involving archaeological resources and stated that that involvement was currently concentrated in cataloguing.

b) Of the two amateur associations that responded, both ranked cataloguing as their primary curatorial activity; and for one group, it constituted their only involvement. The other group, involved exclusively with underwater archaeology, also reported some involvement in conservation and restoration work. Neither group was involved with storage.

c) The one professional association contacted was also involved solely with cataloguing.

III) Interpretive Activities

The information involving the distribution of interpretive tasks is available in chart form (to be inserted in final report) and in summary form below.

Over all institutional types, the individual interpretive tasks rank as shown in Table III.8.

Table III.8 Distribution of Interpretive Tasks among
Institutions as Group

	none	1-25%	26-50%	51-75%	76-100%	(total no. responses)
display/ exhibit	11*	29	12	3	5	(60)
educ. progs.	12	25	15	2	2	(56)
scholarly reports	17	18	16	3	5	(59)
written educ. material	23	27	5	1	0	(56)

*number of respondents

museums: Among the museums, the primary interpretive activity, as might be expected, is display and exhibition work: all twenty respondents reported involvement in this area, with twelve placing their involvement below 50%; and, of the remaining eight, three reported between 51-75% involvement and five others, over 76%.

The second-ranked interpretive activity in which museums indicated involvement was educational programmes: here, with three respondents reporting no involvement, the remaining seventeen were split with eight reporting up to 25% of their effort expended here, and the other nine reporting between 26 and 50%.

Eight museums reported no involvement in the production of written educational material; of the remaining twelve, ten fell into the 1-25% category, and the remainder into the 26-50% category.

Of the four interpretive activities, museums were least involved in the production of scholarly reports: ten reported no involvement at all, while eight said that they dedicated no more than 25% to this task; and two others placed themselves in the 26-50% category.

federal authorities: The Archaeological Survey of Canada indicated that it devoted equal amounts of effort to the production of displays and exhibits and the production of scholarly publications, ranking written education materials third at 15% and educational programmes

fourth at five percent (the ASC informed us that its "parent", the National Museum of Man, undertakes more of the display and exhibit, written materials and educational programme duties). Parks Canada, on the other hand, indicated that each of these tasks occupied between 1-25% of their workload.

provincial/territorial authorities: In this institutional group as a whole, efforts were spread relatively evenly among the four interpretive tasks: for example, eight of ten respondents indicated that their involvement in scholarly reports fell between 1-50%; eight of ten reported a 1-50% involvement in the production of educational programmes; nine of ten reported a 1-50% workload expenditure on written educational material; and ten of twelve respondents reported spending 1-50% of their effort on displays and exhibits.

private consultants: Currently, the involvement of private consultants in the area of interpretive activity is generally not extensive, although at least two of our respondents from this group indicated that they would welcome the opportunity, on occasion, to expand the usual discovery/recovery parameters of their contract work. The seven consultants that responded to the question cite the production of scholarly reports as the interpretive area that now gets the most emphasis, including, in most cases, the reports that they produce in conjunction with contract work for their clients.

Ranking second among the private consultants is the production of displays and exhibits, which occupies up to 25% of the time devoted to interpretation by five of the seven respondents to this question; the others indicated they were not involved in this task.

For four consultants, conducting educational programmes involved 1-25% of their workload.

Finally, only two consultants reported involvement in the production of written educational material and both stated that no more than 25% of the time they spent on interpretive activities was so involved.

universities: The responses from universities regarding their priorities in terms of interpretive activities fit the pattern that had been anticipated for them; with only two universities claiming no involvement, eleven respondents reported involvement in the production of scholarly publications, with seven respondents estimating that these endeavours occupy up to 50% of the time they spend

on interpretive activities generally, and four others reporting that they occupy over 50%.

The second-ranked interpretive activity among university respondents was the production of educational programmes. In this category, three respondents reported no involvement (2 respondents were connected with museums affiliated with universities; the third listed its academic programmes under 'other'); of the remainder, six listed their involvement as not exceeding 50% and three as entailing more than 50% of their interpretive workload.

other:

a) Only one aboriginal organization responded in this category, indicating that its sole interpretive activity was the production of educational programmes.

b) Of the two amateur associations that responded, one--entirely land-oriented--ranked its overall substantial work in interpretation (51-75%) as mainly involved with the production of a series for Public Access television. Of the more standard tasks, it noted equal amounts of effort being expended upon the production of displays and exhibits and of written educational materials.

The other organization--100% underwater-oriented--placed the production of educational programmes at the 50% level, and the production of scholarly publications and written educational material both at 25%.

c) The one professional association, which had, overall, a modest commitment to interpretive activities, indicated that its time was almost evenly split between the production of educational programmes and displays, with no involvement in either of the 'written work' categories.

3. Collection Policies

To complement the data gathered regarding the various institutions' curatorial activities, respondents were asked to indicate the collection policy that was in place when their current collection was acquired. In conjunction with this, they were asked if there had been a significant change in the institution's collection policy within the past ten years. Ten years was chosen as an appropriate time frame because it allowed enough time for the initial effects of the

Cultural Property Export and Import Act, proclaimed in 1977, to be felt; and it also encompassed the time during which many provinces put in place and/or strengthened specific legislation designed to deal with heritage matters.

Table III.9 ranks various means of collection from most-used to least-used.

Table III.9 Collection Methods used by Institutions as Group

	none	1-25%	26-50%	51-75%	76-100%
excavation by own personnel	8*	11	4	8	16
donation	11	22	3	4	5
excavation by others	25	11	5	3	2
loan	37	7	2	0	0
purchase	42	5	0	0	1**
exchange	45	1	0	0	0

*number of respondents

**Institution purchases casts of artifacts only

Of particular note in terms of the policies of the various institutional types is the fact that, except for "specialty" museums such as Fort Calgary which has all of its work done by a private consultant, most institutions reported having gathered their current collections using a variety of methods. Many museums, for example, cited the combination of donation and excavation by their own staff and/or others. The same combination was also cited by a number of universities and provincial museums.

Of the lesser-used collection methods, "exchange", which was cited by only one respondent, was mentioned by at least one other respondent as an area in which he hoped to become involved in the future.

One category that stands out as particularly significant is "purchase"; of the six respondents that admitted to using this method, four said it was responsible for less than three percent of their collection, and one slotted it at 10% (the sixth respondent credited it for 90% of her university's collection but it must be noted that that collection consists exclusively of casts of artifacts and contains no authentic archaeological pieces). That 42 of 48 respondents to this category indicated that none of their current collections was acquired through purchase could be interpreted as emblematic of the general aversion within the archaeological community to the notion of assigning a monetary value to archaeological resources.

To the second part of this question, which asked if there had been an appreciable change in collection policy over the last ten years, eleven respondents answered "yes". When asked to detail the changes, their replies centred generally around three main themes:

- (I) a decrease in funding, cited by some as being responsible for a shift away from excavation by their own personnel,
- (II) a general change in the "personality" of an institution, perhaps through the appointment of a new style of curator (ie. a non-archaeologist replacing an archaeologist), or, as in the case of the Prince of Wales Northern Heritage Centre, a change of designation for the institution,
- (III) the success of some provincial resource management programmes, (eg. Saskatchewan) which can result in a considerable influx of new material to a museum.

4. Interaction Between Institutions Involved In Archaeology

Table III.10 Use of In-House Resources and Outside Agencies for the Completion of Archaeological Projects by Institutions as Group

	none	1-25%	26-50%	51-75%	76-100%
In-house resources	12*	9	3	8	28
outside agencies	14	21	6	3	16

*number of respondents

Overall, out of the 60 institutions which provided a ratio between the use of in-house resources and outside agencies, 28 claimed that more than 75% of their archaeological projects required the use of in-house resources only.

In terms of institutional types, 66% of the museums and half of the heritage resource consultants conducted more than 75% of their archaeological projects using their own resources. It must be noted, however, that in some cases, private consultants reported high percentages of projects using in-house resources if they included their client and the fees associated with the contract as in-house resources as opposed to considering only those resources needed to fulfill their contract.

Although the raw data gathered in response to this set of questions seem to imply that a majority of projects are done independently of other agencies, according to additional information from the lists of "outside agencies" provided by respondents, we found that this is not the case.

It was made apparent to us, during the course of our interviews, that institutions are not discrete units independently involved in archaeological activities, but that there is a significant level of interaction and cooperation taking place among institutions. The extent of this

Interaction ranges anywhere from a short-term cooperative venture, such as a travelling museum exhibition, to day-to-day interaction between provincial museums and the provincial authorities.

Different types of interaction or association identified most often by our respondents included funding, use of personnel, and subcontracting.

Funding arrangements were the most common form of association cited by survey respondents. Archaeology programmes in universities use funds from the Social Sciences and Humanities Research Council and from provincial governments. Museums receive funds from provincial and federal governments, while developers finance many archaeological research projects conducted by museums and heritage resource consultants.

Personnel was listed as another type of link between institutions. Museums make use of volunteer organizations for such tasks as cataloguing and setting up displays. University students are involved in the research activities of museums and provincial authorities. Other outside agencies may be called on for specific advice.

Subcontracting was yet another form of association between agencies. Heritage resource consultants, for example, on contract with either a developer or a provincial authority, may subcontract work which requires specialized attention by individuals such as geologists or ethnographers; and as mentioned previously, many museums make use of the specialized services of the Canadian Conservation Institute.

D. Summary of Viewpoints Regarding the State of Canadian Archaeology

During the interviews for the survey, and particularly in response to question 12, respondents commented on the development of federal policy and legislation for archaeological resources and the general state of Canadian archaeology.

Criticisms which were raised about policy, and suggestions proposed for its development revolved around recurring themes. We provide some discussion of these themes, as they were put to us by respondents, below.

1. Problems Identified

a) Inadequacy of Federal Legislation:

Almost all of the respondents to question 12 criticized the lack of federal legislation to protect archaeological resources. Specific complaints raised most often included the insufficient means of protecting sites and resources in the North, on Reserve lands and underwater.

Other groups of informants expressed the need for more cooperation between federal and provincial authorities in the management of archaeological resources and more consistency between the two levels of legislation. They claim that there are many sites within each province on federal land which are unprotected, while sites which are on provincial land are managed far more effectively.

A few respondents felt that the federal government should, in addition to increasing its role in resource management, also increase its commitment to research archaeology.

The federal government's current interest in developing policy and legislation is welcomed by the majority of the people interviewed. However, some fears were raised about the potential for "undoing what the [provinces have] put into place". Federal legislation should not adversely affect the goals of existing provincial legislation, it was stated. A small group of respondents were skeptical about the actual implementation of policy and legislation, claiming that it would be complicated and time-consuming.

b) Inadequacy of Legislative Enforcement:

Some of the respondents expressed their satisfaction with the existing level of legislation. They believe that specific provincial heritage legislation and federal acts already in place are sufficient. Their criticisms are directed at the lack of enforcement procedures. Despite the existence of some laws, the lack of a willingness to enforce them was seen as a major difficulty in implementation.

Many of the respondents who voiced their complaints about insufficient legislation, (as indicated in the subsection above), were also interested in establishing enforcement guidelines.

c) Inadequacy of Funding:

A number of views were expressed which criticized the lack of funding available for archaeology programmes. In particular, smaller museums voiced the opinion that they are not as involved with archaeology or that they have not acquired a comprehensive archaeological collection because of a lack of adequate funding. Museums said that they are in need of more financial assistance for conducting their own excavations and also for the restoration of archaeological collections that are in danger of deteriorating.

One museum stated that there is insufficient information regarding federal funding programmes available to museums. Another noted that monies should be set aside not only for the collection and preservation of nationally and provincially-significant artifacts, but also for those that are locally-significant.

A number of complaints were raised about the cancellation of the Mercury Series published by the National Museum of Man and the cutbacks in government funding to the ASC.

d) Lack of Concern for Aboriginal Involvement:

While some institutions criticized the lack of federal legislation protecting archaeological sites and resources on aboriginal lands, several went even further by stating that the native people "don't have any say" in matters which relate to archaeological heritage.

One respondent expressed the view that aboriginal people, particularly in isolated areas in the North, do not

have access to the federal authorities which govern them and therefore do not have the appropriate mechanisms to voice their concerns about archaeological resources.

A number of people interviewed wanted to see more direct aboriginal involvement in archaeological resource management.

Opinion is divided with regard to the ownership of archaeological resources. Whereas the majority of the informants who discussed the subject of ownership felt that archaeological objects which were identified as native belonged to aboriginal people, others claimed that the objects were public property or that they were a part of a universal heritage.

e) Conflicts Between Professionalism and Non-Professionalism:

Our interviews produced two sets of opinions which address the question of who should be involved with the practice of archaeology.

One argument states that because archaeology is a specialized academic discipline, the practice of it should be restricted to professionals. This would also ensure the maintenance of high standards in archaeological research. Within this group of respondents, there is disagreement about the nature of these "standards" and who should establish them.

The counterargument to this is the need to have avocational or non-professional archaeologists recognized. Some interviewees argue that many avocational archaeologists conduct excellent research. Furthermore, the encouragement of amateur involvement in archaeology would increase public awareness of the subject which, in turn, would increase the potential for protecting archaeological resources. Others stated that amateur associations were instrumental in the implementation of provincial legislation.

f) Conflicting Roles Within the Government:

A few people talked about conflicts between government agencies caused by the potential opposition between government as developer and government as manager of archaeological resources. Specifically, government as developer could be made to spend much time and money in order to fulfill requirements set down by government as manager.

2. Solutions Proposed

a) Need for Consultation/Cooperation:

Opinions were expressed to the effect that there is a tendency towards "relative bureaucratic isolation" when developing policy. The suggestion which was made to avoid this situation is to establish a consultation process. This consultation process, as respondents advised, should provide a forum for different agencies to exchange information about their various needs and objectives vis-a-vis archaeological resources. It was also suggested that this consultation should include archaeologists, aboriginal groups, academics, government agencies and developers. As one individual stated, this consultation would help form a foundation upon which decisions regarding jurisdiction would be made. Several respondents cautioned that we must avoid repeating the mistakes which were made in the United States, where legislation was formulated quickly and jurisdictional problems arose.

b) Need for Public Education:

A viewpoint shared by most respondents who commented on the subject of policy implementation is that in order to achieve effective enforcement of legislation or policy, the members of the public must be educated so that "they will help protect the site".

Public education could include, as some people have proposed, field trips, lectures and exhibitions aimed at educating the general public on the reasons for the preservation of sites. One individual stated that in Manitoba, for example, there are now fewer cases of plundering because the public is more aware of the significance of archaeological resources.

Instead of pursuing programmes aimed at the general public, other advocates of public education feel that specific groups (particularly those involved with archaeology) should be targeted. It was stated that Save Ontario's Shipwrecks, which aims to increase the awareness of underwater archaeological resources among divers and other interested members of the public, has met with relative success.

c) Need for More Decentralization/Need for More Centralization:

One solution proposed by some institutions was a move toward decentralization.

The type of decentralization proposed by some museums concerns the location of archaeological museum collections. If artifacts recovered in the area were stored and displayed in a local museum "instead of being shipped to Ottawa or Toronto", residents of the area could learn about themselves locally. As well, one respondent noted that the prospects for tourism would be enhanced.

Another institution explained that it has tried unsuccessfully to repatriate some artifacts which were excavated from the area and suggested that legislation should require that archaeological collections be returned to the area in which they were discovered.

On the other hand, a few museums want to develop a more centralized and complete archaeological collection which would be representative of a much larger geographic area. They pointed out that a centralized system would have better facilities to restore and preserve artifacts.

On a more political level, some suggestions for legislation and policy reform emphasized decentralization. Specifically, the territorial authorities want to play a more decisive role in managing the archaeological resources of the territories.

d) Need for Standard Procedures and a New Federal Agency:

A portion of the informants expressed the need for the establishment of a set of standardized procedures for archaeological fieldwork as well as a standardization of reporting procedures. In their view, this is essential because archaeological resource management also includes the management of information as a resource.

Although some stated that this set of procedures should be followed by a specific group of institutions, most expressed the desire to see a set of procedures in place uniformly in all institutions involved with archaeological activities.

Some people interviewed stated that federal legislation for the protection and management of archaeological resources should complement the already-existing provincial legislation. Furthermore, a few asserted that they would

welcome federal legislation which would set a "national standard" for archaeological resource management, in order to stimulate the development of legislation in their own province.

There were a number of respondents who called for the creation of a separate agency responsible for the administration of new federal legislation. Depending on each suggestion, the type of agency envisioned ranged from a totally autonomous federal body to one which would be created out of Parks Canada and the ASC.

e) Need for Funding to Increase Tourism:

According to a number of informants, archaeological resources could be better utilized to promote tourism. They explain that if more funds were invested in developing archaeological sites and making them available for public tours, the resulting increased tourism would mean a good return on investment.

Section IV: LEGISLATION AND POLICIES

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A. General Overview of Issues

Archaeological resources are an important part of Canada's cultural heritage. In spite of the fact that this is so evident to many, and that general awareness is increasing significantly, the dangers facing archaeological heritage are becoming more and more serious.

Archaeological resources are being destroyed by the processes of industrialization, land development and urbanization; and even by the increase in public interest, when it results in the destruction of sites or in the creation of an illicit trade for archaeological artifacts.

As we pointed out at the end of the last section, the need for effective legislative action is widely recognized, or more precisely, effective legislative action on the federal level has been strongly called for by the people working with the multiplicity of Canadian institutions involved in archaeology. It is obvious that such an initiative has to take into account already legally assured individual and social rights such as the right to ownership.

The need for compromise between the conflicting interests within society is to be recognized, keeping in mind the impossibility of satisfying the expectations of all groups involved.

The federal government's financial and human resources; its jurisdictional power in the Canadian North; and its limited jurisdiction in the provinces; along with the Canadian Constitution and the Charter of Rights serve as the foundation for the development of a new policy.

Heritage Programs

Recognition of the importance of heritage for federal cultural policy has been strengthened by the 1976 ratification of the U.N. Convention for the Protection of World Cultural and Natural Heritage.

The federal government is directly responsible for non-renewable resources owned by the Crown and for the preservation of existing national collections. Through the funding of several assistance programs to non-governmental organizations across Canada, it is involved in heritage activities in all parts of the country.

B. Areas of Federal Jurisdiction

1. Domaine de juridiction federaux

a) Introduction

Au Canada, la spécificité de l'histoire nationale et la forme fédérative des institutions politiques et législatives au Canada permettent une répartition relativement décentralisée des juridictions en matière de patrimoine culturel, entre le gouvernement central et les États membres de la fédération. Cela circonscrit le champ d'intervention du gouvernement canadien dans ce domaine. Les responsabilités juridiques du fédéral s'étendent à de nombreux territoires.

Dans un premier temps, nous allons décrire les domaines de juridiction fédéraux. Dans un deuxième temps, nous examinerons les domaines de juridiction provinciaux dans la mesure où ceux-ci délimitent les champs d'activités du fédéral au sein des provinces, en ce qui concerne la gestion des ressources archéologiques.

b) Domaines de juridiction exclusivement federaux

L'article 91 de l'Acte de l'Amérique du Nord britannique (1867) énumère les pouvoirs législatifs qui relèvent exclusivement du gouvernement fédéral (voir l'Annexe). Notons que cet article n'a pas été modifié lors du rapatriement de la constitution en 1982. Dans la Constitution canadienne, il n'est pas fait mention du pouvoir

de juridiction qui se rapporte spécifiquement aux vestiges archéologiques. Voici toutefois une liste des domaines de juridiction qui concernent d'une façon générale, la responsabilité ou la propriété du gouvernement vis-à-vis certains biens ou territoires associés au patrimoine:

- la propriété publics (91,A);
- l'importation et l'exportation (91,2);
- le transport et le commerce interprovincial (91,2 et 92,10);
- les bureaux de poste (91,5);
- les bases militaires (91,7);
- les installations maritimes (91,7);
- les terres réservées aux Indiens (91,24);
- les entreprises de nature locale données au fédéral (91,29 et 92,10);
- les ouvrages et propriétés publiques de chaque province transférés au fédéral (108). (voir HETU et PIETTE, 1976).

Cette liste nous laisse entrevoir l'ampleur des territoires qui sont sous la juridiction exclusive du fédéral. Cela comprend entre autres, les Territoires du Nord-Ouest et du Yukon; les parcs nationaux et les réserves indiennes; les multiples entreprises et ouvrages publics tels que bureaux de poste, installations militaires, portualaires, ferroviaires, aéroportualaires, etc. On peut aussi souligner l'importance que peuvent avoir, le commerce interprovincial et le commerce international.

De plus, le pouvoir déclaratoire d'expropriation que détient constitutionnellement le gouvernement fédéral, peut en principe entraîner un accroissement de ses domaines de juridiction actuels:

"Il existe un mécanisme juridique permettant au gouvernement fédéral de prendre en charge une propriété qui relèverait autrement d'une compétence provinciale. Il peut en effet le faire, s'il 'déclare' que la propriété en question est un 'ouvrage profitant au Canada en général'(...) Aussi est-il concevable que le gouvernement fédéral devienne compétent à l'égard d'un lieu du patrimoine en 'déclarant' que ce lieu constitue un 'ouvrage profitant au Canada en général'." (Denhez, 1978: 629-630).

Toutefois, l'utilisation de ce pouvoir discrétionnaire pourrait se heurter à certaines résistances au niveau des tribunaux, lesquels hésiteraient à employer une telle clause juridique dans le cas d'ouvrages du patrimoine. De plus, l'emploi d'une telle procédure risquerait de provoquer des protestations de la part des autorités provinciales:

"On peut enfin voir avec évidence les complications politiques pouvant découler de la prise en charge par le

gouvernement fédéral d'une compétence relevant des provinces." (Denhez, 1978: 630)

c) Les limites du pouvoir fédéral: les domaines de Juridiction provinciaux

Conformément à la loi constitutionnelle en vigueur, les limites imposées au gouvernement central sont circonscrites par les domaines de Juridiction relevant exclusivement des Etats provinciaux. Ces domaines sont énumérés à l'article 92 de l'Acte de l'Amérique du Nord britannique:

- l'administration des terres publiques appartenant à la province (92,5 et 109);
- la propriété et les droits civils dans la province (92,13);
- les matières d'une nature locale ou privée dans la province (92,16);
- certains travaux et entreprises publics de nature locale (92,10);
- les institutions municipales (92,8);
- les permis (92,8);
- l'imposition des sanctions en vue de faire exécuter toute loi dans la province (92,15). (Hetu et Plette, 1976)

Ainsi, en raison de l'article concernant la propriété et les droits civils dans la province, le point important qui limite l'activité juridique du gouvernement fédéral est soulevé, à savoir que:

"sous réserve de certaines exceptions, sa compétence en matière de lieux historiques se limite aux: (i) lieux qu'il possède ou acquiert; (ii) lieux dans les Territoires; (iii) lieux qui sont désignés ouvrages profitant au Canada en général; (iv) biens qui font partie d'un ouvrage qui tombe sous la Juridiction fédérale. A moins qu'un bien se retrouve parmi les catégories ci-haut mentionnées, le gouvernement fédéral manquera normalement la Juridiction constitutionnelle pour le protéger: il ne possède aucune compétence en ce qui a trait aux autres biens du patrimoine; ceux-ci sont en effet exclusivement de compétence provinciale. La raison en est la suivante: la protection des lieux du patrimoine est une question de 'propriété et de droits civils'; or, les lois portant sur la 'propriété et les droits civils' sont, en vertu de l'Acte de l'Amérique du Nord britannique, une prerogative exclusive des législatures provinciales. C'est pourquoi l'activité du gouvernement fédéral dans le secteur de la conservation du patrimoine s'exerce principalement dans le secteur: (i) de la recherche; (ii) de la surveillance des propriétés

mentionnés ci-haut, et (III) du financement." (Denhez, 1978: 622-623)

En effet, là où les États provinciaux sont désignés compétents au chapitre du droit de propriété, l'État fédéral ne peut pas imposer de restrictions à la jouissance de ce droit pour des motifs procédant de la nécessité de sauvegarder l'environnement culturel. (Lessard, 1979: 98)

Lorsqu'il s'agit de faire valoir l'autonomie législative provinciale en matière de patrimoine culturel. Par exemple, au Québec, on insiste tout particulièrement sur l'article 92,13. Par ailleurs, dans les provinces de l'Ouest, il semble que l'interprétation juridique sur les ressources archéologiques est historiquement associée à celle sur les ressources naturelles. Or, l'autonomie en cette matière est assurée depuis le transfert aux provinces, en mars 1930, des juridictions sur les ressources naturelles. (Jones, 1978: 40. Voir à ce propos l'article 109 de l'aanb).

Les pouvoirs législatifs fédéraux à l'intérieur des provinces sont de nature résiduelle, dans la mesure où ceux-ci sont définis et délimités en fonction des domaines échappant aux sphères législatives provinciales. Il ne s'agit toutefois pas de sous-estimer l'ampleur des champs d'intervention du gouvernement fédéral.

Un des éléments-clés de la législation concernant la gestion des ressources archéologiques, qui relève de la juridiction fédérale, à savoir: la loi d'exportation et d'importation des biens culturels sera maintenant étudié.

2. Cultural Property Export and Import Act

a) Introduction

The federal government of Canada controls external trade and related activities (see discussion earlier in this section). As a result, customs and excise has become "the first great independent source of revenue for the federal government in the federation" (Wheare, 1976:96). Controls over the export and import of cultural property also falls into this category.

The Cultural Property Export and Import Act, introduced in 1977, has been the subject of extensive study and analysis by federal agencies and by special interest groups, such as museologists, collectors, and dealers. It has far reaching consequences for the protection of archaeological resources. Aspects of the Act related to the antiquities trade, museum acquisitions and interests and concerns of the archaeological community in Canada will be presented under Section VI and related to the international obligations of the federal government, as described in Section IV, G.

This Act serves as the main legal tool to preserve within Canada significant cultural property. Its objectives are threefold:

- (I) to control export and prevent the loss of important cultural objects;
- (II) to provide tax incentives to individuals who donate cultural property of outstanding national significance to designated institutions;
- (III) to assist with grants and loans the public institutions enabling them the purchase of objects significant for national heritage located outside Canada or being designated to export for sale by its owners.

The control of export is exercised by the establishment and use of the Canadian Property Control List, administered by the Canadian Property Export Review Board.

As described by the Act, the List may include "any object or class of object" which it is deemed necessary to control "in order to preserve the national heritage". The List is divided into six categories of objects deemed to be

controlled. Archaeological resources fall under Group I together with Mineralogy and Paleontology.

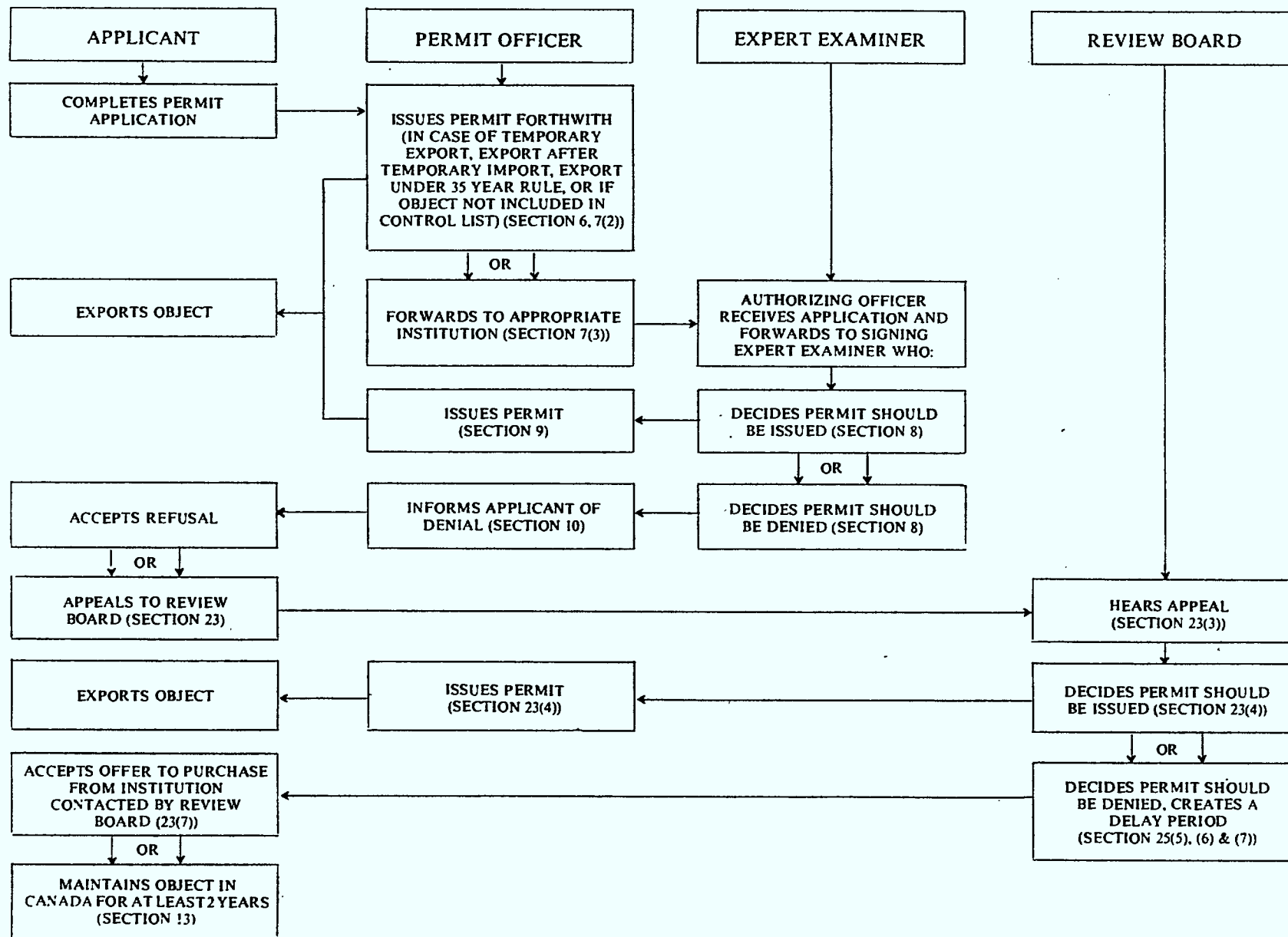
Archaeological resources are defined as "object(s) of any value recovered from the soil of Canada, the territorial sea of Canada or the inland or other Internal waters of Canada not less than 75 years after its (their) burial, concealment or abandonment if the object is an artifact or organic remains associated with or representative of historic or prehistoric cultures" (section 4.(1) of the Act).

The legislation requires an export permit for all archaeological specimens irrespective of commercial or other value. It means that in cases of intended export, an application must be made to a Permit Officer who then refers it to an Expert Examiner after having determined that the objects are on the Control List. The assessment by an Export Examiner has to take into account whether the objects are of outstanding significance and of national importance (section 8 (3)). If the objects meet these two criteria the Expert Examiner will tell the Permit Officer, a customs official, and the officer will deny a permit. Copies of the refusal and the rationale go to the Canadian Cultural Property Export Review Board. The Board acts also on appeals (see chart next page).

The Board reviews all three determinations made by Permit Officer and Expert Examiner, i.e. the inclusion of the objects in the Control List, their being of outstanding significance and their national importance. Only if all three determinations are positive, the Board will uphold the refusal of the permit to export, but it has also to find a Canadian institution which might be interested in acquiring the objects. If the Board considers that no such institution exist, a permit will be issued. In order to allow time for this process the Board may establish a delay period, i.e. a time where the export application is put on hold to allow Canadian institutions to assess the objects and find the monies for a possible purchase. In case that an institution makes an offer to acquire an object, but cannot agree with the applicant for an export permit on the price, the Board can be requested to establish a fair price.

In the final analysis an export permit will only be refused if the applicant is not willing to accept the fair price offer of a Canadian institution. In all other cases, i.e. an offer below fair price or no buyer, an export permit will be issued.

Application for the Export of Cultural Property — Procedures



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LEGISLATION AND POLICY

Source: First Report. The Cultural Property Export and Import Act, 1978, p. 21.

b) Role of Federal Government

In introducing the Cultural Property Export and Import Act, the federal government was responding to its national and international obligations. In this manner, the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property was ratified by Canada. The tardiness of the government in legislating the protection of Canada's heritage was, however, costly in terms of the loss of cultural property:

"a significant proportion of what Canadians would now regard as their important and irreplaceable cultural heritage - particularly that of the Native people - had gone to museums and private collectors in continental Europe and Britain prior to the Convention. During the nation's first century...the departure of important national treasures continued almost unnoticed."
(Cameron, 1980:6)

The lack of a strong interest and an insufficiency of funds from Canadian institutions often resulted, even in recent years, in the loss of collections and objects of recognized national importance to foreign buyers. The damage to Canada's archaeological resources is particularly significant. The 1977 legislation arose to prevent or at least diminish such damage. There is, however, considerable disagreement - notably among archaeologists - whether or not the existing law indeed serves as a useful tool for the protection of archaeological resources.

The Act is concerned with movable cultural property, and outlines measures for its preservation only in cases when export from the country is involved. In relation to Canadian archaeology, it provides control over archaeological artifacts only once they have been removed from the site and attempts made to legally export them.

The real problem in the preservation and management of archaeological resources lies, as we argue elsewhere in this Report, not with ex situ protection but with in situ, before an object is separated from its context. Considering that a small percentage of all archaeological sites have been discovered, (in Saskatchewan, for instance, it is considered to be less than 1%), the legislation can hardly be regarded as a tool for the overall protection of archaeological heritage in general. Nor was it intended to do so.

As pointed out by several international conventions and regulations, the objective of the central government is to conserve the whole cultural heritage for future generations. It should be added, furthermore, that public and professional

opinions concerning preservation and archaeology evolve, and that future generations might be willing to go to greater expense and different efforts than we do today. In this sense, the preservation of sites is an absolute precondition of any future management efforts.

c) Federal/Provincial Relations

As indicated earlier in this section, within the federal system of government in Canada the provinces are responsible for legislation directed towards the preservation of cultural heritage. The result of their respective efforts in the management of archaeological resources will be presented in Part E of this section. No provincial act, however, can control export; consequently, the present Act may be seen as a reinforcement of existing provincial laws.

The cooperation of the provinces has been forthcoming on a number of issues, and differences between the two levels of government have been eliminated (see also: Cameron, 1980:8). For instance in the case of tax incentives for donors of cultural properties, federal and provincial tax laws are made to conform. The role of the federal government, in relation to the provinces, is demonstrated by the designation procedures. The Minister of Communications has the power to designate an institution or a public authority as eligible to receive gifts of cultural property. These regulations are implemented in the current museums acquisition policies which are discussed in Section VI of this Report.

d) Legal Model Applied for the Act

The Cultural Property Export and Import Act is based on two foreign models considered suitable by legislators for the Canadian situation. Its principles were designed after British law and its administrative rules, which provide for decentralized control over cultural properties, after the French system (Cameron, 1980:9).

e) International Implications

Despite the fact that 1/3 of the 159 U.N. member states have become parties to the 1970 UNESCO convention, the protection of and the illicit trade in archaeological resources continues to be a problem.

As far as Canadian archaeology is concerned the main partner in bilateral relations, both legal and illegal, are the U.S.A. . Americans are the main buyers for Canadian cultural properties, including archaeological objects.

The ratification of the 1970 UNESCO Convention by the Canadian and U.S. governments has created a common basis between the two countries. As the 1969 Treaty between the U.S. and Mexico for the Recovery and Return of Stolen archaeological, Historical and Cultural Properties shows, bilateral agreements on the basis of the UNESCO convention can be very effective tools in the protection of archaeological resources, in this case of the pre-Columbian civilizations (Williams, 1984:130).

According to DOC information, Canada has not yet concluded an agreement with the U.S., although it has made a formal request.

Export certificates and national legislation are the main working tools of the 1970 UNESCO Convention. Signatories of the Convention agreed to prohibit the exportation of cultural property from their territory unless it is accompanied by a certificate. It should be noted that each state may apply its own standards for the issuance of certificates and apply its own procedures for its enforcement. For example, the Canadian Act defines an archaeological object as at least 75 years old. The 1977 U.S. Convention on Cultural Property Implementation Act, on the other hand, defines archaeological material as: "any object which is of cultural significance...at least 250 years old" (section 202(2)).

f) Conclusions

The 1977 Cultural Property Export and Import Act has increased, considerably, general public sensibility towards cultural heritage; it has also been instrumental in retaining for Canada valuable objects of her heritage.

The Act has, however, not gained the support and approval of Canadian professional archaeologists. Moreover, archaeologists have opposed the Act since its introduction. They argue that the Act facilitates the attachment of monetary value to movable archaeological resources, and thus increases illicit trade and looting of sites. We are dealing with these two phenomena in other sections of this report. We have described here the working mechanisms of the Act and the place it takes in a general legislative framework and within the international efforts to protect heritage resources.

We believe that it is important to judge the Act on what it is supposed to do, and how well it achieves this end. According to the Moveable Cultural Property Secretariate in the DOC, there have been only 66 applications for export permits since the 1977 introduction of the Act. 59 of these concerned temporary permits, and 3 export after temporary import. There are only four cases which could be used to substantiate the criticisms by archaeologists of the Act. Two permit applications resulted in permanent exports, one in a permanent export refusal, and one in certification of cultural property. In these four cases monetary value was brought into consideration regarding archaeological artifacts.

When assessing the systemic effects of legislation, it is important to take into account their frequency of occurrence, and to set the findings into relation to other costs and benefits as well as to the overall policy priorities. It is the Centre's judgement, that on the face of the available evidence and the present state of the debate a revision of the Export and Import Act would not contribute in substance to the protection of archaeological heritage.

C. The Department of Communications and The Department of the Environment : Federal Agencies Acting as Policy Leaders Parks Canada and National Museums of Canada

1. Introduction

Recognizing the fact that the mandates of several federal departments (e.g. Coast Guard, Transport Canada, Fisheries and Oceans) are related to archaeology, it is to be stressed that the Department of Communications and the Department of the Environment are to be considered as policy leaders. They are currently not only administering archaeology related programs, but also their agencies, the National Museums of Canada and Parks Canada are perceived by other federal departments and referred to as the institutions with the greatest expertise in archaeology. Their respective roles and activities in iure or in facto and in different manners respect the complex situation of Canadian archaeology. In order to assess the areas in which future legislators may operate as promoters of a comprehensive federal policy on management of archaeological resources, the current mandates of Parks Canada and ASC/NMM (agencies of the DOE and the DOC respectively); their policy objectives; and practices must be carefully reviewed and analyzed.

2. Review of Legal Acts

The effort of the Canadian government to introduce laws aimed at protecting the national cultural heritage goes back to the 1930's. The most important legislation, however, has been introduced by the federal government only during the

last three decades. The relevant Acts are:

The Department of State Act, amended by the 1966 Government Organization Act, states that the Minister's powers include "the encouragement of learning and cultural activities ..., museums" (In 1980, these responsibilities were transferred to the Department of Communications by Prime Ministerial announcement).

The 1979 Government Organization Act, which states:

"5. The duties, powers and function of the Minister of the Environment extend to and include (a) (...) (vi) the coordination of the policies and programs of the Government of Canada respecting the preservation and enhancement of the quality of the natural environment; (...)

6. (1) The Minister (...) shall (a) initiate, recommend and undertake programs, and coordinate programs (...) that are designed (ii) to ensure that new federal projects, programs and activities are assessed early in the planning process for potential adverse effect on the quality of the natural environment and that a further review is carried out of those projects, programs, and activities that are found to have probable significant adverse effects, and the results thereof taken into account, and (...)

(b) promote and encourage the institution of practice and conduct leading to the better preservation and enhancement of environmental quality, and cooperate with provincial governments or agencies thereof, or any bodies, organizations or persons, in any programs having similar objects; and

(c) advise the heads of departments, boards and agencies of the Government of Canada on all matters pertaining to the preservation and enhancement of the quality of natural environment."

The 1930 National Park Act, amended to 1970, establishes Parks Canada; provides for the establishment of two types of parks: National Parks, and National Historic Parks, which are established to:

" commemorate an historic event of national importance, or ... preserve any historic landmark or any object of historic, prehistoric or scientific interest of national importance" (s.10).

The 1953 Historic Sites and Monuments Act allows the Minister of the DOE to mark or otherwise commemorate historic places or to make agreements with any persons to do so, to establish historic museums, and to provide for the administration and

maintenance of historic places or museums so acquired. It also gave the Minister statutory responsibility for developing and implementing a national program commemorating places and events of prime national, historic and prehistoric interest. It also identified places which, "...illustrate effectively the culture of a prehistoric people or are associated with important archaeological discoveries." The Act establishes an Historic Sites and Monuments Board of 17 members, including representatives from the ASC and Parks Canada.

The 1968 National Museum Act sets out the mandate:

"to demonstrate the products of nature and the works of man, with special but not exclusive reference to Canada, so as to promote interest therein throughout Canada and to disseminate knowledge thereof." (S.5(1)) (and) ... In furtherance of its purposes the corporation may...(g) arrange for or provide professional and technical services to other organizations whose purposes are similar..(h) generally, do and authorize such things as are incidental or conducive to the attainment of the cooperation and the exercise of its powers."

A graphic display of the legislative situation outlined above is provided in chart IV.2 (see next page).

a) Review of Terms and Definitions In
Federal Legislation

The five acts quoted above do not provide us with a clear indication of which agency is responsible for the management of archaeological resources: the Department of State Act relates to learning and cultural activities and museums, suggesting that the mandate of the Department of Communications is directed toward collection and research activities rather than the preservation of archaeological resources; the National Museums Act relates to works of man that consequently would include archaeological artifacts; the Parks Canada Act and the Historic Sites and Monuments Act relates to prehistoric objects and interests (terms which would also include archaeological resources as well as the notion of archaeological discoveries); and the Government Organization Act relates to the preservation of the natural environment.

Although both departments, Environment and Communication, may be seen as a base for federal legislation on archaeology, the coordinating and initiative powers of the DOE are set out in a more detailed manner.

Comparing the two sets of current laws, it seems that the mandate of Parks Canada has better defined objectives and

also broader base for the inclusion of a comprehensive programme of historic archaeology. It does not provide, however, for prehistoric archaeology which is the main issue for all interested "prime policy publics" - i.e. professional archaeologists, museums, native groups, dealers and the general public. Parks Canada also has broader ground for the inclusion of a comprehensive programme for archaeological resource management.

3. Review of Administrative Procedures

a) Parks Canada Policies:

The general mandates of the Department of the Environment constituted the basis for Parks Canada and the National Museums of Canada to develop policies that include management of archaeological resources.

A review of their respective policy statements will facilitate the assessment of the agencies' objectives according to issues that have been considered of prime importance for the effective management of archaeological resources.

1) Parks Canada's Roles and Relationships in Federal, Provincial and International Context

The following are quotations from "Parks Canada Policy":

"Parks Canada is to play a leading role in federal government activities related to protection and preservation of places representative of Canada's natural and cultural heritage; it will carry out its mandate in close co-operation with related federal agencies. The interests and responsibilities of the latter will be considered by interdepartmental committees (e.g. The Federal Advisory and Coordinating Committee on Heritage Conservation, the Interdepartmental Committee on Archaeology) and through consultation on specific matters of mutual concern."

Management, policing and enforcement powers:

"Parks Canada will rely upon the expertise of other federal agencies in carrying out its programs.

Parks Canada will make protection of heritage resources

its primary consideration.

Ecological and historical integrity are Parks Canada's first considerations and must be regarded as prerequisites to use. Protection of heritage resources is fundamental to their use and enjoyment by present and future generations" (Parks Canada Policy, Program Policy 1.1, para 1,2).

"Parks Canada will fulfill its mandate in ways that recognize provincial and territorial responsibilities and complement their efforts in related fields"; e.g., agreements for recreation and conservation will enable provinces to operate jointly in certain heritage areas. Among the mechanisms available are Parks Canada's five regional offices, annual federal/provincial conferences, and senior consultative committees.

"Parks Canada will assume a leading role in fulfilling Canada's international responsibilities for the protection and presentation of places representative of the world's natural and cultural heritage". Parks Canada participates in activities of the International Council for Monuments and Sites and the International Centre for the Study of Preservation and Restoration of Cultural Property.

Parks Canada's program objective is to protect for all times those places which are significant examples of Canada's "...cultural heritage and also to encourage public understanding [and] appreciation...of this heritage."

11) Prime Policy Publics in Parks Canada Policy

-Archaeologists and Research/Collection Institutions-

The interests of archaeologists and museums are addressed in policy statements in a very general manner, without providing a context for a comprehensive interpretation:

"Parks Canada committed itself to encourage and conduct archaeological research, to protect significant archaeological resources in national parks, to prepare inventories of prehistoric resources and to acquire and protect actually known sites. It will also make available to the public research information to enhance public understanding of historic resources. The artifacts will be properly recorded, stored and exhibited in ways which ensure their continued survival

with minimum deterioration." (Parks Canada Policy, 1984)

The above policy statements apparently respond to the needs of professional archaeologists, research and collection institutions. Archaeologists may apply for excavation permits under Parks Canada Permit Regulations. It is generally understood, however, within the archaeological community, that Parks Canada's policies are not sympathetic toward the needs of prehistoric archaeology. As a result, only a few attempts have been made in recent years to apply for excavation permits.

The policy is clearly directed toward the designation and protection of archaeological sites, "leaving to museums the jobs of [collection, preservation and display]". It is to be added, however, that archaeological resources are given more extensive consideration within historic parks than in natural national parks. It means that in a case of an important archaeological discovery in a national park, the park cannot be changed into a national historic park. Cultural resources in a national park do not provide a basis for the establishment of the historic park. This is an important consideration in view of the fact that in the North where valuable archaeological resources are located, Parks Canada has no national historic parks.

-Rights and Interests of Aboriginal Peoples-

Parks Canada recognizes that in certain areas, lands which have been traditionally used by aboriginal people are the subject of unresolved native land claims. The policy explicitly states that:

"An agreement will be negotiated between Parks Canada and representatives of local native communities prior to formal establishment of a national historic park, creating a joint management scheme for the planning and management of the park".

Parks Canada's Archaeological Research Division is designed to provide, through the research and analysis of physical, documentary and oral evidence, information necessary to determine the significance, treatment and use of historic and prehistoric resources for Parks Canada's purposes and to make it available for public benefit: "The new national parks, the treaty rights of Indian people and those rights recognized in native land claims settlements will be honoured."

The native people, according to Parks Canada's policy statements are considered to be part of the larger public involved in the department's activities. The policy

recognizes however the special character of aboriginal culture as it refers to native and Indian land claims. This policy may be used as a basis for a program designed to valorize the Inuit and Indian archaeological sites.

The Canadian North is a region where, aboriginal populations have been settled since prehistoric times and where presently a substantial number of natives live. In regard to them, Parks Canada's concern for aboriginal heritage appears to be largely theoretical, since the majority of protection for archaeological sites is provided only within national historic parks and no such parks have, as of yet, been established in the Yukon or the Northwest Territories.

-Market Rules and Private Collectors' Interests-

The Parks Canada Policy unequivocally states that:

"The Government of Canada owns all land and resources within national parks, and so any kind of archaeological research requires a Parks Canada permit. No surface collection of artifacts should be made; and where excavation is carried out without archaeological supervision, any artifacts recovered from the excavation (e.g. pottery, glass, bones, etc.) must be carefully packed and sent by the superintendent of the park to the regional or central Parks Canada Archaeological division".

These statements imply clearly that no artifact recovered from Parks Canada's sites may be considered as privately owned and no artifacts of such a provenance may be legally placed on the market.

-Public Participation and Rights-

"Parks Canada is committed to the principle of public participation and will encourage it to the fullest extent possible". Public participation is provided in a variety of ways: public information meetings, workshops, public hearings, advisory committees. Responding to local needs and to the principle of heritage preservation, Parks Canada fulfills its role as a major agency concerned with the national and cultural environment. However, archaeology never constituted a central point of public interest, therefore various cooperative agreements possible with organizations and individuals could not be considered as beneficial for archaeological resources.

On the contrary, interest of the general public might easily disregard the value of archaeology as it attempts to

achieve other cultural objectives. It is more likely to happen when the legitimate aspiration to economic and social welfare conflicts with preservation objectives. Although Parks Canada policy states that an appropriate balance must be maintained, implementation of such a principle is always very difficult.

b) National Museum of Man/Archaeological Survey of
Canada Policies

The 1972 National Museum Policy has two objectives: to preserve Canada's heritage, and to make that heritage accessible to Canadians. It relates these objectives to research, collections and conservation.

1) NMM/ASC Roles and Relationships In Federal,
Provincial and International Context

National Museums of Canada, is Canada's leading collection and research institution. It operates programs of assistance to museums and agencies across Canada. The programs administered are the Canadian Conservation Institute, the Canadian Heritage Information Network, Mobile Exhibits, International Programme, the Museum Assistance Programs, and those designed to cover so-called special activities.

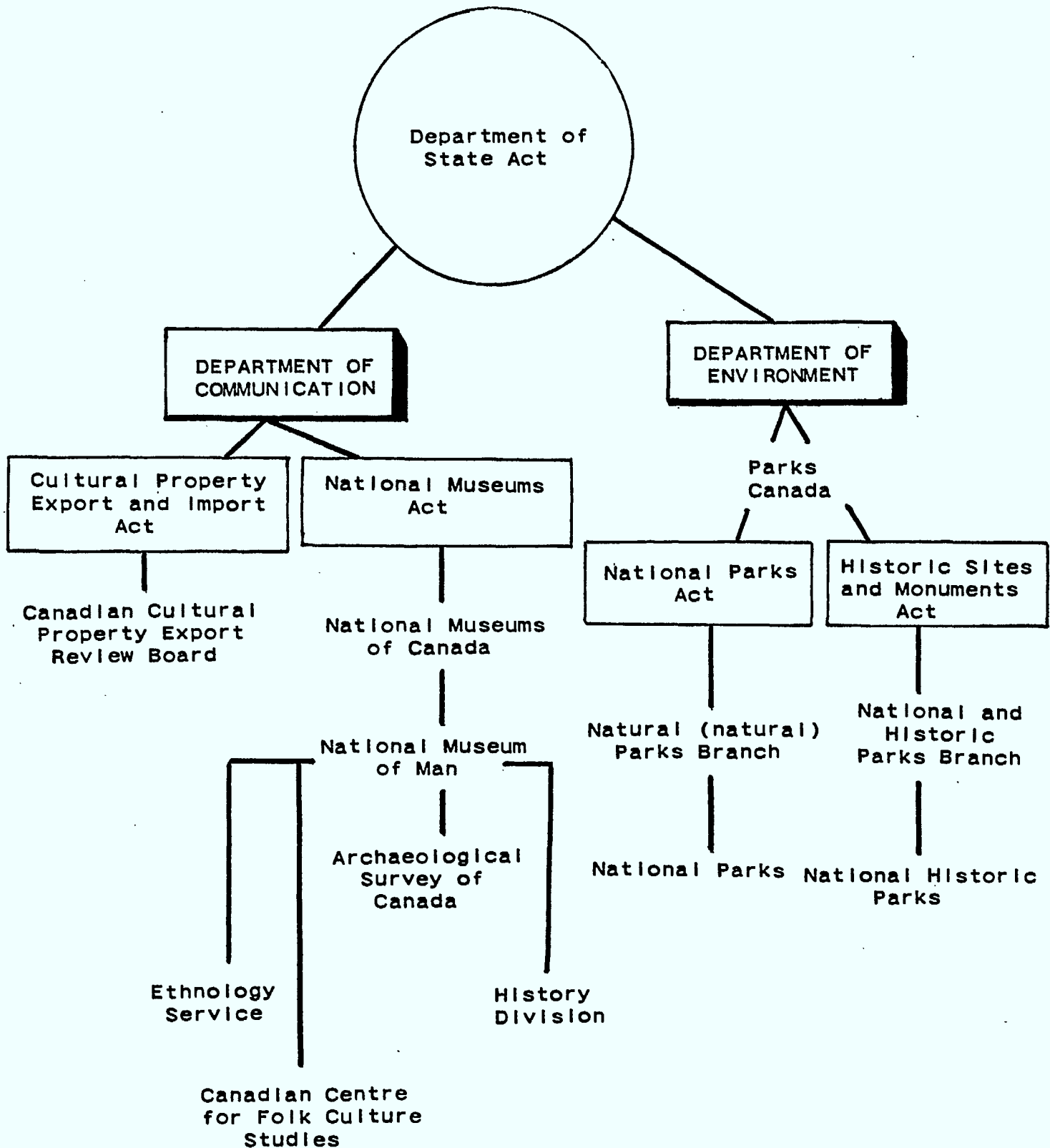
Although the Registration Assistance Programme provides possible funding for archaeological collection, it states that "In light of limited funds, institutional priorities currently [as of 1983] have been established as: large institutions, with art galleries taking precedence over human and natural history museums" (National Museums of Canada, Research Policy, 07-04-1986 (draft)). It seems that archaeology is not considered to be the primary objective for the current NMC policy.

Within the National Museum of Man, the Archaeological Survey is the most important agency for our purposes. It is responsible for the research, inventory, collection, analysis, and conservation of archaeological sites and artifacts. In this way the NMM is fulfilling its research, collection and exhibition mandate. The ASC also acts as coordinator of all archaeological programs across Canada and cooperates with its provincial and territorial counterparts. Likewise, it provides professional expertise to other federal agencies and departments in matters regarding the protection of archaeological resources.

The ASC constitutes the only section within the National Museum of Man that conducts an archaeological research programme. Other sections, such as the History Division, the Canadian Centre for Folk Culture Studies, and the Ethnology Service cooperate with the ASC mainly for exhibit purposes but do not themselves engage in archaeological activity:

"Although it does not have a legislated mandate to do so, the ASC acts as the federal representative in the management of archaeological work on federal lands. For example, it reviews all [applications for archaeological permits related to] federal lands in the North, evaluating the scientific merit of this work, and acts as a repository for archaeological collections and associated documentation resulting from these activities (ASC, 1985). The Interdepartmental Committee on Archaeology, which advises on the issuance of archaeological permits on federal lands, is chaired by the Chief of the ASC." (Rueggeberg, 1986:b, 14)

The Department of Communication and the Department of Environment: Federal Agencies Acting as Policy Leaders, Parks Canada and National Museums of Canada



11) Prime Policy Publics In NMC/ASC Policy

-Archaeologists and Research/Collection Institutions-

The review of the ASC's policies shows that the Archaeological Survey is keenly interested in developing a comprehensive policy concerning long term research and management of archaeological resources on lands under federal jurisdiction.

Calling for the creation of such a federal policy without acknowledging the variety of needs and requirements of other policy publics, the ASC statements underline that a special consideration should be given to the discipline of archaeology.

This position is consistent with the 1986 general policy that states "the research activity is an essential and integral part of the museum activities." Research has as its primary purpose the contribution of new knowledge in all areas included in National Museums of Canada's mandate."

In order to achieve a high standard compatible with universities and other federal research agencies, the NMC is committed to carry out a publication program designed to disseminate the results of research. The object of the Mercury Series published by the National Museum of Man was "designed to permit the rapid dissemination of information pertaining to those disciplines for which the National Museum of Man is responsible. The series was discontinued in 1985 due to budget cuts.

The NMC policy statements, in relation to the rights of archaeologists, are inconsistent and contradictory. While underlining that research activities are essential to fulfill the NMC's mandate, policies in practice resulted in radical budgetary limitations and in an explicit declaration, that archaeology is not a primary objective for the current NMC policy.

-Rights and Interests of Aboriginal Peoples-

A review of NMC policy statements reveals a marked inattention to the rights of aboriginal peoples to manage their own cultural resources, as well as to other claims and the recontextualization of these resources in other ways.

-Market Rules and Private Collectors' Interests-

The 1983 Collection Policy indirectly recognizes the existence of a national market for archaeological artifacts.

The NMM's Acquisition Plan allows for the "purchase [of] artifacts under special circumstances" and states that archaeological "collection will be limited to the acquisition of inexpensive or expendable material."

III) Review of Terms and Definitions in Policy Statements

The reviewed policies present an even more complicated picture of goals, means and possible activities than does existing legislation. Both agencies operate in the area of cultural heritage, but only Parks Canada's clearly defines the meaning of heritage as "an inheritance or a legacy; things of value which have been passed from one generation to the next." It also indicates the meaning of historic artifacts as "material modified by man to produce an object of artistic, utilitarian or symbolic significance, attributed to past culture."

Other terms of interest for archaeology which appear in Parks Canada's Policy are left without definition, such as, for example, the often used notion of "native communities".

The NMC policies explicitly define only the notion of research, describing it as

"critical investigation or experimentation aimed at the generation and synthesis of knowledge pertaining to museum-related collections disciplines and allied fields and the development of this knowledge for museum-related activities."

IV) The ASC's Activities

In contrast to the Archaeological Division of Parks Canada, the Archaeological Survey of Canada/NMM operates within very general statements of objectives which make it difficult to compare both. In order to understand the ASC objectives it is desirable to review the present activity as well as the programmes carried out by the agency.

Most of the ASC's archaeological work is done in the NWT and Yukon under the Rescue Archaeology Program:

"Under this program, the ASC carries out field work, operates the Sites Records and Inventory Offices, and provides information for the Interdepartmental Committee, as well as provides support and services to the territorial governments for archaeological rescue activities.

This program was first established in the late 1970's with Cabinet and Treasury Board approval" (Rueggeberg, 1986:b, 14)

Funding for the programme has been provided by the National Museum of Canada and by the Northern Oil and Gas Action Plan. Support from the museum was discontinued in 1985. However, the NOGAP funds allow the Rescue Program to continue to operate in the north as the major archaeological investigator.

Under the same NOGAP project, the ASC had strengthened its prominent role as the agency responsible for prehistoric archaeology in areas of federal jurisdiction. In close collaboration with territorial heritage agencies, the ASC has undertaken a policy of "short, medium and long term archaeological research and management needs in areas north of [sixty degrees latitude]."

Through the collection of data relevant to the archaeological management process, the agency aimed, through its seven year plan, to produce a resource management guide, to test relevant mechanisms, and to eventually come out with a comprehensive proposal for federal policy. Currently, this initiative seems to be delayed due to decisions made, apparently outside the ASC.

v) Physical Anthropology

Several recent archaeological activities have been related to the emotionally sensitive issue of human skeletal remains which have constituted the core findings of prehistoric and historic burial sites.

Although being of primary importance to aboriginal communities and to archaeological in situ research, the issue has never been the subject of ASC policy statement. The physical anthropology section is, however, a part of the Archaeological Survey and needs some attention.

A committee composed of physical anthropologists published, in 1979, a brief defining excavation, treatment, analysis and disposition of human skeletons from archaeological sites in Canada. It recommended the close working liaison between provincial and territorial agencies and the NMM. It recognized as well the national responsibility of the ASC in matters related to archaeology.

Further detailed recommendations were directed to the concerns and rights of aboriginal people. The Association of Physical Anthropology urged archaeologists "to consult with local native band councils about their projects and keep local communities informed of progress." This recommendation has been put into practice by physical anthropologists for

the ASC that has in several cases, proved to be a significant stimulus to cultural recovery process initiated by aboriginal people (Cybulski, 1976).

The Association clearly states, however, its primary scientific objective stressing that no single public interest group, aside from cases where sites relate directly to the cultural heritage of a particular local native community, can lay claim to all Canadian prehistory. It warns as well that the impediment to archaeological research posed by the religious views of some individuals may lead to deprivation of the benefit of scholarly research for all Canadians including aboriginal peoples.

The importance of the above mentioned initiatives and views to the review of the ASC activities does not refer to formal, institutional ties but to an informal situation. As it often happens in very specialized disciplines, the author of the publication quoted above, a member of the Committee is closely involved on a personal and professional basis in the policy area under discussion and is also the chief curator of physical anthropology at the ASC/NMM.

4. Legislation and Policies: Practical Implementations and Effectiveness

Legal acts and policies designed for and by Parks Canada, the ASC and departments associated with them, encouraged cooperation with outside bodies and gave initiative power to do so to the departments in question.

As was already mentioned, the DOE's mandate is very strong and well defined. The practical implementation of programs and the institutional attitudes of Parks Canada are, however, directed toward existing parks, which constitutes a very small section of the national territory (1.3%) or towards areas of potential parks. We are not aware of any incentive undertaken by Parks Canada in relation to archaeology outside of the traditional areas of the agencies operations.

The 1984 Federal Review Committee's Report on Cultural Policy is an example of the Government of Canada's concern for effective management of heritage resources. The Report stressed the need for a new legislative act that will be used as a base for a comprehensive archaeological preservation program especially directed toward the Canadian north.

In 1984, the NMC through the publication of "After Applebaum-Hebert" responded to the Committee Report supporting its recommendations aimed at regulating the federal activities and responsibilities in the heritage field.

The publication states unequivocally the NMC's readiness and willingness to be involved in the process, recognizing at the same time the role of other federal departments such as Indian and Northern Affairs and the Department of Communications.

The Applebaum-Hebert report discusses prehistoric and historic resources in the North. This classification of archaeological resources seems to have considerable operational value since it responds in principle to the archaeological related programs and activities of the DOC (the NMM) on the one hand, and the DOE (Parks Canada) on the other.

It may be symptomatic however that Parks Canada in contrast the NMC does not take any official stand in relation to the Committee's proposal.

Even if the Applebaum-Hebert Report can be seen to serve as a primary reference for an attempt to review federal activities and responsibilities and for the formulation of a legislative proposal a presentation of a case study seems to provide more reliable data for the evaluation of Parks Canada's interests in relation to the ASC.

a) National Park on Ellesmere Island: Case Study on the Application of Federal Jurisdiction

There are apparently no overlapping jurisdictions, gaps or institutional conflicts of interest between the ASC and Parks Canada in relation to the management of archaeological resources on territorial and Parks Canada lands.

A potential conflict of competences and interests may take place, however, in northern areas of future national or national historic parks planned by Parks Canada.

Consistent with the previously reviewed policy, Parks Canada's initiatives directed toward the foundation of new national parks are preceded by an extensive consultation process with representatives of the local population who live close to the area of the potential park. One of the elements of this process is the publication of joint statements or memorandums.

In 1982, the memorandum of understanding for the establishment of a reserve for a National Park on Ellesmere Island was signed by the Minister of the Environment and the Government of the Northwest Territories. Condition 18 of the memorandum specifies that:

"Parks Canada shall consult with the Government of the Northwest Territories, the community of Grise

Flord, and the Archaeological Survey of Canada concerning proposed archaeological programs for the park reserve. Archaeological policies and practices in force in the Northwest Territories shall be used as a basis for Parks Canada's policies and practices to regulate archaeological activities in the park reserve."

The Government of NWT and Parks Canada, in the quoted documents on archaeology, express three general concerns related to archaeology: (1) protection of archaeological resources; (2) investigation of in situ resources by competent researchers and for valid reasons; and (3) preparation of adequate documentation of any archaeological activity.

Those concerns relate mainly to the permit system currently in force. Both Parks Canada and the Government of the NWT have their own related regulations. Even if it may generally be assumed that federal standards match and in some cases even exceed territorial requirements it is to be added that areas of potential or probable conflict still exist, especially if it is considered that territorial power over archaeology is delegated by the Government of NWT to the ASC.

It has been mentioned, that Parks Canada is committed to develop, as stated explicitly in its policies, a complex and adequate system of public consultation proceeding the planning stage for the establishment of a new park. However, once Parks Canada is granted full jurisdiction over parks territory, the concerns of the local community may no longer be taken into consideration. Further evidence of this parks-native persons relationship is seen in the Parks Canada archaeological permit system.

The current procedure, in contrast to the one of the NWT, does not require assurances that the archaeological project has the approval of the community nearest to the area of research. It also does not require that the archaeologists inform the local community about the project during the early planning stage.

It shows that present Parks Canada rules on archaeological investigation may be opposed by some aboriginal people who under the present territorial system have more control over archaeological resources.

Since Parks Canada's major objective is preservation of sites in collaboration with local authorities not research, some disagreement may result from the different criteria of evaluation used by the involved parties.

Even if section 18 of the Memorandum of Understanding,

quoted above, seems to commit Parks Canada to respecting territorial rules, it is evident that once a park is established, it will be under the full jurisdiction of the DOE.

As a partial recognition of existing and potential gaps and conflicts between the two federal agencies the ASC and Parks Canada, a draft of a joint agreement was prepared in 1985, describing the responsibilities of the Archaeological Research Division of Parks Canada, and the Archaeological Survey. The agreement, which, apparently, originated within Parks Canada, has not yet been signed or made public. The officers involved in the initiative were not able to explain reasons for not completing the agreement. Similarly, it seems that the process of establishing the national park on Ellesmere Island has been slowed down, if not stopped.

5. Conclusions

The two federal departments in question both operate on the national level and both are involved in the management of archaeological resources. Disregarding the question of the different position of Parks Canada and NMC within their departments, it is to be stressed that Parks Canada functions only within the very small area of the overall national territory (1.3% of Canadian land) but with full jurisdiction. The ASC/NMM, on the other hand, acts on all federal lands and, to a certain extent, on provincial ones, but virtually without any jurisdiction.

The main goal of the ASC is to engage in activities that will increase the objective knowledge about past cultures on national territory. This academic attitude implies the use of methodologically correct procedures mainly based on excavations; and the interpretation of collected data according to current theories.

Parks Canada's concern is directed less toward scientific achievements and more toward the preservation of archaeological resources. Parks Canada's clear mandate is directed not toward knowledge but rather toward the general public satisfaction.

The differences between the two agencies' goals are likewise reflected in their interests in different archaeological periods: Parks Canada seems more concerned with historic archaeology, which may be perceived and used as and auxiliary to historical resources; the ASC, on the other hand is concerned with prehistory that, although being less spectacular by general public standards and expectations, is more interesting from the scientific point of view.

D. Department of Indian and Northern Affairs (DINA):
Mandates and Activities within the Provinces

1. Introduction

Besides the DOC and the DOE, the third federal department of primary interest for this project is DINA. Its mandate relates to the administration of all affairs of aboriginal people inhabiting reserve lands located within provincial boundaries and the territories.

As we have seen in Section II archaeological resources in Canada are frequently recognized as related to the cultures of aboriginal populations.

Prehistoric and historic knowledge about Indian, Inuit and Metis people in Canada serves to increase their own cultural consciousness and sense of identity. As a result of settlement patterns, historic, economic and political factors, these groups, with the exception of non-status Indians, considered aboriginal, are governed independently and in a different way by the rules and regulations developed by the federal authorities.

2. Review of Legal Acts

There are two federal legislative acts related to aboriginal populations (acts on and from the Northwest Territories and the Yukon will be presented under a different section):

The first is the 1967 Department of Indian Affairs and Northern Development Act. Its mandate is defined in the following manner:

" 4. The duties, powers and functions of the Minister of Indian Affairs and Northern Development extend to and include all matters over which the Parliament of Canada has jurisdiction, not by law assigned to any other department, branch or agency of the Government of Canada, relating to

- (a) Indian Affairs; [i.e. Status Indians]
- (b) the Northwest Territories and the Yukon Territory and their resources and affairs;
- (c) Inuit Affairs;
- (d) National Parks "

Section (d) on national parks was amended and has been transferred to the Department of the Environment. It should be noted, that although the Canadian constitution identifies three aboriginal peoples, Indian, Inuit and Metis, the Act and its amendments do not refer to the Metis population.

The second is the 1951 Indian Act (amended 1985). The Act is not explicit concerning archaeological resources. Section 91, however, states that:

- " (1) No person may, without the written consent of the Minister, acquire title to any of the following property situated on a reserve, namely:
- (a) an Indian grave house;
 - (b) a carved grave pole;
 - (c) a totem pole;
 - (d) a carved house post;
 - (e) a rock embellished with paintings or carvings.
- (2) No person shall remove, take away, mutilate, disfigure, deface or destroy any chattel referred to in subsection (1) without the written consent of the Minister.
- (3) A person who violate this section is guilty of an offence and is liable on summary conviction to a fine not exceeding two hundred dollars or to imprisonment for a term not exceeding three months. R.S.,c. 149,s.90. "

The Act does not mention any other historic or prehistoric resources, particularly any object of archaeological character, and consequently cannot be considered a legal tool for the protection of archaeological sites within reserves - i.e. land which falls under federal jurisdiction.

As discussed in the section on native claims, some agreements between aboriginal groups and the federal government deal with issues related to archaeology. Bill C-93, of 1986, on self-government for the Secheit Indian Band

made no reference to heritage or archaeology. Bill C-93, however, may eventually serve as a basis for the management of non-renewable resources through Indian self-government and legislative and administrative activity. Section 14(3) of this bill states that: "the Council has the power to adopt any laws of British Columbia as its own". This also includes the legislation on heritage resources.

Unfortunately, B.C. laws do not provide very effective tool for the protection of archaeological resources.

a) Review of Terms and Definitions

The above mentioned Acts do not define the terms that relate to heritage resources. There are, however, three definitions that are of importance to this project:

- " 'Indian': a person who pursuant to this Act is registered as an Indian or is entitled to be registered as an Indian;
- 'Reserve': tract of land, the legal title to which is vested in Her Majesty, that has been set apart by Her Majesty for the use and benefit of a band;
- 'Band': a body of Indians for whose use and benefit in common, lands...have been set apart before on or after the 4th day of September, 1951."

Section 4(1) of the Indian Act states that: " A reference in this Act does not include any person of the race of aborigines commonly referred to as Inuit".

It is interesting to note that the Act, amended as recently as 1985, made use of the notion of race, a notion that has long been rejected not only by academic physical anthropologists but also by an enlightened part of the general public.

3. Administrative Procedures

The federal government through its administration of the Indian Act, has complete jurisdiction over reserves located within the provinces. As a result, DINA works in a close relationship with provincial and municipal authorities. Generally, it has three main areas of operational responsibility.

1. Indian and Inuit Affairs Program - Involves a variety of agreements and arrangements with the provinces;
2. Northern Affairs Program - Involves financial arrangements with the territorial governments;
3. Office of Native Claims - Involves the settlement of native land claims through a process of negotiation, often with the direct participation of the provinces

a) Federal Provincial Relations

The implementation of DINA's mandate depends upon the negotiation process. A process that can be bilateral (federal-territorial) or tripartite (federal-local Indian bands-provincial) in character.

With the development of an extensive negotiation process between the federal and provincial governments, concerning Indian issues and Indian land claims in particular, the two levels of government organized the Intergovernmental Conference Secretariat in 1971. The Secretariat was designed to serve federal-provincial conferences and meetings by preparing agendas and keeping records. The function of this independent body is to facilitate the operation of bilateral contacts. As a body it is not concerned with the substance of the issues discussed. Funding for this body are provided jointly by the two respective levels of government. The Secretariat operates independent of the Federal-Provincial Relations Office.

DINA's cooperation with the provincial governments, in the administration of the Indian Act, falls under two categories; formal agreements and informal joint agreements. DINA's cooperation with municipalities usually takes the form of requests from DINA to municipal authorities to extend municipal services to local aboriginal populations. All formal and informal relations between interested parties are related primarily to social, political and economic issues.

Of the 19 programs operated under formal agreements none are related to the management of heritage resources. Consequently, neither legislation nor policy statements can provide information about the state of archaeological resources within Indian reserves. According to the opinions expressed by officials of the NMM and the DINA archaeological sites within Indian reserves are "totally unprotected and the inhabitants of the reserves may do whatever they want with the artifacts".

Apparently, provincial archaeological agencies prefer to stay away from land under federal jurisdiction. In practice, in the case of an archaeological discovery reported by

Indians, the DINA rely upon the expertise of the Archaeological Survey of Canada. It is the performance of this role that the ASC has become the main federal agency for archaeology. It should be noted that the DINA do not refer to Parks Canada in matters related to the preservation of archaeological resources even though Parks Canada was administered by DINA in the past.

Artifacts excavated on reserves are considered the property of the Crown. The formal procedures should be that artifacts are processed, cataloged and entered into the National Sites Inventory by the ASC. Our impression, however, is that presently very little excavation is taking place on reserves. Recently, the ASC has entered into several informal arrangements with Indian bands in British Columbia and Alberta for the excavation and preservation of archaeological sites on reserves.

There is a noticeable lack of federal legislation and policy concerning the management of heritage resources within Indian reserves. Despite this lack, according to unofficial opinions from the ASC and DINA, the practical handling of archaeological resources within reserves is a relatively uncontroversial issue for officers from both departments. It should be noted, however, that this assessment has no implication for the safeguarding of archaeological sites. The "easy going" cooperation between federal departments may simply be the result of the refusal, by local Indian populations, to report any archaeological sites.

As a result, it seems that neither the interests of prime policy publics nor their rights are safeguarded and protected, with the exception of private collectors and dealers who may take advantage of the situation.

E. Management of Archaeological Resources by
Provincial Authorities

1. Background

By its commitment to national heritage and multiculturalism, the federal government is deemed to play an active role in the management of cultural resources. Since the management of cultural resources is generally under provincial jurisdiction, it is important to discuss the relation between these two levels of government.

The existing federal-provincial liaison mechanisms and provincial intergovernmental capabilities are based upon the concept of federalism perceived as a system of government in which federal and regional authorities are linked in a mutually interdependent political relationship and where a balance is maintained in such a way that neither level of government becomes dominant.

Some provincial legislations recognize the need for a close cooperation with outside bodies, including the federal government, in order to properly manage their own cultural resources, including archaeology. The enclosed list of provincial legislation indicates the areas where the need for cooperation with the federal government has been already recognized.

On the other hand, the federal government, through its Federal-Provincial Relations Office is empowered to propose new agreements on cultural management with the provinces,

where the legislation on heritage is thought not to provide a legal base for such cooperation.

2. Provincial legal acts related to intergovernmental cooperation on the management of archaeological resources

Alberta and Saskatchewan are the only two provinces who have gone into agreements with the federal government. The related Acts are:

Alberta:

The Federal-Provincial Agreement on Responsibilities and Powers Relevant to Federal Archaeological Projects in the Province of Alberta (1977 Office Consolidation, Alberta Culture, 1982) it states:

1. the Alberta Historical Resource Act has no application to federal lands in Alberta;
2. the Historical Resource Act is applicable to provincial lands;
3. the Historical Resource Act is applicable to privately owned lands in Alberta.

Saskatchewan:

The Saskatchewan Federal/Provincial Agreement Act, Cap. F-13 (1972), encourages joint participation in any program arrangement. Sec.3(2) states that the provincial Minister of Saskatchewan Culture and Youth may, on behalf of Government of Saskatchewan, enter into any agreement with the government of Canada or any other nation, or with the government of any other province or with any person, agency, etc. respecting the coordination, preservation, study, interpretation and promotion of the appreciation of heritage property in the province.

Legislation in other provinces does not directly relate to the federal government but do provide a general base for cooperation.

British Columbia

The 1977 Heritage Conservation Act provides the Heritage Conservation Branch with a mandate to assist all other

government agencies in the planning and management of property of heritage significance, and to undertake co-operative heritage development programs and projects.

Manitoba

The Heritage Resources Act sec. 49(2) states that:
"The Minister may enter into an agreement with any museum or other appropriate public or private institution outside of the province for the display by that museum or institution of any heritage object found in Manitoba or the display within Manitoba of any heritage object in the custody of that museum or institution".

Quebec

Sec.51 (f) of the Cultural Property Act, states that the Minister, upon advice of the Commission, may make, with the approval of the Lieutenant-Governor in Council, agreements with any government or person respecting cultural property.

Other Provinces

The 1980 Ontario Heritage Act, the 1980 Nova Scotia Heritage Property Act and the Special Places Act, the 1970 PEI Archaeological Investigation Act, the 1978 New Brunswick Historic Sites Protection Act - no mention about provincial/federal agreements, the 1985 Newfoundland Historic Resources Act. (Draft of agreement on Working Guidelines between Province of New Brunswick and the NMM, 1979 - never made official policy).

3. Legislation and Management of Archaeological Resources by Provinces

a) Introduction:

Provincial legislations and policies related to archaeology reflect the differences of economic, political and social development of the Canadian provinces.

It seems that there is a relation between financial and human potential of a province and interest in the management of archaeological resources. It has to be recognized that archaeology may be seen not only as an important scientific discipline but also as related to big land development due to the necessity and expense of impact assessment and mitigation studies.

The provincial legislations were introduced during different stages of provincial history (see Chart IV.3). They were also approved by different constituencies and responded to different needs of various segments of society.

The Alberta legislation developed as a result of an extensive program of land development taking place in that province in the 1970's, and responds to the needs of contractual archaeologists, developers and administrators. Consequently, several detailed guidelines, policy statements and regulations have been issued making the existing system both complicated and legalistic.

In contrast, the legislative acts related to archaeology in the Maritime provinces provide for a very general and imprecise tool for the management of archaeological resources. For example, the Prince Edward Island Archaeology Investigation Act, in apparent inconsistency with its name, does not specify even a repository for archaeological specimens nor does it indicate who is responsible for archaeological resources. There are almost no policy statements issued by Maritime provinces that indicate the current status of archaeology in this area.

To assess the manner in which provincial legislation and policies work it is important to understand the geographical areas of provincial jurisdiction. Such jurisdiction covers all provincial lands with the exception of national parks, Indian reserves and lands owned by the federal government.

We have identified here a list of provincial legislative acts relevant to archaeology that are presently in force in the provinces. They may be generally classified as falling into the following categories:

- 1) Cultural Property, Heritage Conservation, Preservation, Protection Acts and Historical Resources (Sites, Objects, Records) acts;
- 2) Anatomy, Human Tissue, Human Tissue Gift Acts, Coroners, Fatality Inquiries, Fatal Injuries, Cemeteries Acts, Vital Statistics acts; and
- 3) Environmental Assessment, Planning, Wilderness, Forest and Provincial Parks acts

The acts on Cultural Property and Historical Resources are

more directly related to the management of archaeological resources. These acts will serve the purpose of assessing the roles of the prime policy publics as reflected by several pieces of the provincial legislation.

1) List of Provincial Legal Legislation

British Columbia

-the Heritage Conservation Act, 1977

Alberta

-the Alberta Historical Resources Act, 1980
Regulation 124/79: Research Permit Regulation

Saskatchewan

-The Heritage Property Act, 1980
-The Provincial Parks, Protected Areas, Recreation Sites and Antiquities Act, R.S.S. 1965, amended 1980

Manitoba

-the Historic Sites and Objects Act, 1966-67, amended 1975
Regulation respecting Archaeological or Paleontological Field Research, 1980
Heritage Resources Act, 1985

Ontario

-the Ontario Heritage Act, 1974, amended 1980

Quebec

-Loi sur les biens culturels (Cultural Property Act)
amended 1979
Reglement sur la recherche archeologique (Regulation respecting Archaeological Research), 1973

New Brunswick

-the Historic Sites Protection Act 1975, consolidated 1984

Nova Scotia

- The Heritage Property Act, 1980: an Act to provide for the identification, preservation, and protection of heritage property
- The Special Places Act, 1980: an Act to provide for the preservation, regulation and study of archaeological and historical remains and palaeontological and ecological sites

Prince Edward Island

- The Archaeological Investigation Act, 1970
- The Recreation Development Act, amended to 1974
(Provincial Parks regulations fall under this Act)

Newfoundland

- the Act Respecting the Preservation of the Historic Resources of the Province, 1985

SECTION IV
LEGISLATION AND POLICY

	1960	1970	1980	1986
ALB.			Alberta Historical Resources Act (1980)	
B.C.			Heritage Conservation Act (1977)	
MAN.		Historic Sites and Objects Act (1966-67), amended to 1975		Heritage Resources Act, 1985
N.B.			Historic Sites Protection Act (consolidated to 1978)	
N.F.				Historic Objects, Sites and Records Act (1985)
N.S.			The Heritage Property Act (1980). The Special Places Act (1980)	
P.E.I.		The Archaeological Investigation Act (1970)		
ONT.			Ontario Heritage Act, 1974, amended to 1980	
QUE.		Loi sur les biens culturels, 1972, amended to 1979.		
SASK.		The Provincial Parks, Protected Areas, Recreation Sites and Antiquities Act (1965), amended to 1980.		The Heritage Property Act, 1980

II) Review of Terms and Definitions

With the exception of the Alberta Archaeological Research Regulation and the Prince Edward Island Archaeological Investigation Act, no provincial legislation is directly and entirely dedicated to archaeological resources.

A multiplicity of terms with different uses and meanings appears in provincial legislation:

British Columbia

'heritage': historic, architectural, archaeological, palaeontological, or scenic significance to the Province or municipality;

'heritage object': personal property, designated or not, of heritage significance;

'heritage site': land, including land covered by water, designated or not, of heritage significance"

Alberta

" 'archaeological research project': a specific research program carried out for the purpose of locating, recovering, analyzing, and interpreting archaeological resources;

'archaeological survey': an examination of a physical land area, including subsurface deposits, for the purpose of obtaining information on the archaeological resources located on, in or under the land;

'mitigative research project': an assessment carried out to determine the impact a proposed development will have on archaeological resources in the area where the development is proposed to be carried out;

'excavate': to explore for, locate or recover archaeological resources which are or were buried in Alberta or submerged beneath the surface of any watercourse or permanent body of water in Alberta;

'heritage': historic, architectural, archaeological, palaeontological, or scenic significance to the Province or municipality;

'heritage object': personal property, designated or not, of

heritage significance;

'heritage site': land, including land covered by water, designated or not, of heritage significance"

(1980, Historic Resources Act)

Saskatchewan

" 'archaeological object': any object showing evidence of manufacture, alteration or use by humans that is found in or taken from land in Saskatchewan and that is of value for the information it may give on prehistoric human activity in Saskatchewan;

'heritage property': any property, whether a work of nature or of man, that is of interest for its architectural, historical, cultural, environmental, aesthetic or scientific value, and includes a site where architectural, historical, cultural or scientific property is or may reasonably be expected to be found;

'site': includes any parcel of land or remains of any building or structure;

'protected area': area designated for the purposes of protecting and preserving scenic, historic or scientific areas of interest or significance;

'palaeontological resource': means a work of nature consisting of or containing evidence of extinct multicellular beings and includes those works of nature designated by the regulations as palaeontological resources."

(1980 Heritage Property Act)

Manitoba

" 'artifact': an object that is a product of human art or workmanship or both, of value primarily for its historic or archaeological importance or interest, that is or has been discovered above or beneath the surface of the earth or uncovered from beneath the surface of the earth, whether by human activity or natural causes;

'historic site': site, parcel of land, building, or structure declared as such under the regulations;

'skeletal remains': remains of human bodies situated or discovered outside a recognized cemetery or burial ground in respect of which there is some manner of identifying the

persons buried therein;

'archaeological object': product of human art, workmanship or use, including plant or animal remains that have been modified by or deposited due to human activities. (An object) of value for its historic or archaeological significance, and (an object which) has been discovered on or beneath land in Manitoba, or submerged or partially submerged beneath the surface of any watercourse or permanent body of water in Manitoba;

'heritage object': an object that includes an archaeological object;

'heritage resource impact assessment': written assessment in such form as the minister may by regulation, showing the impact that proposed work, activity and development...is likely to have upon heritage resources;

(1985 Heritage Resources Act)
Ontario

" 'object': an object of archaeological or historical significance"

(1980 Heritage Act)

Quebec

" 'cultural property': work of art, a historic property, historic monument or site, archaeological property of site;

'work of art': movable or immovable property whose conservation, from an aesthetic point of view, is in the public interest;

'historic property': any manuscript, printed item, audio-visual document or man-made object whose conservation is of historic interest, excluding an immovable;

'historic monument': immovable having historic interest due to use or architecture;

'historic site': place where events have occurred marking the history of Quebec or an area containing historic property or monuments;

'archaeological property': any moveable or immovable property indicating prehistoric or historic human occupation;

'archaeological site': place where archaeological property is found;

'historic district': a territory, municipality or part of municipality so designated because of concentration of historic monuments or sites found there;

'natural district': a territory, municipality or part of municipality so designated due to aesthetic, legendary or scenic interest of its natural setting;

'protected area': an area whose perimeter is 500 feet from a classified historic monument or archaeological site"

(1976 Cultural Property Act)

New Brunswick

" 'anthropological object': object of anthropological significance found at an anthropological site;

'anthropological site': any site, parcel of land, building, or structure of anthropological significance that has been designated as such by Minister;

'archaeological field research': explorations, surveys or excavations to obtain information of an archaeological nature or with the intention of recovering objects of archaeological significance;

'historic district': a group or collection of historic buildings and their environs, in urban or rural areas, considered by the Minister to be of historic or architectural significance and designated to be an historic district by the Minister;

'historic object': object of historical significance found at an historic site;

'protected site': any historical or archaeological site designated as such by the minister;

(1978 Historic Sites Protection Act)

Nova Scotia

" 'municipal heritage property': building, streetscape or area registered in a municipal registry of heritage property;

'provincial heritage property': building, etc. registered in the Provincial Registry of Heritage Property "

(1980 Special Places Act)

Prince Edward Island

" 'archaeological investigation': Investigations made by any person or organization in or on lands in any part of P.E.I. for the purpose of discovering, or in forming part of the soil, remains of ancient civilizations or historic objects, but does not include studies, surveys or examinations which do not involve interference with or removal from the soil of any historic objects;

'historic object': any object of historical significance to or connected with archaeology"

(1970, Archaeological Investigations Act)

Newfoundland

" 'archaeological investigations': means an investigation made by a person for the purpose of discovering, in, on or as forming part of the land within the province, archaeological objects and includes a survey or examination whether or not it involves interference with or removal of the soil or of an archaeological object on, in or partly in land;

'archaeological object': means an object showing evidence of manufacture, alteration or use by humans that is found in or on land within the province and is of value for the information that it may give on prehistoric human activity in the province and includes human remains;

'historic resource': means any work of nature or of humans that is primarily of value for its archaeological, prehistoric, historic, cultural, natural, scientific or aesthetic interest, including but not limited to, an archaeological, prehistoric, historic or natural site, structure or object"

(1985 Historic Resources Act)

Territorial Legislation:

Although the management of archaeological resources within the Northwest and Yukon Territories is to be presented under a special section of this project, it seems useful to list here the following terms and definitions.

Northwest Territories

" 'archaeological site': site or work of archaeological, ethnological or historical importance, interest or significance of a place where an archaeological specimen is found and includes explorer's cairns;

'archaeological specimen': an object or specimen of archaeological, ethnological or historical importance, interest or significance and includes explorer's documents;

-- where any question arises as to whether a site, work or cairn is an archaeological site, or whether an object, specimen or document is an archaeological specimen, decision of the minister shall be final --"

(1960 Northwest Territories Archaeological Sites
Registration)

Yukon

" 'archaeological site': a site or work of archaeological, ethnological or historical importance, interest or significance, or where an archaeological specimen is found, and includes explorer's cairns;

'archaeological specimen': object/thing or specimen of archaeological, ethnological or historical importance, interest or significance, and including explorer's documents;

'historical place': a site, building or other place of historical interest or significance, and includes building or structures or things that are of interest by reason of age or architectural design"

(1960 Yukon Territories Archaeological Sites
Regulations)

We have carried out the independent analysis of the use of terms in the provincial legislation. These terms and definitions relate to four different levels:

- 1) archaeological sites
- 2) archaeological objects
- 3) archaeological resources
- 4) palaeontological resources

These levels respond to the terminological baseline presented

In the section on definitions and key terms.

The review points to the considerable lack of consistency between different provincial legislations both in their use and their understanding of terms, such as:

- 1) archaeological sites - defined as - historic sites, historic places, heritage sites, anthropological sites and protected sites
- 2) archaeological objects - defined as - historic, heritage, or anthropological objects or artifacts
- 3) archaeological resources - defined as - historical resources, heritage resources, heritage properties and protected areas

Alberta legislation also defines terms related to the use of archaeological methods in the field as 'excavation', 'archaeological research project', 'mitigative research project' and 'archaeological survey'. Manitoba legislation uses the term 'heritage resource impact assessment' to refer to archaeological methods in the field (Heritage Resource Act).

In policy statements related to the legislation as well as in various other documents even more terms are used to convey different meanings. Besides the relatively clear use of the term 'survey' there are various uses of the terms 'archaeological exploration', 'fieldwork', 'monitoring', 'assessment', 'mitigation', and 'field-programs' usually without explanation.

Furthermore, it may be assumed that the understanding of these terms can differ between academic, contractual archaeologists, avocational archaeologists, managers of archaeological programs and the general public.

b) Prime Policy Publics In Provincial Legislation

1) Archaeologists and Research/Collection Institutions

In contrast with archaeological activity carried out by the two federal agencies, NMC and Parks Canada, archaeologists operating within the provinces, mainly in Alberta, Saskatchewan and Manitoba, are mostly engaged in contractual archaeology - i.e. impact assessment and mitigation processes rather than in academic research or environmental preservation.

All provincial legislative acts recognize university-trained professional archaeologists as the only group worthy of full accessibility to archaeological resources.

Permit System

In order to protect resources and to assure the scientific interests of archaeologists and to build scientifically valuable collections, all provinces utilize a permit system for any archaeological activity undertaken. Generally, a PhD. or M.A. in archaeology or a related field is required from a prospective applicant. Saskatchewan legislation, however, allows the granting of permits to so-called avocational archaeologists under special circumstances. This "restricted" permit enables the holder to engage in surveys, surface collection and, with exception, salvage excavation.

Provincial law in Alberta, Newfoundland and Saskatchewan allows for the eligibility of students enrolled in a post-graduate program for an archaeological research permit provided that they are supported by a research sponsor.

Provincial archaeological legislation in Alberta has been extensively developed. The law provides for two types of permits: Type A - Archaeological Research Permit and Type B: -Mitigation Research Permit.

Ontario legislation distinguishes between a permit and a license. Prior to an application for an archaeological permit an archaeologist must be in possession of a license issued by the Ontario Ministry of Culture.

British Columbia legislation does not require the possession of a permit for those who are engaged in archaeological survey work. The legislation requires possession of a permit only for excavations undertaken on protected lands.

According to information provided by the ASC/NMC,

the permit system in provinces such as Alberta and Saskatchewan was designed to establish minimum standards (for)...all individuals engaged in exploitation of the non-renewable archaeological resource base. The intention was to assure that basic professional standards would be used and that there would be some control over looting and collecting, or inadequate archaeological study by profit-oriented consultants. (Letter by R.J. LeBlanc, May 27, 1986).

All provincial legislation requires the submission of reports from archaeological research undertaken. Specific requirements, however, differ from province to province. For example, Saskatchewan legislation requires the submission of a report on any archaeological activity before the end of the calendar year. Alberta's legislation requires the submission of reports on archaeological activity 180 days after the expiration of the permit.

All legislation bestows on the minister responsible for the management of cultural resources the power to designate the allocation of depository remains, usually to provincial museums and universities.

Most of the archaeological research in the provinces is contract work. Due to its complexity and importance it will be presented in a separate section.

11) Rights and Interests of Aboriginal People

Provincial legislation regarding the general management of cultural heritage resources does not pay any special consideration to the interests of aboriginal people regardless of where or when the legislation was introduced.

Only two provinces, Saskatchewan and Nova Scotia, have legislation that addresses this neglect. The 1980 Saskatchewan Heritage Act, Sec.65 (3) states that :

"all excavated or naturally exposed Amerindian skeletal material postdating 1700 AD is to be made available to the Indian band Council nearest the discovery site for disposition following scientific examination or any use for research or educational purposes that the minister shall decide"

The 1980 Nova Scotia Special Places Act states that "a representative of the Union of Nova Scotia Indians shall be a

member of the Advisory Committee on the Protection of Special Places".

An analysis of legislation alone does not provide answers for the lack of interest toward aboriginal people on the part of provincial governments.

We have seen that Indian reserves fall under federal and not provincial jurisdiction. On the other hand, legislation that relates to archaeology is often administered by provincial agencies or departments whose interests or goals may be other than cultural. For example, the 1867 B.C. Indian Ordinance Act was designed to prevent the violation of Indian graves. According to the DINA this Act is still in effect and it applies to all provincial lands with the exception of Indian reserves. This Act relates directly to issues sensitive to this project. The B.C. department that administers the Heritage Conservation Act asserts that the 1867 Ordinance has been "long forgotten" and there is no official stand with regard to its administration. It was also suggested that the Act may be a potential subject for a constitutional debate between the federal and provincial governments and as such it would be better to take a "low profile" .

III) Private Collectors and Market Rules

The interests of private individuals , regardless of professional orientation , towards the collection of archaeological objects are not a recent phenomenon but date back to the last century when an awareness of aboriginal culture began to be felt.

Provincial legislation for the protection of moveable cultural objects has been introduced in only the last few decades. As a result, provincial jurisdiction over the ownership of archaeological objects and sites does not apply retroactively. Private collectors are allowed to hold on to their collections as personal property. The present policy applied in Ontario, according to the official publication "Archaeological Conservation in Ontario", states that "private collections may be retained but not added to". The Saskatchewan and Newfoundland legislations allow for the imposition of provincial jurisdiction over archaeological objects and sites retroactively but its interpretation as well as its enforcement poses some question.

Generally, the private ownership of archaeological objects is recognized by provincial legislation. An 1980 brochure, "Archaeological Resources Management Program",

published by Saskatchewan Culture and Youth, acknowledges that:

"looking for and collecting from archaeological sites has long been a popular hobby in Saskatchewan. Much valuable information has been gained by private citizens recovering artifacts and reporting sites"

In further recognition of the non-professional interest in archaeology, the existing Saskatchewan permit system has developed forms to govern survey and collecting activities by so-called avocational archaeologists. Furthermore, the Provincial Archaeological Section committed itself to "visit applicants to assist their collection programs" (Saskatchewan Resource Management Program, 1984, n.p.).

The Saskatchewan Heritage Property Act acknowledges the existence of private collectors. The Act, however, requires that all collections be reported to a provincial register. (See the further discussion in Section VI.)

Current provincial legislation is constantly under the process of amendment and expansion which suggests that the perception of the value of cultural resources by legislators and the general public is also changing and evolving. For example, under the 1967 Manitoba Historic Sites and Objects Act all archaeological objects found on or beneath the surface of any land were the legal property of the land owner. It implied that any artifacts recovered in such a way would be free to circulate on the open market. The new Manitoba legislation introduced in 1985 as the Heritage Resources Act states that all artifacts are crown-owned by the province regardless of who owns the land. The only exception to this are archaeological artifacts such as human skeletal remains collected before 1985, which remain the property of the land owner. As stated by a Manitoba minister "amateur collectors in Manitoba... assemble collections of artifacts in which they take considerable pride" (Heritage Resources, Manitoba Culture and Recreation, Hon. E. Kostyra, Minister, 1985).

Other provincial legislation is not as explicit about amateur archaeology and collection as the Manitoba and Saskatchewan legislation. They can still be understood, however, as a basis for possible and legally correct activity for private collectors and dealers. British Columbia legislation, for example, does not require the submission of information on the ownership of artifacts. As well, it only requires an archaeological permit for the investigation of designated sites.

The 1867 B.C. Indian Grave Ordinance was designed to prevent the violation of Indian graves. The Act has "weak teeth" with regard to current standards. For example, the

penalty for ordinance offenders is not to exceed \$100. If the information about the Act's applicability is correct, it nevertheless would be insufficient to prevent the looting of Indian graves.

Furthermore, it should be underlined that the major source of artifacts supplying the market come not from excavated sites but rather from surface collection. Most provincial legislation, including P.E.I., N.S., N.B., Ont., Sask., and B.C., do not require that fortuitous discoveries be reported.

Assuming that public opinion does not provide one with a clear indicator as to what is "correct" or "incorrect" with regard to fortuitous discoveries and the private ownership of artifacts, the bulk of provincial legislation may be considered favourable to collectors and the activity of dealers.

IV) Public Participation and Rights

Almost all provincial legislation provides for public participation, and enables the minister responsible to organize appropriate programs. For example, the B.C. Heritage Conservation Act, sec. 20, states that:

"The B.C. Heritage Trust may conduct and arrange exhibits or activities to inform and stimulate the interest of the public in property of heritage significance. The Heritage Conservation Branch may conduct exhibitions and other means of stimulating interest in heritage conservation."

The Saskatchewan Heritage Property Act, sec. 3, states that the:

"...minister may exhibit and display, within or outside the province, any heritage property acquired by the Crown under the Act, undertake, support or sponsor educational or research programs relating to heritage property, provide professional, technical and financial assistance to any person, agency, organization or society whose aims and objectives are complimentary to the purposes of the Act."

Section 71(2) of the same Act provides for "suitable recognition" to any person reporting an archaeological discovery, apparently to stimulate a public awareness and interest towards archaeology.

The 1980 Ontario Heritage Act (sec.7) indicates that one of the objectives of the Ontario Heritage Foundation is to conduct research, conservation and communication programs, "necessary for heritage conservation, protection and preservation".

Archaeological Field Schools and so-called "Hands-on" Programs are designed to promote an interest in archaeological heritage. They are organized by the Ontario Ministry of Citizenship and Culture.

The Prince Edward Island Research Development Act, sec.5, states that the:

"Lieutenant-General in Council may provide grants, scholarships or other contributions to any person to assist in the carrying out of education or conservation programs."

The Alberta Historic Resource Act bestows upon the minister the power to respond to the needs of the general public. The Minister may:

- "(a) provide for the operation, maintenance and development of the Provincial Museum of Alberta ;
- (b) cause to be exhibited and displayed specimens, artifacts, documents and works of art depicting the history of Alberta , or any other subjects that may be of public interest from time to time;
- (c) receive from other institutions, produce, exchange and display loan and circulating exhibits from the use both in and out of Alberta;
- (d) undertake, support or sponsor educational and research programs relevant to the purposes of this Part;
- (e) publish information and studies..."

Although the right of the public to participate in programs designed to promote a general understanding of the value inherent in archaeological heritage has been clearly stated in the legislation quoted above, the effectiveness of these measures certainly need to be investigated further.

c) Management of Archaeological Resources -
Impact Assessment and Mitigation Process

One of the most important problems for the management of archaeological resources is the preservation of non-renewable resources threatened by the increasing activities of commercial, industrial or other developmental interests.

All provincial legislation, with the exception of New Brunswick, provide for archaeological impact assessment studies prior to the implementation of any project related to land development.

The object of such studies is to locate archaeological resources that will be effected by land development programs, to evaluate the worth of archaeological sites, to determine the nature of the impact of land development programs and to propose conservation or mitigative procedures. The components of the impact assessment process are as follows:

1. preliminary referral -i.e. to make a preliminary review of an impact assessment project;
2. inventory -i.e. to identify the archaeological resource sites within the land development project area;
3. site evaluation -i.e. to determine the scientific value, in the context of the site, and the amount of destruction to which the site will potentially be subjected as a result of any land development
4. mitigative measures -i.e. to determine the appropriate measures in relation to the scientific value of a site and its possible destruction

Contractual archaeologists act as intermediaries between provincial agencies responsible for the implementation of regulations concerning impact assessment and land developers who are obliged to follow the requirements of the legislation as well as provide for related studies.

Responsibilities for the appropriate impact assessment and conservation process are defined in different manners by the respective provincial legislations. As well, the role of various active components, such as provincial agencies, land developers, archaeologists and land owners, also differ considerably.

For example, B.C. legislation requires that compensation be paid by the province to land owners whose property has been designated as an archaeological site and as a result has decreased in economic value. The legislation also requires that the land owner pays for the archaeological survey and excavation.

The Nova Scotia Special Places Act ,(sec.7), states that: "No person shall be entitled to any damages or compensation for injuries effected as the result of the designation of land."

We were only able to address the official documents and we have not initiated any research on the implementation of legislation when confronted with development activity.

The enclosed tabular companion is intended to show the differences between provincial legislations with respect to the practical organization of site protection (amended and expanded from Watson, 1975).

PROVINCIAL AND TERRITORIAL HERITAGE PROGRAMMES
COMPARISON, as at MAY 1986

POLICY AND RESPONSIBILITY	NFD	PEI	NS	NB	QUE	ONT	MAN	SAS	ALT	BC	YT	NWT
Minister's responsibilities defined	X	X	X	X	X	X	X	X	X	X	X	X
policy or principle defined in legislation	X	X	X		X	X	X	X	X	X		
policy or principle defined in other ways						X		X	X	X		X
funds for administration	X				X	X	X	X	X	X	X	X

ADVISORY BOARD	NFD	PEI	NS	NB	QUE	ONT	MAN	SAS	ALT	BC	YT	NWT
board to implement legislation		X	X	X	X	X	X	X	X	X	X	X
museum representative on board			X	X			X			X		

SITE PROTECTION	NFD	PEI	NS	NB	QUE	ONT	MAN	SAS	ALT	BC	YT	NWT
all sites must be reported					X		X	X	X		X	X
official registry of heritage property	X		X		X	X	X	X	X	X		
any site may be designated protected on provincial land	X	X	X	X	X	X	X	X	X	X	X	X
provision for restoration &/or maintenance or privately owned cultural property			X	X	X	X	X	X				
Minister may inspect any site	X	X			X	X	X	X	X	X		
Minister may acquire any site	X	X			X	X	X	X	X	X	X	X
underwater sites are included			X				X		X	X		

ARTIFACTS	NFD	PEI	NS	NB	QUE	ONT	MAN	SAS	ALT	BC	YT	NWT
owned by land owner				X	X							
owned by province	X		X			X	X	X				
owned by province on Crown land	X			X	X	X	X	X				
province may claim if site designated	X		X			X		X				
report of fortuitous discoveries	X				X		X		X		X	X
Minister must approve removal of artifacts from province or territory	X				X		X	X	X	1	X	X
Minister may acquire artifacts	X		X	X	X	X	X	X	X	X	X	X
artifact claims by province may be retroactive	X							X				

HUMAN SKELETAL MATERIAL	NFD	PEI	NS	NB	QUE	ONT	MAN	SAS	ALT	BC	YT	NWT
procedures defined (e.g. accidental finds)			X				X	X	X	X	X	X
ownership defined									X	X		

COMPENSATION	NFD	PEI	NS	NB	QUE	ONT	MAN	SAS	ALT	BC	YT	NWT
owner for reduced value due to designation		X				X			X	X		
owner for reduced value due to excavation	X	X		X	X			X				
owner for cultural property claimed by province	X			X								
owner for stop-work order					X	X						
developer for stop-work order					X	X						
RIGHT OF APPEAL	NFD	PEI	NS	NB	QUE	ONT	MAN	SAS	ALT	BC	YT	NWT
related to designation of property								X	X			
related to potential designation of property						X	X	X	X			
related to research permit								X			X	
PENALTIES	NFD	PEI	NS	NB	QUE	ONT	MAN	SAS	ALT	BC	YT	NWT
finer	X	X	X	X	X	X	X	X	X		X	X
Imprisonment	X	X	X	X		X		X	X		X	X
offender pays for restoration of cultural property					X	X	X	X	X	X	X	X

PERMITS	NFD	PEI	NS	NB	QUE	ONT	MAN	SAS	ALT	BC	YT	NWT
required for excavation on all land	X	X	X	X	X	X	X	X	X		X	X
required for survey	X		X	X	X	X	X	X	X		X	X
required for excavation on protected land	X	X	X	X	X	X	X	X	X	X		
Minister may cancel permit	X	X	X	X	X	X		X	X	X	X	X
owner's permission required to dig	X	X	X	X	X	X		2	2			
permission from local Native Band												
permission to remove artifact from province or territory	X				X		X	X	X		X	X
REPORTS	NFD	PEI	NS	NB	QUE	ONT	MAN	SAS	ALT	BC	YT	NWT
required as condition of permit	X	X	X	X	X	X	X	X	X	X	X	X
copy of report to landowner												
copy of report to local Native Band												
REPOSITORIES	NFD	PEI	NS	NB	QUE	ONT	MAN	SAS	ALT	BC	YT	NWT
National Museum Canada												
Provincial Museum or Archives	X		X	X							X	X
as Minister directs			X	X	X	X	X	X	X		X	X

IMPACT ASSESSMENT	NFD	PEI	NS	NB	QUE	ONT	MAN	SAS	ALT	BC	YT	NWT
provision for	X		X		X	X	X	X	X	X	X	X

STOP-WORK ORDER	NFD	PEI	NS	NB	QUE	ONT	MAN	SAS	ALT	BC	YT	NWT
provision for	X		X		X	X	X	X	X	X	X	X

MITIGATION (3)	NFD	PEI	NS	NB	QUE	ONT	MAN	SAS	ALT	BC	YT	NWT
provision for			X		X	X	X	X	X	X		X
owner pays										X		
developer pays									X			X
Minister pays			X									
Minister and developer pay							X					
Minister and owner pay							X					

FOOTNOTES:

1. Ministerial approval only required for removal of designated artifacts
2. Owner's permission only required for entry
3. Includes investigation and/or excavation, or avoidance of sites

4. Provincial Legislation and Policies - Political Implementation and Effectiveness

Taking into account the preliminary nature of the present project it should be said, that some important issues have emerged from provincial legislation. Generally, provincial legislation can be categorized around three factors: human, organizational and financial.

Human Factors:

It seems that legislation tends to be more effective if the advisory boards of the agencies who are to implement the legislation reflect the interests and rights of all prime policy publics.

(for example: sensitive to this factor -Saskatchewan
less sensitive to this factor - P.E.I.)

Organizational Factor:

The creation of an agency with archaeological expertise, closely involved with museums and the academic community, seems to be more effective than assigning the responsibility to the minister.

(for example: sensitive to this factor - Ontario
less sensitive to this factor - NWFLD)

Financial Factors:

The amount of financial support for activities related to the management of archaeological resources does not necessarily increase the level of protection for archaeological sites or the level of objective knowledge about past cultures.

(for example: sensitive to this factor - Alberta
less sensitive to this factor - Manitoba)

The effectiveness of some sections of provincial legislation are thought by some commentators to be weak because of the inadequate enforcement measures. For example, the Saskatchewan Heritage Property Act requirement that all private collections be registered before November 1985 apparently failed. The Curator of the National Museum of Natural History admitted that: "a very large number of private collections remain unregistered...(and that) many collectors have expressed concern, wondering if their unregistered collections are in jeopardy" (Saskatchewan

Archaeological Society Newsletter, 1986, vol. 7, p. 1-2). As we show in section VI of this Report, the current position is that 103 collections (out of an estimated 10,000) have been photographed and entered into inventory.

Similarly, provisions for the mandatory review of all land development projects may be impossible in practice because of the lack of a sufficiently large administrative structure. For example, in 1980 the Archaeological Survey of Alberta was able to review, in detail, only 850 projects from some 10,000 proposed land development projects.

a) Law Enforcement - Penalties

With the exception of the B.C. Heritage Conservation Act, all provincial legislations on heritage resources provide penalties for offenders of provisions in effect. The type of penalties and the level of fines differ considerably between provinces. For example, the 1967 Manitoba Historic Sites and Objects Act imposes a fine of \$100 for a contravention or failure to comply with provision in the Act. The new 1985 Heritage Resources Act for the same province states, in sec.6(1):

"Any person who contravenes or fails to observe a provision of this Act or a regulation, order, by-law, direction or requirement made or imposed thereunder is guilty of an offence and liable, on summary conviction, where the person is an individual, to a fine of not more than \$5,000.00 for each day that the offence continues and, where the person is a corporation, to a fine of not more than \$50,000.00 for each day that the offence continues."

The Saskatchewan Heritage Property Act (sec. 73) penalizes offenders to the extent that those:

"guilty of an offence and liable on summary conviction in the case of a corporation...a fine of not more than \$250,000 or in the case of an individual, a fine of not more than \$5,000, imprisonment for a term of not more than 6 months or both."

Alberta legislation does not distinguish between individuals and corporations. Violation of the Act will result in a fine of not more than \$50,000 and/or imprisonment for a term of not more than 1 year (Letter, R. Leblanc, May 27, 1986).

In comparison to the Western and Central provinces, the Maritime provinces exact relatively mild penalties for offences. In New Brunswick fines not to exceed \$500, in Newfoundland and P.E.I. fines are not to exceed \$1,000.

The review of provincial acts in relation to the penalties provided for offenders shows a newly developed and current awareness of the necessity for the protection of archaeological resources. The more current legislation tends to provide heavier penalties in terms of fines and imprisonment.

b) L'expérience Québécoise - Étude de Cas

L'implication du gouvernement québécois dans les activités archéologiques s'amorce avec les années 60. On peut considérer en effet que la création en 1961 du Service d'archéologie du ministère des Affaires culturelles, devenu quelques années plus tard l'actuelle Direction de l'archéologie et de l'ethnologie, inaugure cette implication.

Toutefois, la décennie 70 s'avère la période la plus décisive en ce qui a trait au développement du cadre légal et de la politique de gestion des ressources archéologiques au Québec. Durant cette période, des lois portant directement ou indirectement sur la recherche archéologique sont adoptées, des mécanismes institutionnels et administratifs sont créés dans le but d'appliquer ces lois, tandis que des projets de recherche d'envergure sont mis sur pied à la faveur principalement des aménagements hydro-électriques à la Bale James. Notons que cette période correspond à une transformation rapide et en profondeur de l'activité et de la communauté archéologiques : expansion des programmes universitaires et des fonds de recherche, croissance rapide du nombre de professionnels, formation de l'Association des archéologues du Québec, création de compagnies privées spécialisées en archéologie, etc. Tout ce développement s'inscrit alors dans un contexte de forte croissance économique et d'effervescence politique et culturelle. Si l'archéologie au Québec est surtout le fait des "amateurs" jusqu'au début des années 70, ce champ devient par la suite très largement occupé par les universités et le gouvernement provincial, lesquels sont suivis, à compter de 1978, par les compagnies privées.

Pour aborder ici le cas du Québec, nous concentrerons notre attention en premier lieu sur deux législations qui ont été adoptées au cours des années 70 et qui apparaissent encore aujourd'hui comme les plus importantes du point de vue

de la communauté archéologique au Québec. Il s'agit de la Loi sur les biens culturels (1972) et de la Loi sur la qualité de l'environnement (1978). Nous les examinerons en reprenant les mêmes critères et catégories que ceux adoptés au cours de ce chapitre. Nous ferons ensuite ressortir certains aspects de l'évolution actuelle de la gestion québécoise des ressources archéologiques.

1) La loi sur les biens culturels : les Publics Concernés

La première législation québécoise dont certains articles se rapportent directement à la recherche archéologique est, la Loi sur les biens culturels. Ces articles sont d'une importance décisive puisqu'ils concernent l'inventaire, le sauvetage et la gestion des sites archéologiques, en plus de réglementer les fouilles et les projets d'excavation. D'un point de vue général, les principaux objectifs de cette loi sont d'autoriser le ministre des Affaires culturelles à reconnaître ou classer la propriété culturelle, d'établir la Commission des biens culturels chargée d'aviser le ministre sur les questions relatives à la conservation de la propriété culturelle, de fournir une réglementation sur les fouilles et sur les recherches archéologiques, ainsi que d'autoriser le gouvernement à déclarer district historique un territoire ayant une concentration de sites et de monuments historiques, ou district naturel un territoire dont l'ensemble naturel présente un intérêt esthétique, légendaire ou scénique. En 1978, des amendements y ont été apportés afin de transférer certaines de ses dispositions aux municipalités.

Examinons maintenant cette loi en ayant pour objectif de faire ressortir les dispositions pouvant s'appliquer spécifiquement aux groupes d'intérêt suivants: les archéologues, les institutions de recherche et de collection, les populations et les organisations autochtones, les collectionneurs privés et commerçants de biens archéologiques.

- Les archéologues

La politique de sauvegarde définie par la Loi sur les biens culturels se concrétise tout particulièrement dans le "Règlement sur la recherche archéologique" établissant l'obligation d'obtenir un permis avant d'effectuer toute recherche archéologique. La Loi attribue au ministre des Affaires culturelles (article 35) la responsabilité de

l'émission des permis.

Le règlement prévoit notamment les dispositions suivantes. Quant aux qualifications requises pour être en mesure d'obtenir un permis, il est exigé que "Toute recherche archéologique doit être effectuée par des personnes dont les méthodes, les ressources professionnelles et matérielles garantissent l'exécution complète et satisfaisante du projet" (article 4 du Règlement). Est également obligatoire le dépôt d'un rapport au ministre avant l'expiration du permis dont la durée est d'un an.

Quelques données nous fourniront ici un aperçu du degré d'implantation et d'efficacité de ce système de permis ainsi que du profil de clientèle qu'il touche. Ainsi, environ 280 permis ont été délivrés entre 1972 et 1985. En se basant sur le "Bilan de la procédure de demande de permis de recherche archéologique pour l'année 1983" (L'Association des archéologues du Québec, 1986: 367-69), on peut établir que la grande majorité des requérants bénéficient d'une formation spécialisée de niveau universitaire et que plus de 30% ont une formation de deuxième et de troisième cycles universitaires. On sait également que ces requérants ont pour la plupart une vaste expérience professionnelle: la moitié d'entre eux, en effet, oeuvrent en archéologie depuis plus de dix ans. Le taux de refus est d'ailleurs très faible (6% en 1983) et s'explique en grande partie par leurs qualifications professionnelles élevées. Enfin, plus du quart exercent leur profession à titre de professionnels autonomes et près des trois-quarts en tant que professionnels salariés travaillant principalement pour des firmes, des universités ou des organismes de la fonction publique et parapublique. Notons qu'on peut compter aujourd'hui environ 75 archéologues professionnels au Québec.

- Les institutions de recherche et de collection

Le Ministère des Affaires Culturelles a notamment pour mandat d'inventorier les biens culturels susceptibles d'être reconnus ou classés (article 52), ce qui inclut certains biens et sites archéologiques. Il s'est doté à cette fin d'une banque de données informatisée appelée Inventaire des sites archéologiques du Québec (I.S.A.Q.); les informations accumulées dans celui-ci sont extraites des rapports de terrain exigés par le Règlement sur la recherche archéologique. On établit à environ 5,000 sites ceux qui y sont actuellement répertoriés.

Le Ministère s'est par ailleurs donné pour rôle de fournir l'aide technique et l'expertise nécessaires à la

préservation et à la mise en valeur des collections archéologiques. Certains services ont été créés à cette intention. Ainsi, le Centre de conservation du Québec est chargé de fournir des expertises sur les objets qui lui sont soumis pour examen par les archéologues et les gestionnaires de collections. Pour sa part, le Laboratoire d'archéologie du Ministère a pour fonction essentielle l'analyse scientifique et l'interprétation des collections archéologiques. Il assume aussi une fonction de diffusion et d'information en constituant des collections de référence ainsi qu'une banque de documentation en culture matérielle destinées aux intervenants qui en font la demande au Service du patrimoine. Enfin, les collections sont entreposées à la Réserve des collections gérée par le Service du patrimoine du ministère des Affaires culturelles. Elles peuvent alors être prêtées aux organismes intéressés, soient les musées, les municipalités ou encore les universités

- Les populations et les organisations autochtones

La Loi sur les biens culturels ne prévoit pas de dispositions particulières à l'égard des droits et des intérêts des populations autochtones

Par contre, signalons que le ministère des Affaires culturelles et certaines organisations autochtones ont conclu des ententes dans le cadre desquelles ces organisations se voient attribuées une aide financière par le Ministère afin de prendre en charge leurs propres recherches archéologiques. Il s'agit des ententes établies récemment avec l'Institut culturel Avataq, le Conseil Attikamek-Montagnais et l'Administration régionale criée. En outre, le ministère des Transports du Québec, qui s'associe avec celui des Affaires culturelles pour certaines interventions archéologiques, a pour sa part conclu une entente distincte avec l'Institut culturel Avataq concernant le processus de sauvegarde de sites archéologiques menacés par des projets d'aménagement d'infrastructures aéroportuaires.

Il conviendrait sans doute d'évaluer la portée effective des programmes auxquelles ces ententes ont donné lieu. Il faudrait voir par exemple dans quelle mesure les groupes concernés se montrent satisfaits et si une formule différente n'est pas souhaitée. Mentionnons ici qu'un représentant de l'Institut culturel Avataq à la dernière conférence (mai 86) de l'Association des archéologues du Canada soulignait qu'un des problèmes majeurs au Québec demeurerait pour sa part l'absence de "clause culturelle" dans l'entente de la Baie James établie entre le gouvernement provincial et les Inuits.

- Les collectionneurs privés et les commercants

La propriété ou le commerce des biens archéologiques n'est pas interdit par la Loi sur les biens culturels. En principe, les collectionneurs privés ont donc le droit de conserver leurs collections en tant que propriétés personnelles. Ces biens ou ces collections peuvent également faire l'objet d'un commerce. Cependant, certaines exceptions ou restrictions conditionnent ou limitent l'usage ou la propriété de ces biens:

1. -Il y a tout d'abord l'obligation, en vertu des articles 40 et 41 de cette loi, d'aviser le ministère des Affaires culturelles pour toute découverte fortuite de tels biens;
2. -Le ministre se réserve ensuite le droit, conformément à l'article 51 de la Loi, d'acquiescer par entente ou par expropriation toute propriété culturelle classifiée ou reconnue;
3. -Une propriété culturelle classifiée ou reconnue ne peut être transportée à l'extérieur de la province sans la permission du Ministre, ni ne peut être détruite, altérée ou aliénée sans avis au Ministre (articles 17,55 et 57);
4. -Enfin, si une propriété culturelle classifiée ou reconnue est mise en vente, le Ministre peut l'acquiescer par préférence .

En somme, on peut considérer que la législation québécoise, à l'instar de la majorité des provinces, s'avère relativement permissive ou favorable aux activités des collectionneurs privés et des commerçants de biens archéologiques.

II) La loi sur la Qualité de L'Environnement (1978): Les Études d'Impact

Certains amendements apportés à la Loi sur la qualité de l'environnement en 1978 ont pour objet d'introduire les vestiges archéologiques dans la catégorie des biens environnementaux définis par la Loi. Conséquemment, les études d'impact sur l'environnement qui doivent obligatoirement être menées dans le cadre de certains projets de développement sont tenues désormais de prendre en compte l'existence de ces vestiges et de se conformer à des procédures spécifiques définies par la Loi.

Cette loi a donc pour effet de renforcer les mesures de protection des sites archéologiques instaurées antérieurement par la Loi sur les biens culturels. Plusieurs archéologues considèrent même que cette dernière est relativement moins efficace maintenant, tandis que la Loi sur la qualité de l'environnement est à leurs yeux beaucoup plus opérationnelle et reçoit en conséquence plus d'attention.

Son entrée en vigueur a d'ailleurs eu pour effet de favoriser considérablement la situation professionnelle d'une bonne proportion des archéologues québécois, du moins au cours des premières années d'existence de cette loi. A plus forte raison parce que le moment de son adoption correspondit à une forte croissance des travaux de la Société d'énergie de la Baie James et de l'Hydro-Québec qui commanderent alors de nombreuses interventions archéologiques (études de potentiel, inventaires, fouilles, analyses); ces interventions se déroulerent surtout dans les parties septentrionales du Québec. C'est ainsi que des compagnies privées spécialisées en archéologie virent le jour en s'implantant comme intermédiaire entre le ministère des Affaires culturelles d'une part, qui assure le suivi de l'aspect archéologique et patrimonial dans le cadre des études d'impact, et d'autre part les initiateurs de projets de développements tenus désormais de se conformer aux exigences de la Loi sur la qualité de l'environnement. Plusieurs archéologues travaillèrent également comme professionnels autonomes ou contractuels dans ce nouveau contexte. En somme, du point de vue professionnel, cette loi favorisa une conjoncture assez propice à la fin des années 70 pour nombre d'archéologues québécois

Au plan de sa gestion, cette loi est administrée par le ministère de l'Environnement, cependant que le ministère des Affaires culturelles prend à sa charge la surveillance de l'aspect archéologique et patrimonial dans le cadre des études d'impact.

A défaut pour l'initiateur de projet de se conformer au règlement sur les études d'impact, diverses amendes sont prévues à cet effet selon les différentes sections de la Loi. En ce qui a trait spécifiquement aux dispositions pouvant affecter les aspects patrimoniaux, des amendes de l'ordre de \$200 - 5,000 peuvent être imposées aux individus pris en défaut, et \$400 - 10,000 pour chaque offense subséquente. Dans le cas d'une compagnie, les amendes peuvent être de trois à six fois plus élevées.

III) Evolution Actuelle de la Gestion Québécoise des Ressources Archéologiques

Depuis l'adoption de la Loi sur les biens culturels et

en particulier depuis celle de la Loi sur la qualité de l'environnement, le nombre d'organismes impliqués dans des projets archéologiques a augmenté de façon considérable. Qu'on pense entre autres à certains ministères (celui de l'Environnement, celui des Transports, celui des Affaires municipales, etc.) qui se sont associés à celui des Affaires culturelles en intégrant la variable archéologique dans leurs projets de développement. Qu'on pense également à des sociétés d'Etat comme l'Hydro-Québec et à la Société d'énergie de la Baie James, ainsi qu'à certaines villes et municipalités, associations autochtones, universités, ou encore à certaines compagnies privées.

On peut observer que malgré cette augmentation du nombre d'organismes impliqués, le ministère des Affaires culturelles demeure encore le principal instigateur et promoteur de projets. En 1983, par exemple, ce dernier représentait plus du tiers de toutes les sommes dépensées dans le cadre des travaux autorisés par les permis de recherche archéologique (Larouche:369). Néanmoins, le Ministère a fait de cette pratique du "partenariat" un principe central de fonctionnement dans sa gestion des ressources patrimoniales et archéologiques.

Parmi les grandes orientations administratives qui sont appelées par ailleurs à déterminer la gestion présente et à venir des ressources archéologiques au Québec, on peut évoquer la politique de régionalisation des prises de décisions concernant le patrimoine, qui consiste notamment à mettre l'accent sur la participation du secteur municipal. De même, on peut voir se dégager une volonté de planifier et de rationaliser l'aménagement du territoire et l'utilisation des ressources. L'adoption de la Loi sur l'aménagement et l'urbanisme (1979), par exemple, s'inscrit dans cette perspective. Celle-ci instaure sur le plan des municipalités un nouveau mode de fonctionnement basé sur l'élaboration d'un schéma d'aménagement régional. Soulignons que cette loi stipule entre autres que le schéma doit tenir compte des lieux présentant un intérêt d'ordre historique, culturel ou esthétique. S'il n'y a pas de mention explicite s'appliquant aux sites archéologiques, on sait par contre que cette loi les inclut implicitement. Plusieurs estiment d'ailleurs que la Loi sur l'aménagement et l'urbanisme devrait avoir une incidence très positive au cours des années à venir dans la sauvegarde et la mise en valeur des ressources archéologiques.

L'implantation effective du cadre légal et de la politique de gestion au Québec ne va cependant pas sans obstacle. Les développements décrits précédemment, en effet, ont aussi donné lieu à des problèmes administratifs impliquant notamment la complexité croissante de la planification et de la diffusion de l'information. En outre, les problèmes associés aux restrictions budgétaires, qui impliquent entre autres une réduction drastique des

opportunités d'emploi pour les archéologues, sont également nombreux. Les grands projets d'aménagement hydro-électriques qui avaient contribué à multiplier les études d'impact durant la seconde moitié des années 70, ont considérablement ralenti leur cadence, réduisant du même coup bon nombre d'activités archéologiques au Québec...

Il serait sans doute pertinent d'obtenir une évaluation plus précise de l'implantation et de l'efficacité des législations et de la politique de gestion québécoises, dans la mesure où certains de leurs aspects peuvent inspirer des initiatives fédérales dans ce domaine. Pour ce faire, il s'avère à notre avis nécessaire de procéder à une revue extensive des opinions de tous les milieux concernés, c'est-à-dire non seulement celui des archéologues impliqués dans cette gestion, mais également celui des collectionneurs privés et des commerçants de biens archéologiques, celui des divers promoteurs de projets de développement, celui des associations autochtones, etc.

c) Alberta's Experience - Case Study (based on P.F. Donahue -Archaeology, 1984 - Archaeological Survey of Alberta)

The province of Alberta during the last few decades has undergone extensive economic, social and cultural change. It is experiencing problems that may serve as an example for the less-developed areas of the country.

Approximately 93% of archaeological activities in Alberta are directed toward impact assessment and mitigation studies - i.e. towards contractual archaeology.

In 1980, during a period of economic prosperity, about 120 archaeologists were employed within the province to carry out contractual projects and over \$2 million was spent in the development of these projects. During this time 800 previously unknown sites were recorded and 30,000 artifacts were collected. The Archaeological Survey of Alberta has reviewed, in detail, 850 land development projects from some 10,000 applications received and granted 200 excavation permits.

Since 1974, when the Archaeological Survey of Alberta was established, some 13,000 sites have been recorded. In the same period, however, the extensive archaeological activity resulted in only a few scholarly publications and in four public information brochures. Most archaeologists went from an academic research interest and orientation towards business management and administration.

The Archaeologists who are active as consultants compete with one another on the market to show a profit - i.e. to do the minimum amount necessary to satisfy existing provincial rules, regulations and report criteria as well as satisfy their client-developer requirements.

According to the author quoted, the case of archaeology in Alberta shows how a highly developed system of archaeological resource management may result in a relatively small output in terms of objective knowledge and in terms of increasing general public sensitivity to heritage issues.

Furthermore, after 1982 the managerial activity of the ASA, the provincial agency responsible for the promotion and control of all related programs and projects, slowed down considerably. Apparently, no new policy statements have been issued and no major legislative activity has been undertaken.

It should be determined how the new situation, apparently caused by factors related to the economic crisis, in Alberta influenced the status of archaeology and the state of archaeological resources.

5. Conclusions

A summary review of provincial legislation and policies on archaeological resources clearly shows a great deal of concern for the preservation of a national heritage. It also indicates that a longer period of time is required to assess the effectiveness of the legislation and policies currently in force.

The newest provincial legislation on heritage resources, which extensively covers archaeological resources as well, was introduced by the Manitoba and by the Newfoundland governments in 1985.

Some provinces like Alberta, Saskatchewan, and Manitoba developed detailed legislations and policies in order to protect and efficiently manage archaeological resources. Others like P.E.I., Nova Scotia and British Columbia still applying legislations are apparently insufficient to be used as a legal tool for protection.

In the preliminary stages of preparation for a comprehensive federal policy on archaeological resources it is important and necessary to study not only recent provincial legislative experience but the whole process of public consultation as well.

F. Territorial - Federal Relations and the
Management of Archaeological Resources in Canada's North

1. Introduction

The absence of comprehensive federal legislation for the protection of archaeological resources affects, in a particular manner, the Yukon and the Northwest Territories. The acceleration in land development activities in these two regions poses an immediate threat to all non-renewable resources.

The presence of the federal government in the North has a special character in comparison to the rest of Canada. The federal government not only has authority over all lands and resources but also retains responsibility for representing the interests of aboriginal affairs. The main representative of federal authority in the territories is the Department of Indian and Northern Affairs (DINA). Its mandate has already been discussed in chapter D. A recent study contracted by this Department on the conservation of archaeological resources in the North shows the department's concern for the existing problems (see, "Policy Needs for the Conservation of Archaeological and Cultural Heritage Resources in Canada -The Role of the Federal Government" by Harriet Rueggeberg, 24 February 1986). This study is the main source of information for this section along with policy statements and materials from the files of the ASC/NMM.

The Archaeological Survey of Canada acts as the main agency with archaeological expertise in the Yukon and NWT. It also serves as a strong voice to the federal government on the protection and management of archaeological resources.

2. Legal Acts Related to Intergovernmental Cooperation

The federal government, through the 1970 Northwest Territories Act and the 1970 Yukon Act, created the two territorial governments to deal with "all matters of a local or private nature". The powers of the territorial governments are "province-like". However, unlike the provinces they have no constitution and as a result are subject to federal rulings and the delegation of jurisdictional authority by Parliament. Rueggeberg points out that:

"...given its authority over Northern land and resources, its authority over the jurisdictional powers of the territorial governments, and its responsibilities to Canada's aboriginal peoples, the federal government is in a key position with respect to the management and protection of northern heritage resources. But this jurisdictional state of affairs is changing. Steps are already being taken to transfer ownership and legislative authority in a number of fields from the federal to the territorial governments. Joint management regimes, involving not just the federal and territorial governments but native organizations as well, are being established in areas that previously were exclusively under federal rule. Land and resources ownership are also being negotiated under four comprehensive land claims affecting all regions of the North. The point is, whatever observations, conclusions or recommendations that can be made regarding federal involvement in northern cultural heritage management must be considered in the context of this dynamic political and jurisdictional environment."
(Rueggeberg, 1986:b,3)

The transfer of ownership and legislative authority from the federal to the territorial governments is consistent with federal goals of self-government in the territories, as stated in the 1972 "Seven National Policy Objectives for the North".

3. DINA - Mandate and Activities

The Territorial Land Act, the Yukon and Northwest Territories Act, along with the accompanying regulations are the main legislative tools by which DINA administers territorial land use.

The Territorial Lands Act provides for the establishment of regulations respecting the protection, control and use of the surface of the land through the issuance of land permits (s. 3.2) and authorizes the sale, lease or "other disposition" of territorial lands (s.4). The Governor in Council may also "set apart and appropriate...burial grounds,...historic sites" (s. 19(b)).

The Tentative Land Use Regulations established pursuant to the Act deal with land use permits for land developers. The regulation's provisions for protecting archaeological resources from land development projects are:

" s.10(a). No permittee may, unless expressly authorized in writing by an Inspector, conduct a land use operation within 30 metres of a known or suspected archaeological site or burial ground

s.16. Where, in the course of a land use operation, a suspected archaeological site or burial ground is unearthed or otherwise discovered, the permittee shall immediately

a) suspend the land use operation on the site; and
b) notify the Engineer or an Inspector of the location of the site and the nature of any unearthed materials, structures or artifacts."

The Territorial Land Use Regulations are administered by DINA's Northern Affairs Program; the Program is assisted by the Land Use Advisory Committee. The representatives of local heritage agencies are members of the Land Use Advisory Committee. They are in the position to assess land use applications in relation to their impact on archaeological resources. The Regulations do not prescribe conditions for the protection of archaeological resources.

There are two pieces of federal legislation in the North designed to protect archaeological sites by means of a permit system; the Yukon Archaeological Sites Regulations and the Northwest Territories Archaeological Sites Regulations.

Technically, it has been DINA's mandate to administer the Regulations. However, since 1971, the Yukon Heritage Branch and the Archaeology Program of the Prince of Wales

Northern Heritage Centre manage the administration of these regulations in their respective Territories:

"As a condition of the Ministerial delegation, however, these agencies are required to submit all archaeological permit applications to an Interdepartmental Committee on Archaeology, consisting of representatives from the ASC (whose Chief chairs the Committee), the Canadian Conservation Institute of NMC, and Parks Canada, for advice on the professional competence of the applicant and the scientific merits of the proposed work."
(Rueggeberg, 1986:b,11)

4. Government of Northwest Territories - Mandates and Activities

The management of archaeological resources by the NWT government is based upon federal and territorial legislation. In its administration of the federal Archaeological Sites Regulations, the Archaeology Program of the Prince of Wales Northern Heritage Centre issues archaeological permits. The permittees are obliged to comply with the requirements of the permit as they would be under the provincial regulations, and also, to provide a summary written in non-technical English, -i.e. in a form that is comprehensible to the general reader.

Until 1985, permits specified the ASC as the sole depository for artifacts collected. As a result of an agreement signed between the Prince of Wales Northern Heritage Centre and the ASC:

"...the PWNHC is now responsible for curating and documenting all collections derived from PWNHC staff and contract projects. For other projects, "which agency curates what collections shall be determined by the Interdepartmental Committee for Archaeology...before any research permit is approved" (Agreement between ASC and PWNHC, 1985, s.3). The Agreement also deals with other matters pertaining to data reporting and collection sharing." (Rueggeberg, 1986:b,22)

The PWNHC's Archaeology Program is engaged primarily in archaeology rescue operations and impact assessment and mitigation as a result of extensive land development activity.

The 1976 NWT Historical Resource Ordinance vested in the local government the authority to establish museums and to

provide for the administration and protection of cultural resources. The Ordinance states:

"S.9.(1) Whenever, in the opinion of the Commissioner, any prehistoric or historic remains...are threatened with destruction by reason of commercial, industrial, mining, mineral exploration or other activity, the Commissioner may order the persons undertaking the activity to provide for adequate investigation, recording and salvage of prehistoric or historic objects threatened with destruction.

(2) Any person who fails to comply with an order made pursuant to subsection (1) is guilty of an offence punishable on summary conviction."

The 1976 Territorial Park Ordinance is another territorial regulation related to archaeology. It is administered by the NWT Department of Economic Development and Tourism. It provides for five categories of parks, including the one of historic parks. Historic parks are established through the designation and commemoration of historic and archaeological sites for educational and recreational purposes.

The regulations presented above do not adequately protect archaeological resources in the NWT. In the last five years the PWNHC, developed amendment proposals to the Archaeological Sites Regulations in association with the legal services of the Territorial government. The regulations, at present, only apply to the activities of archaeologists, they do not provide for the protection of lands under development projects. The PWNHC draft amendments aim to:

"Introduce provisions dealing with assessment of archaeological resources prior to development as well as provide for additional powers regarding protection of archaeological resources during development activities. For example, section 20 of the proposed amendments requires a developer to carry out a site survey and report the results to the territorial archaeologist. The territorial archaeologist may then approve the development or require the developer, at his expense, to carry out a detailed site investigation and to perform any salvage, preservation or protection measures required by the archaeologist.

Section 21 requires a developer, upon discovering a site during development to suspend activities and notify the territorial archaeologist. The territorial archaeologist must respond within 30 days with either permission to recommence development activities or an

order to perform a site survey, investigation, salvage, etc. The section also allows the territorial archaeologist to issue stop orders. Section 26(3) allows the territorial archaeologist to assign all or part of the cost to the developer, and section 27(1) states that the government is not liable for compensating the developer for costs associated with delaying or relocating the developer's activities." (Rueggeberg, 1986:b,43)

The proposed amendments increase the responsibility of developers with regard to impact assessment and mitigation. These proposals are similar to rules presently in effect in provincial legislation, such as Alberta's.

5. Government of Yukon - Mandates and Activities

Although the Yukon's history, its current settlement patterns and its cultural heritage objectives differ in a substantial manner from the NWT's, the same federal legislation constitutes the basis for activities related to archaeology in the Yukon as well.

The Yukon Archaeological Sites Regulations allow the Heritage Branch of the Department of Tourism to issue archaeological work permits in the territory with the advise of the Interdepartmental Committee on Archaeology. The obligations of permittees are similar to those in the NWT. Artifacts collected from such investigations, however, cannot be kept in the Yukon, since the Branch is unable to provide for the curation or storage of artifacts. All specimens from the Yukon are deposited with the ASC in Ottawa.

Other legal acts issued by the Yukon Territorial Government that are related to the management of archaeological resources are: the Historic Sites and Monument Ordinance, Parks Ordinance, Scientific and Explorers Ordinance and finally, the Cemeteries and Burial Ordinance.

The Heritage Branch, which administers the Historic Sites and Monuments Ordinance, is interested primarily in the development of historic sites, development which, is thought to generate additional employment and stimulate tourism.

The Park Ordinance is administered by Lands, Parks and Resources Branch of the Department of Renewable Resources. This Ordinance provides for several types of parks, among them historic parks. One such park has already been established on Herschel Island. The Heritage Branch of the Department of Tourism is presently engaged in an archaeological survey on the Island.

The Scientific and Explorers Ordinance is administered by the Heritage Branch. They are responsible for the issuance of permits for "scientific activities". Some archaeological permits have been issued under this ordinance in the past.

The Cemeteries and Burial Sites Ordinance is also administered by the Heritage Branch. Written permission is required for any excavation, disturbance of a marker, monument or fence connected to any burial site. This ordinance has considerable value for the protection of archaeological resources because aboriginal burial sites have long been of interest to treasure hunters.

Like the regulations of the NWT, the Yukon ordinances are not regarded as a sufficient legal tool for the protection of archaeological resources. In order to improve the situation, the Heritage Branch, under pressure from private organizations who perceive a need for greater protection of local heritage resources, has been active in the field of legislative change:

"Unlike the activities in the NWT where attention is being focussed on changing the current federal regulations, the Branch is looking to developing comprehensive territorial legislation to deal with archaeological and heritage affairs in Yukon. The Branch produced a paper in September 1983, in which it made policy recommendations concerning the scope of a new heritage policy, the formation and functions of a Heritage Advisory Board, methods for designating and protecting important sites, ways of directly involving Yukon Indian people in heritage management, and the establishment of a Heritage Preservation Trust. The Branch recently contracted a legal consultant to revise and expand upon this initial effort in determining what should go into a territorial policy and legislation" (Rueggeberg, 1986:b,20)

6. Prime Policy Publics in Territorial Legislation and Policy

The assessment of the interests and rights of prime policy publics in the North must be related to two different types of archaeological resource management: central and regional.

Centrally managed activities in this area are carried out by two federal agencies, Parks Canada and the ASC/NMM. Their respective positions in relation to Canada's North have already been reviewed in chapter C.

On the regional level there are the territorial governments and their organizations which are characterized by different degrees of independence and self-management. Due to the lack of comprehensive legislation and the lack of agencies with clearly defined mandates for the management of archaeological resources in the North, all related human, social, economic and political factors have to be seen in the context of dynamic change and evolving responsibilities and interests of federal and local institutions.

a) Archaeologists and Research/Collection Institutions

The Archaeological Sites Regulations constitute the main tool for the management of Archaeological resources in the North. The regulations, as applied to both territories, has been used to a greater extent by the Prince of Wales Northern Heritage Centre in the Yukon. As mentioned earlier, the PWNHC is more interested in practicing archaeology and the protection of archaeological resources. The concerns expressed by the PWNHC regarding the Archaeological Sites Regulation point out the shortcomings of the regulation. The PWNHC claim that the regulations:

"...do little more than stipulate that reports must be filed following archaeological investigations. They do not define the qualifications which a person must possess in order to hold an archaeological permit, nor do they require an applicant for a permit to provide the rationale for a particular research project. These are important concerns, as archaeological excavation is a destructive process and archaeological sites are finite resources." (Rueggeberg, 1986:b,46)

The local authority - i.e. territorial archaeologist - has no power to suspend or cancel a permit in a case of failure to comply with the terms of the regulations by the permittee nor to impose special rules in relation to research conduct.

Most research collecting activities in the North are a response to the immediate needs created by the threat of land development to archaeological resources:

"The research (in both territories) may be conducted in response to individual development applications, or be part of studies determining the potential environmental and social impacts of proposed large-scale development projects. As such, much of federal and territorial research work is "rescue" -oriented, and is carried out under a variety of programs (the Rescue Archaeology Programs of the ASC and the PWNHC) or, in a few cases, under stated policies (e.g., NOGAP). Alternatively, programs on a site-specified basis, such as for the

establishment of national or territorial parks or historic sites.

A significant amount of research on northern cultural heritage is done privately. Universities and other research institutions are sources of research projects in archaeological and anthropological fields. Several northern-based institutions such as the Northern Heritage Society in the NWT and the Council of Yukon Indians and the YHMA in Yukon, carry out their own research projects.

The NMM's computerized Canadian Heritage Information Network of archaeological material across Canada is a valuable service which northern administrators can use to catalogue and store their own information as well as find out what other materials are available for research or loan purposes elsewhere in the country." (Rueggeberg, 1986:b,47)

In her report to DINA, Rueggeberg asserts, that existing legislation and practices do not respond to the needs and interests of the archaeological community or the research institutions:

"...neither the federal or territorial governments have passed legislation authorizing, and thereby providing an incentive for, research and inventory activities regarding northern archaeological resources. Nor is any particular government agency assigned the authority under legislation to coordinate such research efforts. Consequently, the approach to research and inventory of northern cultural heritage resources is piecemeal and unsystematic, and is often dependent on being carried out as adjuncts to other programs." (Rueggeberg, 1986:b,48)

b) Rights and Interests of Aboriginal People

In the North aboriginal people form the majority of the population even taking into account their minority presence in the Yukon. The aboriginal population is comprised of several distinct groups, including Inuit, Inuvialuit, Dene, Metis and Yukon Indians.

The aboriginal peoples in the North are undergoing extensive social and cultural change. They perceive, in varying ways their own cultural and spiritual heritage. Their understanding of archaeology differs considerably from the view of the academic community and from the view of the general public.

The example of the NWT and the Yukon show that the increasing consciousness concerning aboriginal interests, rights and values is taking the form of active local organizations, which aim to change the political and legislative situation in the North. Some of these groups, like the Solman-Carmaks Band, have signed agreements with the Yukon Government on cultural heritage, which included the hiring of an anthropologist who was directly responsible to the Band. A further example, is the agreement between the Inuvialuit of the Western Arctic and the federal government concerning a comprehensive land claim.

The majority of aboriginal groups have expressed interest in cultural heritage resources including archaeology. We provide three examples:

The Tungavik Federation of Nunavut

" The Tungavik Federation of Nunavut (TFN) operates under the auspices of the Inuit Tapirisat of Canada (ITC) as the body responsible for negotiating land claims for the Inuit of the eastern Arctic. As part of these negotiations, TFN signed an agreement in principle regarding lands and resources with the federal government on July 23, 1983. This agreement in principle contained specific provisions dealing with the management of archaeological resources on Inuit lands, indicating that the Inuit place considerable importance on the identification, protection and interpretation of their archaeological record.

TFN negotiators argue that archaeological artifacts in the eastern Arctic are the cultural property of the Inuit and must remain or be returned to their place of origin. But the PWNHC is the only place with acceptable facilities for storage, protection and research of these artifacts. The agreement in principle provisions recognize an urgent need for establishing adequate facilities in Nunavut (the Inuit claim area) so that archaeological material can remain there. They state that a final agreement will establish an Inuit Heritage Trust which "will assume increasing responsibilities for supporting, encouraging and facilitating the conservation, maintenance, restoration and display of Nunavut archaeological sites and specimens" (TFN, 1983: 7). The final agreement will also deal with funding and training programs to encourage greater Inuit involvement in archaeological research and development.

The Dene/Metis

The Dene and Metis people of the western NWT are also negotiating comprehensive land claims with the federal government, although they as yet have not finalized any agreements in principle. But in a draft interim agreement on key elements of land and resources (dated July 9, 1985), section 11 deals in general terms with the preservation of Dene/Metis heritage.

The section recognizes the Dene/Metis' special interest in the identification and protection of heritage resources (defined as including archaeological and historic places, sites, artifacts, records, and religious objects) and the need to be actively involved in their management "consistent with the maintenance of the integrity of public archives and national and territorial heritage collections". It also proposes Dene/Metis participation in any heritage policy or legislation formulation, representation on any boards or administering agencies, and employment preference at public sites and museums in the settlement area."

The Council for Yukon Indians

"The Council for Yukon Indians (CYI) has been very active in the realm of Indian archaeological and cultural heritage management. It has carried out extensive archaeological research and occupancy studies, along the route of the Alaska Highway Gas Pipeline for the Northern Pipeline Agency in 1979, as well as for its own purposes of demonstrating traditional use and occupancy in land claims negotiations. Until recently, it employed an archaeologist to carry out this work...

The CYI take the position that Indian cultural heritage resources belong to the Indian people and should therefore remain with these people. It resents the fact that under the directives issued by the Minister of DINA under the Archaeological Sites Regulations, all archaeological artifacts from the territory are sent to and housed with the NMM-ASC. The CYI has proposed that this directive be changed to state that these artifacts are collected and curated by the NMM-ASC on an interim basis until a "Yukon Indian Heritage Resource Centre" with proper curation and storage facilities is constructed, at which time all Yukon Indian material will be returned to Yukon (Letter from Chairman, CYI to Minister of DINA, 11 April 1983).

The Council also requested that a CYI representative be appointed to the Interdepartmental Committee on Archaeology as well as on any heritage advisory board that may be established under the auspices of the Yukon government in the future "so that our interests in these important and fragile evidences of our heritage are reflected in the...operations of (these) Committee(s) (ibid).

The CYI argued these positions in negotiations leading to previous agreements-in-principle regarding their land claims. Presumably, it is raising these and other related issues within the current negotiations, which have just recently been resumed after a lengthy suspension... " (Rueggeberg, 1986:b,30)

Non-Territorial Organizations

Besides the aboriginal organizations, there are several non-profit volunteer organizations that are "involved in a variety of activities related to archaeology and cultural heritage in the North. Among them are:

The Northern Heritage Society

The Northern Heritage Society in the NWT was created in 1981 to operate what was then known as the Northern Cultural Heritage Project, a field school for northern students dedicated to carrying out research and thereby learning about northern archaeological and cultural heritage resources. The field school has operated at two sites of archaeological and ecological significance in the high Arctic, where each summer a group of students aged 17 to 21 carry out surveys, conduct excavations, analyze, interpret and report their results under the supervision of trained archaeologists...

The school was first conceived in response to a perception that northern people were not being involved in the research and interpretation of their own heritage -activities that were largely being done by research interests originating in southern Canada. Therefore, the Project is aimed at fulfilling several functions. It provides young people in the NWT with the opportunity to learn more about their northern heritage in a real "learn-by-doing" setting. In so doing, it teaches them techniques and knowledge which enables them to be hired by southern research groups on their field programs,

thereby responding to northerners' desires to become more involved in this work and researchers' desires to involve local people in their field programs. Besides increasing general understanding and interest in these types of research efforts, it helps to provide the North's young people, and through them their communities, with the knowledge to be able to understand and judge other resource-use issues that affect them.

The Yukon Historical and Museums Association

Yukon has a tradition of individuals and groups who have been active in the field of cultural heritage protection. Within this tradition, the Yukon Historical and Museums Association (YHMA) was formed in 1977 "to serve as an umbrella organization for Yukon museums and historical societies" (YHMA, date unknown). The YHMA views Yukon's cultural heritage as encompassing a broad spectrum; from landscapes to buildings and artifacts, from the archaeological evidence and the traditions of its seven Indian groups to the history of the Klondike. (Rueggeberg, 1986:b,30-33)

Greater general awareness of Canada's aboriginal heritage, as well as greater confidence among native people in dealing with the structures and practices of Canada's cultural institutions contribute to the rise in native participation in cultural heritage affairs. In addition, there is a consensus that the opportunity to benefit from developing these resources should lie with the native people themselves. " (Rueggeberg, 1986:b,41)

c) Private Collections and Market Rules

The Archaeological Sites Regulations state that "no person shall excavate or investigate any archaeological site, remove or collect any archaeological specimen unless he has obtained a permit to do so". The term 'investigation' is not clearly defined but presumably the prohibition includes any surface collection and survey and does not pertain exclusively to artifacts found by excavation. This interpretation is consistent with the requirement of the Regulations to report all fortuitous discoveries.

The present legislation makes no mention of the rights of private collectors or of collections of northern artifacts assembled prior to or after the enactment of the Archaeological Site Regulations. The legislation provides for

public depositories for archaeological artifacts from the North (NMM/ASC or recently, PWNHC) but does not provide the basis for the build-up of private collections.

An assessment of market rules for collectible objects from the North directly relates to the question of ownership, particularly to archaeological sites and artifacts considered "abandoned". According to Rueggeberg:

"Most government representatives consider archaeological sites and specimens to be public resources, and therefore the responsibility of the appropriate government agency to manage in the interests of present and future generations". (Rueggeberg, 1986:b,35)

The federal government has the power to make regulations pertaining to the protection and preservation of archaeological resources through the Northwest Territories and Yukon Act:

"Interestingly though, nowhere does the federal government claimed outright ownership of these resources on crown lands...On the other hand, several of the aboriginal organizations in the North claim title to archaeological sites and artifacts that pertain to their ancestry. For example, TFN (1983) (Tungavik Federation of Nunavut) notes that the question of ownership was not settled in its agreements-in-principle for archaeology, but that "title to artifacts will be discussed during negotiations on a final land claim settlement"."
(Rueggeberg, 1986:b,35)

Although the increasing awareness of the local aboriginal people regarding archaeological resources constitutes an important tool in the protection of artifacts and sites, it is also evident that this awareness cannot serve as a substitute for comprehensive federal legislation. The insufficiency of laws will always lead to the "lawful" disappearance of archaeological artifacts.

According to Rueggeberg, it is generally recognized that there exists a market for archaeological artifacts in the North:

"Private collectors and treasure-seekers have removed countless items of both native and non-native heritage from the North, for their own use or for sale in the artifact and antique markets. Consequently, northern artifacts can be found in collections and museums across Canada and around the world." (Rueggeberg, 1986:b,36)

7. Legislation and Policies - Implementation and Effectiveness

The lack of comprehensive legislation and policy, the lack of clear mandates for several federal departments and agencies operating in Canada's North, the lack of clear divisions in jurisdiction between territorial and federal authorities, make research on effectiveness of legislations and policies complicated and difficult.

There are, however, a sufficient number of individual acts dealing with the designation of sites, usually, as historic, natural and territorial parks. Rueggeberg points out that the:

"Implementation of this legislation appears to have been more of a problem. Only recently has federal attention been focussed on the North regarding the designation of national historic sites and parks. The same can be said of territorial sites and parks, as territorial agencies have been occupied with other government priorities but have also perhaps felt their designatory powers to be limited by their lack of jurisdiction over land.

These activities are increasing, however, particularly with respect to themes pertaining to the history of the North's aboriginal peoples...(T)here are efforts to involve local organizations and native people in planning, developing and operating these sites and parks. Initiatives are also being taken by communities to develop and interpret sites of local significance...

Parks and historic sites legislation in both territories contemplate and provide the territorial governments with the authority to enter into agreements with other governments and non-governmental parties regarding the establishment, care and preservation of territorial historic parks and sites."
(Rueggeberg, 1986:b,49-50)

The initiatives of federal and territorial governments and agencies in the North are summarized by Rueggeberg in the following way:

"-The efforts of the Arts and Heritage Policy Division of DOC are aimed at national issues and achieving nation-wide consensus, whereas the issue in the North are quite territory specific. In essence, the territories require province-like legislation and policy action from a department or agency familiar with the North

- The ASC/RAP's efforts under NOGAP have helped to focus attention on the problems in protecting archaeological resources in the North, but these efforts are limited from the perspective of developing a comprehensive policy in three ways: I) they deal only with archaeological resources; II) the recommendations are made from a federal/NMM perspective with little consideration of local participation; III) the RAP's efforts suffer from a lack of support from within the NMC bureaucracy.
- Given its experience in protecting Canada's natural heritage, there are those in DOE who feel that development is best suited for developing protective legislation and policies on cultural heritage. On the other hand, while DOE/Parks Canada has a considerable presence in the North, its preservation activities have been aimed primarily at the North's natural heritage, even to the detriment of inventorying cultural and archaeological resources in national parks when archaeological research activities have been considered too disruptive to the natural environment. Furthermore, Parks Canada's activities regarding cultural heritage resources have been mainly site specific and in the context, again, of national as opposed to northern interests.
- DINA and the territorial governments have probably the clearest mandates regarding cultural heritage resource management. The territorial governments have the greatest knowledge of territorial needs, are responsible for most of the on-site programs, and have the strongest interest and political will to protect these resources. But they feel their efforts in the policy and legislative fields are stymied by their limited legislative authority and their lack of jurisdiction over land and resources in their respective territories.
- Finally, DINA has by far the greatest management responsibilities and experience in northern affairs of all the federal departments, as well as the greatest responsibility for supporting native efforts to preserve their cultural heritage, but probably the least expertise in archaeological and cultural heritage management.
- National heritage interests notwithstanding, northern cultural heritage is primarily a concern of the people who live there. Native and non-native northerners rebel against the idea of policies for their heritage being formulated in Ottawa. It would seem only fair that they have equal authority over their heritage resources as do residents in the provinces, all of

whom must also take matters of "national" heritage into account in formulating the policies and programs by which their heritage is protected and used."
(Rueggeberg, 1986:b,39)

8. Conclusions

The legislative and policy making role of the federal government in Canada's North has to be seen as a dynamic process of devolution of authority to the territorial governments. The same process is guided not only by the political determination of the federal government to increase the level of self-government by the local population but primarily by territorial bodies and organizations who are actively taking part in policy making. Several programs and projects which affect archaeological resources have already been initiated by territorial governments, local committees and aboriginal organizations. It should be underlined that these activities cannot replace comprehensive legislation and policy aimed at protecting an archaeological heritage. Instead, they demonstrate the strong need for such a federal initiative.

The transfer of political and economic authority from the federal government to the local level will not produce, however, immediate solutions for the protection of cultural heritage. Furthermore, it should be mentioned that in the past archaeological resources have been destroyed by the paternalistic attitudes of central governments and that, in the present, they might be as easily destroyed through the idealization of aboriginal capacities and goals.

The review of the implementation of federal and territorial acts and policies point to the differences between NWT and Yukon. These differences have to be taken into consideration, especially during the consultation process prior to any government legislation aimed at protecting archaeological resources.

Recent legislative proposals concerning the existing Territorial Archaeological Sites Regulations demonstrate the concern and understanding of the value of heritage resources expressed by the local population. This initiative, however, should be seen in relation to the larger socio-economic and political context.

Neither in the NWT nor the Yukon does there presently exist adequate facilities for the effective management of archaeological resources. Without such facilities no local

Initiative has a chance to be successful. Federal action is required for this reason, but as Rueggeberg points out:

"any logistical and financial support provided under a federal policy should be aimed not at creating or increasing dependence on federal programs, but rather at assisting territorial agencies and native and non-governmental organizations become self-sufficient in managing their own archaeological and cultural heritage resources. " (Rueggeberg, 1986:b,61)

Although the federal agencies - i.e. Parks Canada and the ASC/NMM - are present in the territories, their respective mandates and authority are very limited and unclear, as pointed out in section A. The federal government in the territories is represented primarily by DINA. This department:

"is responsible for managing northern lands and resources, administering programs dealing with native people, and coordinating the activities of other federal departments in the North. It does not have expertise in the field of archaeology and cultural heritage management, and as mentioned above has delegated its authority under federal regulations in this field to the territorial governments. However, there are important functions it can play in the context of northern heritage protection.

The Minister of DINA is the main federal authority responsible for initiating legislative and jurisdictional changes for northern affairs(...)

Besides this crucial role in initiating these fundamental changes to the northern management regime, DINA has an important role as the representative and advocate of northern interests in dealing with other federal agencies in Ottawa whose policies and programs affect northern archaeological and cultural heritage affairs...

DINA also has an important role to play in encouraging greater coordination between federal and territorial government agencies regarding policy initiatives at both levels and regarding research and information sharing." (Rueggeberg, 1986:61)

Consequently, it seems clear that any proposal for federal legislation on archaeological resource management has to take into consideration DINA's role in Canada's North.

G. International Conventions and Recommendations Related to
Archaeological Heritage

1. Introduction

Cultural resources can be considered not only as a material and symbolic property of one local, ethnic or national group, but as a common property of all mankind. Archaeological objects and sites occur throughout the world. Many geographically distinct prehistoric cultures have no direct link with the culture of the present inhabitants in the same region. For example, no nation may claim exclusive ownership of the Altamira frescos in France or the Scythian Golds in Russia. From this perspective, governments and nations in which these objects are to be found are only the temporary guardians of this common cultural wealth of humanity.

Different governments may apply different attitudes towards archaeological resources within their own territories, according to the ideological value that is attached to such objects, the financial and logistical capabilities of the governments involved and their political priorities. For these reasons the role of international organizations which coordinate and assist the effective management of archaeological resources cannot be ignored.

International organizations, by means of conventions and recommendations are trying to introduce standard procedures for the preservation of all non-renewable heritage resources.

The main effort has come from UNESCO. Its conventions are designed to lay down foundations for a system of international cooperation and interdependence between states. Without such interaction, the cultural heritage of humanity will not be adequately protected. Beside conventions, UNESCO, through its supreme organ, the General Conference, adopted several proposals, that have taken the form of recommendations. The aim of these recommendations is to influence the development of national legislation by suggesting a course of conduct which is preferred by the international community.

A recommendation does not entail reciprocal undertakings or establish legal obligations of a contractual nature. A recommendation, however, is not completely void of legal consequences:

"It entails for all members, even those who did not vote in their favour, clear obligation of a constitutional and administrative nature. Each state is obliged to submit the recommendations to its competent national authority within a period of one year...and to submit periodic reports on the actions they have taken on such recommendations." (Williams, 1978:174)

For the purpose of this project, existing acts and documents will be classified into three groups:

1. UNESCO conventions ratified by the Canadian government
2. UNESCO recommendations adopted by the General Conference and deemed to be respected by Canada (by virtue of Canada's membership in UNESCO)
3. International conventions without Canada's participation

The extent to which these conventions bind the Canadian government differs considerably (in decreasing order).

2. Conventions

Canada formally acceded to the 1970 UNESCO Convention on 'Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property' in 1978. This move was enabled by the introduction in 1977 of the Cultural Property Export and Import Act. The ratification of the convention has been officially seen as an example of federal government's assumption of responsibility towards the protection of archaeological resources. As stated by then-

Secretary of State, John Roberts:

"the government of Canada has assumed responsibility to act as guardian of the heritage of all Canadians...(and) has taken an important step in recognizing that the responsibility extends to the cultural heritage of all mankind" (Department of External Affairs, Communique #30:28 March 1978)

The UNESCO Convention for 1972 on the 'Protection of the World's Culture and National Heritage' was ratified by the federal government in 1976. Parks Canada has been designated as the primary agency responsible for fulfilling Canada's obligations under this convention (Parks Canada Policy, 1982:15,16).

3. Recommendations

The following recommendations, made public by UNESCO, are of particular interest with regard to the management of archaeological resources.

- 1956 - on International Principles - Applicable to Archaeological Excavations
- 1968 - on Preservation of Cultural Property Endangered by Public and Private Works

4. Other Conventions:

- 1969 - European Convention on the Protection of Archaeological Heritage
- 1976 - San Salvador Convention of the Organization of American States (OAS) for the Protection of the Archaeological, Historical and Artistic Heritage of the American Nations

Canada is not a member of the Council of Europe and is only an observer within the OAS. Consequently, the two conventions mentioned above have no binding power on the federal government. Therefore, they will not be considered in detail for this project. They may be used by legislators, however, as possible points of reference and comparison with other conventions.

5. Review of Definitions used by Recommendations

Two UNESCO recommendations, the '1956 New Delhi Recommendation on archaeological excavations' and the '1968 Paris Recommendation on cultural property endangered by public or private works' are of importance to this project. These conventions focus on archaeological excavations, cultural and protected property, monuments and sites. The New Delhi Recommendation defines archaeological excavations as:

"any research aimed at the discovery of objects of archaeological character, whether such research involves digging of the ground or systematic exploration of its surface or is carried out on the bed or in the subsoil of inland or territorial waters of a Member State."

The same Recommendation defines protected property as any remains whose preservation is in the public interest from the point of view of history or art and architecture. As stated by the Recommendation, each member state:

"is free to adopt the most appropriate criterion for assessing the public interest of objects found on its territory. In particular, the provisions of the Recommendation should apply to any monuments and movable or immovable objects of archaeological interest considered in the widest sense.

The criterion adopted for assessing the public interest of archaeological remains might vary according to whether it is a question of the preservation of such property, or of the excavator's or finder's obligation to declare his discoveries.

(a) in the former case, the criterion based on preserving all objects originating before a certain date should be abandoned, and replaced by one whereby protection is extended to all objects belonging to a given period or of a minimum age fixed by law.

(b) in the latter case, each Member State should adopt far wider criteria, compelling the excavator or finder to declare any object, of archaeological character, whether movable or immovable, which he may discover." (section 3, New Delhi Recommendation)

The 1968 Paris Recommendation defines cultural property as:

(a) immovables, such as archaeological and historic or scientific sites, structures or other features of historic, scientific, artistic or architectural value, whether religious or secular, including groups of traditional structures, historic quarters in urban or

rural built-up areas and the ethnological structures of previous cultures still extant in valid form. It implies to such immovables constitution ruins existing above the earth as well as to archaeological or historic remains found within the earth. The term cultural property also includes the setting of such property;

(b) Movable property of cultural importance including that existing in or recovered from immovable property and that concealed in the earth, which may be found in archaeological or historical sites or elsewhere."

The 1972 UNESCO Recommendation concerning the Protection at a National Level of the Cultural and National Heritage defines cultural heritage as:

monuments: architectural works, works of monumental sculpture and painting, including cave dwellings and inscriptions, and elements, groups of elements or structures of special value from the point of view of archaeology, history, art or science;

sites: topographical areas, the combined works of man and of nature, which are of special value by reason of their beauty or their interest from the archaeological, historical, ethnological or anthropological points of view."

The above quoted definitions are of a general character and do not exactly apply to the Canadian situation. It should be added, however, that the purpose of outlining these recommendations is to present broad guidelines that can be elaborated upon, according to local situations.

6. General Principles of Recommendations

Unlike definitions, the general principles of recommendations are described in a precise way. It is worthwhile to present these principles in a summarized format:

a) The Recommendation on International Principles Applicable to Archaeological Excavations

This recommendation makes provisions for a permit system, the reporting of findings, ownership, administration, research and public education.

- A national archaeological service should, so far as possible, be under central state administration, working in cooperation with research institutions and universities in technical training, and setting up a central documentation of archaeological sites, collections, museums, etc.
- Regular provision of funds should be ensured for: satisfactory administration, to carry out programs of work proportionate to the archaeological resources of the country, including scientific publications, to exercise control over accidental discoveries, to provide for the upkeep of excavation sites and monuments.
- Central and regional collections should be formed to facilitate research.
- Educational measures should be initiated by the competent authority to encourage public education.
- Archaeological exploration and excavation should be made subject to prior authorization by the competent authority.
- The excavator or finder should be obliged to declare any object of archaeological character whether movable or immovable that he may discover.
- Penalties should be imposed for infringements of regulations and undeclared objects subjected to confiscation.
- The legal status of the archaeological sub-soil should be defined.

The Recommendation also suggests various regulations for excavation and associated research by foreign archaeologists, for stolen antiquities, for the repression of clandestine excavations, for the illicit export of archaeological finds, for excavation in occupied territory and for bilateral agreements.

b) Recommendations on Preservation of Cultural Property
Endangered by Public and Private Works

The 1968 Recommendations concerning the Preservation of Cultural Property Endangered by Public or Private Works, concentrate mainly on salvage archaeology when considered in comparison to the 1956 Recommendation concerning International Principles. The 1968 Recommendations prescribe a combination of site and artifact inventory coupled with an evaluation program. This combination is designed to be an effective system of management and control for archaeological

resources endangered by land development activities. In particular, the Recommendations suggest that:

- measures to preserve cultural property be extended to the whole territory of the State and should not be confined to certain monuments and sites; (3)
- protective inventories of important cultural property, whether scheduled or unscheduled, should be maintained; (4)
- measures for the preservation of entire sites or for salvage of sites should be taken in relation to its cultural significance; (5 a,b)
- due priority to measures required for the preservation in situ of cultural property endangered by public or private works (should be given) when...conditions require that cultural property be transferred, abandoned or destroyed, the salvage or rescue operations should always include careful study of the cultural property involved and the preparations of detailed records (9)
- The results of studies having scientific or historic value carried out in connection with salvage operations, particularly when all or much of the immovable cultural property has been abandoned or destroyed, should be published or otherwise made available for future research. (10)
- important movable cultural property, including representative samples of objects recovered from archaeological excavations, obtained from salvage operations should be preserved for study or placed on exhibition in institutions, such as museums, including site museums, or universities. (12)

The Recommendations state that the preservation or salvage of cultural property endangered by public or private works should be ensured through the legislative and organizational system of the State. It recommends particular measures pertaining to legislation, finance, procedures for the preservation and salvage of cultural property, penalties for infringements, repairs for cultural property damaged, awards in the form of recognition or payment to individuals or organizations engaged in programs for the preservation or salvage of cultural property and to education programmes. The Recommendations state that:

Member States should enact or maintain on the national as well as on the local level the legislative measures necessary to ensure the preservation or salvage of cultural property endangered by public or private works in accordance with the norms and principles embodied in this recommendation (sec. 14)

Member States should ensure that adequate budgets are available for the preservation or salvage of cultural property endangered by public or private works. Although differences in legal systems and traditions as well as disparity in resources preclude the adoption of uniform measures, the following should be considered: (sec.15)

(a) The national or local authorities responsible for the safeguarding of cultural property should have adequate budgets to undertake the preservation or salvage of cultural property endangered by public or private works;

(b) The costs of preserving or salvaging cultural property endangered by public or private works, including preliminary archaeological research, should form part of the budget of construction costs

In the event of unusual costs due to the size and complexity of the operations required, there should be possibilities of obtaining additional funds through enabling legislation, special subventions, a national fund for monuments or other appropriate means. (sec. 16)

At the preliminary survey stage of any project involving construction in a locality recognized as being of cultural interests or likely to contain objects of archaeological or historical importance, several variants of the project should be prepared at regional or municipal level before a decision is taken. (sec.21)

Thorough surveys should be carried out well in advance of any public or private works which might endanger cultural property to determine:

(a) The measures to be taken to preserve cultural property in situ;

(b) The amount of salvage operations which would be required such as the selection of archaeological sites to be excavated, structures to be transferred and movable cultural property salvaged, etc. (sec. 22)

Important archaeological sites and in particular prehistoric sites as they are difficult to recognize, historic quarters in urban or rural areas, groups of traditional structures, ethnological structures of previous cultures and other immovable cultural property which would otherwise be endangered by public or private works should be protected by zoning or scheduling; (sec.24)

Member States should make it obligatory for persons finding archaeological remains in the course of public or private works to declare them at the earliest possible moment to the competent service. Careful

examination should be carried out by the service concerned and, if the site is important, construction should be deferred to permit thorough excavation, due allowance or compensation being made for the delays incurred. (sec.25)

Member States should have provisions for the acquisition through purchase, by national or local governments and other appropriate bodies of important cultural property endangered by public or private works. When necessary, it should be possible to effect such acquisition through expropriation. (sec.26)

Member States should take steps to ensure that offences through intent or negligence, against the preservation or salvage of cultural property endangered by private or public works are severely punished by their Penal Code which should provide for fines or imprisonment or both. (sec.27)

Specialized publications, articles in the press and radio and television broadcasts should publicize the nature of the dangers to cultural property arising from ill-conceived public or private works, as well as cases where cultural property has been successfully preserved or salvaged. (sec.32)

Museums and educational institutions and other interested organizations should prepare special exhibitions on the dangers to cultural property arising from uncontrolled public or private works and on the measures which have been used to preserve or to salvage cultural property which has been endangered. (sec.34)

7. Conclusions

Conventions and recommendations are the instruments adopted by UNESCO for the protection of cultural heritage. The obligations of a convention are carried out by a state through domestic legal acts. Canada through its introduction of the Cultural Property Export and Import Act, the National Parks Act, and the Historic Sites and Monuments Act has created a base of support for the UNESCO conventions; with the exception of the 1959 Convention for the 'protection of cultural property in the event of armed conflict'.

The UNESCO Conventions relate to cultural heritage in general, there are no particular sections dedicated

specifically to the management of archaeological resources. Canada, as a member of the international community, has a commitment to carry out the UNESCO Recommendations. The lack of federal legislation in Canada regarding the protection of archaeological resources means that these internationally accepted rules and standards are not implemented by federal agencies. Individual Canadian provinces, on the other hand, use the UNESCO Recommendations as a guide in the formulation and implementation of provincial legislation concerning the protection of archaeological resources.

I. CANADIAN PROPERTY LAW

1. Introduction

Archaeological artifacts, although they may be of great importance to Canada culturally, are at present afforded little legal recognition or protection at the Federal level. Ownership disputes which arise on discovery of an artifact follow the ordinary Common Law rules which are applicable to finders. The Common Law rules that are used to determine ownership of lost umbrellas and wallets are applied with equal force to centuries old aboriginal pottery; the law does not distinguish between these items, remaining blind to the relative public interests that may attach to each.

In the Common Law jurisdictions of Canada, the law of findings, or as it is traditionally described, the law of finders, is established by decisions of the English and Canadian courts. In the absence of guiding legislation, court cases have created a body of rules from which principles of law are difficult, if not impossible, to extract. Many academic writers, despite repeated and often lengthy attempts to "reconcile the irreconcilable" have failed to distill a workable framework upon which future expectations can be based. What is more, without legislative intervention the law of finders is destined to remain in a fragmented state of ad hocery. This is largely because so few finder cases are ever litigated and even fewer reach the appeal level. To date no dispute concerning a finding has reached either the Supreme Court of Canada or the House of

Lords in England where a definitive statement of law could be expected to be made. The reported cases tend to be lower court decisions at the trial or intermediate appeal level, creating decisions of lesser persuasive authority.

In contrast to the Common Law, the Quebec Civil Law system sets out the rules of findings on a relatively clear and concise manner. The Civil Code of Quebec makes provisions for both objects found on the ground and treasure hidden or buried in the ground. In Quebec, when an object is found on public or private property and the owner is unknown or does not make a claim, it belongs to the finder. When the thing is hidden or buried, ownership of the object will depend on ownership of the land. If the finder owns the lands he/she is also deemed to own the find. However, when the find is discovered on another's soil, the ownership of the object is shared equally by the finder and the landowner (Quebec Civil Code 586 and 593). The Common Law of finders is unfortunately not as clear.

2. Common Law of Finders

In Canadian Common Law jurisdictions the rights to possession of found objects is governed by the law of property, the other branch being the law of real property. One distinction between these two branches of property law is that the former deals with movable objects and the latter deals with immovable objects, such as land and things permanently attached to land (i.e. buildings). Although both branches of property law have an impact on artifacts, the law of personal property usually governs, since they are generally considered movable.

The discovery of personal property such as an archaeological artifact raises the question of who is entitled to ownership at the time of the finding or, more precisely, of the persons who claim ownership, who will succeed, for in the Common Law tradition the function of the courts is to resolve disputes. In deciding question of ownership the Common Law courts do not permit a procedure to determine ownership in the abstract, as was the case under Roman Law. Rather, they are only concerned with deciding real disputes between competing claimants. As a result of this approach no clear theory of ownership has developed in the Common Law.

Since the courts are merely being asked to determine as between two competing claimants who has the superior right to legal possession, it is of no concern that a third person, not before the court, the "true" owner. Thus, for example, a finder will be able to claim successfully against a thief who

has taken the found goods despite the fact that the true owner is known. A finder may, then, in law be considered a limited owner who is able to assert legal possession against all but the "true" owner.

Under the rules of personal property, legal possession or "ownership" may be acquired in a number of ways:

1. by agreement - typically a purchase and sale;
2. by inheritance - personal property passed to a beneficiary through a Will or Intestate devolution;
3. by prescription - where a prescribed time has passed, traditionally six years, the relevant statute of limitation will extinguish the ownership of the original owner and allow the person with adverse possession to claim "ownership";
4. by taking possession - as in the case of finding. (Fitzgerald, 1966)

Rights thus acquired will continue until either the personal property is intentionally abandoned or new rights are acquired in either of the above listed ways. Rights acquired in one of these manners will however be subject to the claim of the true owner whose right has not been extinguished with the passage of time. The buyer will, however, have valid legal possession as against all others. Similarly, an "owner" who loses or misplaces personal property can claim its return from subsequent finders because the loss of physical possession by its misplacement or unintentional loss will not deprive an owner of a valid pre-existing right. The finder's right acquired by taking possession will only be enforceable against those without any pre-existing rights.

In respect of archaeological artifacts, however, the competing claims to legal possession will not emanate from the "true" owner or occupier of the real property upon or in which the discovery is made.

3. The Finder v. Landowner

The claim of both the finder and landowner will be based on the fourth method of acquisition stated above, that is, taking possession. Both will claim a right to "ownership" based on prior possession. In the case of findings will therefore determine ownership. Traditional attempts to define a concept of possession in Common Law have generally avoided a philosophic a priori approach choosing instead a pragmatic theory intended to "fit the facts". The facts traditionally selected have been the relative physical relation of the

would-be possessors to the object and their relative intent toward interferers (Reisman, 1939). In the Common Law, legally enforceable possession has no defined prerequisites - which means it need not necessarily include actual physical possession nor any specific or actual intention. In addition to the factors of power and intent to control, courts have also considered other "facts" as being relevant to establishing a right to possession such as:

(a) the legal relationship of the claimants to the premises where the goods were found. The finder for example might be a trespasser on the landowner's property;

(b) the legal relationship between the contestants - such as a finder who is an employee or contractor of the landowner;

(c) the social purpose behind the particular rule, which turns on the question of possession - such as the need to establish possession in the case of theft. (Harris, 1961)

These factors may be given varying weight by the particular judge in light of the circumstances which are presented to the court. Since there is a great flexibility in each of the criteria or "facts" to be applied and little certainty as to their order or importance, decisions in the Canadian, English and American courts have tended to be confusing and at times conflicting. And, since there has been no formulation of any specific requirements of possession, fictional concepts such as constructive possession or constructive intention have been created to displace actual possession or intention in order to justify a desired result.

The following examples of the divergent court rulings in selecting between the finder or occupier's rights of legal possession illustrate the confusion:

(I) a wallet found by a traveller on a shopkeeper's floor was awarded to the finder;

(II) Jewellery found by an employee on a shop floor was awarded to the occupier/employer;

(III) a roll of bank notes found by a salesman in a shop and turned over to the shop owner was awarded to the finder;

(IV) Jewellery found by a tenant in a house that the landlord had never lived in or occupied was awarded to the finder;

(V) a wallet left in a barber shop and found by another customer was awarded to the occupier/barber.

It would appear that the underlying theme in these and

other similar cases is the court's desire to do justice between the parties under the particular circumstance of the case. In order to achieve a just result, the court will seek to identify who has the greater moral claim. The finder will claim possession because, had it not been for the discovery, which may have involved much effort, the object would have remained hidden or lost. The landowner, on the other hand, will consider the object as part of the resources of the land and will claim to have lost the opportunity to make the find. In either instance the object will likely represent an unexpected and possibly unearned windfall gain. (O'Keefe and Prott, 1983:306) As a result, because these moral claims are often evenly balanced as between the finder and the landowner, the outcome will vary depending on the individual judge's sense of fairness. Thus in one case where a shopkeeper was wholly ignorant of the fact that a valuable parcel had been lost on the shop floor and consequently having no direct intention with regard to the parcel, the court saw no reason why he should gain the benefit of the fortuitous find of another. However, the result no doubt would have been different if the shopkeeper had seen the parcel first and placed it to one side, evidencing control and intent over it.

In balancing the competing claims of the finder and landowner, some measure of certainty of right to legal possession has developed depending on whether the personal property is found on or below the surface. Therefore it would seem appropriate to discuss them separately.

a) Findings on the Surface

In a contest between the finder and the landowner the following factors would appear from legal precedents to be of central importance:

(I) the status of the finder - was he/she a trespasser, invited guest, an employee?

(II) the knowledge and intention of the landowner with regard to the personal property;

(III) assuming the landowner to have no knowledge of the article, which is generally the case with artifacts, the focus would then be on the intention of the landowner with regard to maintaining control over the real property i.e. was the property open to the public, was it fenced off?

Because of these variables, predicting the outcome of a particular case or laying down general principles would be difficult. The outcome would depend on the relative

importance which the court ascribes to each of the listed issues. However, some English cases suggest that there is a legal presumption that possessor of land is also the possessor of personal property found on the land. Although Canadian courts have yet to adopt such a presumption, the general tendency in the few reported cases is to side with the landowner/occupier.

b) Findings Below the Surface

The case law in this area seems to have a measure of consensus not enjoyed by and other area of the law of finders. Although there is no direct Canadian legal authority on this point, British, and to a limited extent, American, jurisprudence has concluded that landowners have legal ownership of all matters below the surface. This appears to be the case regardless of whether the landowner had any knowledge of the potential for the discovery of artifact below his property.

This presumption in favour of the landowner is arguably based on a combination of two ideas; firstly, the concept of the law of real property that ownership of land extends from the surface to the core of the earth and to the sky "cujus est solum, ejus est usque ad coelum it ad infernos", and anything that is attached to the soil or found in it is considered part of the land; secondly, the concept of a presumed or constructive intention to possess all personal property on the land where and actual intention to exercise control over real property is manifest.

Two leading British cases illustrate the law in this area:

1. Elwes v. Brigg Gas Company (1886) [(1886) 33 Ch.D. 562] A prehistoric boat was found some feet below the surface by the tenant while excavating for a building. In denying the tenant's claim, the court found the boat to have already been in the possession of the landowner, despite the landowner's lack of knowledge of its existence.

2. Corporation of London v. Appleyard (1963) [(1963) 2 All E.R. 834 (Q.B.D.)] An old wall safe containing money was discovered by workmen excavating for a new building. The safe was ruled to be in the possession of the occupiers of the premises, despite its physical possession by the workmen and the lack of knowledge by the occupier of its existence.

4. State Claims to Found Property

Unlike real property under the English tenurial system where the Crown is considered the final and ultimate owner of all land, personal property under the Common Law is considered open to "absolute ownership". This is not to say that the State cannot pass legislation affecting personal property rights - as has been done in many jurisdictions. The State though has no ultimate interest or residual title in personal property in the same way it theoretically has in real property. Personal property that is abandoned or lost does not pass to the State but to the common mass of goods and then becomes available to the first person to take possession, unless the "true owner" of the goods reclaims them in the case of goods lost. In contrast, in the Quebec Civil Law movable property that has no owner is held to belong to the State.

Thus under the current law in Common Law jurisdictions, in the absence of express legislation, the State has no claim to legal possession of archaeological artifacts, unless of course it is a finder as in the case of a Government employee making a find in the course of employment, or is an owner or occupier of the land upon which the property is found. There are, however, two Common Law exceptions.

The first exception is the very ancient and arcane doctrine of treasure trove, the origins of which are obscure but can be traced back to Roman times. The rule permits the Crown, in its royal prerogative, a right to possession of any gold or silver coin, plate or bullion which is found hidden in the earth, or other secret place (Halsbury's Laws of England Vol 8, para 1513-15). The last reported case of a successful claim of treasure trove was in 1903 in an action brought by the British Attorney General, in whom the right now resides, against the British Museum. Gold ornaments and jewellery which had been found in the North of Ireland and subsequently purchased by the British Museum were deemed to be treasure trove and were ordered to be delivered to the Crown, which in modern times is now synonymous with the State. [Attorney General v. Trustees of the British Museum [1903] 2 Ch. 598].

A more recent decision of the English Court of Appeal in 1982 involving a large cache of Roman coins found in a farmer's field ruled that to be considered a treasure trove coins must be at least 50% silver or gold. In this case the coins, being of low grade silver alloy, were awarded to the farmer. (Attorney General of the Duchy of Lancaster v. G.F. Overton (farm) Ltd. [1982] 1 All E.R. 524 (C.A.))

It is important to note that the rule of treasure trove applies only to cases where the goods have been hidden, not

lost by the original owner. Further the Crown will only acquire a right which is subject to the claim of the original owner who had purposely concealed the goods. There is no court decision to indicate that this royal prerogative has not survived in Canada. Neither is it clear which Canadian Crown, Federal or Provincial, retains the right, if it exists.

The other exception to the rule that the Crown has no overriding interest in lost or abandoned property is the royal prerogative to the possession of marine wrecks, recognized first by Common Law, (Halsbury's Laws of England Vol 8 para 1505 - 1512) It has been given statutory effect in Canada by the Canada Shipping Act. (Canada Shipping Act R.S.C. 1970 c. S-9 Sections 500-513). All wrecks "jetsam, flotsam lagan and derelict found in or on the shores of the sea... or in the inland waters of Canada" (Canada Shipping Act S.2), if unclaimed by the owner become the legal possession of the State. Although envisioned to apply to recent wrecks, the right would appear to apply equally to ancient wrecks of archaeological value.

5. Alternative Approaches

With some exceptions, neither the Common Law finders nor legislation presently gives the Federal Government any inherent claim to archaeological artifacts, Where there is a pressing need to either temporarily or permanently make and acquisition or gain access to important items of antiquity the general law of contract must be relied on - in short the State must enter into the marketplace to acquire its rights.

The Federal Import and Export Act provides the means for acquiring artifacts only in cases where there is an attempt to export them, in all other cases there is no normal mechanism requiring the State to be alerted to the existence of important finds, More importantly, the State has at present no means to act proactively to protect either artifacts or privately owned potentially important sites where artifacts may be found.

The current legal framework does not recognize any overriding public interest in artifacts or artifact rich sites, nor is the Federal Government empowered to force a finder to turn over objects which may have national cultural significance. Instead the Common Law largely prefers to lump them in with lost umbrellas and the like. If it is accepted that it is in the national interest to allow Government control, or at least access to newly discovered archaeological artifacts, legal reform would be needed, Such

reform would of necessity be in the form of legislation to override the shortcomings of the Common Law.

A number of alternatives can be considered depending on whether the policy chosen is to acquire Government ownership or merely to ensure Government access to the discoveries.

6. Acquiring Ownership

a) Voluntary Acquisition

Government acquisition by voluntary agreement with the private owner would in essence retain the legal status quo in matters of legal possession, and would tend to enforce the concept of private property. Ownership would be acquired through the normal forces of the marketplace. However for such an approach to be an effective way of acquiring archaeologically significant finds, there would have to be in place a method by which the Government would be informed of the existence of such finds. A scheme of mandatory disclosures could be instituted with penalties for neglecting to do so or rewards for compliance. However, precisely defining the circumstances under which a duty of disclosure would arise would be both complex and essential and would presumably apply with equal force to archaeologists, hobbyist and fortuitous finders. A definition of the duty of disclosure would consequently need to be drafted with a view to being clearly understood and easily applied.

An alternative to an across the board duty to disclose findings might be to create a more limited specific duty which would only arise in specifically designated archaeologically important zones. This would have the advantage of being more easily promulgated to scientists and hobbyists alike, but would not as readily catch the fortuitous finder.

b) Compulsory Acquisition

Compulsory acquisition would represent a mandatory imposition of state ownership on designated classes of archaeological artifacts or sites. However, State enforced acquisition raises many complex constitutional, administrative, and civil libertarian issues. For the purpose of this paper only a brief description of the constitutional problem will be given, followed by a few proposals of the mechanisms that could be used to acquire State ownership.

c) The Constitutional Problem

In Canada any attempt by the Federal Government to impose State ownership would raise an issue of the Federal Government's constitutional right to legislate in the area of property rights. Pursuant to the division of powers created by the Constitution Act, the Provinces are given exclusive jurisdiction under Section 92(13) to legislate with respect to "property and civil rights". An attempt by the Federal Government to expropriate property would arguably infringe on this exclusive Provincial legislative mandate. However, it has been recognized by the courts that the Federal Government may at times encroach on Provincial powers under "the Federal power" to pass laws in the national interest.

This principle is vividly illustrated in the Supreme Court of Canada decision of Munroe v. National Capital Commission (1966) 57 D.L.R. (2d) 753 which upheld the right of the Federal Government to expropriate lands for a green belt for the National Capital Region. The Supreme Court ruled that the Federal infringement on Provincial power over property was justified under the general power, assigned to the federal Government in the opening words of section 91 of the Constitution Act to make laws "for the Peace, Order and good Government of Canada".

The test used by the Supreme Court to decide whether the subject matter of the legislation fell within these opening words was to determine whether it went beyond a local or Provincial interest to encompass the concern of the Dominion as a whole. Creating a worthy seat of government, the Supreme Court ruled, was of sufficient national significance to permit the overriding of Provincial powers.

Similarly, it may be argued that archaeological artifacts and relics have a national significance well beyond the local and Provincial level which justifies federal intervention. The importance of protecting the archaeological heritage extends beyond the provincial boundaries and is of concern to all Canadians, for not only this generation but those to come.

Archaeological commentators and other involved citizens feel there is as strong case to be made for a federal power to legislate in the area of archaeological finds and sites. If it were to be decided to legislate federally to protect archaeological artifacts by compulsorily acquiring ownership, a number of legal mechanisms are available to achieve this goal, all of which would raise the constitutional issue discussed above, three which will be considered as follows:

- (i) expropriation;
- (ii) reservation of ownership in the subsoll;

(III) expansion of the doctrine of treasure trove.

1) Expropriation

Usually associated with real property, expropriation is the compulsory acquisition of property by the Crown or other public agency, such as a public utility or the National Capital Commission. Although generally used in acquiring land, expropriation of other interests is permitted by various Federal statutes, which allow the expropriation of such non-realty as machinery, patent rights, stocks of coal and in some instances personal property in general.

In the archaeological context, therefore, a legislated power of expropriation could be considered for either or both the unearthed personal property and the land thought to contain the artifacts. Unlike real property, however, personal property such as artifacts is capable of being secreted away by the finders; and therefore a duty to provide information about a finding may be needed to encourage disclosure.

Any scheme of expropriation, whether for real or personal property, would be required to establish not only a classification of what objects are subject to expropriation, but also a scheme for compensation. Expropriation cannot under the existing system of property relation be exercised to confiscate private property without payment.

One advantage of a system of expropriation is its ability to be selective. In any such system the agency with expropriating authority within its legislative mandate has discretionary power to decide what to expropriate. All artifacts or sites need not be compulsorily obtained, only those with sufficient significance.

(II) Reservation of Rights in subsoll

As mentioned previously, ownership of real property as a general principle carries with it the right to ownership of everything below the surface right to the earth's core. The landowner can, however, sever the rights in the subsurface from the rights to the surface. This may be done upon sale of the property where the vendor wishes to reserve rights in economically important mineralization.

The State being the English tenurial tradition the source of all land ownership also has the power to reserve to itself any or all subsurface rights. Under Common Law this was done with regard to the precious metals gold and silver, although in Canada the Provinces under their constitutional

power over property rights have not generally reserved such rights in privately held land. A number of exceptions do exist. Moreover, the power to make reservations still exists and can be exercised to protect and retain for the Crown ownership of minerals or other deposits.

Extending the principle of severing rights in real property, it would be possible, at least in theory, to reserve to the Crown subsurface property interests in all archaeological artifacts as would be defined by legislation. Following the analogy of Provincial mining laws, the Crown or its licensed agent would be empowered to enter and search for archaeological artifacts on lands where the subsurface has been reserved. The surface owner's rights would only extend to being compensated for the use or misuse of the surface.

A variation on the use of a reservation of subsurface rights to protect artifacts is contained in the British Ancient Monuments and Archaeological Areas Act of 1979. Rather than reserving rights in the subsurface in general, the legislation permits a designation to be made of areas determined to be of archaeological importance. This designation results in a moratorium on all unauthorized excavation or disturbances of the soil, during which time government inspection and excavations may take place. However, because Government authorities are only granted access, the property interests of the landowner are not permanently affected. What is being reserved is merely a limited right of entry, not ownership, in personal or real property. In some circumstances, however, the Act does permit expropriation to follow.

The Federal Government within its sphere of competence is also permitted to reserve subsurface rights for general or specific purposes in Federal lands such as the Territories, or Indian Reserves. Its power to do the same for Provincially owned lands or private land within the Provincial sphere raises complex constitutional issues beyond the scope of this paper. However, as argued before, the "overriding national interest" doctrine applied in the Monroe v. National Capital Commission case may provide the federal Government with the basis for reserving rights in subsurface when done in the national interest.

If rights in the subsurface were reserved, the Federal Government would be able to enter upon the lands to search for and recover archaeological artifacts or grant licences to permit others to do so. Correspondingly, it would be an offence for any unauthorized or unlicensed person to remove any artifact from reserved lands.

Using the reservation of subsurface rights as a legal mechanism would mainly have the effect of deterring the hobbyist, since it is presumed that licences would be granted

for scientific excavations. However, because it is limited to subsurface rights, ownership of anything found on the soil would continue to be decided via application of the Common Law rules.

(III) Expansion of the Doctrine of Treasure Trove

The principle of the doctrine of treasure trove, that there exists an overriding State right to legal possession of a specific identifiable item of personal property, may be applied to the case of artifacts as a method of acquiring archaeological artifacts. Other than constitutional questions, there appears to be no legal barrier to legislation which would reserve in the Crown the right to ownership of all artifacts found in Canadian soil.

The original object of the doctrine, which is open to some doubt, appears to have been the desire of the Crown to share in the riches occasionally provided by the discovery of a treasure. Since the late 1800's, however, it appears that the Crown's right in England is no longer used as a source of revenue but rather "as a means of preserving interesting antiquities for the benefit of the nation as a whole" (Attorney General of the Duchy of Lancaster v. G.E. Overton (Farms) Ltd. (1980) 3 All E.R. at 506 per Dillon J.). But the doctrine of treasure trove is wholly inadequate for preserving the nation's antiquities. The doctrine is too narrow to apply to anything beyond silver or gold and even then only if it can be shown that they were purposely hidden. In Canada, where one is most unlikely to discover secret caches of Roman coins, treasure trove has virtually no impact on protection of antiquities.

The doctrine would be of value if the definition of treasure was widened as in the case of Denmark where it was extended in 1752 to include all metal objects (O'Keefe and Pratt, 1983:311). Even such an extension however may be too narrow for Canada where many artifacts consist of clay or stone.

The additional condition in the current Common Law definition that the treasure be purposely hidden with the intention of subsequent recovery, apart from creating the problem of proof, is an additional limit on the doctrine's usefulness. In Canada most discovered relics would not fit such a narrow classification. To be of any real use in protecting archaeological artifacts, this condition would need to be eliminated or at the very least modified.

Even with an expanded definition, the doctrine of treasure trove has one major disadvantage. It is reactive. It must await the finding and declaration before it can operate for, under the doctrine, it cannot, without consent, enter

upon private lands to search or excavate. Unlike a reservation of rights in the subsoll, or the British legislation which permits rights of entry, no State interests are created by the rules of treasure trove until the object is discovered.

7. Acquiring Access

The alternatives discussed above all deal with the concept of state acquisition of ownership of the archaeological artifacts. However, in many if not most cases ownership is not sought nor for that matter needed by archaeologists and others seeking to study and protect Canada's heritage. Other than preserving a particular relic considered to be of great value, temporary custody rather than permanent ownership may be all that is necessary in the study of archaeological finds. Examining and recording artifacts can be accomplished without compulsory acquisition of ownership.

If this is so then a system of acquiring ownership of archaeological artifacts on an across-the-board basis, such as reservation of all subsoll rights, would appear to be an unnecessary and possibly costly exercise. In the instances where permanent acquisition of specific artifacts of exceptional value is deemed essential, a system of voluntary acquisition or selective expropriation would be preferable.

Access or temporary access can be achieved by a scheme of legislated reform similar to the one contained in the previously mentioned British statute Ancient Monuments and Archaeological Areas Act, 1979. In this legislation, in addition to provisions for compulsory acquisition of real property, power is given to acquire temporary control of finds which are of archaeological or historical interest.

Acquiring access only, has the advantage of satisfying both the collective interest in preserving the Canadian heritage and at the same time recognizing individual interests in the right or private ownership. What is more, a scheme to compensate for a temporary loss of custody would not be as burdensome as the compensation that would be required for acquiring ownership.

J. Underwater Archaeology: An Exploratory Survey of
Developments and of the Policy and
Legal Issues

The need for some rationalization of policy and legislation pertaining to underwater archaeology in Canada was accepted by nearly all the informed and involved people with whom we have been in contact. There appear to be three general concerns.

1. The Growing Popularity of Diving

There has been an enormous expansion of popular interest, beginning in the 1950's, in "sports-diving" and, with it, the development of a fascination amongst divers in the exploration and, occasionally, collection and salvage from wrecks. In the United States, in 1985, there were estimated to be 2 million members of sport-diving associations, and also between 5 and 20 professional salvage operations (Giesecke 1985: 108). There are no reliable figures for Canada, and some commentators insist that the development of diving in the cold waters of Canada is less marked than in the U.S. It is also felt that the chances of discovering treasure (as did Mel Fisher working off the coast of Florida in 1985) are relatively remote, by comparison with the possibility in the U.S.. Set against these views are the observations that the deep, cold waters in many parts of this country are quite exceptionally effective in preserving both wrecks and their contents (specialists speak of underwater sites where human bodies remain undecomposed) and the certain fact that some of the shipping that is sunk in Canadian waters, no matter that it was never on the Spanish Main,

contains significant amounts of "treasure", with the advantage that it is likely to be in quite pristine condition. The practice of combining sport diving with searches for shipwrecks is likely to increase exponentially, as the cost of the scuba gear, but more importantly the technology of underwater searches, gets to be within reach of the average sports diver and/or tourist. At present the cost of a "side scan sonar" (which is capable, when fixed to a boat, of producing a sophisticated image of an arrowhead on the floor of a lake) is about \$120,000. But chart recorders, developed originally for fishing (to enable identification of rocks and other natural obstacles), are now available, with the capacity to scan a channel of some 50 feet on either side of a boat, at a cost of only \$800. Underwater metal detectors (which are particularly beloved by "pot-hunter" divers looking for coins and Indian silver in the vicinity of known Indian sites which are now underwater) are on sale at about \$1,500. In each of these various cases, the prices are falling, and the concern of archaeologists is that a "free-for-all" situation could develop around both Indian sites and wrecks.

2. The "Discovery" of Underwater Sites

There has been a clear recognition in Canada in recent years that the diversity of "heritage sites" that are found on land is matched by an equally impressive range of heritage objects that lie under the surface of Canadian lakes, waterways and rivers, as well as at sea, within Canadian offshore limits. These objects range from spectacular wrecks of ships from much earlier historical periods to very important and distinctive "sites" of flora and fauna, as well as of fish and other underwater life.

This recognition of diversity seems to be particularly true in Quebec, where recent initiatives of the Commission of Cultural Affairs have focussed on identifying a very broad-based conception of what it calls the "maritime patrimony" of Quebec:

"Ainsi, par patrimoine maritime, on comprend tout ce que est le fruit des actions de l'Homme sur ou dans l'environnement maritime, celui-ci englobant non seulement la mer, mais aussi le fleuve et ses affluents, les canaux et même les lacs. Pris globalement donc du paysage, de la faune et de la flore marine aux infrastructures de pêche ou d'entreposage en passant par les objets témoins qui peuvent être aussi bien les éléments d'archives ou des artefacts provenant de fouilles archéologiques. Ce serait notre héritage du passé concret ou abstrait, lié aux étendus d'eau."
(Commission des Biens Culturels du Québec, 1983:5)

With this broad conception in mind, the Quebec Commission is able to express its pleasure at the reduction of pollution in the Saguenay (which has resulted in the return of seals and whales to that major tributary), the renovation, with assistance from Parks Canada, of ancient lighthouses (for example at Pointe-au-Pere), and also the opening of the historic park and interpretation centre at Restigouche, where a sunken wreck, the Machault, is having its parts systematically returned to it after being studied by researchers in Ottawa.

The discovery and renovation of sites like these throughout Canada and the publicity that often results, has highlighted a great range of problems with respect to the distribution of mandates between federal, provincial and municipal government, as well as with respect to the most fundamental question of all - the issue of the ownership of objects found underwater.

But most of the underwater sites that have become a topic of public debate have involved historic shipwrecks, and the controversies that have developed have tended to involve professional archaeologists committed to historical or industrial archaeology, at odds with salvage companies and/or groups of amateur divers. However, in Ontario - the home of the Ministry of Citizenship and Culture's "Marine Heritage Conservation Programme" (and the Save-Ontario-Shipwrecks organization) - the protection of the province's suspected 10,000 wrecks is seen to be entirely consistent with the protection of underwater Indian sites, with "bottle dumps" and with the underwater environment generally.

The intensification of interest of Ontario archaeology in wrecks seems to date from the case of the Hamilton and Scourge. In 1977, Mr. Dan Nelson, a St. Catharines' dentist, discovered two American vessels, which had originally been sunk in the 1812 war, in mint condition, in 300 feet of water in Lake Ontario, off Hamilton. He reported his find to the Royal Ontario Museum, which claimed ownership, after which the ships were transferred to the City of Hamilton, who wanted to build an underwater museum. Further problems arose when a newly-appointed director of the R.O.M. claimed ownership back for the museum. In the meantime, two summer-long dives took place without licence, and it was subsequently discovered that these dives did significant damage to the site. At this point, the Ontario Archaeological Society formally warned the Government of Ontario that they would claim against the Government for improperly attending to the wreck. Jurisdictional disputes of this kind have occurred in many parts of the country, and have apparently resulted, de facto, in considerable looting and vandalism. A recent article in Canadian Heritage observes that:

"From the early 1950's until well into the 1970's, British Columbia's shipwrecks were looted on as sources of booty, and amateur divers vied with each other to bring up portholes and other artifacts for their mantles. Commercial divers went after scrap metals and such items as propellers and brass condensers. Little thought was given to the historical significance of the ships, and only a few artifacts eventually found their way into the collections of the Vancouver Maritime Museum of the British Columbia Maritime Museum in Victoria." (Griffiths and McDaniel 1985-6:22)

In Newfoundland, the discovery in 1972 of the HMS Saphire (an English ship sunk in 1696 in doing battle with the French over the fishing grounds), did not prevent the wreck from being looted before archaeologists were able to study it. More recently, off Labrador, the similar discovery of a 16th Century Basque whaler, the San Juan, in Red Bay, has not resulted in vandalism or looting, in part because of some clarification of law and of jurisdictional responsibilities of government authorities (c.f. Tuck and Grenier 1981).

3. Jurisdictional Issues

The incident which seems to have provoked action at the federal Government level was the claim made in 1981 by a group of salvors to the possession of objects they had found in a wreck, the Auguste, discovered off Cape Breton Island. After some discussion between government departments, the Treasury Board approved the transfer of some of the property found on board to the salvors, but Ministers asked the Department of Justice to cooperate with Transport Canada and Environment Canada with a view to devising a "structure" for handling similar problems in future dealings with salvors. There followed a period of consultation between these departments with a view to agreeing such a structure but these efforts seem not to have borne fruit.

There is no question that there are ambiguities and controversial aspects in existing Canadian legislation governing the ownership of wrecks. The most frequently-voiced legal opinion appears to be that wrecks found on the seabed accrue to the Crown. This claim to title is justified on one or more of three different arguments:

- (I) that the wrecks, and other objects found in Canadian waters, are the Crown's by prerogative right;
- (II) that the objects, being found on the seabed of Canada, belong to the Crown in right of Canada; and/or

(III) that the Canadian Shipping Act, Part X, provides that property is deemed to have been abandoned at the expiration of one year from the date the Receiver has taken possession.

Controversy has surrounded all three justifications, but, in particular, the attempt to use the Canada Shipping Act as a means of regulating archaeological and/or other interest groups interested in wrecks. Transport Canada has apparently indicated that it would prefer not to apply Part X of the Canada Shipping Act to "ancient" wrecks (wrecks that were sunk before 1900). The department seems to feel that the role of the Receiver of Wrecks is best seen as that of custody and disposal, rather than conservation; and there is also a strong view that the Shipping Act contains no definition of what constitutes a site of historical value. More pragmatically, the Receivers of Wrecks feel that section X of the Act is actually unenforceable since there is no way of encouraging public compliance in delivering historic wrecks to the Receivers. In the meantime, the National Museum of Man has suggested that the use of that legislation could result in an encouragement of underwater salvage, rather than its control, in that the Crown (via the Receivers of Wrecks) might be tempted to dispose of wrecks and artifacts it did not want or found difficult to conserve. Particular anxiety was expressed at suggestions made in 1983 that the Government could make use of the Surplus Crown Assets Act of 1952 to dispose of such property "either gratuitously or for a consideration."

There seems little doubt that archaeologists working in Canadian museums have been mindful of recent developments in the attempt to regulate underwater archaeology in the United States. After many years of pressure by archaeologists in that country, two House of Representative Committees favourably reported on a bill to protect archaeological resources, but the bill was effectively blocked by one Senator, in October 1984, who felt that the granting of title to the States would effectively put private commercial salvors out of business (Herscher, 1985:112). A member of the House of Representatives Committee on Merchant Marine and Fisheries, Anne Glesecke, no doubt wrote on behalf of all archaeologists when she observed that:

"Every delay (in introducing legislation to protect underwater archaeological sites) means the loss of more of this unique cultural resource; it is extremely unfortunate that action this year (1984) could have been blocked by such a tiny special interest group."
(Glesecke 1985:108)

The American experience was undoubtedly a factor in the criticism voiced by archaeologists of the Canadian Shipping Act as an effective means for central Government to protect underwater archaeological sites found within Canada. But

there are other criticisms, too, of the use of this Act, and of the argument of perogative right and the argument that objects "found" on the seabed thereby accrue to the Crown. Lawyers are concerned, in particular, that any such claims might be superceded by international law, particularly with respect, for example, to shipping originating in foreign countries (like the San Juan, the Hamilton and Scourge, etc.). There is also an important constitutional argument, however, with respect to the divisions of responsibilities of federal and provincial governments within Canada. There is no doubt, in law, that the regulation of shipping within Canada in general is a federal responsibility, but as we have seen earlier in this report, the protection of heritage on land sites is generally a provincial matter, but the question of who has title to the seabed on objects on it is a matter of considerable controversy. According to some archaeological commentators, section 109 of the British North America Act (which determines that mines, minerals, etc. on land and underwater were to accrue to the province) applies also to shipwrecks, outside of wrecks found in publically owned harbors. In this view, the provinces have title, (in right of the Crown) to wrecks outside of publically owned harbors and they are therefore responsible for the custody and conservation of wrecks on their seabed. There is, however, a need to extend this provision to the seabed of publically harbours, because they are likely to be prime sites for discovery of wrecks.

This view of the "true" legal situation is by no means shared amongst federal Government departments. Particular underwater sites have, indeed, been claimed (with very different degrees of success) in recent years by Parks Canada, by the Harbour Commission, the Department of National Defence, Public Works and the Department of Indian Affairs and Northern Development. There is clearly no clear consensus on which to base legislation conferring title to underwater archaeological sites on a particular government agency acting for the Crown in Canada.

Two observations might perhaps be made with respect to the current position. In the first instance, it is clear that the law in Canada is more conducive to the restriction of commercially-motivated salvage activities than the law in place in the United States. Salvors can certainly seek out sites in Canada, but, unlike their counterparts in the U.S., they have no right to title on the basis of a claim to "finding" or to "treasure trove" (see our discussion of Canadian Property Law in Section IV). The only possible exception to this generalization is in respect of publically owned harbours.

Secondly, there seems to be a fairly cautious perspective on the likely effectiveness of new legislation. All commentators feel that rationalization (and therefore

clarification) of the relevant legislation would help the situation and sympathetically-minded lawyers clearly also feel that the reliance by Government on legislation originally intended for other purposes does not provide the certainty to assert title and protect underwater sites. On these grounds, specific legislative provisions on shipwrecks could be very important. But, amongst practicing underwater archaeologists, in particular, there seems to be a widespread feeling that "public education" is likely to be more beneficial in protecting sites than would be any attempt to introduce "heavy-handed" or "big stick" legislation. Writing of B.C., Newfoundland and Ontario, Christopher Moore refers to the emergence of a new "diving ethic", oriented towards careful exploration and conservation (Moore, 1985-6). In Ontario, where the Marine Conservation Programme does circulate a document to all its diver-members on "legal mechanisms to prevent/punish stripping of wrecks", (which includes instructions on the right to make citizens' arrests), the practical emphasis is, nonetheless, on the development of public education by members of Save-Ontario-Shipwrecks chapters. In particular, there is a strong interest in the creation of "dive preserves" protected by diver archaeologists and by local citizens, where wrecks (like the Annie Faulkner in Lake Ontario) can continue to be preserved in deep, cold water; and legitimately viewed by tourist divers under escort. There is a hope, in particular, that these dive preserves will encourage a sense of collective membership in the way that the clubs of amateur divers also do, but in the name of preservation rather than salvage and collection. The intention, it should be said, is to extend this project to the kind of protection to the thousands of "bottle sites" in the province as well as to Indian sites now underwater.

We should conclude this exploratory overview by referring to the discussion elsewhere in the Report. There seems to be some basis for suggesting that professional underwater archaeologists have progressed somewhat further in developing fruitful partnerships with citizens with a particular interest in their specific field of activity than have archaeologists working exclusively on surface sites. There is also a clear recognition in this area of a definition of archaeological sites as a general public interest (protected by "The Crown"), against the emphasis on the freedoms that should be allowed commercial entrepreneurs. But we are still confronted, in respect of underwater sites, with the contradictory positions that dominate discussions of sites on land: the view of archaeologists, emphasizing the need to conserve sites primarily for the purpose of the scientific study of cultural heritage, set against alternative views. On land the alternative perspectives often revolve around the different conceptions of ownership and "recontextualization" held to, inter alia, by the aboriginal peoples or by hobbyists and private collectors. In the case

of underwater sites, organizations outside of archaeology (like Transport Canada) express considerable concern over the practical impossibility of protecting and/or studying all sites. These alternative views are often given even firmer substance by the attempts of particular interest groups (local, municipal authorities, other nation-states, and, in some cases, aboriginal peoples) to assert their right to control over material found underwater in different parts of Canada.

We cannot leave this area of investigation, however, without referring again to the consensus which appears to exist amongst nearly all the specialists we consulted with respect to underwater archaeology. There is clearly a very high degree of agreement that the salvage of historic wrecks by salvors should become a specific federal offence and that, to this purpose a specific definition of historic wreck is required. No matter that such legislation might not be consistently enforceable, the symbolic importance of a commitment by the national State to the protection of historic wrecks sunk in Canadian waters is unquestionable. From all the investigations completed by this Centre, it seems clear that new legislation is necessary, of a very specific character, to establish this particular purpose in federal law. Existing legislation is thought, universally, to be insufficiently focussed to accomplish this universally-agreed "public" purpose.

What we cannot comment on this time is on the question of underwater archaeology in respect of sites, other than wrecks, now underwater. The two most important types appear to be "bottle sites" (dumps where older and sometimes historical bottles are in plentiful supply) and Indian sites which have been flooded at different times. The protection of both of these kinds of sites was clearly a matter of considerable concern for archaeologists with whom we had discussions. We were not able, however, to raise the issue of these kinds of sites with representatives either of the aboriginal peoples or with hobbyists. We would not want to take the position in respect of underwater sites that is in any way inconsistent with the general argument we have advanced with respect to sites on land. Our recommendation must therefore be that the second phase of the Department of Communications' Initiative on the Management of Archaeological Resources could usefully include:

- (a) a systematic investigation of the extent and the general significance of underwater archaeological sites of all descriptions throughout Canada; and
- (b) a serious survey of the specific and/or generalized claims that are made to the ownership and use of these sites by members of the various "prime policy publics" described in this Report.

Section V: THE ABORIGINAL PEOPLES AND ARCHAEOLOGICAL
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Section V: THE ABORIGINAL PEOPLES AND ARCHAEOLOGICAL
RESOURCES

A. Introduction

The reformulation of national policy with respect to archaeological heritage in Canada has to consider the role and responsibilities of the aboriginal peoples in Canada. We have argued throughout this Report for the involvement of all interested social groups and organizations in the efforts to protect and manage the archaeological resources of this country. The specific interests of the aboriginal groups in the sites and materials under discussion need to be encouraged, as they provide highly committed support to the overall goal of proper protection and practical management of archaeological heritage.

This section of the report examines the role aboriginal peoples in Canada have played and propose to play in the management of archaeological resources. This examination is divided into three areas:

- I) Identifying the goals and objectives of native people relative to their role in the ownership and management of archaeological resources in Canada;
- II) examining the effect of both the comprehensive claims process and constitution conference process on the national policy on management of archaeological resources; and

- III) Identifying and examining current native initiatives undertaken with respect to protection and preservation of archaeological resources as negotiated within the two political forums.

The scope of this discussion is limited to the initiatives undertaken by native organizations working within the two political forums identified below. We note that there are other native initiatives which should be considered, such as the projects and policies of Indian band governments in Southern Canada. It is beyond the scope of this section to examine these projects and identify how they could affect national policy. It is recommended that further research in this area be undertaken in the second phase.

The heritage of Canada is often presented as if it encompasses, or is expressible as, the heritage of the aboriginal peoples of Canada. For international and Canadian visitors to the 1988 Olympic games in Calgary, the Glenbow-Alberta Institute will be mounting a special Canadian heritage exhibition with one of the most extensive collections of Indian and Inuit artifacts making up a large part of the display. A significant part of the archaeological record of Canada is the record of the use and occupancy of the lands and resources by aboriginal peoples. The special relationship to the land and its resources which has been cultivated over time means more than 'cultural heritage' to aboriginal peoples. It is an expression of the special rights and responsibilities aboriginal peoples claim to have with respect to the land, its resources and accordingly, the archaeological resources which provide the evidence of their use and occupancy.

In the struggle for self-determination, the goals and objectives of the aboriginal peoples have included as a primary goal the preservation and control over aboriginal cultural heritage. Despite the cultural diversity among the aboriginal groups, there are three objectives which are common to their views on archaeological resources:

- I) to preserve and protect sites of spiritual, religious or cultural significance;
- II) to retain archaeological artifacts and to establish native owned and operated custodial institutions with financial assistance from government;
- III) to train and involve native people in the research, maintenance and custodial work

of archaeology and museology.

It is useful for the objectives of the national policy to fully recognize the role and responsibilities of the aboriginal peoples, not only as interested citizens, but due to their special relation to archaeological resources. The recognition of this relationship and the rights emanating from them is evolving out of the aboriginal peoples' dialogue with the federal, provincial and territorial governments.

This dialogue is comprised of two major processes. In both, government and aboriginal organizations attempt to define the scope of the special rights and responsibilities aboriginal peoples have with respect to the land, its resources, and political development within the Canadian federal system. These two forums are:

- I) comprehensive land claims; and
- II) political development through the Constitution.

The outcome of the constitutional talks and the comprehensive claims negotiations undoubtedly will have a significant impact in shaping federal policy with respect to the management of the archaeological sites and objects in Canada.

The archaeology provisions of the comprehensive claim of the Inuit of the Eastern Arctic is especially interesting as it appears to almost fully reflect the objectives of aboriginal peoples and has received the endorsement of the federal government. The issue of legal title to the archaeological specimens has been left to be resolved in the Final Agreement. A national policy on the management of archaeological resources has to include the participation of aboriginal peoples. It should be recognized that aboriginal organizations involved in the formulation of the policy will expect nothing less than that already agreed to by the federal government in the archaeology provisions of the Inuit land claim.

B. Goals and Objectives

1. Retention of Artifacts and the Establishment of Aboriginal Custodial Institutions

"The locks of Louis Riel remain hanging in a museum in Toronto. We have no right to that heritage which is ours." (Statement by Duke Redbird at the Joint Working Group meeting of government and national native organizations prior to the First Ministers' Conference in March 1983.)

Aboriginal peoples want the right to own the artifacts that are integral to their own cultural record. The organizations representing the Indian, Metis and Inuit people want their artifacts to teach their children about their past and to preserve their cultures for the future. They are proud of their cultures and equally as proud to share their traditions and history with others, but not at the expense of their own people.

"It is not until recently that people started calling [graves] archaeological property...these things are very insulting to our people...we are made into classroom specimens and we're not. We are existing people. We don't believe that just because we're different from you, you have the right to dig up our graves...it's not right...we want to keep our heritage. It is an essential part of our makeup. These are ancestral rights and not up for grabs for academic interests sake..." (Comment by Zebedee Nungak, an Inuk from Northern Quebec at the Joint Working Group meeting)

In the past, response by archaeologists and government to this demand has focused upon several concerns:

- I) the public responsibility to preserve and make available artifacts of all Canadians;
- II) the refutation of the aboriginal peoples' claim of "legal" ownership to the artifacts;
- III) the assemblage of artifacts from a site yields information about cultural behavior, not individual artifacts, and splitting up a collection between native community museums would mean archaeologists studying the cultural behavior in the past would be required to travel to more than one repository; and

- iv) certain artifacts require specific and expert attention because of their fragility and should not be removed from their present custodial institution.

The responses by aboriginal peoples to these concerns allows us to clarify a number of underlying differences between what archaeology means to professional archaeologists and to aboriginal peoples.

The "compelling public interest" argument is well known to aboriginal groups. Clearly while it is in the interest of all Canadians to have access to these artifacts, it should not be done to the exclusion of those who have a direct and legal relationship with the resources. The aboriginal claim for repatriation of artifacts has not been proposed to take the artifacts away from the public. The purpose is to see that the archaeological resources be shared in a manner acceptable to the aboriginal peoples.

"There is more of us in museums in Southern Canada than in graves in Northern Canada...we have lost so much and we want to preserve whatever is left...we are to about to part with it unless we have a very good reason for doing so." (Zebedee Nungak at the Joint Working Group meeting)

The question of the "legal" title to the objects and sites has yet to be resolved (see for example the section on property laws). While the aboriginal people claim legal title, the government contests, claiming it has title. It is expected the issue will be resolved through the two political processes discussed later in the paper.

The third concern is one often presented by archaeologists and other researchers in the field. It raises the fundamental question of the balance between the importance of the archaeologists' obtaining knowledge and the aboriginal peoples' use. It is the position of the aboriginal peoples that, while the interpretation of artifacts is of importance, it is equally important for spiritual, cultural and religious reasons that a significant portion of the archaeological record remain with aboriginal peoples for their own interpretive, informational and educational use (see section on Definitions and Keywords). The Canadian Society for Archaeology Abroad stressed to the Federal Cultural Policy Review Committee that "[a]rchaeologists have long moved beyond this question, for collecting objects is no longer the ultimate goal of archaeology, but rather the acquisition of knowledge about past cultures." (Federal Cultural Policy Review Committee, 1982:79).

The aboriginal response to this has been two-fold. If the Society accurately reflects the opinion of archaeologists throughout Canada then it should not matter who holds the artifacts. The aboriginal peoples have not denied the importance and the need for cataloguing the artifacts at the central repository (National Museum of Man). With archaeological artifacts catalogued and their locations known, there is little in the way of preventing a researcher access to the information he or she requires. Secondly, aboriginal peoples view and value archaeological objects in quite a different way from archaeologists. The aboriginal peoples do not see their culture as one preserved in the 'past', caught in time to be analyzed, rather they envision their archaeological record as a dynamic part of their thriving culture which must be available to all their people.

The fourth concern is one shared by aboriginal groups. They realize that their cultural record will be destroyed without the required skills in preservation and proper custodial institutions. The development of these skills and institutions is dependent on adequate financing. Aboriginal reliance on financial assistance from government is shared with many other Canadians. Many groups are vying for a limited source of funding. At present, there is no certainty nor long-term funding capabilities. Despite these funding restrictions, aboriginal groups have attempted to remedy the separation of their people from their cultural heritage displayed in urban centres by establishing small scale museums and limited training programs. With assistance from government, national aboriginal organizations and private donations, the Inuit Cultural Institute at Eskimo Point, NWT, was created. The Institute plays a vital role in Inuit culture and education. The Institute is in the process of establishing an Inuit Museum University, where artifacts would be maintained and specialists would be available to train Inuit in all aspects of archaeology and museology.

2. Preservation and Protection of Sites

Their burial grounds, abandoned villages, outpost camps and cairns have always been places of spiritual and cultural importance to aboriginal peoples. It is because of this symbolic significance of these areas that aboriginal peoples have continued to preserve and protect them. A variety of situations endanger the integrity of these unique sites. For aboriginal peoples, it has become a struggle to retain their cultural identities. Fear has prompted the Haida Indians' protest against the loggers and developers who propose to destroy the Haida's sacred forests and the actions of the Bella Coola Indians to counteract the vandalism and

disrespect by non-natives of their ancestral petroglyphs.

The aboriginal groups are utilizing many avenues, including the comprehensive claims process, to ensure that unique sites will not be destroyed further. The identification of the special areas and provisions of responsibility for the protection and preservation of the sites have been negotiated. As well, the aboriginal groups continue to take the opportunity afforded through the constitutional conferences to regain control in the management of the primary sites. For some aboriginal groups, time was of the essence and they acted independently of both of these forums. One example of this is the Historic Sites Project in Baker Lake, NWT.

In 1983, the Inuit in the community, with financial assistance from the territorial government, began the project of identifying sites where the Caribou Eskimo, Thule and Paleo-Eskimos occupied the land. The benefits of the project have been far-reaching. The educational aspect of the project has been very rewarding:

"In the realm of education, a collection of photographs and learning materials are being made up for the school and the school children will be able to take field trips to see archaeological sites. They will be learning about their heritage in an exciting and concrete way."
(Cheryl Kabloona, "Baker Lake's Historic Sites Project", Inuktitut, winter, 1984: 25)

The ability to share the widespread information with visitors to the community and to develop an appreciation of the Inuit culture is more than just an economic benefit. The most pertinent outcome deals with the preservation and protection of the sites, "...now that the sites are marked with signs and publicized, we hope that people will be less likely to destroy them carelessly through ignorance. They should be preserved for all to see, now and in the future."
(Ibid.)

Increasing access to these unpopulated wilderness areas has provided the curious and enthusiastic souvenir hunter with a plentiful bounty of archaeological resources. While it is recognized these "pot-hunters" are certainly a problem, a more insidious one has also arisen. Developers who are either unaware or, in some cases, aware but unconcerned have seriously disturbed primary sites. Legislative reform has been suggested by some archaeologists to alleviate this problem:

"From an archaeologist's perspective, one answer is that all development proposals should be

reviewed for their possible impacts on archaeological sites...in areas where no prior archaeological work has been done, developers should be prepared to provide for adequate inventories of archaeological sites." (Charles D. Arnold, "Archaeology in the Northwest Territories: An Intellectual Context", Northern Perspectives, volume 10, number 6, November-December 1982: 3)

Avataq, a cultural institute operated and owned by Inuit in Northern Quebec, has been very active in the preservation and protection of sites endangered by new construction activity. Their work has included site surveying of a new village, Umiujag, to determine whether construction will pose a potential threat to any existing sites. Avataq has also been contracted by Transport Quebec to conduct site survey studies in relation to nine proposed airstrip developments.

The other issue of concern to aboriginal people is the "archaeologist". The lack of understanding as to what archaeology is and what it is the archaeologist is actually doing has created a great degree of mistrust between aboriginal peoples and the archaeologist:

"Many Inuit do not know how useful archaeology is because no one ever bothered to explain its significance to them. All they ever see is some archaeologists that come during the summertime then leave... Time and time again the Inuit have witnessed various scientists doing a study that seemed useless, even foolish and senseless to Inuit because they aren't told what is happening or they can't comprehend. It would seem to make more sense if some of the scientists even made one little practical gesture in the eyes of the local people. It doesn't seem fair to spend all kinds of money on a particular research problem and be of no value to a local community in any small way." (Comment made by Daniel Weetaluktuk from: "Bill Kemp in Memory of Daniel", Northern Perspectives, volume 10, number 6, November-December 1982: 11)

The participation of aboriginal peoples in the management of sites may resolve this difficulty and encourage a better working relationship between aboriginal peoples and archaeologists than the existing one. At an Elders Conference held in the Northwest Territories in 1981, some of the elders present spoke of the experience of working with the archaeologists. Markoosie Keatalnak "...has seen how many artifacts were taken from one excavation. Inuit burial sites have been destroyed and some archaeologists even took the skeletons with them. Elders were also aware that some

archaeologists had hidden artifacts to be shipped south later." (Joanassie Ningulak, "Avataq Activities", Inuktitut, Fall 1984: 41-42).

3. Training Programs

Aboriginal participation in the protection and preservation of archaeological sites and objects requires specific skills and knowledge of archaeology and museology that are not readily acquired. There is a desire on the part of the aboriginal population to develop the essential skills concurrently with the repatriation of archaeological objects and shared control of archaeological sites.

In order to develop the required skills and acquire the knowledge of archaeological resource protection, preservation and management generally, aboriginal peoples acknowledge the need for an extensive training initiative. As noted earlier, the commitment from government to financially assist in training is as difficult to obtain as the commitment to finance the construction of more custodial institutions. Nevertheless, aboriginal peoples continue to make their submissions. The forum of comprehensive land claims is being used as a means to ensure that the aboriginal role in archaeological resource management is more than that of field research labourers.

The aboriginal peoples' interpretation of their past culture has not always been sought after by archaeologists. However, aboriginal groups insist that the aboriginal interpretation is valid and extremely important to all involved in archaeological research. It is anticipated that their participation will introduce archaeologists to this valuable perspective. This concern on the part of the aboriginal peoples with participation in archaeology was quite apparent at the recent convention of the Canadian Archaeological Association in Toronto.

During the work at the Baker Lake Historic Sites project, elders played a crucial part in the project's success:

"These older people have grown up on the land and they had used and seen various kinds of shelters, caches, cooking areas and traps like those at our sites. They were able to identify features of the sites that we and the archaeologists hadn't understood." (Kabloona, 1984:24)

Daniel Weetaluktuk, a self-educated archaeologist from Northern Quebec, was very concerned about the role of Inuit in archaeology. He saw the need for the inclusion of the people, especially the elders, in the day-to-day process of archaeological interpretation and the need for consultation with nearby communities where projects were undertaken. Of primary importance was the need for archaeology "...to attract the imagination of local people...such as attracting Inuit to participate in all phases of archaeological work. He realized his goal could never be accomplished as long as outside scientists maintained control over arctic archaeology. Daniel saw the immediate solution for effective Inuit participation in northern science to be linked to individualized training. He felt that a critical gap between today's immediate needs and the long-term goals of northern education had to be filled...He suggested as an interim solution his own method of learning; close associations between interested Inuit and capable professionals." (Supra fn.9: 12)

C. Political Forums: Comprehensive Land Claims and the Constitution/Constitutional Amendments

The relationship which has evolved between aboriginal peoples of Canada and government is presently undergoing great change. No longer are aboriginal groups content to have their lifestyles controlled by the policies and decisions of government. The dialogue between government and aboriginal groups is focussing upon self-determination through self-government. This is the substance of the discussions at the First Minister's Conference on Aboriginal Rights and in the comprehensive land claims process. In both of these forums, aboriginal peoples are negotiating for control of their lives and cultures based on their aboriginal rights.

The outcome of the constitutional talks and the comprehensive claims negotiations undoubtedly will have a significant impact in shaping federal policy with respect to the management of archaeological sites and resources. It is necessary that national policy fully recognize the role and responsibilities of the aboriginal peoples, not only as interested citizens, but because of their special title to the lands on which primary sites are located.

It is useful to review, in summary format, the development of the special rights and the political forums.

The native claim of the right of an "aboriginal title" is more commonly known as an "aboriginal rights" claim. Prior to and following Confederation, almost half of the native

population signed treaties with the government. For those groups who signed after Confederation it is clear that the primary purpose of the government was to extinguish "the personal and usufructuary rights" to the lands ceded to the government (Cumming and Mickenburg, 1972). There is some question whether this was the primary purpose for treaties concluded prior to Confederation. The aboriginal half of the population without treaties continues to assert an "aboriginal title" as a means to effective participation in socio-economic, cultural spiritual and political matters. Of utmost importance is the right to be self-determining; to be empowered to control one's own life today and in the future. This includes controlling development where it is considered to be environmentally hazardous to the land, wildlife and aboriginal lifestyle.

"We have never been unwilling to share our resources or dividends from development, but we would like in return to have our fair share. We require exclusive right of ownership and control of our existing lands, and of those additional lands required to meet our population growth and cultural needs...we do need immediate assurance there will still be land and economic opportunities available once an agreement is reached. We include, but do not limit our focus to...the natural forest for religious, cultural and hunting use; consultation in land and resource planning with specific references on former village sites, burial and archaeological sites, areas used for religious and ceremonial purposes, Federal and Provincial Crown lands; co-management in areas such as fisheries, logging, parks and traditional sites. Our request for a moratorium on developing areas of concern to us should be respected and acted upon to ensure there will be something left for us to recognize our heritage and develop a future after an agreement is reached." (Submission by Musqueam Nation, September, 1985 to the Task Force Review on Comprehensive Land Claims Policy: 14-15)

Until very recently, the response to this claim by the federal government and its provincial counterparts was to deny that these aboriginal rights meant anything in law. The history of the struggle of aboriginal groups to have their aboriginal title recognized is a long and bitter one (c.f. Lester, 1973). It is only in the past decade or so that the issue of legal aboriginal title has taken on significance at the political level. The Supreme Court's decision in the Calder Case (S.C.R. 313; 34 D.L.R. (3d): 145) and the Berger Inquiry into the MacKenzie Valley Pipeline catalyzed a reformulation of federal policy in relation to aboriginal rights. Aboriginal peoples who had not signed treaties and whose rights had not been extinguished in legislation or 'superceded by law' were now eligible to be a part of the

comprehensive land claims process. (This policy was recently the subject of a Task Force Report.) Presently there are six groups negotiating with the federal government (including the provincial and territorial governments where applicable) and fifteen awaiting approval of their claims. Those aboriginal groups who can provide evidence (archaeological and historical record) to demonstrate their use and occupancy of the lands and resources to which they claim an aboriginal title will be accepted.

The comprehensive land claims process has not been the only avenue aboriginal peoples have taken to gain recognition of their rights of self-determination. Aboriginal peoples in Canada succeeded in persuading the government of Canada and the ten provincial governments of the need for the recognition and constitutional entrenchment of the aboriginal and treaty rights of the Indians, Metis and Inuit (Constitution Act, 1982, s. 35). Section 37 of the Constitution committed the federal and provincial governments to negotiate and define these rights with aboriginal groups at First Minister's constitutional conferences.

At the constitutional conference in March 1983, several constitutional amendments were agreed to by the aboriginal groups and governments. They included an amendment which would include for greater certainty as a "treaty right", rights acquired by way of existing and future land claims agreements. The participants also agreed to a further set of First Minister's Conference on Aboriginal Rights. The most recent First Minister's Conference held April 3 and 4 1985 failed to reach an agreement on a federal proposal to amend the Constitution to include a principle right to self-government. Despite the lack of consensus on the wording of the amendment, the Conference was generally hailed as providing a basis for the entrenchment of aboriginal rights in the Constitution. The argument now revolves around the how of self-government rather than the why (see Toronto Star, April 6, 1985; Globe and Mail, April 4, 1985).

1. Constitutional Amendment Process

As discussed above, the First Minister's Conference is an ongoing process. The last in the set of conferences is to be held in 1987. It is expected, however, that the dialogue will continue until the issues are resolved. It is also expected that the discussions will begin to focus on specific issues as they relate to land and resources, self-government, and economic and social development. It is very likely that self-government will be recognized in the Constitution as a right of aboriginal peoples thereby providing the necessary means by which aboriginal cultural heritage can be preserved

for aboriginal peoples.

Aboriginal participants in the process have identified the need to repatriate aboriginal artifacts and to control archaeological sites as topics to be addressed in this forum. It is worthwhile to take note of the process and the fact that its outcome will have a significant impact on the national archaeological resource management policy.

2. Comprehensive Land Claims Process

Of the two processes identified, it is possible that this one will have the most immediate impact on the national archaeology policy. The scope of the negotiations have gone beyond the barriers of past treaties and into broad socio-economic and cultural issues. Aboriginal groups are no longer satisfied with the notion of "a bit of money and a bit of land". This has been increasingly obvious in the position papers of various tribal groups during their respective negotiations. For those who have yet to reach a final agreement, it is clear that demand for control over their lives forms the basis of their positions:

"The main objective of the Tribal Council is to move toward self-government...other objectives are to preserve and promote the Native heritage and identify the Carrier and Sekani people of the north central British Columbia..." (Submission by the Carrier-Sekani Tribal Council to the Task Force on Comprehensive Claims, Vancouver, B.C. October 21, 1985:7)

It has not always been recognized that aboriginal peoples would have to be given decision-making powers in matters that directly affect their lives. However, the recent task force review of the government policy on comprehensive claims recommends greater participation of aboriginal groups in the decision-making processes and a broader scope of issues to be negotiated:

"A claims policy based on the affirmation of the special rights of aboriginal peoples rather than on assimilation must respect the unique cultural values and traditions of aboriginal societies. Consistent with the objectives of the proposed comprehensive claims policy, the scope of negotiations should include political, social, and cultural matters. Aboriginal peoples should exercise the greatest possible control over matters that directly affect the preservation

and enhancement of their culture. Future claims agreements will define a new relationship between the governments and the aboriginal peoples affected, based on the recognition and affirmation of their unique rights. In addition to providing a framework of certainty for land and an opportunity for economic self-sufficiency, agreements must also include provisions that address the social and cultural needs of aboriginal societies." (Task Force to Review Comprehensive Claims Policy, Living Treaties: Lasting Agreements, Report of the Task Force to Review Comprehensive Claims Policy Ottawa: DINA, 1985: 72)

In relation to archaeology, neither of the two comprehensive claim agreements completed include specific archaeological provisions. This deletion can certainly be understood as these agreements are by-products of the old, more limiting, comprehensive policy. The Makivik Corporation, which represents the Inuit living in Northern Quebec, has called for the repatriation of their artifacts, even though it was not a specific provision of the final agreement with the government. With claims compensation money, Makivik and the Kativik regional government (established under the agreement) founded Avataq. Under the auspices of Avataq, two museums are being constructed in the communities of Povungnituk (Saputik Museum) and Inukjuak (Avataq Museum). The Inuit organization has also has some input into preserving and protecting the archaeological sites, either as land owner or as member of land and resource management bodies. The same is true for the Inuvialuit (COPE) who also have signed an agreement with the federal government.

Under current negotiations, the Dene and Metis have identified general areas related to archaeology for negotiation. The areas of concern include the identification and protection of heritage resources (defined as including archaeological and historic places, sites, artifacts, records, and religious objects); the need to be actively involved in their management; participation in any heritage policy or legislation formulation; representation on any boards or administering agencies; and employment preference at public sites and museums in the settlement area.

The Task Force has recommended specific changes to the comprehensive claims policy with respect to archaeology:

"Thus, agreements could include cultural provisions concerning archaeological activity in traditional lands, the return of cultural artifacts, support for culturally relevant education, the use and teaching of aboriginal

languages, and aboriginal communications."

It appears the recommendations reflect the approach taken by one aboriginal group already in the process of negotiating its comprehensive claim. Looking beyond the precedents of past comprehensive claim agreements, the Tungavik Federation of Nunavut (TFN) appears to have broken new ground.

D. Archaeological Provisions of the Tungavik Federation of Nunavut Land Claims Agreement-in-Principle

The Tungavik Federation represents the Inuit - the land north and east of the tree line in the NWT. Their approach has been to seek control over their lives through participation on boards of management established in the agreement dealing with land and water use, resource development, land and wildlife management, education, health and housing to name a few. These boards involve the territorial and federal government and Inuit as equal members.

"...for Inuit to believe in the effectiveness of these bodies, they must have more than just advisory powers. Our experience, and the experience of other native groups in Canada, has shown that advisory powers are ineffectual. These boards and any others which are established through the TFN negotiations must have decision-making powers." (Tungavik Federation of Nunavut. Submission to the Task Force to Review Comprehensive Claims Policy, September 27, 1985:38)

The TFN recently negotiated the archaeological provisions of the land claims agreement with the federal government. This agreement appears to be fully endorsed by the Task Force as evidenced by its recommendations. It is very likely, pending future claims, that this will provide a model of the relationship and role aboriginal people can have in the management of archaeological resources.

The issue of who "owns" the artifacts has not been resolved in the provisions. Inuit continue to claim their unextinguished right to all archaeological resources be they on the land, underwater or in the central repository of the National Museum of Man. It has been suggested that this matter will be resolved in the final agreement.

The major points of the Agreement-in-Principle are:

- 1) It is agreed that the identification, protection and conservation of archaeological sites and objects is of primary importance to Inuit and their involvement in the management of the archaeological resources is without question.
- 2) The responsibility for the management of archaeological sites, burial grounds, outstanding and unique landmarks, traditional harvesting areas, outpost camps, archaeological objects is presently shared by the federal and territorial governments as identified in the existing legislation. This responsibility will have to be balanced with the responsibilities of Inuit for the same, as land owners of vast parts of Nunavut and as active members on the administrative bodies responsible for these matters in the Nunavut area.
- 3) A permit system for archaeological research will be established which requires researchers to involve Inuit in all aspects of the work where feasible and to report to nearby communities at the end of research projects.
- 4) It is agreed that while it is essential that archaeological objects be catalogued and registered, it is not essential that they remain in the central repository in Ottawa. Both government and Inuit agree that there is a need to establish facilities in the Nunavut which will be responsible for the management and conservation of a representative portion of the archaeological record.
- 5) The development of the Inuit Heritage Trust is provided for. The Trust's responsibilities will increase to encompass the conservation, maintenance, restoration and display of archaeological sites and artifacts throughout Nunavut. In addition, the Trust will also be the agency responsible for administering and carrying out archaeological work in Nunavut. The requirement for a long-term training programme was addressed and agreed to by both parties.

The interim provisions ensure the participation of Inuit in the development of any archaeological policy pertaining to the North, amendments to the existing legislation and regulations including sanctions against unauthorized disturbance of sites and unauthorized dealing in archaeological objects.

It is anticipated that the cumulative effect of these provisions will result in greater participation of Inuit and the communities in the archaeological research undertaken.

It is apparent that the Inuit have attempted and succeeded in having government recognize the special role aboriginal people strive for in preserving and interpreting their cultural heritage. It is this role that must be acknowledged and endorsed in any national policy with respect to the management of archaeological resources.

Section VI: MARKET DYNAMICS AND THE VALORIZATION PROCESS

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Section VI: VALORIZATION AND MARKET DYNAMICS

A. Introduction

Out of the total set of archaeological objects from a culture a small percentage have generally been judged to have exceptional value. Value is attributed to these objects according to a number of criteria which may be inherent in or external to the object itself. The type of value ascribed has, historically, directly affected the monetary value of an object and in turn the way it is transferred from owner to owner (commercial marketing, donation to a public institution, etc.). The valorization of archaeological objects and the dynamics of the market in those objects deemed to be 'art' are, then, closely interrelated issues.

The first part of this section will address the types of value which are assigned to individual archaeological artifacts with special emphasis on aesthetic valorization - that is, archaeological objects recontextualized as 'works of art'. This category deserves particular attention for several reasons. In the first place it is 'art objects' which, because of their aesthetic and expressive power, most easily attract public attention. They are therefore particularly useful in contexts where archaeological material is used to convey a sense of heritage and to promote tourism.

'Art' objects are featured in tourist brochures and in posters advertising museums and national parks and are predominantly displayed in publications on archaeology and

native art. For example, the objects illustrated in the large colour plates in the National Museum of Man's most widely distributed book about Canadian archaeology, Six Chapters of Canada's Prehistory (Wright, 1976), are those objects which are deemed to have particular qualities of craftsmanship or aesthetic value. Such pieces are also often the focal points of museum displays and special exhibitions. Thus the general public is more aware of aesthetically pleasing objects than of other archaeological material.

Archaeological objects which have aesthetic as well as scientific value are specifically in demand both by museums and private collectors. Considerably higher monetary value is ascribed to them by the commercial market and they become especially vulnerable to illegal activities and to export.

In order to have a clear idea of the specific criteria which have been applied in defining an archaeological object as a work of art the discussion will begin with a brief historical account of the definitions which are now in use. A historical perspective is useful because the motivations of contemporary collectors, both private and public, are heavily influenced by the conceptual legacy of past centuries.

The second part of this section will focus on the motivations and practices of collectors of archaeological artifacts and on the commercial market in archaeological material.

B. The Collection of Archaeological Objects: A Historical Perspective

We noted in section 2 that the vast number of Canada's archaeological resources relate to occupations by aboriginal cultures. The collecting of aboriginal artifacts, whether archaeological or ethnographic, has been an aspect of the interaction between Canadian aboriginal people and European settlers since the earliest period of contact. Initially, such objects were collected as 'curiosities'; and were valued not as art, but as rare and exotic objects. Cabinets of curiosities in Europe included North American archaeological artifacts together with ethnological and natural history specimens.

During much of the nineteenth century the aims of collectors were largely scientific, and native-made objects were used to substantiate evolutionary theories of social development. Throughout the early part of contact and settlement European settlers and visitors in North America commonly sought out artifacts to send back to local museums and learned societies in their countries of origin. For

example, Edward Walsh, a doctor in the British Army who was in Canada at the beginning of the nineteenth century, recorded the discovery of "a few rude figures in baked earth" in Indian burial mounds and attempted to collect objects such as these for English museums. A contemporary of Walsh's, Colonel Jasper Grant, included Indian arrowheads with the ethnographic material in his 'Indian cabinet'. (Phillips, 1984) In the middle of the nineteenth century Sir Daniel Wilson was regularly sending Indian arrowheads and other archaeological specimens to the National Society for the Antiquities of Scotland, to name only one of many other examples.

Right up until the middle of this century European scholars working in Canada continued to send large collections of Canadian archaeological material, especially from the Arctic, to museums in England, France, Denmark and other European countries (see for example the material collected by the Fifth Thule expedition of 1921-24 now in Copenhagen). Markets for archaeological specimens have existed in Europe and North America from the eighteenth century on, and the records of older museums on both continents testify to the purchase of North American native archaeological and ethnographic items from private individuals and at auction. The sums paid for such items were not high, but it is noteworthy that a commerce in such materials is long established.

The radical stylistic changes in the European fine art world which took place at the beginning of the twentieth century brought about shifts in taste which profoundly affected the interests of private collectors and museums - and, in turn, the commercial market. 'Tribal' art began to be collected side by side with Western fine art by both public art galleries and private individuals. The appropriation of tribal artifacts to the Western category of fine art has not, however, been a uniform process. At the beginning of the century Western artists and collectors were largely interested in African and Oceanic art. Interest in the traditional arts of the native peoples of North America has grown steadily during this century, but it has not been until the last few decades that art galleries in Europe and North America began to exhibit and collect native American ethnographic and archaeological material. The first, and for a long time, only major exhibition of native American art in an art museum was not held until the 1940's (at the Museum of Modern Art in New York). There were few major publications on or exhibitions of North American native art in comparison to other types of tribal art until the 1960's.

An awareness of this history has great relevance for the present discussion. Because the category of 'art' is one which has traditionally been associated with wealth and status in Western cultures, the identification of an object

as a work of art has had a clear effect on its monetary worth. As native-made objects, whether archaeological or ethnographic, became seen as works of art the magnitude of their monetary value increased accordingly.

The type of value attributed to an individual archaeological artifact is, then, directly affected by historical changes in the social sciences, art history, and taste. The "rude images" collected by Edmund Walsh as scientific curiosities in 1806 would have had a modest monetary value in the auction houses of London at the time. These same pieces today would be worth many thousands of dollars due to an increased attribution of archaeological significance, changes in taste which assign them value as art, and also because of their increased rarity.

C. Valorization

The factors which affect the value of individual archaeological objects are to a large extent the legacy of the history which has been briefly outlined above. As we shall see, some institutional and private collectors are still motivated by a taste for the unique and the curious while others value scientific and aesthetic content more highly.

The factors which affect value placed on objects by public and private collectors can be listed as follows:

1. Aesthetic Quality
2. Rarity or Uniqueness
3. Documentation
4. Fashion or Taste
5. Exhibition History
6. Circumstantial Phenomena
7. Local or National Consciousness of Heritage
8. A High Sale Price for a similar object
9. Condition

We will now discuss them in more detail.

1. Aesthetic Quality:

Attempts to distinguish art from non-art encounters considerable difficulty when dealing with foreign cultures. The pioneering work of Boas early in this century is still fundamental (1927). Boas emphasized that a work of art was the product of a skilled person creating according to certain learned conventions (a style). The objects made by such skilled individuals within a particular stylistic tradition have qualities of regularity and satisfying form which produce an "affective response" in the viewer (Anderson, 1979:13-18). The expansion of cultural horizons in Europe and North America in this century has meant that a highly ethnocentric emphasis on naturalistic representation has been replaced with a far more eclectic appreciation for a wide range of formal approaches. This has made it possible for Western art audiences to experience an affective response to many different world art traditions including objects made by prehistoric aboriginal peoples.

The identification of prehistoric objects as 'art' is not a static process. Objects not recognized as art in one decade may be accepted as such in the next. The category 'art' is itself a Western concept. Although it is generally recognized that aesthetic experience and an appreciation of beauty are present in every human culture, there is no separate word or category for art in the languages of the descendants of the makers of the objects under discussion. It is Western art critics and scholars who select from among the material products of aboriginal peoples those which are considered to meet aesthetic criteria. It is important to note, too, that increased understanding of the aesthetic standards applied by aboriginal people to their cultural products has been a focus of anthropological and art-historical work in recent decades.

An example of the process of reevaluation which is constantly going on is a recent exhibition of prehistoric Woodlands Indian art of the United States which opened in the National Gallery of Art in Washington, D.C. in 1985, the first such exhibition to be held in that institution. (Brose, Brown and Penney, 1985) The catalogue of the exhibition was brought out by Harry Abrams, a leading art book publisher, and featured full-page colour plates of stone spear weights known as bannerstones as well as of spearpoints and other weapon and tool forms. These were discussed as "sumptuary weapons" to which extraordinary value had been attached by the original producers and which were used as offerings in burial mounds. The pieces were photographed separately with backlighting that underscored the 'purity of their abstract forms' in the same manner as is 'fine art' sculpture. Previous to this publication the same objects had usually been published in small black and white photographs of poor

quality, often grouped together so that their individual shapes could not easily be seen.

The second criterion which influences the identification of an object as a work of art is expressive content. This is usually contained in the imagery, or iconographic features displayed by an object. Such features are valued both by scientists for the information they provide about the producer cultures and by art lovers for the communicative value they lend to a piece. In this respect, there is a direct link between scholarly research and art collecting.

A good example of this link is the broadening appreciation in the general public for prehistoric Inuit art, a category known only to specialist scholars until fairly recently. The popularity of contemporary Inuit art in the 1950's and 60's seems to be directly related to this 'discovery'. A major Canadian collector of contemporary Inuit sculpture also owns about 50 prehistoric Alaskan Eskimo pieces which he collected during the 1970's. He values them for their artistic qualities and also for their cultural interest - "one is aware", he says, "of this tremendous culture that has been going on for thousands of years". In his appreciation of pieces which have both formal qualities and interesting imagery this collector is representative of a general art historical tendency to identify as 'masterpieces' - the most highly valued works of art - those artifacts which display both outstanding craftsmanship and exceptional expressive content.

2. Rarity and Uniqueness

Rarity and uniqueness are attributes of objects which lead them to be especially valued by both scholars and collectors. Almost every museum curator interviewed said that his or her acquisition policy placed a priority on the acquisition of unique or rare pieces. One curator stated that although she would not normally issue a tax credit for the donation of an archaeological object because she adheres to the CAA guidelines (see Section I), she would probably make an exception if she were offered something "really unique". Another said that he could not accept all the donations of archaeological objects offered but that he discriminated in favour of unique or rare pieces. Collectors too, used these words to describe their favourite pieces. Rarity is often associated with age. Earlier artifacts are generally in the smallest supply and therefore more highly valued by both scholars and artifact collectors.

3. Documentation

The firm identification of the date or place of origin of an object, usually by associated written documents, is a further criterion of value. This aspect is of particular concern to scholars.

Many professional archaeologists do not place any value on artifacts which have not been professionally excavated because it is this documentation which makes them meaningful. One museum curator said that he would not be interested in acquiring further archaeological material unless the site were known. The contrast in attitude at its most extreme was expressed by one scholar of Inuit art who said that, "for archaeologists knowledge of the site is essential; for collectors it is utterly unimportant".

According to the evidence, however, private collectors appear to fall into different groups. One collector of Inuit art said that he valued inherent 'artistic' qualities the most but that a knowledge of the source of an object lent additional value. A museum curator made a distinction between two types of amateur collectors of Plains Indian artifacts. One group, he said, was "proud of the purity of their collections" and knew the sites from which their artifacts came. Many collectors of this type attach special value to objects because they had the excitement of discovering them themselves. Others buy at auction or from dealers and don't worry about the context of the pieces.

4. Fashion or Taste

The dominant schools of art in the West at a given moment have a great influence on what historical or non-Western art traditions are particularly appreciated. Usually the taste for a particular exotic art is a reflection of the formal traits exhibited by Western art at the moment.

During the 1930's, for instance, Surrealist artists directed public taste towards Alaskan Inuit masks which displayed assemblages of apparently unrelated shapes and images similar to those being created by Surrealist artists themselves. It is quite likely that minimalist sculpture popular since the 1960's created a climate of taste which allowed the greater appreciation of the economical, abstract forms of prehistoric bannerstones can now be appreciated.

Briefer periods of popularity for non-Western art may also be created by 'blockbuster' exhibitions, or even by

fashions in interior decoration and clothing. The increased value ascribed by such fashion, however, is not usually of long duration.

5. Exhibitions and Publications

Major art exhibitions or widely distributed art publications on a particular group of objects appear to be closely tied to their valorization as art. An important recent example which illustrates this process is the recontextualization of prehistoric Inuit carvings as art. According to the manager of one of the most important commercial galleries dealing in this material, there was a wave of enthusiasm among private collectors for archaeological Eskimo objects during the 1970's. It is probably not coincidental that the first widely available publications containing recent scholarly work on prehistoric Inuit art were brought out just prior to this period. (Taylor and Swinton 1967, Swinton 1972, National Gallery of Art 1970)

Indeed, it is characteristic of all the recent surveys of native art to include archaeological material as 'starting points' in the discussion of stylistic and iconographic development. In this sense no hard distinction is made between archaeological and ethnographic material as evidence in a discussion. The two types of objects are shown together in the same context, although there are generally far fewer archaeological than ethnographic pieces. Indeed, an important theme of many of these exhibitions has been to establish continuities between prehistoric and historic native cultures by demonstrating the stylistic and iconographic links in their aesthetic forms.

The type of publication in which archaeological objects are illustrated, thus, is extremely important to their valorization as art. A revealing example of the importance of a fine art publication context and presentation is the 1975 exhibition of prehistoric Northwest Coast stone sculpture at the Art Gallery of Greater Victoria, Images Stone, B.C. (Duff, 1975). Much of this material had been published a decade earlier by the author of the exhibition catalogue, Wilson Duff, in a scholarly series on anthropology (Duff 1956) and pieces had also been displayed in ethnology museums, but there was no general awareness of the material as 'art'. As a direct result of the exhibition and catalogue, according to one Northwest Coast ethnologist, "people's consciousness (was) raised about works in stone".

As we shall see below, it became a matter for great public concern when two of the works included in this exhibition were exported from Canada. According to the

ethnologist quoted above these pieces had acquired a "special meaning" through the exhibition and their "status was something beyond the dry definition of what (they were)".

6. Circumstantial Phenomena

Dramatic stories regarding the finding of an object, previous ownership by a famous person, or the fame of the finder may also lend special value to an object which will make it more valued by collectors.

7. Local or National Consciousness of Heritage

Policies of particular communities to seek out and collect local archaeological materials are based on valorizations mentioned above and may in turn raise their value above that ascribed by the scholarly community or by the art market.

Most provincial museums which collect archaeological material are interested only in acquiring material from their own provinces. They routinely refer people offering pieces originating in other regions of Canada which are offered to them as gifts or for purchase to the institutions in those provinces.

On a national level, people interviewed expressed the greatest concern over the potential loss from Canada of those pieces which are Canadian in origin. The value of these pieces is particularly great when they are needed to develop displays and programs about Canadian heritage in Canadian museums and thus form essential elements in fulfilling the mandates of these institutions.

8. High Sale Price

High sale prices at auctions for similar objects will raise the value of a piece, particularly if the sale is well publicized. This factor, of course, will itself be a result of some combination of the preceding factors and will in turn affect some of them. In the course of this project we did not have sufficient time to research this aspect. Further study should be undertaken later, particularly in regard to the effects of American auction-house activity regarding Canadian artifacts.

9. Condition

The physical condition of an archaeological artifact affects the value attributed to it. Objects which are unbroken and whose surfaces are unmarred are valued most highly by scholars, dealers and collectors.

D. Archaeological Artifacts as Art: An Empirical Study

In the preceding discussion we outlined the criteria which are applied in the identification of archaeological objects as works of art. The discussion was based on an examination of widely used theoretical and descriptive publications and on the statements of archaeologists, curators and collectors. It is possible to look at the question of valorization in an empirical way as well. We can ask the question: What types of objects have actually been exhibited by art museums or published in art books over the past fifteen years? An analysis of these objects will provide a typology of archaeological objects identified de facto as works of art by art historians, archaeologists, art critics and anthropologists.

In order to carry out this analysis five exhibition catalogues and four books on aboriginal American art were examined. All were publications widely distributed in Canada, and five of them were published by major Canadian museums or federal government departments. The sample is weighted by the fact that two of the publications were entirely devoted to the archaeological art of single provinces, British Columbia and Ontario. (Duff 1975, Reid and Vastokas 1984) The others were general surveys. (National Gallery of Canada 1970, Dickason 1972, Brassier 1976, Coe 1976, Snow 1976, Maurer 1977, Feest 1980, Dockstader n.d.) All the authors were either archaeologists, anthropologists or art historians.

The archaeological objects originating in Canada were listed and grouped according to type and general iconographic content. The sample can be broken down into the following numbers and types of objects:

- 6 miniature masks
- 1 harpoon head with face
- 1 antler fragment with faces
- 1 pipe bowl, abstract
- 22 human effigy pipe bowls
- 23 animal effigy pipe bowls
- 1 spoon with animal effigy
- 1 marlin spike with effigy

5 pipes, abstract
38 bowls with human effigies
26 bowls or mortars with animal effigies
3 clubs with human effigy
16 human or partial human figurines
2 charms with anthropomorphic motifs
18 animal effigies
3 miniature pestles with animal effigies
4 ornaments with animal effigies
1 spindle whorl with zoomorphic motifs
1 carving tool with zoomorphic motifs
1 bow drill with engraved figures
5 combs with animal effigies
18 combs with human figures
2 combs with incised decoration
7 hand mauls, abstract or phallic form
6 hand hammers with human effigies
14 stone clubs, with effigies
5 hammer heads with human effigies
8 hafted hammer heads with animal effigies
3 pottery vessels, incised decoration
1 whalebone club
1 stone mask
3 labrets
1 stone marker
1 stone tool
5 projectile points
7 gorgets, decorated
6 birdstones
1 awl
1 adze
1 tube
1 group of beads and pendants
2 nephrite blades

This simple exercise makes evident a very strong preference of the selecting group for archaeological artifacts which contain recognizable depictions of humans or animals. Out of the total sample of 280 objects only about a fifth are abstract forms. The rest are figurines and masks or pipe, tool, container, or weapon forms embellished with anthropomorphic or zoomorphic effigies. It appears, then, that the presence of easily recognizable imagery (iconographic features) is the single most important valorizing criterion in the recontextualization of archaeological artifacts as art.

The archaeologist William Taylor supports this observation when he writes of an Inuit bow drill:

"Perhaps the most remarkable art object from the Canadian Thule culture, this flat ivory drill bowl is also that culture's most informative single artifact...the remaining subject matter of these confidently-cut incisions refers to summer activities giving the prehistorian a welcome glimpse of the life of his now-silent subjects."
(National Gallery of Art, 1970:no.21)

The authors of the sample texts also explicitly prize the formal qualities of these objects, as indicated by the late anthropologist Wilson Duff's comment about a piece of Northwest Coast sculpture in the sample: "This elegant little bird", he writes, "achieves its artistic strength through economy of line" (National Gallery of Canada 1970:no.29). The meaning of imagery in aboriginal archaeological material, unlike ethnographic objects, cannot be known with certainty. It may therefore be the case that an even higher premium is put on unambiguous representational forms in prehistoric material than in historic material. For such imagery provides a meeting ground of visual forms commonly understood by the "now-silent" peoples of the past and those of today. The enhancement of such imagery which is lent by artistry lends those visual forms additional power. The combination of imagery and artistry present in the objects referred to in the above quotations has led to their being valorized as "masterpieces", as indicated by the title of the exhibition in which they were shown, Masterpieces of Canadian Indian and Inuit Art.

E. The Monetary Evaluation of Archaeological Objects by Curators

We have seen that archaeological objects are assessed by various people to have exceptional curiosity, scholarly, or aesthetic value according to the criteria outlined above. The relationship of these types of valorization to monetary worth will be discussed further in the context of market dynamics in Part F. of this section.

In certain circumstances, however, museum curators are called upon to evaluate the monetary worth of archaeological objects in their collections. As this process constitutes a further aspect of valorization our discussion of that topic would be incomplete without a summary of such museum practices.

Until the early 1980's, many Canadian museums occasionally purchased archaeological material from private individuals, dealers, or auction houses. On these occasions monetary values for specific objects or groups of objects

were established by the agreement between the buyer and seller. In 1982, however, the Canadian Archaeological Association, concerned over a perceived increase in site looting and the commercial sale of archaeological objects, adopted a policy which required its members to refuse to acknowledge monetary value in archaeological material. It recommended:

"that all archaeological specimens shall be agreed to have a nil market value, and that all members of the Association agree to refrain, on pain of expulsion, from the Association, from participation in any discussion, negotiations or agreement which will result in the establishment of monetary values for archaeological specimens or collections from Canadian archaeological sites". (cited in, Winter, 1983)

This policy meant that members of the CAA should refuse to purchase archaeological objects, to accept evaluations of archaeological objects presented by the prospective donors in order to qualify for tax credits, or to cooperate in any other way in a process which placed a monetary value on archaeological material.

As we shall see below, the CAA policy has been generally successful in stopping the purchase of archaeological objects by major Canadian museums. There are a number of other situations, however, in which archaeologists who act as curators of public collections have found it difficult to adhere strictly to the CAA recommendations. These situations will be listed and then commented upon briefly.

1. Tax credits for donated objects
2. Insurance of Permanent collections
3. Insurance of objects lent outside the institution
4. Deaccessioning of objects
5. Customs Regulation

1. Tax Credits

Several major Canadian museums have adhered strictly to the CAA policy, notably the National Museum of Man and the British Columbia Provincial Museum. This has resulted, in the case of one of the institutions, in the need to turn away gifts of objects that were much desired. As one archaeologist put it, on occasion this necessity "almost broke my heart".

Other curators reported that although they would not purchase objects, they would accept evaluations done by outside assessors such as dealers or auction houses in order to obtain highly desirable archaeological objects. (According

to experienced officials from three major museums, the procedures for allowing tax credits to people who donate to museums require three independent evaluations, one of which can be done by the museum if the value is less than \$1,000. The museum must accept the evaluations presented by the donor before the credit can be given.)

Still other curators reported a variety of creative solutions to the problem. In one case a collection of sixteenth-century European artifacts retrieved archaeologically was offered to a provincial museum which had refused the donation some years earlier when the collection was first discovered. In the interim the owner had displayed them in a small private museum. The gift was accepted the second time it was offered and the owner was paid a sum of money 'for his care of the objects' during the intervening years. Great care was taken to prevent any publicity about this payment so that pothunters would not be encouraged. Other solutions are listed by Winter (1983: 5) :

"Some (curators) wanted donors to prove conclusively that the objects were obtained prior to legislation before granting a receipt. One cited an example where a knowledgeable collector was hired to catalogue his donated collection. No tax receipt was issued, and the museum obtained some of the needed contextual data.

"While in a sense it is paying for artifacts, we are also receiving labour at a reasonable rate, and for a useful end..." Other compromises have been negotiated: "this year a farmer was induced to let us dig on his land when we promised to hire his son as a member of the field crew for the summer".

These examples indicate a desire on the part of a number of museum curators to find ways to make possible donations from private individuals and acknowledge their monetary value whether by tax credit or by other payment, without encouraging the negative effects of site looting and pothunting.

2. Insurance of Permanent Collections

Most major museums are required by their insurers to provide monetary values for all items in their collections. In some institutions this has been done for some time while in others (Manitoba Museum of Man and Nature) the requirement is relatively recent.

Curators felt strongly that this type of evaluation was an inescapable part of their jobs and of their accountability to the public. They expressed concern, however, as to how the

evaluation could best be carried out. In the case of one major archaeological collection, the staff member responsible said that twenty years earlier these evaluations had not been required and there were no precedents to fall back on. She has spent time assembling a file of auction and dealers catalogues and collectors' newsletters so that she can assign fair market values. Another curator of a provincial museum has tried to develop a scale of replacement values for objects in his collection. According to this scale the value is based on the cost of mounting an archaeological dig to recover similar objects.

3. Insurance of Loan Objects

When an object is lent from one institution to another a monetary insurance value must be placed on it while it is outside of the 'home' institution. This necessity must be met by any institution whether lending to a temporary exhibition or for extended periods.

As damage to artifacts occurs much more easily when they travel and are handled by exhibition installers it is felt that such values should reflect a real replacement cost. One museum staff member reported that the values she placed on objects had initially been somewhat arbitrary (unrelated to true market values) and that borrower institutions had frequently told her that her evaluations had been too low.

4. Deaccessioning Objects

A further instance in which monetary value must be placed was mentioned by a staff member of the Archaeological Survey of Canada. National Museums, as federal institutions, are not required to insure their permanent collections. However, when objects are transferred permanently to another institution, as is currently happening with a group of artifacts being given to the Prince of Wales Northern Heritage Centre, The National Museums Act requires that a monetary evaluation must be carried out.

5. Customs Regulations

When customs officials spot cultural objects in general they suspect of being illegally exported or imported, they routinely call museums in order to determine the monetary

value of the objects. This is necessitated by customs regulations which, are understood by officials to be written in terms of monetary worth. As one curator summarized: "The only way customs can stop an object is by being able to say it has a certain value, otherwise they have to let it go. We are not protecting our stuff", she concluded, "by refusing to assign value". This understanding underlying the enforcement of customs regulations is at variance with the provision of the Export/Import Act regarding archaeological properties.

F. Market Dynamics

The discussion of the monetary evaluation of archaeological objects has already strayed into the area of market dynamics. As we have seen, curators who are called upon to place monetary values on archaeological objects often have recourse to information from commercial dealers. We will now turn to a description of the market for archaeological objects in Canada during the past decade.

There currently appear to be two distinct markets for archaeological objects in Canada. These markets coincide with two different types of private collectors. One type of market, to be described first, is patronized by collectors of "art objects" - archaeological objects held to have aesthetic value. The second is a more informal market in archaeological artifacts frequented by "hobbyist" collectors who value them primarily as collectible curiosities or antiquities. This second type of collecting and its associated market practices will be discussed further below.

1. Fine Art Collectors and Dealers

Inquiries about the market for archaeological art objects in Canada indicate that it is a very small one. According to the five most active dealers in native art in Canada ethnographic material plays a far more important role in their businesses than archaeological objects. Only three had had any archaeological pieces for sale over the last five years. In each case they said they handled only one or two pieces a year on average. The one exception to this pattern was the Inuit Gallery in Toronto which has handled a considerable amount of prehistoric Alaskan Eskimo art over the past decade. This gallery acquires on average about twenty pieces in a year, and has held about five special shows of prehistoric material over the past decade.

The one sizable collection of archaeological objects which has come up on the Canadian market, the Dutilly collection (see below) has been on and off the market for about four years without finding a permanent buyer. Although, as we shall see, this is partly due to the position taken by the CAA with regard to purchasing by museums, it also reveals the lack of active private collectors investing large amounts of money in archaeological objects.

Dealers give three reasons for the small volume of the market in archaeological art. First and most important is the rarity of the material. Secondly, they say, the nature of the material is too esoteric to find a larger market. One gallery manager described the objects as things "only a mother could love", and continued, "the guy off the street doesn't know them". The third reason offered is a steep rise in prices in the past decade. One collector who bought prehistoric Alaskan pieces in the 1970's described prices now as "astronomical". Information about the Dutilly Collection (see below) indicates that prices for prehistoric Inuit art have more than quadrupled during the past decade.

Aside from the rise in prices, the dealers did not see any major change in the amount of material on the market over the past decade. The manager of the largest gallery selling Inuit art thought that the archaeological objects had become less "popular", and said that the amount they sell has been decreasing. It is interesting to note that during the same period there has been a slump in the market for contemporary Inuit art. In contrast to this situation, a dealer specializing in Northwest Coast material thinks there is now a "greater recognition of art from B.C." The views of the archaeologists sampled differ as to the effect the CAA policy, which brought to a halt purchasing by museums, has had on the market. One prominent archaeologist thought the policy had succeeded in "dampening down" the market while another from the same institution thought that there had been no effect at all.

The interaction of commercial dealers and private collectors can be illustrated through two case studies involving the marketing of archaeological 'art' objects. The first example is a collection of prehistoric Inuit art objects made by Father Dutilly. The second case involves well-known stone sculptures from British Columbia which were sold to buyers in the United States.

a) The Dutilly Collection:

Father Dutilly, a French missionary working in the N.W.T., made a large collection of prehistoric Inuit material. A number of permits were issued to Dutilly in the

late 1930's under the terms of the Northwest Territories antiquities legislation then in force. The collection was inherited by a nephew from whom the NMM purchased 3900 archaeological specimens in 1975 for a price of \$12,000. The rest of the collection, some 69 Dorset and Thule objects of aesthetic significance "skimmed off the top" in the opinion of one archaeologist, was retained by Dutilly's French heirs. Over the past ten years this material has been offered to a number of institutions including the Winnipeg Art Gallery and Canadian Arctic Producers.

In the early 1980's, after the CAA non-evaluation policy was in place, the material again appeared on the market and was offered to the Prince of Wales Northern Heritage Centre. The curator was so concerned about the ethical implications of the proposed purchase that she carried out a study of other Canadian institutions and government agencies "in charge of heritage resources" asking if the Dutilly collection could "ethically be purchased or accepted as a donation and receipted". The majority of her respondents said they would not purchase or evaluate archaeological specimens.

The objects were again offered to the National Museum in the mid-1980's through the Montreal art dealer Leon Lippel but the material was not bought because of the CAA policy. A buyer was found in the States and the archaeologist asked to act as expert examiner for the Cultural Properties Review Board approved the application. His reasons were adherence to the CAA policy, his opinion that the National Museum and other institutions already owned enough similar material, and outrage at the very high price being asked. The U.S. buyer, a corporate group presumably buying for investment, apparently purchased the collection. This same collection was again offered for sale this spring to a Toronto collector of Inuit art who also expressed amazement at the high price being asked. The price was approximately four times the amount asked in 1975 when the same collection was offered to Canadian Arctic Producers.

b) The Export of Archaeological Stone Sculptures from B.C.
(see also Appendix - Case Study No. 1)

In 1982, two prehistoric British Columbia Stone carvings were legally exported from Canada to the U.S., a Halda tobacco mortar and a seated human figure bowl. A value of \$3,500 was placed on a similar piece by the dealer the previous year. The pieces had been published in the 1975 catalogue of the landmark show "Images Stone, B.C.", and were quite well-known.

These two pieces were recognized widely as 'treasures'. The archaeologist acting as expert examiner, nonetheless, approved the export in order to comply with CAA policy. A great deal of adverse comment appeared in the press. It was recalled that one bowl had been described as "one of the largest and most terribly powerful of all the seated human figure bowls". This effect was intended by the archaeologists involved who wished to draw public attention to their position regarding monetary evaluation of archaeological materials. The export also created controversy within the scholarly community. A prominent ethnologist viewed that policy as "a position of such utter purity that it ignores the reality of the world" (Vancouver Sun, December 6, 1983). On the other side, a U.S. dealer who publishes a private commercial newsletter referred to the CAA position as, "cutting off your nose to spite your face" (McKillop Report, October/November, 1983:3). Copies of these articles are appended at the end of this report.

Last year another stone bowl from the same private collection as the other two pieces came to the market in B.C. The value placed on this second Seated Human Figure Bowl was \$8,500 (U.S.), more than twice that placed on the very similar piece exported four years earlier. According to Howard Roloff, the dealer involved in all the sales, this bowl had been acquired together with the other pieces about twenty years previously. Because of the owner's tax situation she "made a decision to convert her funds into Indian material" which she could more easily bequeath to her son. When the CAA policy began to be implemented Roloff advised his clients that they should sell quickly lest objects be subject to confiscation. Roloff then heard that the British Columbia Provincial Museum had applied to designate the bowl as a heritage object under the British Columbia Heritage Conservation Act which would prevent it leaving the province. Before this designation was announced he arranged to have the bowl taken outside of B.C. jurisdiction to Alberta. He then got his export permit and exported the piece to the U.S.

A British Columbia ethnologist familiar with the details of these cases commented on another aspect of the situation. He said that there was ambiguity in the definition of the tobacco mortar as an archaeological piece, an ambiguity which exists for many similar stone objects. "At the time that the collecting of Northwest Coast material began", he pointed out, "a lot of these items were going out of use". They were found in abandoned villages and other places but had actually been used by the same people whose other objects are generally regarded as ethnographic. He felt that the dealer had purposely manipulated the situation knowing that if the object were defined as archaeological it would be granted an export permit because of adherence of expert examiners to the CAA policy.

These two cases are revealing in a number of ways. They both show, on the one hand, that archaeological art objects are being used for investment by private individuals and by corporations. In both cases the rise in monetary values turned a profit for the investors. The failure of the Dutilly collection to find a permanent home, however, also indicates that the refusal of museums to purchase has made it very difficult for dealers to dispose of large collections for which considerable sums of money are asked. On the other hand, individual pieces such as the B.C. sculpture have several times successfully found private buyers in the United States. Both cases also reveal confusion and ambivalence on the part of curators called upon to make decisions about the purchase of objects.

2. "Hobbyists" and the Antiquities Trade

The term 'hobbyist' has acquired a somewhat pejorative implication among professional archaeologists and anthropologists. It is widely used to describe the apparently very large number of private individuals who collect archaeological artifacts of a primarily non-aesthetic nature such as projectile points and stone hammers. It is precisely because such hobbyist activity is so widespread, and its impact on archaeological sites so fundamental that we have chosen to focus so much attention in this report on this question. Much of our information on hobbyist activity is anecdotal but the concerns are widespread and it is quite apparent that this kind of private collecting is a key indicator of a particular, (and by comparison with the activity of art collectors a substantially under-researched and insufficiently recognized) popular interest in archaeological objects.

Like 'fine art' collectors hobbyists often collect such objects together with ethnographic specimens. The goals of such collectors can be distinguished from those of 'fine art' collectors. A privately published directory of 'hobbyist' collectors in the United States, Who's Who in Indian Relics No. 5 (Thompson 1980), gives valuable insight into the motivations and attitudes prevalent among this group. It is very common among 'hobbyists' to place great value on the personal discovery of artifacts they collect. These finds can be made either on the surface or by digging in archaeological sites. As the author of the directory reports of one collector, a lawyer:

"Earl tells me that when the stress and strain of a trial becomes too great, he often takes off to the fields to hunt arrowheads. In the excitement of finding

even a crude arrowhead he forgets all of his problems. He says that it is great therapy for the relief of the tensions and frustrations of life." (Thompson 1980: 23)

One important aspect of 'hobbyist' collecting, then, might be termed recreational.

The hobbyists in the directory refer to their artifacts as "relics" and most have special rooms in which they are displayed on shelves or, in the case of projectile points, hung in shallow wood and glass 'frames'. Each frame contains a set of artifacts which are usually carefully arranged to form precise geometric patterns. Indeed the care lavished on the tasteful arrangement of the artifacts, as the statements of the collectors show, is an important aspect of the collecting activity. When grouped on a wall the frames resemble patchwork quilt patterns, and in themselves appear to constitute a form of folk art which adds further recreational value to the collecting process.

The word "relic" which, as we have seen, is commonly used by this type of collector to refer to an archaeological artifact offers an indication of another type of value important to hobbyists. A relic is something left behind by a deceased person by which that person may be remembered. This sense of intimate connection to the past is greatly valued by hobbyists. As one collector described in the directory said, "I have always been intrigued by the fact that each arrowhead, no matter how crude, was at one time in some dim past held by an Indian" (Thompson, 1980: 32). An aesthetic response to individual artifacts is also an aspect of hobbyist collecting. The skilled workmanship evident in an archaeological object may be regarded as a source of 'beauty' and aesthetic pleasure.

The collectors in this group also appear to place a high value on assembling a complete set of a particular type of object, or of amassing a very large number of examples of one type of object. One collector, for example, had over 300 examples of a type of spearweight called a birdstone, including examples from Canada. The achievement of internal symmetry and logic within a collection is, of course, important to many types of collectors including the 'fine art' collectors discussed above.

It is also clear from this directory as well as from information about 'hobbyist' collectors in Canada that many individuals who are being included within this group are serious amateur archaeologists who are active in provincial and state archaeological associations. They are meticulous about recording contextual information to the best of their

ability, and scrupulous about obtaining required permits for their digs. There appears to be a range of behavior with regard to the degree of scientific interest and adherence to or awareness of the law which is discussed further in section VII.

The nature of the market in which these hobbyist collectors participate is quite different from the fine art market discussed above. Although more research is needed to assess its volume and pricing patterns, it is clear that its size is much larger than the market in archaeological 'art' objects. Much exchange, however, is carried on through direct trading of artifacts by collectors. The purpose of the directory cited above and of other such collector's magazines is to put collectors in touch with potential trading partners. In addition to trading there are also many small-scale dealers who sell "antiquities" such as arrowheads and stone hammers both directly through shops and by mail order. Finally, archaeological artifacts are sold at auction in cities such as Calgary, where the Galvin auction house markets as 'frames of points' at regular intervals.

The hobbyist collectors and their marketing practices can be better understood through a description of a major Alberta collector of archaeological objects.

3. Profile of a 'Hobbyist' Collector

The rancher and farmer to be described here started collecting Indian archaeological pieces about fifty years ago as a young boy. He started with an interest in rocks. Together with these he also gathered arrowheads and stone hammers which gradually became the focus of his interest. Over his long collecting career he estimates that he has collected over 10,000 artifacts, although he now has only 2-3,000. Together with the archaeological artifacts he has collected ethnographic specimens, ammonites, dinosaur bones, old tools, and bottles. He has done a lot of trading, and has bought archaeological specimens by mail order from the U.S. and in person on trips he has made to the States. He advertises in special collectors' magazines and in turn has often received visits from other collectors interested in trading. He prefers to trade with individuals when he goes to the U.S. but usually ends up buying from an antique shop or a dealer. He mentioned that collectors vary greatly, and recalls one man whose aim was to have a point from every state in the U.S. and from every province in Canada.

He collected much of his material himself at the sites of Indian camps and buffalo jumps. Since 1978 when legislation was passed in Alberta protecting such sites he "doesn't roam around much", and stays closer to home. He has

also found that things have changed a great deal in the last decade because of the legislation and because of the increasing scarcity of artifacts. Because of the difficulty in finding things oneself, he says, there are many more dealers now than there used to be and prices have risen a great deal. Years ago a hammerstone would sell for five dollars or a bottle of whisky, whereas now arrowheads are worth twenty or thirty dollars apiece in the U.S. trade magazines.

There aren't many people with collections the size of his, he says, although a number of his neighbors have small collections. Because he has invested a lot of money in his collection he has been selling parts of it and actively looking for buyers. He had his MLA write to Ottawa to see if the National Museum was interested in purchasing from him but he got no response. He has also approached museums in Alberta, but is interested in selling to them rather than donating because of the investment he has in the material. He sells frames of points regularly at auctions in Calgary, at the Galvin Auction House. He says he "hates to part with this stuff, but can't keep it all, it costs too much". He has also set aside certain favorite pieces which he doesn't want to sell, pieces which are rare and unusual.

Several times during the interview he commented on the fact that there was much more interest in buying archaeological objects in the U.S. than in Canada. He said, "It disturbs me no end that our government has no interest...the Americans are interested and will pay fair prices". He predicts that in the future there won't be as many collectors because the opportunity to find things oneself is gone. He gave the example of dinosaur bones. He said that at one time people living around Drumheller, Alberta, all had dinosaur bones in their rock gardens and on their fences, but that since the 1978 law was passed everything like that belongs to the Crown so there's no longer any point in going out looking.

This Prairies collector carries on the spirit of the centuries-old tradition of the curiosity cabinet. His biography illustrates not only the motivations which inspire such collecting activity - curiosity, pleasure in trading, the desire to assemble complete sets of particular categories of objects - but also the changes which have occurred in the market for antiquities.

The collector's statements about the widespread nature of interests such as his are echoed by curators of many provincial museums. One said that virtually every farm had its shelf of arrowheads, while another termed the number of amateur collectors "phenomenal". But curators also commented that the formation of new collections such as those already

In existence is becoming less and less frequent.

The active market among hobbyist collectors across the border is also confirmed by many sources. Trade journals thrive, and values for individual pieces appear to be rising.

G. Conclusions

The above story of the amateur hobbyist illustrates well the problems arising from a lack of legislation and protective policy, and the considerable benefits which result from such initiatives for the overall goal of conservation. Improvements in these areas have apparently been quite effective in reducing the 'roaming around'. On the other hand, the increase in price levels might counteract some of these effects by offering greater monetary incentives to hobbyist collectors. It is therefore all the more necessary to consider ways of accommodating those amateur collection activities which cooperate with the goals of preservation and conservation.

The valorization of archaeological objects by collectors, scholars and curators is, as we have seen, a complex process. Most of the prime policy publics discussed adopt more than one criterion in evaluating the worth of an object. These publics also share certain common values with regard to archaeological objects. The notion of beauty, for example, which has been a central focus of this section, is not confined to art historians and other scholars. Hobbyist collectors also regard certain artifacts as possessing aesthetic value through their excellent workmanship, state of preservation, or rarity. The attribution of monetary worth, too, is subject to historical shifts in taste, to the continuing refinement of the scientific understanding of the objects, and to the scarcity created by the gradual depletion of in-ground archaeological resources.

Research into valorization and market dynamics carried out within the time allotted for this study revealed certain areas which need more systematic study. High on this list, as previously mentioned, is the extent and nature of the hobbyist market in archaeological artifacts. Secondly, the practice of donation by private individuals to public institutions also needs to be looked at further. If, as curators and collectors indicated, direct collecting by hobbyists is on the wane because of the increasing scarcity of objects and improved legislation in many provinces protecting archaeological sites, then the policies of institutions toward donations and tax credits become even

more important. In much of southern Canada, the soil has now been broken and the easily accessible surface finds may have already been made. The supply of such material may not be as unlimited as it has appeared to be in the past.

The importance of donations to Canadian museums is revealed by a further analysis of the sample of archaeological objects published in popular art books which we discussed earlier in this section. These were objects, it will be recalled, defined as having exceptional artistic and expressive value. The large majority of the pieces in the sample are owned by public institutions. At the time they were exhibited only 12 of the 280 pieces were owned privately. Available information about the provenience of the publicly owned pieces indicates that very few were acquired through purchase. A great many were donated by private individuals who had found them, while others were uncovered by archaeological excavation. Donations by private individuals, then, have historically played an important role in enriching public collections.

In the case of 'art' objects we found that they appear to be very few in number. Yet because of that very rarity each individual piece assumes great value. The loss of even one such piece to Canada, as we have seen, is regarded by scholars and collectors as a serious depletion of heritage resources. Rarity undoubtedly also contributes to the increasing monetary value these aesthetically endowed pieces assume in the marketplace. Evidence uncovered in this preliminary survey of market values showed that these market values have doubled and redoubled during the past decade. Thus, archaeological objects identified as "works of art", though few in number, have been attractive to investor-collectors. There is no reason to believe they will become less so in the future or that pressures from dealers for export permits to the lucrative U.S. market will decrease.

Finally, research revealed a widely felt ambiguity in the demarcation between ethnological and archaeological objects. Lack of a clear definition, it was felt, has led to abuses and manipulations of existing laws regarding the import and export of Canadian heritage objects. This area, too, deserves rigorous examination and consultation with scholars and curators in order to arrive at a clearer and more workable categorization of archaeological and ethnological material.

Section VII: ILLEGALITY AND CULTURAL PROPERTY

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Section VII: Illegality and Cultural Property

A. Definition of 'Property' and 'Illegality': Introduction

Throughout the authoritative literature on the preservation of the cultural heritage of Canada, and in the various policy statements of archaeological associations, museumologists and bodies representing the voice of the aboriginal peoples of Canada, there are frequent references to acts of "vandalism", "pillage", "looting" and, more straightforwardly, of "theft", particularly in respect of archaeological sites. The Applebaum-Hebert report, speaking in general terms about legislation concerned with the conservation of cultural heritage, asserts, rather elliptically, that the inadequacy of "formal federal designation...has often led to theft or vandalism" (pp. 108-109, our emphasis).

The exactly opposite conclusion - i.e. that various illicit activities inimical to the project of conservation of heritage can actually be encouraged by overly restrictive legal regulation - is to be found in Duncan Cameron's commentary on the Cultural Property Export and Import Act:

"In some parts of the world where the antiquities laws are restrictive, the evidence is clear. Smuggling has been encouraged, world art markets have been inflated by the artificial scarcity which the laws have created, research and scholarship have been severely retarded." (Cameron, 1980:1) (our emphasis)

More recently, the discussion paper presented by the Canadian Archaeological Association on the Cultural Property Export and Import Act speaks of "a dramatic increase in the illicit excavation and plunder of undisturbed archaeological sites" (C.C.A., 1985:Executive Summary) (our emphasis).

It is not our intention here to resurrect discussion of the "market consequences" of the CPEI Act, nor either to investigate the evidence on the causal relationships that might exist between the passage of legislation on cultural heritage and the actually-occurring amount of illicit or formally illegal activity around "heritage" in general or archaeological resources in particular. Our concern here, instead, is to focus attention on the way in which these references to theft, illicit excavation and pillage necessarily all involve implied or explicit claims to the ownership of such cultural property (whether by individuals, by "science", by the State or by a particular people - Canadians in general, or by certain aboriginal groups in particular). Some clarification of these claims to ownership is logically a prerequisite to any attempt to bring about an accommodation that allows for the protection in law and practical conservation of the property in question.

Our concern to achieve some distance on the various policy publics in and around archaeology is nowhere so important as it is in this discussion of property rights, since it is precisely in respect of claims to property ownership that quite fundamental differences of perspective have surfaced amongst representatives of what we have called our prime policy publics, during the course of the Centre's research into this issue.

At the most general level, these differences of perspective on the ownership of property derive from the material presence, especially in the North, of two quite different systems organizing rights to property ownership, use and exchange. These two systems of property rights have been examined in great detail, in respect of their relevance for the management of wildlife resources in the North, in a brilliant essay by Peter Usher (1984). Usher follows C.B. McPherson in identifying the prevalence in Canada of a hybrid version of Western utilitarian thought, comprising a mix of American individualism (wherein the frontier areas, particularly in the North, are seen as the land of opportunity for free individuals) and, more predominantly in, for Canada, a strong recognition of the "public interest" (wherein the State is accorded a strong presence on the land in defence of the environment and wildlife, and in the name of social peace). In contrast to the legal situation obtaining south of the border, the rights that individuals hold in land in Canada are held "by virtue of a deed, grant or licence from the Crown" (Usher, 1984:398). All rights in land derive from the Crown and are, therefore, available for

expropriation (for example , by compulsory purchase) by the Crown. There are in Canada a vast range of private interests in land (from freehold title to restricted licences for use), but the majority of the land remains the "public property" of the State. Very few of the property resources, however, whether in private or State possession, are collective or communal. One example of such communal right discussed by Usher is that of fish and wildlife, but the existence of this grey area is explained as a reflection of attempts to define fish and wildlife as a private possession. Fish and wildlife are a problem conceptually because:

"Our modern conception of property is either that it is private, or that it belongs to the State. If it is neither, then it is not really property. Resources that are not amenable to private appropriation we call common property, but, contrary to aboriginal conceptions, by this we do not mean that it is collectively owned by a group. We mean that it is not owned by anyone, indeed, that it is a free good, there for the taking."
(Usher, 1984:399)

Amongst the aboriginal peoples of Canada, there is a quite different and distinctive approach to the definition and the use of property rights. The system is only now coming to be articulated in a written, documentary form - as representatives of the aboriginal peoples participate in negotiations with Canadian governments over their people's claims to land. As Usher persistently observes, there has indeed been no need until recent times for the collective use of property by aboriginal peoples to be justified to any larger public, and thereby recorded in documentary form:

"If no class within native society could or did appropriate land to itself, there was no need of a justifying theory to advance or rebut that process. Now that southern society encroaches on their traditional lands by peaceful political processes of absorption, rather than through outright warfare, native peoples are rapidly elaborating theories to justify that title."
(Usher, 1984:397)

This development of formal aboriginal claims is far from being opportunistic. Usher observes that:

"Contemporary native perceptions in land and resources seem to me to rest on (aboriginal people's) understanding of the consequences of losing these things. These consequences are seen in a collective as well as an individual way, as adverse effects on native communities and on native institutions, as well as on native individuals. The concern is entirely consistent with aboriginal tradition and experience. It is not a subterfuge for grabbing oil revenues nor was it mischievously invented by outsiders." (ibid)

In aboriginal tradition, according to Usher, the use of property is governed by three widely-understood and-accepted system of rules. A system of rules governs the pattern of land-use, in order to allow predictability of residence. There is some variation in the ways these rules worked amongst different bands, the Inuit and Dene appearing to inhabit areas of land in small "co-residential" groups and hunting collectively within these particular areas, whilst the Algonkians in Eastern Canada apparently used to live in individual households whilst laying claim as bands to quite large territorial surrounds. But both patterns of land use are predictable, and, moreover, are underwritten by what Usher calls "a system of local authority", whereby the use and circulation of land amongst individual households are guaranteed. There are also, thirdly, well-understood rules in most aboriginal groups respecting foraging behavior, to ensure the harmony and survival of the group: no individual can do exactly as he pleases as a hunter.

This institutionalisation of collective rights within and between bands is sanctioned not by reference to some secular utilitarianism (in which propertied individuals make conditional contracts with the State for their own protection against other individuals in a market society). Instead, as one would expect of a society in which individual property ownership is not a developed and material fact of social existence, and a society in which there is a need to legitimize the collective authority and thereby protect the economic and social survival of a group, the sanction is transcendental. As Usher puts it, "these rules were commonly expressed in a metaphor of religion and spirituality..." (Usher, 1984:394).

Where the rules were not sanctioned in this way, they would often be given their justification, by representatives of the aboriginal peoples, in terms of the "wisdom" or the lived or spoken "tradition" of the people as a whole. Such justifications may not appear very persuasive to western observers attuned to the idea that rules should be justified by "modern" legal-rationality, particularly in documentary form. But, as Usher acerbically observes:

"It is unbecoming in the extreme when (such a) suggestion comes from a society that, by virtue of its own modernity and sophistication, has managed to obliterate more species on the North American continent in less than a century than had disappeared since the Ice Age." (Usher, 1984:394)

Discussions of the ownership of archaeological resources - like the discussions over wildlife management which are the subject of Usher's seminal essay - that are to be found throughout the length and breadth of Canada can in no way escape the material and ideological existence of these two

"Canadian" and "aboriginal" systems for justifying the ownership of property. By the same token, we shall argue, some way of accommodating these contradictory claims is a prerequisite to the creation of a clear consensual basis from which to protect archaeological sites from predatory acts committed by individuals or social groups who can be said, without ambiguity, illicitly to occupy, use, destroy or exchange that archaeological resource.

1. Archaeology and the Right to Cultural Property

In their most unrevised form, Western theories of individual market "freedom" and property rights, through sale, would probably allow for the widest possible dissemination of archaeological artifacts amongst those propertied individuals who had the resources to buy them. But the development in Western societies of the power of the State in the nineteenth and twentieth centuries is a recognition of a generalized public interest that is independent of the cumulative private interests of propertied individuals. An unusually forthcoming example of the way in which pure individualism comes to be qualified in this area is the declaration made to the first Law and Visual Arts Symposium in Portland, Oregon in 1974 by an American private art collector, Mr. Ben Heller:

"Basically I am a free trader, with specific limits in my approach to moving works of art. I am very much a non-free trader in my approach to aspects of protecting the past." (Heller, 1975:277)

We have suggested, following Usher and McPherson, that Canada is quite different from the United States in the great emphasis that is routinely placed in Canada on the public interest (for example, in respect of the Crown's ownership of land in this vast and otherwise "open" and "free" country) and, indeed, in the extent to which the public interest actually takes precedence in some areas of State activity (for example, in respect of public health) over private interests.

The study and preservation of "Canada's cultural heritage" has also become a massive public interest, particularly since the Second World War. In the past, no doubt, this attempt to preserve what is seen as Canada's past is a reflexion of a generalized sense, that seems to have been common in many Western societies in the post-war period,

that the speedy transformation of modern society is in danger of producing a loss of existential continuity with the customs and traditions of "the past" - a dislocation of individual's sense of locatedness in history and culture. This need to re-establish a sense of continuity with classical and/or historical tradition is seen by many commentators as the rationale for the massive expansion of "tourism" (especially on the part of residents of the modern world) into countries and regions of countries, especially in the "ancient world" or in the older European countries, that are famous for their "history" (MacCannell, 1976). It is also a key reason for the extraordinary development of museums and museology in countries that in other respects seem to be preoccupied with dynamic and futurist industrial and economic change (Horne, 1984, Wright, 1985 c.2). This view is often closely associated with more authentically conservative attempt to use "tradition" more instrumentally with a view to establishing the loyalty of a people to the values that are believed to be encapsulated in a tradition (Hobsbawm, 1983:263).

But the development of a public (State) interest in the past is also a reflection of the rapid development of the techniques and knowledge claims of "scientific disciplines" like archaeology. In its original forms, in the mid-nineteenth century, archaeology was exclusively an activity or 'avocation' of amateurs, utilising an intuitive commonsense method in the excavation of individual pre-historic and/or palaeontological sites. David Boyle, a pioneer in Ontario archaeology and a founder of one of the first museums in that province was a working artisan involved with the development of the social and leisure activities of the working-men's clubs in Ontario (c.f. Killian 1983). But twentieth century archaeology, especially in North America, has come to take on much of the highly professional language and method of positivist social science. The discipline is characterized by an unswerving commitment to the careful collection and the "scientific analysis" of artifactual data: generalisations are made about pre-historic civilisations on the basis, quite frequently, of statistical patterns discovered in the fragmentary relics of that civilisation. The preservation of sites and artifacts, therefore, is widely seen to be essential to the process of scientific deduction in archaeology.

It needs to be said that this particular occupational ideology of archaeology - namely, that it is in the business of serious scientific exploration of the pre-history of the culture and is for that reason entitled to the support of the modern State and, indeed, of State law in the conduct of its business - has been remarkably influential and expansive in countries like Canada during the post-war period. Indeed, archaeology as a profession has been remarkably successful in legitimising itself within the State (for example, in the

sense of creating the conditions for the employment by the provinces of considerable numbers of professional archaeologists). It was notable in our interviews how often Canadian archaeologists spoke of their use of State law and State authority in the struggle to control external predatory forces on sites: unlike the representatives of the aboriginal peoples, archaeologists feel as though they are part of the public State. As an occupation, they are implicated, in this sense, in the larger Western concept of property ownership - albeit, in this instance, the ownership by the State of cultural property for the purposes of research and protection of "heritage".

In the interviews conducted for this Centre's research, archaeologists did differ in the firmness of their belief in the need to protect all sites and specimens (some of them certainly recognising Peter Usher's point that all human activity involves the selective management of scarce resources) but the general tendency was unambiguously in the direction of preservation of a maximum number of sites and/or artifacts - in the name of science.

In part, there is no question that this commitment to preservation of all available artifactual information is also underpinned by the belief that archaeology is in the business of conserving for public information and edification civilisations that would otherwise be lost to view, that are "dying cultures". In part, preservation of the past arises out of the distrust of the dislocating effects of "modernism", which we mentioned earlier. But there are also undoubtedly strong traces of that kind of anthropology which prefers to discuss the history of minority peoples and to freeze their ethnic history in museums, quite independently of any social and political context (Horne, 1984: c.1), rather than to connect to the contemporary living representatives of those cultures and their present political and economic realities. Our interviews with spokespeople who are knowledgeable about the present struggles of the aboriginal peoples in Canada attest to an undeniable sense of the anger that exists amongst aboriginal peoples over the way in which the dominant culture has often presented a caricature of aboriginal life in its museums, and a sense that aboriginal people's culture is only of the past, "frozen in aspic".

Archaeologists can speak, and have in our interviews spoken, as if the preservation of data on sites must always take precedence over aboriginal people's claim to land and property or over their definition of the importance of sites. We were told, for example, of the case of the Kuper Island Indian Reserve, in the Gulf Islands of British Columbia, which was the only area which refused to participate in the B.C. Provincial Secretary Heritage Branch's recently completed inventory of provincial archaeological sites:

shortly after their refusal to participate, the local Indian peoples built a parking lot (for canoes) over what had been an important heritage site in B.C.. Other archaeologists have spoken to us in terms of educating aboriginal peoples to become amateur archaeologists in their own right: the Oneida Band of S.W. Ontario are currently in the second year of an archaeological assessment of their own land, whilst there is an already well developed archaeological programme on the Manitou Rapids Reserve, also in S.W. Ontario. It is apparent, however, that there is some considerable difference between involving the aboriginal peoples in a process of "scientific deduction" about culture (with a view to historically locating that culture in the past, in a museum) and the kinds of partnership that have evolved between archaeology and native peoples (with a view to identifying the culture of minority peoples as a living culture: a heritage that exists in the present). It is this kind of project which we see to be evident, for example, in the work of Wayne Choquette at the Kootenay Cultural Heritage Centre in B.C.

We were also able to recognise in interviews that the archaeological commitment to the preservation of artifacts for formal scientific reasons may sometimes conflict to the powerful commitment that other agencies or individuals might have to the aesthetic value of an object. References were made (often, it should be said, rather grudgingly, by archaeologists working on the Prairies) to the "spectacular" kinds of sites and specimens that are found, and preserved, on sites in British Columbia and in Ontario, ranging from whole native Indian villages to extraordinarily well-preserved maritime wrecks (See our earlier discussion in Section IV, J). There are estimated to be over 10,000 wrecks altogether in Ontario's lakes and waterways. Clearly, some of the public interest in these wrecks derives from what diver-archaeologists call "Mel Fisher's syndrome" (Mel Fisher being the leader of the group that has discovered gold on a Spanish frigate underwater off the shores of Florida). But there is clearly also a widespread interest in looking at historical sites (for example, at Indian villages) in situ, or in context, an interest which may indeed be more widespread throughout the population than the considerable interest which exists in visiting museums. It is not necessarily the case, of course, that this popular curiosity in historical sites is incompatible with the task of salvage and preservation of archaeological sites. We were particularly impressed, for example, with the way in which Ontario archaeologists, through the so-called Save-Ontario-Shipwrecks programme, have encouraged local residents and amateur tourist divers to assist in the protection of sunken shipping sites. A well-preserved Great Lake Schooner is currently lying off the shore of Prince Edward County protected by locals enrolled in one of the twelve chapters of the S.O.S. organisations; and the Tobermory site in Northern Ontario is being turned into a "dive preserve" by

archaeologists working in collaboration with local amateur divers. The S.O.S. scheme is predicated on the idea of encouraging what seems to be an already existing and widespread popular interest or curiosity in the cultural relics of the past. This is by no means widely recognized. In our assessment, amongst all archaeologists, some of whom speak of the curious individual collector with his or her metal detector, as if he or she were literally a street thief.

B. Surveying the Extent of 'Illegality': Some Key Issues

In the current situation of unresolved and/or competing claims to the ownership of cultural property, the various "publics" speak of particular and urgent kinds of damage that they claim are an immediate threat to their property or to the property of the public or the State. We want to illustrate each of these claims here, to give some sense of the various concerns and also to try to survey the extent of these "illegalities". We have no intention of wanting to deny these claims in any empirical sense - the incidents which have excited the attention of archaeologists, art historians, museumologists, collectors, representatives of the aboriginal peoples are all "real" and we will discuss some of them here. Our concern is simply to insist that these cries of theft and vandalism are inextricably linked to particular, and sometimes, implicit claims to property rights.

1. The Aboriginal Peoples

There seem to be two main issues in the approach of the representatives of the aboriginal peoples to the question of cultural property and the identification of the threats to such property that are said to exist in the current period.

By far the most basic is the claim of aboriginal peoples to the title of their lands. We illustrate this claim in respect of the Dene and Inuit peoples in Section V of this Report. Suffice it to say here that the claim to land title is based on a claim to ownership prior to contact with the colonising Europeans: it in no way recognizes the right of the Crown to ultimate power of ownership. It is also important to recognise that the claim of the aboriginal peoples to their "stuff", as it is sometimes referred to in

negotiations, is a very generalised claim. The claim is not just to the land itself, but, for example, to the right to forage fauna and flora on the land (thereby challenging the mandates of the National Museum of Natural Sciences) and also to the ownership of animal life (like the gyrfalcons which were being exported from the Arctic to Arabia during the late 1970's). It should be said that it was this very general definition of "environmental impact" that was utilised by the Inuit and their supporters in lobbying successfully against the so-called Arctic Pilot Project in 1980-82. Their combined opposition overturned the proposal of the APP Consortium to produce natural gas on Melville Island in the High Arctic and transport it to Eastern Canada in icebreaking tankers, on a route which would take the tankers through the Parry Channel, south through Baffin Bay and the David Strait.

In many aboriginal groups, it should also be said, the generalised claims to land and environment are based on a spiritual definition of the lived space in relation to a larger cosmos: burial sites, in particular, carry a particular and powerful significance (surrounded by the spirit of the dead) and should never be disturbed. In some groups, however, perhaps especially on the N.W. Coast, the generality of the claim may be a stubborn reflection of a bitter experience of earlier periods of "negotiation" and "partnership" between aboriginal peoples and the dominant society, notably the banning of the Potlach by the B.C. Government in the early 1920's. In the case of the Inuit, the firmness of the claim may be a product of their continuing to experience a federal political and legal system which insists that the business of the courtrooms in overwhelmingly Inuit areas must be conducted in one of Canada's two official languages, and not in Inuktitut, which is the only language widely understood in "Nunavut".

The generality of the claims on questions of land, environment and aboriginal heritage is, nonetheless, under active negotiation between the federal Government and several organisations of aboriginal peoples. The agreement-in-principle between the Government and the Inuit of July 1984 is discussed in Section V of this report.

The other controversial area for aboriginal peoples does not have direct implications for the protection of archaeological sites, but it certainly bears heavily on the question of cultural property. The concern here with the regulation, or alleged lack of regulation, of the market in Native cultural artifacts and, in particular, the flooding of the markets by "fakes", mass produced by small industries that have no connection with native people. We discuss this issue separately, in sub-section E below.

2. The Looting and Vandalism of Archaeological Sites

The concern over the "destruction" of archaeological sites through "looting" has been widespread internationally, both among archaeologists and museumologists, for some time. In 1974, L. Wardlow Hamilton, the then-Assistant General Counsel of the Smithsonian, argued at a major American Symposium that:

"archaeologists the world over are profoundly alarmed at how rapidly the physical evidence of man's past is being destroyed to obtain saleable objects. Not only in the poorer countries, where governments cannot afford the luxury of protecting their antiquities, but also in our own country, pot hunters and organized looters are steadily digging up and dismantling archaeological sites and in the process almost completely destroying their value to scholars. For instance, it may be that Mayan hieroglyphic writing will never be deciphered if the present destruction of Mayan sites continues. The remains of prehistoric cultures within the United States are daily under attack from private developers, public works and commercial or amateur artifact hunters".
(Hamilton, 1975:347-8)

The Canadian archaeologists interviewed during the research on this project were certainly activated by the issue of looting and vandalism, although it may exaggerate the point to see them as being in a state of "alarm". Most archaeologists made a distinction between casual collectors, on the one hand, and more serious "looters" on the other. A senior archaeologist with the Archaeological Survey of Alberta observed that one would be hard pressed to find a farmer in the province who did not have a collection of arrowheads that had been encountered on the surface. But there are also a significant number of amateurs (some 100-200 in his estimation) who routinely go onto the land after "blow-outs" (Prairie wind storms), especially across southern Alberta, and comb the surface for artifacts that have been laid bare.

Bill Fox, an Ontario Ministry of Citizenship and Culture archaeologist who has been very active in the prosecution of "pot-hunters" distinguished the serious "looters" into people who scavenge on the surface and even more committed individuals who excavate on sites. In his view, both these two types of looters, surface collectors and excavators, have a good knowledge of the legislation prohibiting their activity (in the case of Ontario, the Ontario Heritage Act): they are willfully breaking the law, perhaps for the fun of

doing so, or perhaps because of an essential acquisitiveness, or perhaps, in some cases, for profit. In the view of this archaeologist, there are some thirty such serious looters in the Southern Ontario region, all of whom he knows by name; something in the order of 300-400 surface collectors, and an inestimable number of amateur collectors (by and large completely ignorant of the damage their casual collecting may have done, from the point of archaeology, and almost certainly ignorant of the law).

It is not possible to generalize from Southern Ontario, where there is an enormous concentration of archaeological sites, even to the rest of Ontario. Bill Fox had worked previously in Northern Ontario and estimated that there were probably only ten serious excavators in that region, but emphasized that these individuals were not local, and in many cases came from the U.S. in to area to excavate and collect. But the perspective of archaeologists working in that province, and in others, certainly is that such looting can do great damage in a very short period of time. Many archaeologists spoke here, in a psychological fashion, of a phenomenon they called "finders' fever". One archaeologist in Alberta referred to a spate of attempts by amateur collectors to chip away Indian etchings from the stones at "Rock Art Sites", resulting in the stone cracking or flaking off and the loss of invaluable Indian art.

In Saskatchewan, a provincial archaeologist spoke of there being a serious problem of what he called "unlicensed collecting", with a small group collecting for profit and gain by selling the artifacts at auctions (held usually outside the province in neighbouring Alberta - the otherwise advanced Albertan legislation does not apparently prevent the auctioning of objects originating from outside the province. See our case study Number 2 in the appendix of this Report.) Margaret Hannah, the Director of the Collections Registration Programme of the Saskatchewan Museum of Natural History, knew of two important sites that had been destroyed by looters in the south of the province (Buffalo Gap and the Bakken-Wright Site) and three others (Gull Lake, Lake Midden and Stoney Beach) that had been "potted" to a more or less serious degree. The archaeologist responsible for underwater archaeology in Ontario, Phillip Wright, referred to the "stripping" for sale, some 25 years ago, of the parts of the Lily Parsons, a Great Lakes Schooner, sunk in Lake Ontario off Belleville, as an example of the kind of vandalism that underwater archaeologists are now committed to prevent. The problems they face include the increasing popularity of underwater diving for treasure particularly among American tourists, whose boats frequently are equipped with quite sophisticated technology (in particular, the sonar scanner) for locating the position on the lake bottom of underwater wrecks.

Ontario archaeologists do seem to have been at the forefront of the national campaign against pillage and vandalism both of land and underwater sites. The greatest success that is claimed is the prosecution in May 1985 of three "looters" from S.W. Ontario (one of whom was repeatedly identified by respondents as a "second generation looter") for the pillage of the Freelon Site near Ancaster, Ontario during the fall of 1984. This site had been discovered by former-McMaster University students, now area archaeologists, in 1983 and identified as a Neutral Indian village dating from about 1640. The site then comprised 11 middens with some well-preserved food storage pits. The process for the purchase of the site from the landowner by the Ministry of Citizenship and Culture was well advanced when the discovery was made, in September 1984, that the site had been systematically looted. In the aftermath of this looting, the local Ontario Archaeological Society put enormous pressure on the Hamilton-Wentworth Regional Police to use the powers granted to them under the Ontario Heritage Act to gain entry to houses of certain suspected looters. Some 8,800 beads, bones and other artifacts were discovered; and two of the three local "looters" were subsequently fined the impressive sum of \$7,000 each, with the other person being sentenced to community service.

In other provinces, prosecution has not yet occurred in quite the same way. But in Saskatchewan, the Museum of Natural History was mandated, under the provincial legislation of 1980 (The Heritage Property Act), to establish a compulsory system of registration of all private collections in the province. Two archaeologists have been employed full-time on this project, which began in the Spring 1983, initially for a two year period. To date, some 103 collections have been photographed and listed and their owners registered: the sources of the artifacts have been discovered and added to the Provincial Site Inventory. The scheme excites controversy amongst observers: many collectors fear that registration is a prelude to confiscation by the Crown, whilst other observers have been impressed by the care which hobbyists take with their collections and wonder if the conservation of archaeological objects by private individuals especially when passed down (or bequeathed) through families, is not a very useful alternative to their acquisition by overcrowded, overstretched museums. Other observers point to the enormous investment of resources in the process of registration and the relatively small return: only 103 out of an estimated 10,000 Saskatchewan collections have been recorded, and there is not even a "union catalogue" of the inventories completed. In British Columbia, a scheme to introduce a voluntary registry and catalogue of private collectors is now reported to be dormant, and certainly employs no provincial archaeologist.

Most archaeologists consulted claimed to know the "looters" in their area by name and also spoke enigmatically of the existence of a "bush-telegraph" between serious collectors, alerting collectors to the activities of archaeologists trying to restrict their collecting. In the wake of the arrest of the Freelton looters, for example, it was alleged that many private collections were moved and/or hidden away. It is the fear of this kind of bush-telegraph system that has encouraged Ontario archaeologists to employ students around the clock to guard the Neutral Indian site that has only just this month (May 1986) been uncovered during work taking place for the purposes of residential development in Milton, Ontario.

There is undoubtedly some self-consciousness amongst archaeologists over the question of regulating private collectors and of looting. Many archaeologists developed their own personal interest in archaeology during childhood, precisely by developing their own small collections, say, of arrowheads: some quite prominent academic or museum archaeologists still retain their own private collections. Nor either is it the case that the "pot-hunters", who are so loudly denounced, are unambiguously sinister individuals, engaging in a self-interested illegal enterprise against the national well-being for personal economic profit. There is very little evidence of any really significant flow of artifacts from private "looters" into a "market" (except perhaps, for a trade in historical artifacts like old bottles sold in antique shops). And the pot-hunters themselves, so far from emerging from some dubious or marginal corner of society, seem to comprise a broad cross-section of the population (from a worker in a factory in a typical Ontario town to prominent high school teachers and/or local amateur historians). The public availability of ever-more detailed ordinance survey maps, and of monographs like the two-volume Deserted Towns and Villages of Ontario, are deplored for the encouragement they give to serious "looters", but it can hardly be claimed that the people who search out such sources are Philistines, completely uninterested in the details of a culture. The purpose of archaeology is surely to harness rather than denounce such interest and energy.

3. Illicit Excavation

The concept of illicit excavation does not seem to have the same resonance with archaeologists as do terms like pillage and vandalism. In some regions of the country, like British Columbia, we were informed that illicit excavation is not a serious problem: elsewhere the problem is recognized

and thought to be serious. In past, some confusion may exist over the use of terms, which is just as prevalent amongst archaeologists as it is amongst any other profession.

There are at least three senses in which an archaeological site may be described as having been excavated "illicitly".

First, a site may be dug over and substantially destroyed, at least for the purposes of formal scientific research, in the way that was done at the Freilton site near Ancaster in 1984, as discussed in our previous section.

Secondly, however, sites may be illicitly excavated in the sense that the archaeologists working on sites may not attend to the spirit of the relevant legislation. We have been given several accounts of Canadian sites being excavated by visiting teams of American archaeologists, who have then decamped, with all of the artifacts they have uncovered, back into the U.S.. Particular mention was made of the wholesale taking of artifacts from the Trent site near Peterborough, Ontario by teams from the State University of New York throughout the 1960's and early 1970's, and, of course, we were also made aware of the very recent transporting of 100,000 small palaeontological artifacts (triassic microfossils with great relevance for the study of the origins of dinosaurs and frogs) from a site at Parsborough, Nova Scotia, by a team from Harvard University. In both instances, federal permits allowed the artifacts out of the country on the understanding that they would be retained for study and then returned, and some of our correspondents, clearly feel that this is not an uncommon occurrence. The scope of the permit system and its enforcement is clearly a matter requiring research, especially given ambiguities over the status of palaeontology in the respect of cultural property. (Paleontological objects wanted for export are regulated by the Cultural Property Export and Import Board, under Group 1(3) of the Control List, but paleontology is seen to be a completely independent discipline.) Certainly, many archaeologists spoke of site excavations and subsequent exports of artifacts (which might not be formally illegal under existing rules) as illicit in the specific sense of depriving Canadians of the chance to participate in the analysis of these artifacts.

But perhaps the most unexamined area of illicit excavation is in respect of the activity of private developers. Many archaeologists spoke of the excellent relations that exist between private companies involved in energy exploration and local archaeologists. In Alberta, a province which, according to the Director of its Archaeological Survey, has "the most progressive historical resources legislation in the world", all private companies involved in development must first show evidence that they

have completed a precise survey of potential archaeological sites on the land to be developed. The provincial Archaeological Survey maintains a list of qualified archaeological consultants to give to private developers working in the province: before the onset of the present recession in Alberta, some 200 permits a year were given to private firms to excavate (but with an archaeologist working on the project). The issue is now down to 100 a year. The example was also given of the Genesee Power Project, west of Edmonton where a consortium headed by the City of Edmonton Power wanted to begin strip-mining for coal. About \$1 million was apparently spent over five years on an archaeological survey of the very large area, examining some 300 small sites where scatterings of stone tools were found. There is, however, no equivalent legislation requiring such surveys before development in the N.W.T. and it is only on Crown land that any kind of protection of sites in the face of property development could be monitored. The Prince of Wales Northern Heritage Centre reports that the informal arrangements made with all the large local (Canadian) developers appear to be working reasonably well, but also observe that the federal legislation is restricted in scope and is difficult to enforce, in part because of the size of the territories and in part because of the isolated location of development (especially difficult to monitor during the winter). The P.W.N.H.C. is particularly concerned as to the activity of smaller development companies, especially from south of the border, and the unreported (or "dark") number of site destruction by excavation crews working with very small companies. These companies, of course, characteristically work without archaeologists on staff.

Many of our informants were at pains to stress the practical and economic difficulties involved in regulating the activities of developers, once the digging of trenches and the laying of pipes has actually begun. One informed commentator observed that the cost of stopping an excavation team for several days whilst awaiting the proper survey of a site upturned by a digging machine could be absolutely prohibitive. The hope had to be that the foreman of the team had "goodwill" and that he had taken seriously the orientation courses which all the companies employees would receive. The recommended practice was that the trenching machines should move forward one hundred feet and return later, when archaeologists had examined and cleared a site, to connect up the trench. Some archaeologists with whom we spoke suggested that this is very rare, and that large numbers of sites, especially in the North, are simply bulldozed over by private developers.

4. Illicit of Illegal Acquisition by Museums

Much of the discussion in this section is based, inevitably, on the informed opinions of individual

professionals who are deeply involved with archaeology in some "recontextualizing" capacity. We have attempted, where possible, (for example, in relation to the issue of "pot-hunting" and its extent) to underwrite these opinions with some quantified estimates, again provided by involved professionals. There is no doubt that these opinions and estimates could be criticised for being based on "hearsay" or conjecture: we would certainly argue for the need for a more systematic and national survey of the extent of the variously-defined illicit activities, particularly but not exclusively "pot-hunting" and site destruction and vandalism in relation to developers.

Perhaps the most murky topic to emerge during our interviews, however, was the question of illegal or illicit acquisition of archaeological resources by museums. Allegations about such acquisitions were almost always rather vague and unspecific, and tended to emanate from representatives of the aboriginal peoples who believe that museums have illicitly acquired their property. We did receive some information as well from practising archaeologists and private collectors. The question of illegal acquisition was certainly a major topic of concern at the first Law and the Visual Arts Symposium in the United States in 1974; and a particular concern was the relationship of such practices to the protection of sites:

"Museums have had to take note...of the growing conviction among professional organizations that the destruction of archaeological sites is in some important measure due to the collecting activities of museums. Ringing denunciations of illicit trafficking in antiquities have issued from such prestigious organizations as the International Council of Museums (ICOM), the American Association of Museums (AAM), the Association of Art Museum Directors (AAMD), the College Art Association (CAA), the Association of Science-Technology Centers, the Society for American Archaeology (SAA), the Archaeological Institute of America (AIA), and the American Anthropological Association (AAA)." (Hamilton, 1975:351)

Considerable progress in resolving these problems seems to have been made in the U.S. since 1974: the exhibition of Mayan Art which is currently travelling to major museums in the U.S. and Canada includes no object which has been illegally acquired by its owner, and an important sub-theme in the exhibition catalogue is the damage which has been done to objects by collectors (c.f. review of catalogue in African Arts (Spring 1986)).

There are certainly several "stories", circulating among Canadian archaeologists, collectors and representatives of

the aboriginal peoples in Canada, as to the problematic proprietary status of certain artifacts that are currently, or have been, on exhibition or on deposit in Canadian museums. Many of the more celebrated cases revolve around objects, often of an ethnological rather than archaeological character, which aboriginal peoples claim have been illicitly taken from them. It is a well-known fact, for example, that a significant amount of aboriginal property taken during the late 1920's from N.W. Coast Indians by the B.C. Government after the suppression of the Potlatch was sold into the United States or, alternatively, deposited in the National Museum of Man. Some of these materials have been successfully "repatriated" by B.C. Indian groups in recent years. In the U.S., legal action has been taken, again in quite recent times, by the Iroquois of New York State, to try to win title to wampum belts currently on permanent deposit in the Museum of the American Indian. The claim, in this action, is that the person who originally sold these belts to the Museum did not have title to them. Similar claims are apparently being made by Indian groups vis-a-vis the N.M.M.

The acceptance by the Canadian government of the UNESCO Conventions (see our discussion in Section 2 of this Report) was credited by many of our interviewees with having tightened up the practices of museums with respect to acquisition of ethnological and archaeological objects. Some other interviewees felt that the CAA's stand against the placing of a monetary value on archaeological objects - coupled with ongoing financial stringency in museums - has substantially reduced the amount of purchasing of objects by museums in recent years. We were told by a number of museum staff members that their institutions are now more conscious of the necessity of establishing the legal ownership of an object by donors or sellers before accepting it for their collections. In the case of archaeological objects from outside Canada some museums require proof that the object was legally excavated and exported in accordance with the UNESCO Convention. In the case of objects from Canada many require proof that the object was acquired from sites not protected by any legislation at the time of excavation.

Two observations need to be made in respect of this area of discussion:

(1). It is an area where conceptual clarity is especially important. The claims that are made about illicit acquisition seem usually to emanate from the aboriginal peoples, drawing on the customary notion of property rights, which, following Peter Usher, we outlined earlier in this section. The claims of illegality in museum acquisition policy seem to be made, characteristically, by collectors or, occasionally by archaeologists concerned with the preservation of in situ

sites, in reference to some particular incident that is part of their professional or private knowledge. Seen in this way, 'illicit' and illegal acquisitions by museums are quite different dynamic processes, and require separate systematic analysis.

(2). It has not been possible within the short period of this research to mount any such systematic analysis. We think there is a sufficient concern over museum activity as an aspect of archaeological conservation (and its alleged relationship to the protection of sites) to warrant a more detailed study of acquisitions in any later research undertaken by the Department of Communications. We could not fail to take account of the angry comment made to us by a major commercial dealer in Inuit art, who observed of archaeologists acquiring such pieces for museum collections, that they "are nothing more than the certified looters of the objects".

(3). It is fair to say that we received no evidence that would suggest that there is a strong relationship between the acquisitions policies of Canadian museums and the destruction of archaeological sites in this country (a relationship which was identified as a serious problem in the U.S. at the symposium referenced earlier). The general impression, which was voiced (on the part of archaeologists and commercial art dealers alike) was that museums "just don't buy anymore". This almost concensual view is still certainly worthy of close empirical investigation in the more remote parts of the country and in the smaller municipal and regional museums.

5. Fakes

The economic well-being of the aboriginal peoples of Canada, such as it is, is still substantially dependent on hunting and foraging activities, especially north of 60. This fact alone may, of course, account for the intensity and the form of many land claims. The aboriginal peoples' notion of "stuff" (and indeed their claims to their property) does not break down this broad property of their culture into distinct categories like "art", "archaeology", or "the environment". Our discussion here of the significance of fakes and forgeries will therefore proceed in a discursive manner, not unlike that of the aboriginal peoples' themselves (for example, in their negotiations with the dominant culture) through a discussion of the markets in Indian art, museum objects and archaeological objects as conventionally

Native peoples have always been interested, since their earlier contact with their colonisers, in trading their "stuff" for income and, generally, entering into market relations with the dominant culture. A significant proportion of the various objects which find their way into the marketplace as North American

Indian Art are products of the ongoing contact between the dominant and indigenous culture. A good example of this would be the argillite objects (usually sculptured figures or plates) produced by the Haida on the N.W. Coast: argillite carvings were also produced by the Haida people exclusively for the tourist trade and it is apparent from advertisements in recent issues of American Indian Art (a dealers' and collectors' magazine produced in the United States), that they remain so to this day.

The market for North American Indian Art, as well as for archaeological objects, has always been substantial. In Canada, in particular, Indian art has been an important ingredient in the post-war development of a distinctively Canadian art form. But the art forms have also been appropriated into the array of cultural objects that constitute the field of "Canadiana", and which find their ways into airports, railway stations and shops as tourist objects. Though we have no detailed information on the economic value of the modern trade in such art objects to aboriginal people, it is clearly very substantial indeed. In the case of the Inuit people the production of soapstone carvings - probably the most well-known and identifiable Canadian art form - has been estimated by the Inuit Tapirisat of Canada, to constitute "a multi-million dollar...economic base" for the Inuit people (Inuit Ublumi, Inuit Today, 1(4):August 1983).

What is not well-known within Canada is that a significant proportion of the soapstone carvings on sale in commercial stores are produced, often via machine production rather than by hand, by non-native people. Some of the commercial companies (like that of a Mr. Muckenheim, a European emigre based in Parry Sound, Ontario) go to some length to conceal their real identities by using trade marks with Inuit sounding names like 'Dimu', 'Siku' or 'Ananas'; others, like a father-and-son team from the U.K., the Parkinsons, working in Eastern Quebec, do not even try to deceive the consumer. In a pioneering investigation of the trade in fake Inuit art, the Ottawa-based lawyer, Mr. Mark Denhez, has argued that this mass production of these fake art objects has very fundamental injurious effects on the economic base of the Inuit (Denhez, 1983). He has also insisted, persuasively, that the mass production of fakes, so far from being a form of flattery, constitutes a further cultural and psychological threat to aboriginal people, additional to the larger cultural and psychological threats experienced by any aboriginal people.

The trading in fakes is certainly not confined to the "modern" production of traditional North American Art. Several of our interviewees have spoken of their suspicion, or their knowledge, about the presence of fake archaeological objects currently held in museums. One archaeologist in

Ontario spoke confidently of the activities in the 1970's, of Mr. Dean Axelson of Toronto, who was engaged in the manufacture of wax pipes for museums. To his knowledge, some of these found their way into the Royal Ontario Museum (from where they have since been removed) and the Peel County Museum. The market in fakes has, however, extended beyond museums to the general public. In the early 1970's apparently, an antique store in London, Ontario doubled as a workshop for the production of Indian silverware; whilst, elsewhere within the province, one could encounter auctions like the one held in Norfolk, Ontario, where genuine Indian flints from Pennsylvania were on sale alongside much gaudier, but entirely fake, artifacts selling for much higher prices. Others, especially archaeologists, have spoken of the "fake" claims that sometimes are made by aboriginal people to possession of particular stretches of land and its attendant cultural property. The Tlingit people (an entrepreneurial and migratory people) are said to have moved from the North West Coast to the Yukon and to have pushed out the Taghish people; but, in the land claims process, to have claimed they were always on the land in the Yukon. And, most well-known perhaps, the Huron of S.W. Ontario live on land that belonged for time immemorial to the Iroquois. Each of these peoples have nonetheless made claims to the title of the land they currently inhabit on the grounds of their traditional occupancy: they are claims which some archaeologists think are "fake".

In archaeology as in art, establishing that an object is "authentic" and a claim to ownership is valid has massive economic consequences for the successful owner of the title to the object (Duboff and Franz, 1975).

In museums and in heritage centres, the discovery of large number of fakes or forgeries could result in a considerable popular loss of faith in the judgement and special knowledge of the State's own guardians of cultural resources. There is sufficient hearsay evidence, in the field, in our judgement, to warrant a systematic study of the forms and extent of fakes and forgery in Indian art and archaeology and in museum acquisitions in Canada today.

Section VIII: FOREIGN MODELS AND EXPERIENCE

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Section VIII: FOREIGN MODELS AND EXPERIENCE

A. Introduction

Italy was the first European country to introduce legislation to protect archaeological resources, as early as the seventeenth century. The Edict of 1624, issued by Cardinal Aldobandini in Rome, forbade any excavation without prior authorization and it requested landowners to report within 24 hours the discovery of any object of historic interest. This understanding of the value pertaining to archaeology was characteristic not only of countries of classical origin. Sweden, for example, declared, in 1684, that archaeological material was protected by law (O'Keefe, 1984:35). The centuries-old experience of Europeans in dealing with the protection of archaeological resources represents a source of valuable data on the different legal models and their respective effectiveness.

The manner in which archaeological resources are protected and managed with various countries differs considerably. Legal and administrative approaches generally depend upon the constitutional system of the country. Where legislative authority is centralized as, for example, in France, Sweden, New Zealand and Italy, the legal acts are enacted by a national government. In countries with decentralized systems of government (for example, the United States, Australia and West Germany), legislation pertaining to archaeological resources is enacted, respectively, by two levels of government - i.e. by state or province and federal authorities.

Of course, national governments determine their cultural policy and legislation according to their own concept of culture, their socio-economic system, their political ideology and the level of their technological development.

For the purpose of this study, we have decided to consider the legislation and policies of countries with levels of cultural, economic and technological development similar to Canada's, and whose experiences and models might inform new Canadian initiatives.

The legislation and policies from the U.S. and Australia (which have a system of federal government comparable to Canada's as well as a similar ethnic structure), from Scandinavia (primarily in the area of protection of archaeological resources), from Great Britain and France (mainly because several of the legislative models from these countries are presently employed in Canada), from New Zealand (because the presence of the Maori population is comparable to Canada's aboriginal people), as well as the effectiveness of these legislations and policies, will be reviewed in a summary manner. The legislation and policies of countries with outstanding archaeological sites, such as Italy, Israel and Mexico will also be reviewed but in a more general way so as to serve the purpose of additional illustration.

This summary review does not pretend to present a comprehensive and thorough picture of legislation and policies directed toward the protection and management of archaeological resources in the chosen countries. We hope, however, that this examination of other nations' legislation and policies will provide a broader context for possible federal activity in this area.

B. Review of Foreign Legislation

1. U.K.

Despite the early contribution of the English antiquarian movement to the development of archaeology (G. Daniel, 1975:17-24, 29-37), Great Britain was late in comparison with other European countries in the implementation of protective legislation. Two major legislative acts are of interest to archaeology: the Ancient Monuments and Archaeological Areas Act of 1979, and the Heritage Act of 1980. The Protection of Wrecks Act of 1983 is not considered under this section. Its provisions, however, have important implications for underwater archaeology.

2. France

Different provisions, in relation to archaeology, are found within various legal acts, such as le Code Civil, Code Penal and le Code de l'urbanisme.

The laws from 1909 to 1913 "adopted the principle of classification which is now a hallmark of protective legislation on the French model" (O'Keefe, 1984:38). The main statute pertaining to archaeology is the 1941 Regulation on Archaeological Excavation, but its legislative power is limited since:

"certaines dispositions de la loi de 1941 ont de toute évidence un caractère réglementaire au sens de la constitution de 1958; elle pourraient être abrogées par décret et remplacées par des textes de forme réglementaire." (Querrien, 1982:45)

3. Sweden

All Scandinavian countries developed a very early interest in archaeology (especially by comparison to their Southern European counterparts), but only in Sweden has this interest been expressed in appropriate legislative action. Although various acts such as the Cemeteries, Environment Protection, and Land and Water Management Acts, can be considered as instruments for the safeguarding of archaeological resources, the primary piece of legislation in Sweden is the Ancient Monuments and Finds Act of 1942, amended to 1976.

4. New Zealand

The remains of aboriginal cultures were the main subject of the 1901 Maori Antiquities Act. During the last decade, New Zealand has also been active in the implementation of new legislation designed to protect heritage and archaeological resources and to prevent uncontrolled excavations. Three pieces of legislation warrant attention here the Historic Article Act of 1962, with 1965 Regulations, the Antiquities Act of 1975 and the Historic Places Act of 1980.

5. Australia

This country which is composed of six states and one territory seems to be of immediate relevance to this project. The Australian government "was slow to pass legislation protecting aboriginal relics and even early colonial remains" (O'Keefe, 1984:70). Recently, however, legislation designed to protect cultural heritage have been introduced. The key acts are the Australia Heritage Conservation Act of 1975, the World Heritage Protection Conservation Act of 1983 (a response to the UNESCO Convention) and the Aboriginal Heritage Act of 1984.

As stated by O'Keefe, "though backward in the protection of relics on land, Australia has, however, done pioneering work, especially in the English speaking world, on the protection of historic shipwrecks" (O'Keefe, 1984:70), by introducing, in 1976, the Historic Shipwreck Act, amended in 1980.

Commonwealth states and territory are also active in implementing legislation pertaining to archaeological resources. The relevant pieces of legislation are the North Territories Native and Historic Objects Preservation Ordinance of 1955, the Queensland Aboriginal Relics Preservation Act of 1971, the North Territories Land Rights Act of 1977 and the North Territories Aboriginal Council and Associations Act of 1977.

6. United States

The U.S. federal and provincial legislation on protection of cultural heritage are complex and at the same time interesting for the purpose of this project. Although the Antiquities Act was passed as early as 1906, it was not apparently until 1979 that archaeological resources had sufficient protection on federal lands - i.e., when the Archaeological Resources Protection Act was enacted. Other federal legislation related to archaeology are the Historic Sites Act of 1935, the Reservoir Salvage Act of 1966, the Natural Historic Preservation Act of 1966, amended to 1980, and the National Environmental Policy Act of 1969.

All states adopted their own legislations; the degree of dependence from federal law depended on the time the states joined Confederation. Because of the similarity of the socio-economic structure and the types of archaeological material to the Yukon, the legislation in Alaska warrants special attention. The most important piece of Alaskan legislation, in relation to archaeology, is the Alaska Historic Preservation Act of 1971, amended to 1974.

7. Israel

Legislation pertaining to the protection of cultural property is particularly interesting, not only because of the extreme "richness" of its archaeological resources but also because of the strong emotional significance that is attached to these resources by the three main religious groups living in Israel; Jews, Moslems and Christians. "Toute proportion gardee", the present position of Jews in Israel can be regarded as similar to that of the Canadian aboriginal population. The legislation designed to protect archaeological resources in Israel is the Antiquities Law of 1978.

C. Review of Terms and Definitions

It has already been demonstrated that the terms and definitions used by different Canadian provincial legislation are very complex and sometimes incompatible. Foreign legislation developed in different periods of time, in countries with distinctive cultural traditions, different linguistic characteristics and often incompatible conceptions of archaeological resources, presents a much more complicated picture of terms used.

This review of definitions does not represent a comprehensive list of terms that are used, but can be perceived as a tool that will serve, later on, a better understanding of the effectiveness of respective national legislative acts.

1. United Kingdom

"'ancient monument': any scheduled monument, and any other monument deemed of public interest by the Secretary of State due to its historic, architectural, traditional, artistic, or archaeological interest.

'archaeological investigation': investigation of any land, objects or other material for the purpose of obtaining and recording information of archaeological or historical interest.

'archaeological area': area so designated by the Secretary of State or a local authority due to its appearing to merit treatment as such for the purposes of

the Act.

'protected monument': any scheduled monument, or any monument under the ownership or guardianship of the Secretary of State or local authority by virtue of the Act."

2. France

"'Historic Monuments': Immovable objects of historic or artistic interest, including megalithic mounds and ground containing prehistoric formations; & buildings which because of their proximity must be maintained to conserve a classified monument; movable objects of historic artistic or scientific interest."

3. Sweden

"'ancient monuments': mounds of earth and stone built by man during ancient times, e.g. burial mounds, burial structures of stone with coverings, stone circles, ship-settings, erected stones, rock surface with inscriptions, pictures, carvings, cult places, stone crosses and other monuments erected for ceremonial uses, remains of dwellings, abandoned fortresses, castles, churches, etc. as listed, including earthbound natural objects associated with ancient customs, legends, or historic events.

4. New Zealand

"'artifact': any chattel, carving, object, or thing which relates to the history, art, culture, traditions, or economy of the Maori or other pre-European inhabitants of New Zealand and which was or appears to have been manufactured or modified in New Zealand by any such inhabitant, or brought to New Zealand by an ancestor of any such inhabitant, or used by any such inhabitant, prior to 1902;

'antiquity': any chattel of any kind whatsoever, (which is) of national, historical, scientific, or artistic importance; and...relates to the European discovery, settlement, or development of New Zealand; and...is or appears to be, more than 60 years old."

5. Australia

'relic': any trace, remains or handiwork of an Aboriginal but does not include any handiwork made by an Aboriginal for the purpose of sale; any trace or remains of exploration and early settlement considered of sufficient importance by Minister to warrant protection under the Act.

'prescribed object': an object (defined as a carving, painting or other representation, whether on rock or otherwise) relating to the aboriginal natives of Australia which is of ethnological or anthropological interest or value;...an object manufactured by an Australian aboriginal native with native tools and according to native methods, and...such other objects of ethnological, anthropological, archaeological or historical interest or value..."

6. United States

"'archaeological resource': any material remains of past human life or activities which are of archaeological interest...(it) shall include, but not be limited to: pottery, basketry, bottles, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, human skeletal remains, or any portion or piece of any of the foregoing items. Non-fossilized and fossilized paleontological specimens, or any portion or piece thereof, shall not be considered archaeological resources, under the regulations under this paragraph, unless found in an archaeological context."

7. Israel

"'antiquity': (1) any object whether detached or fixed which was made by man before the year 1700 of the general era and includes anything subsequently added thereto which forms an integral part thereof;
(2) any object referred to in paragraph (1) which was made by man in or after the year 1700 of the general era which is of historical value and which the Minister has declared to be an antiquity;
(3) zoological or botanical remains from before the year 1300 of the general era;

'antiquity site': means an area which contains antiquities."

D. Prime Policy Publics In Foreign Legislation

1. Archaeologists and Research/Collection Institutions

All foreign legislation that has been reviewed reveals a commitment to the protection of national archaeological resources through regulations designed to limit the accessibility to archaeological sites only to qualified persons; through regulations on commerce and export; and through designation of institutions to be responsible for the preservation, research, and the organization and display of archaeological material.

Permit regulations are the basic tool, not only for the protection of archaeological resources, but also to insure that the information the resources contain will be used to increase the knowledge about past cultures. The permit or license system differs considerably, however, from one country to another.

New Zealand provides an example of weak legislation in this area. The 1975 Antiquities Act (section 6), makes no provision for archaeological investigations. It states, only, that a written certificate of permission from the Ministry of the Interior is required for the removal of any historic artifacts from New Zealand.

British legislation also appears to be vague with regard to a permit system. The 1979 Ancient Monument and Archaeological Areas Act (section 34), indicates that the Secretary of State may at any time appoint any person he considers competent to undertake archaeological investigations. It also states (section 36), that only a person duly authorized, in writing, may carry on excavations. No section of this or any other legislation indicate specific requirements for a permittee.

Australian federal and state legislation are similar to the British model. While written permission is required for any archaeological activity, the legislative acts do not specify the differences between survey, surface collection and excavation. Presumably, the collection of artifacts outside of designated areas (i.e. historic reserves) is permitted.

The legal situation in the United States is very complex. The federal legislation, primarily the Archaeological Resources Protection Act, has strong provisions for the control and enforcement of a permit system. This Act, however, does not extend to non-federal lands; lands that may be excavated without control from the federal government. Several State legislatures have

Introduced different kinds of permit systems. For example, the State of Colorado provides for four categories of permits: survey only; survey with limited collection; sampling excavation; full-scale excavation. The State of Texas includes additional categories of permits for underwater excavation, and altogether the Texas legislation provides for eight classes of permits. The permits are also divided into research or salvage categories.

Further diversification of the present U.S. permit system is guided by private, state, or federal land ownership. The licensing requirements in many states, such as Arizona, Nevada and New York, for example, apply only to public and not to private land. Although the importance of the permit system is generally understood by legislators, often the interests of prime policy publics other than the archaeologists prevail, as demonstrated by the federal Archaeology Resources Protection Act, which does not require a permit for excavation by an Indian tribe on a site located within Indian reserves. While not introducing compulsory requirements for permit systems, legislators, however, seek voluntary compliance by the general public. For example, the Wisconsin Field Archaeology Act strongly encourages the securing of a permit for excavation on privately owned land (O'Keefe, 1984:41).

French legislation provides for the protection of the interests of the archaeological community in a stronger manner than legislation previously reviewed. Permission is required for excavations even on the researcher's own land. The conditions of an excavation permit are determined by the High Council for Archaeology Research under the Ministry of Culture.

In a similar way, Swedish legislation requires a permit for the displacement or alteration of an ancient monument or any archaeological site. Although there is no piece of legislation that is dedicated exclusively toward archaeology and the management of heritage resources, the interests of archaeologists and research institutions are apparently assured. Archaeological rescue excavations are carried out partly by certain larger local museums and partly by provincial museums. The majority of excavation, however, is carried out by the Board of National Antiquities. Underwater excavations are conducted exclusively by the National Museum in Stockholm (Swedish Archaeology Today, 1979:13).

Israeli legislation (i.e. the 1978 Antiquities Law) states in an unequivocal manner (section 9), that:

"no person shall dig on any land, or otherwise search for antiquities, including the use of metal detectors, or gather antiquities, unless he obtained a license, and in accordance with the conditions of the licence".

The same law requires that the Archaeology Council of the Ministry of Education and Culture "make the scientific and financial ability of the applicant its prime consideration" (section 9 (b)).

The majority of the foreign legislation reviewed here, with the exception of the U.K. and New Zealand, imposes in some way state ownership on all archaeological artifacts and sites. Country's with strong traditions in archaeology provide for the management of all archaeological resources by a central body. In France the coordinative role is played by Le Conseil Supérieur de la Recherche Archeologique. The Council is divided into two sections: prehistoric antiquities and historic antiquities. The Decret No. 78.1063 of November 7, 1978 describes in detail its responsibilities.

Similarly, in Sweden all archaeological activities are guided by the Board of National Antiquities, and in Italy by la Soprintendenza della Antichità e della Belle Arti.

Centralized administration and state involvement in the process of protection of national cultural heritage is generally thought desirable by the scientific and the museological community of archaeologists. The Italian model is considered to be the most progressive (Williams, 1978:112). The success of the Italian system is usually interpreted as being an effect of the centralized agency which acts as a guardian of both public and privately owned works.

A similar model of state protection is in effect in several other countries with "rich" archaeological resources, such as Greece, Columbia, Peru, Costa Rica, Guatemala, and Bolivia.

The rigid laws protecting natural archaeological heritage do not limit the right of the international community of archaeologists to work on interesting sites outside of their own countries of origin. Foreign archaeology schools have been established since the beginning of this century in Egypt, Greece, Italy and Spain, allowing archaeologists from foreign countries, such as Sweden, Germany, Great Britain, United States and France, to work together with local authorities. The activities of the schools were not the result of a lack of protective legislations or of the political power of European countries but was rather guided by a general understanding of archaeological resources as a heritage of all mankind. The recent foundation (1970's) of the Polish Archaeological Mission in Cairo further supports this rule.

2. Rights of the Aboriginal Population

Experience from countries with native minorities, such as Australia, New Zealand and the U.S., which have implemented legislation directed toward the protection of cultural heritage resources, including archaeology of aboriginal populations, may prove useful for future Canadian legislation.

The federal government of Australia by introducing in 1984 the Aboriginal Heritage Act recognized formally aboriginal concerns with land and items of traditional significance. The Act tries to preserve and protect places and objects of particular value for the native Australian population. It generally deals with larger areas which might include sites. The term "area" is used to avoid an undeniably narrow approach that might be embodied in the term "site" (G. Ward, 1985:47). "Aboriginal remains" receive special consideration. They require the compulsory reporting of discoveries and "returning the Aboriginal remains to Aboriginals entitled to and willing to accept, possession, custody or control of the remains in accordance with Aboriginal tradition" (section 21.1a). Offenders are liable to a fine of up to \$10,000 or up to 5 years imprisonment.

The Act recognizes the right of the aboriginal population to their own traditions, but does not give them the right to the land they settle on. Likewise, it does not provide management related activities, and bestows executive power to the federal Minister of Aboriginal Affairs.

The law reflects, however, a developing appreciation of Aboriginal interests in heritage matters and the determination of the federal Australian government to support these interests.

The legislative initiative of the federal government of Australia in aboriginal related matters, also includes a new comprehensive Aboriginal Land Rights and Heritage act (data on its implementation unavailable).

Areas of traditional Aboriginal settlements, beside the above mentioned Act, are also protected by the 1983 World Heritage Properties Conservation Act. It states (section 11.1) that it is unlawful: "to carry out any excavation works on any site...to damage or destroy any artifacts or relics from any site", except with the written consent of the Minister of Aboriginal Affairs.

The legislation introduced by the Australian States, apparently, are less important than federal legislation in the same area. The federal Aboriginal Act states (section 7)

that: "the Act is not extended to preclude or limit the effect of state law, but where there is direct inconsistency the federal Act will prevail".

The New Zealand government's recognition of the value of aboriginal culture took the form of the Maori Aboriginal Act as early as 1901. The last 1975 Antiquities Act is designed "to provide for the better protection of antiquities, to establish and record the ownership of Maori artifacts and to control the sale of artifacts within New Zealand". The Act states that any artifact found anywhere in New Zealand after the commencement of this Act, is deemed prime facie to be the property of the Crown (section 11.1). It recognizes also, that: "The Maori Land Court shall have jurisdiction in respect to any artifact" (section 12.1).

Export permits for cultural property objects shall respect its archaeological importance and, "its spiritual or emotional association with the people of New Zealand, or any group or section thereof" (section 6a,b). The 1980 New Zealand Historic Places Act provides for the establishment of the New Zealand Historic Places Trust. One of the Trust's members has to be a Maori person.

Aboriginal organizations, such as the Maori Association, the Maori Advisory Committee or other appropriate Maori tribal authorities are also given the power to decide on the designation of archaeological sites as well as the undertaking of archaeological investigations (section 44 and 50).

United States federal and state regulations seem to be sensitive to the protection in law of historical and prehistorical human remains usually associated with living native populations. There is also a tendency to remove skeletal remains from museum displays and to reburial them after scientific examination. The 1979 federal Archaeological Resources Protection act contains provisions directed toward the protection of archaeological resources on Indian lands and is intended to foster increased cooperation and exchange of information between governmental authorities, professional archaeological community and private collectors who assembled their collections prior to the enactment of the law. The meaning of "archaeological resources" in the Act includes human skeletal remains and graves. Legislation in several states address the sensitive issue of human remains.

California's legislation empowers local Indians with the deposition of skeletons and grave artifacts within the State. Likewise, the law offers protection from vandalism and disturbance of all identified cemeteries on private lands. It is unlawful to possess any native American artifact

originating from a grave. This provision, however, does not affect current museum collections (Science, 1983).

In Washington State it is a gross misdemeanor to "willfully remove, mutilate, deface, injure or destroy any cairn or grave of any native Indian" (O'Keefe, 1984:139). Similar provisions are present in other state legislation, such as Arizona, Iowa, Oregon, Maine and Michigan, which have a high percentage of native populations. For example, Alaska introduced legislation which put a strong emphasis on native cultural heritage.

The 1977 Alaska Historic Preservation Act states that, "where a site is sacred, holy or of religious significance to a cultural group, the consent of that cultural group must be obtained, before a permit (for archaeological excavation) may be issued" (O'Keefe, 1984:152). It is interesting to note that the term "cultural group" is used rather than the term "race" applied in some Canadian legislation.

The rights of the native populations are also de facto recognized. For example, the U.S. Department of the Interior issued a 1982 memorandum on Archaeological Human Remains in National Parks. It states that: "The policy of the Department is to provide reasonable opportunity for consultation by the responsible bureau or office with groups or individuals interested in the deposition of disturbed human remains" (U.S. Department of Interior, Memorandum, 1982:3).

In some foreign cases, even without explicit policy or legislation, the cultural or even political interest of a particular group may prevail. In Israel, for example, 2,000 year old bones, which had been studied by archaeologists, were reinterred ten years after their discovery with full military honours due to the claims by religious groups that they were the remains of an ancient Jewish patriot (The Times, 12 May 1982:6, after O'Keefe, 1984:141).

In Norway, where a minority of the Northern Lapp (Sami) population lives, the 1979 Cultural Heritage Act takes under protection their cultural resources. Section 23(c) states that: "It is prohibited to export without consent of the Ministry Sami (Lapp) cultural relics irrespective of age". The law differentiates between Lapp heritage and national heritage objects. An object that is to be classified as a protected ancient monument has to have been produced prior to 1537, except for Lapp objects which have to be only more than 100 years old to be protected as ancient monuments (Cultural Heritage Act, section 4).

The above reported examples from foreign legislation demonstrate that several central governments have acted in the protection of archaeological resources of aboriginal

populations. To assess the "real" results of these legal provisions, research on how it is perceived by native populations would be highly desirable.

3. Private Collectors and Market Rules

The activities of private collectors and the creation of an institutional market for archaeological objects goes back, much further, in time, than the national legislations that attempt to control archaeological resources. Usually, a state may apply, exclusively or inclusively, three methods to prevent illicit trafficking: (1) declare state ownership of all objects; (2) classify and register movement of objects on national market; and (3) improve licensing system to control export. Most of the legislative acts reviewed, introduced the concept of state ownership of archaeological resources. This concept does not exclude, however, private ownership. Very often both are present in national legislations.

French law, without imposing immediate state ownership on archaeological finds, made it compulsory for the finder to report a discovery. Objects that have been classified through entry into the official inventory of Historic Monuments cannot be exported but may be privately owned and be offered for sale on the national market.

The British legislation, although based on a different foundation, applies similar provisions, imposing a licence system for the export of all archaeological material (Williams, 1978:115). Section 55 of the Ancient Monument and Archaeological Areas Act, implies private ownership of archaeological and historical specimens, and enables temporary custody to be taken of finds which are of archaeological interest. The British legislation does not provide for the reporting of fortuitous discoveries. However, it requires the declaring of discoveries of treasures - i.e. objects made of gold and silver - as state property. The rule can hardly be applied to archaeology, since an object is considered a "treasure" only when "it was hidden in the ground or in the building with the intention of subsequent discovery" (O'Keefe, 1984:317).

New Zealand legislations makes no explicit provision for state ownership, which implies that archaeological resources might be in the possession of private individuals. Restrictions are imposed only on the export of Maori artifacts; some of which can be considered as of interest for archaeology.

Legislation in Queensland, Australia declares objects (relics) from historic reserves and objects of European origin produced prior to 1865, found on public lands, to be the property of the Crown. A state agency, according to law, should control commercial transactions of relics that are in the hands of private collectors.

In U.S. federal legislation, archaeological resources from federal ("public") lands are considered the property of the government. The existence of "legally obtained" collections and the rights of private collectors are recognized as well in the Archaeological Resources Protection Act. One of its purposes is, "to foster...cooperation and exchange of information between government authorities, the professional archaeological community, and private individuals having collections of archaeological resources" (section 2b). Considering the limited areas of U.S. federal jurisdiction and the rights of Indians to undertake excavations without a permit, a substantial number of archaeological objects are lawfully present on the national art and antiquities, and hobbyist/collectors markets.

In Sweden, a widespread and traditional concern for archaeology still leaves enough space for the activities of private collectors. Only objects from sites considered to be "ancient monuments" accrue to the State. All other artifacts are considered the private property of the finder. All fortuitous discoveries are to be reported to the appropriate state authority. The law does not impose limitations to such private property, except, however, for objects of gold, silver or copper, which must be offered to the State for purchase.

In Israel, the state owns all archaeological resources but collections assembled prior to the 1978 Antiquities Law are considered legal. Such collections are, however, under the State's control, in so far as "the owner of the antiquity that is classified as being of national value, may be required to sell it to the State" (section 19a). The law requires that all private collections be registered and any transfer of ownership be reported to the authorities.

Similar provisions exist in other countries where archaeological resources are particularly abundant and valuable. Egyptian, Costa-Rican, Peruvian and Greek legislation require the compulsory registration of all transactions by dealers and as well requires that inventories be maintained by all private collectors of their archaeological objects.

The legislative acts reviewed here, while leaving space for the activity of private collectors and dealers, may be regarded as being more concerned about the preservation of national cultural heritage than with the recognition of the international character of archaeological resources. The case of Great Britain seems to be an exception. British legislation apparently respects general opinion that "a two-way trade of cultural property is of greater cultural advantage than a stifled market" (Williams, 1984:116).

4. Public Participation and Rights

National legislation seems to reflect quite different levels of attention to the interests of archaeologists and the larger public in the protection and preservation of sites. There is, however, a widespread recognition of a considerable level of public interest in archaeology.

The U.S. Archaeological Resources Protection Act states that the preservation is "for the present and future benefit of the American people", as well, the Alaska Historic Preservation Act explicitly refers to "future generations".

Active involvement of the public in the protection of cultural heritage is proclaimed as contributing to personal development and recreation, interests which modern States take seriously, usually for other than cultural reasons.

The British Ancient Monument and Archaeological Areas Act under section 19, provides for the public to have access to any monument on Crown-owned or local property. It also states that the Secretary of State or local authority may provide facilities and information on other services to the public. Although the foreign legislations reviewed do not provide for management related activities to enhance public participation, current policies and practices often rely upon the involvement of the public in excavations as a means of ensuring the public's voluntary compliance. Such practices are traditionally popular in Scandinavia and in United Kingdom (O'Keefe, 1984:337).

The role of the public in the preservation of archaeological resources is also noticeable in such particular areas as underwater archaeology. France and the U.S. are examples of countries where amateur archaeologist-divers carry out excavations under the scientific supervision of professional archaeologists.

Public participation in heritage preservation programmes is much stronger in countries with a high standard of living

and well developed institutionalized periods of leisure, and likewise, insignificant where they are low and underdeveloped. Respective examples are Sweden and Egypt.

E. Conclusions

The quantity of legislative acts designed to regulate the management of archaeological resources in foreign countries is such that any attempt to represent them in a short form renders a highly selective choice inevitable. Leaving open the question of the representative value of the examples chosen, some general conclusions could be drawn.

It is evident that countries with federal political and administrative structures similar to Canada have not as yet developed a comprehensive and effective legislation which could serve as a model for future Canadian law. Their attempts to manage archaeological resources did include, however, legislation related to aboriginal claims and aspirations.

All legislations demonstrate that at the current stage of international development and cooperation, countries with more centralized political systems are highly involved in legislating and policing cultural resources. Most of them explicitly imposed state responsibility for protection of archaeological resources. This responsibility does not necessarily have to be linked to state ownership of artifacts and sites.

The existence of private collections is generally acknowledged and in some cases positively stressed, and there is a widespread recognition of the legitimacy of public interest and participation in the preservation of archaeology.

There are clear differences between the countries we have reviewed with respect to the different degrees of emphasis their legislation places on the amount of direct protection for archaeological sites, on the recognition accorded to the cultural properties of aboriginal peoples and on the extent to which the public is accorded rights of participation to and access in archaeology. It would be important in future research into this area to provide an account of the circumstances which generated the different legislative configurations in each country, to develop what may be called a comparative typology of different types of regulation of archaeological sites, and finally to establish procedures for evaluating the effectiveness of the various forms of regulation in place within each of these countries.

Section IX: CONCLUSION

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SECTION IX: CONCLUSIONS

A. Four Areas of Agreement

The Centre has found a high level of interest amongst various policy publics in a new departure for the management of archaeological resources. This is true for people who are directly affected and those who also have only a marginal interest alike.

The enthusiasm for a new departure on the part of our respondents seemed to derive from four widely shared understandings to which we want to give particular emphasis here.

1. There is a general recognition that archaeological resources, like the natural resources in which they are frequently embedded, are constantly threatened, and then dealt in a series of issues. In Canada, in the 1980's, thousands of sites are threatened by large-scale land development projects. They are also adversely affected by the unchecked processes of nature, by the uninformed and predatory activities of some of the so-called "pot-hunters", by the existence of some mistrust between professional archaeology and the aboriginal peoples, and by the absence of a comprehensive federal policy and the protection of sites.
2. There is a shared recognition, in our view, amongst all those Canadian publics with an interest in

archaeology, of the need for action by the federal government on the protection of archaeological resources. There is a widespread view that such resources are far better protected on provincial land than within federal jurisdiction. There seems also to be a widely-expressed sentiment that the protection of "national heritage" in Canada should be headed by one single, federal body, overseeing and coordinating the work of existing provincial and federal agencies. It ought to be the particular responsibility of such a federal agency to ensure that existing legislation on protection of archaeological resources is effectively enforced.

3. This broad sentiment in favour of a more visible and effective federal presence in the protection of archaeological resources ought not, however, to be understood as a call for the creation of a large bureaucratic federal agency to carry out all the work of heritage protection. We encountered, in our investigations, a widespread interest in the development of a much more extensive framework of local heritage centres, (funded ultimately from federal resources) in which the work of professional and amateur archaeologists could be coordinated and local knowledge constantly built up and disseminated to local publics.
4. There is also a widespread sentiment in favour of some kind of "accommodation" being developed between archaeologists and aboriginal peoples. There is real interest in the way in which archaeologists and aboriginal peoples are working together in the identification and/or the excavation of sites, and in the development of new ways to place the culture of aboriginal peoples on public display. We discuss this development in more detail below.

These general agreements amongst interested publics are associated with a widely-held feeling that the moment is ripe for legislative and policy initiatives? However, the Centre also encountered, a general resistance to a rushed approach.

If there was any criticism of the Centre's work during the conduct of this study it was directed at the limited time-frame provided for it. While people were impressed with the breadth of the Centre's approach to the question, they expressed doubts about the wisdom of the sudden urgency communicated by the Department of Communications. Professional archaeologists in particular pointed to the lesson to be learned from the American experience where - it was felt - action had been taken without the necessary caution and consideration of all factors and effects. These sentiments were echoed by representatives from aboriginal

groups, officials from provincial departments and federal officials from other departments.

On the other hand, contacts were very gratified to see that an action oriented approach was being taken, and that there seemed to be a realistic chance for concrete new policy and legislative initiatives within the foreseeable future. This sentiment should prove to be very helpful for the conduct of the consultation phase.

B. Legislation as policy action

We have outlined in section IV the range and present structure of federal legislative jurisdiction over archaeological resources. We want, here to make the principal point that many of the issues discussed here require, in our judgement, 'policy action' other than legislation.

As discussed a number of times before, the success of archaeological resource management depends on a combination of factors like the level of general heritage awareness, the inclusion of all interested groups in management implementation, the compliance of developers and the availability of sufficient financial support for programmes.

The Centre advocates a something like a 'soft management approach', not unlike the 'soft energy approach' adopted by many energy conservationists and ecologists.

Heritage resources are fragile and non-renewable. Their raison d'être lies in the general value communities in our society accord to the material remains of the past. Legislation can be no substitute for a sustained policy of support for those who undertake heritage protection work and of well planned involvement of all interested.

Land Claim proposals for aboriginal political control outlined in various land claim documents should not be preempted by federal legislation. Rather, these proposals should be taken into account when legislation is drafted. Legislation should built on the proposals and full consultation and agreement should be sought from aboriginal groups. Aboriginal self government as a concept and political strategy derives much of its purpose and justification from the protection of a way of life rooted in aboriginal heritage. The use and management of archaeological heritage resources will be an important element.

This study has shown throughout its discussion that the management of archaeological resources can gain considerable strength, acceptance and accommodation of the initiatives and interests of the prime policy publics. This is true also for

the aboriginal groups and organizations.

In the text of our Report, we have identified at least four connected areas, which, in our view, would be beneficial from imaginative "policy action" at the federal level. We repeat them here, more or less in the order in which they were raised in the text:

1. There is a need to initiate discussions amongst all policy publics on an organizational model, to which archaeologists, collectors, representatives of the aboriginal peoples and developers could accede, the minimalization as to or risk to archaeological resources.

We have a clear sense that some promising first moves have been made in this respect amongst underwater archaeologists, and we would recommend a more extended scrutiny of these developments amongst policy-makers.

2. Connected with this, we have suggested that consideration must be given to the idea that some archaeological sites could be approached with a "multiple-use strategy" in mind. Some sites are of importance to archaeology only for the provenience data they yield; others are of ongoing significance for long term scientific study. Sites may also, of course, have a particular aesthetic quality for an interested larger public or for tourists. They may also be of enormous symbolic and religious significance for aboriginal peoples.

We are not persuaded that these different approaches of the policy publics to sites are always incompatible in principle, although we have a sense that development work does tend overall to constitute a threat to the integrity of sites, however defined.

3. We have been impressed by criticisms raised by representatives of aboriginal peoples to the effect that the existing practices of museums tend to freeze the culture of aboriginal peoples within a conception of that culture as 'dying' and 'historic' culture. We have also heard many criticisms of archaeologists' approach to sites - i.e. as sources of 'scientific data' (in the Western positivist sense) - contrasted as this usually is with aboriginal conceptions of sites as religious or symbolic icons. We have a clear sense of a certain resistance to archaeological practice amongst aboriginal peoples, including the actual hiding of sites.

We are impressed, however, by the development in some museums of a close partnership between aboriginal peoples and professional archaeologists employed in

museums, and the transformations that are emerging in "exhibition strategies".

We have a clear sense that these initiatives will have a specific and beneficial effect on aboriginal peoples' attitudes to archaeology and museums, and, thereby, on the opening up of sites for purposes of research to professional archaeologists (again in collaboration with aboriginal peoples).

We would urge the Department to launch a policy initiative in support of collaborative and innovative museum practice, as a key element in the development of a new accommodation between aboriginal peoples and archaeology.

Such collaborative and innovative museum practices could have the important effect of helping to realize in practice a specific Canadian definition of 'heritage' and 'culture', reflecting the accommodation of the dominant culture and aboriginal culture to the movement towards aboriginal self-government within contemporary Canada.

4. We are aware that our Report is being presented to a federal Government Department at a time of generalized fiscal constraint. There are, however, two connected aspects to the economics of archaeological site protection which need have no financial implications for government but which could carry other benefits.

(a) Consultants and Local Heritage Centres

The protection of archaeological resources in Canada is in general, carried out by committed professionals working in a relatively poorly-paid occupation. This is particularly true for those who do not work for governmental or academic institutions with a general pay scale and unionization.

The scope of the Centre's study did not collect systematic evidence on the question of salaries, or program financing. Nevertheless, some general observations can be made.

A recent study by the American Association for State and Local History shows that heritage protection and management are a poverty ridden field with a growing number of professionals (Phillips and Hogan, 1984). There is a strong influx of well educated young professionals, but the field lacks economic solvency and stability (op cit: 75). There exists a relatively small number of institutions at the top of the field which can pay salaries in line with other professions. Most other work is systematically underpaid.

This applies specifically to small and local institutions.

We have made the point earlier however, that heritage conservation makes most sense when it is connected to its locale. Strong philosophical and economic reasons (e.g. tourism) can be made for this. Thus, we would argue that local institutions must be granted the resources to pay qualified personnel.

Interviews with archaeologists at the recent CAA conference in Toronto confirm, that a good number of those who do not work for governmental or academic institutions gain most of their economic support from the federal unemployment insurance programme.

We are also aware, however, that there is quite a widespread market for archaeological consultancy work, particularly concentrated in the Western provinces. Much of this work is done for large commercial and industrial companies, who are contemplating development in particular areas. The bulk of the consultancy work, however, is distributed according to the decisions made by private companies as to who to employ on particular projects (albeit, in a province like Alberta, from a list presented to them by the provincial Archaeological Survey).

We suggest that there should be systematic investigation of the means whereby such consultancy should be centralized in local heritage centres, and the means whereby consultancy fees could become part of the economic base of institutions dedicated to sustaining local research and education. We would also urge investigation of the means whereby the results of the surveys undertaken during such consultancies could be more effectively disseminated and how the consultancy work (undertaken usually for private companies) could always, in principle, result in the education of local publics (through the direction of local heritage centres).

(b) Developers

We have indicated that there are several kinds of developers working on lands in Canada or, indeed, underwater, in areas which could potentially include archaeological sites. Some developers employ consultant archaeologists, but do so, as we have indicated, on an ad hoc basis for their specific purposes.

Our research conversations with archaeologists indicate quite clearly that the legislation which does exist to regulate development activity is vague on key points, and, in particular, on economic considerations. At present, the costs of systematic investigation of sites that are uncovered

during the course of such development (like the Neutral Indian site very recently uncovered in Milton, Ontario by a house-building excavation) are born by provincial and municipal authorities. The authorities work under pressure of time - in particular, because of the costs accruing to developers and the pressures developers therefore place on local governments. We have no evidence that this process is widely abused, but there is certainly much suspicion amongst archaeologists that sites located in more remote parts of the country are less systematically regulated.

Our recommendation here would be for a serious study by government, of the management and the financing, of archaeological impact work necessitated by the ongoing process of industrial and commercial development. A central part of the study would have to be the design of an effective and comprehensive referral system which would ensure that the question of the effect of land development on archaeological resources is raised in the very early stages of the planning process.

The rational protection of archaeological resources, which is one that considers the costs in relation to the overall benefits, is only possible if protective action is prepared for and actually enabled in the development process. Such a study should include the examination of the idea that developers would have to make a contribution to the work of local heritage centres, particularly via a statutory requirement which would state that all developers employ impact assessment archaeologists who are affiliated with such centres. Consideration should also be given to the influence which such impact assessment reports should have on continued development in the particular area.

C. Future Consultancy and Research

Our judgement is that the process of consultation which has been proposed by the Department of Communications around "Archaeology and the Canadian Publics" with interested representatives of the policy publics should primarily be concerned to investigate whether there is, indeed, a consensus, of the kind we discern. Is there agreement on the need for a new accommodation between archaeology and other publics (including, in particular, the aboriginal peoples) with respect to the protection and exhibition of archaeological sites and resources? Such a consultancy should carefully investigate how far "the publics" we have identified what to move forward by way of legislation (and, if so, how? and with what chance of agreement across all publics?) or, rather, by the kinds of policy initiatives we have outlined here.

We do feel, however, that our Report has identified several specific areas of concern that are clearly in need of further research investigation, independently of the ongoing process of consultation. These consist of topics which we would certainly have investigated further here, had our project run over a longer period of time. Once again, we think it most efficient simply to list them here (but with a reference to the section in which they were discussed), as providing a basis for future discussions.

1. Further empirical research seems urgent with a view to defining the current parameters of "archaeology" as a practice, and as a description of particular kinds of objects (Section I).
2. Legal research is clearly necessary is clearly necessary into the expropriation and reservation of rights to subsoil in Canada (Section IV, H).
3. More comprehensive research is required to confirm the extent and significance of underwater archaeological sites throughout Canada (Section IV, I).
4. The negotiation process that was taking place until recently in relevant Government departments to determine the ownership of underwater sites found in Canadian waters needs to be reactivated (Section IV, I).
5. Consideration might be given, by Ministry of Justice lawyers, as to the advisability of creating a specific legal offence of salvage from historic wrecks (Section IV, I).
6. Careful and informed research is required as to how the actual practices of commercial and industrial development impact on the archaeological sites, especially those which are encountered in the course of development (Section V, VIII-B3).
7. Much more systematic research is required into the number of "hobbyists" in Canada, involved in the collection of archaeological objects (Section VII).
8. Some investigation of the current acquisitions policies of museums, and particularly the impact of the UNESCO conventions, acceded to by the governments of U.S. and Canada. (Section VI), seems essential in the ongoing development of comprehensive knowledge on the market of artifacts.

APPENDIX A: BRITISH NORTH AMERICA ACT.

Sections 91, 92 & 109

VI. DISTRIBUTION OF LEGISLATIVE POWERS

Powers of the Parliament

Legislative
Authority of
Parliament of
Canada

91. It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next herein-after enumerated; that is to say,—

Amendment as
to legislative
authority of
Parliament of
Canada

1. The amendment from time to time of the Constitution of Canada, except as regards matters coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the provinces, or as regards rights or privileges by this or any other Constitutional Act granted or secured to the Legislature or the Government of a province, or to any class of persons with respect to schools or as regards the use of the English or the French language or as regards the requirements that there shall be a session of the Parliament of Canada at least one each year, and that no House of Commons shall continue for more than five years from the day of the return of the Writs for choosing the House: Provided, however, that a House of Commons may in

VI. DISTRIBUTION DES POUVOIRS LÉGISLATIFS

Pouvoirs du parlement

91. Il sera loisible à la Reine, de l'avis et du consentement du Sénat et de la Chambre des Communes, de faire des lois pour la paix, l'ordre et le bon gouvernement du Canada, relativement à toutes les matières ne tombant pas dans les catégories de sujets par le présent acte exclusivement assignés aux législatures des provinces; mais, pour plus de garantie, sans toutefois restreindre la généralité des termes ci-haut employés dans le présent article, il est par le présent déclaré que (nonobstant toute disposition contraire énoncée dans le présent acte) l'autorité législative exclusive du parlement du Canada s'étend à toutes les matières tombant dans les catégories de sujets ci-dessous énumérés, savoir:

Autorité
législative du
parlement du
Canada

1. La modification, de temps à autre, de la constitution du Canada, sauf en ce qui concerne les matières rentrant dans les catégories de sujets que la présente loi attribue exclusivement aux législatures des provinces, ou en ce qui concerne les droits ou privilèges accordés ou garantis, par la présente loi ou par toute autre loi constitutionnelle, à la législature ou au gouvernement d'une province, ou à quelque catégorie de personnes en matière d'écoles, ou en ce qui regarde l'emploi de l'anglais ou du français, ou les prescriptions portant que le parlement du Canada tiendra au moins une session chaque année et que la durée de chaque chambre des communes sera limitée à cinq années, depuis le jour du rapport des

Modification
concernant
l'autorité
législative du
parlement du
Canada

time of real or apprehended war, invasion or insurrection be continued by the Parliament of Canada if such continuation is not opposed by the votes of more than one-third of the members of such House.

[NOTE: Added by the *British North America Act (No 2), 1949, 13 Geo. VI, c. 81 (U.K.) (No. 31 infra).*]

1A. The Public Debt and Property.

[NOTE: Re-numbered 1A by the *British North America Act (No. 2), 1949, 13 Geo. VI, c. 81 (U.K.) (No. 31 infra).*]

2. The Regulation of Trade and Commerce.

2A. Unemployment insurance.

[NOTE: Added by the *British North America Act, 1940, 3-4 Geo. VI, c. 36 (U.K.) (No. 27 infra).*]

3. The raising of Money by any Mode or System of Taxation.

4. The borrowing of Money on the Public Credit.

5. Postal Service.

6. The Census and Statistics.

7. Militia, Military and Naval Service, and Defence.

8. The fixing of and providing for the Salaries and Allowances of Civil and other Officers of the Government of Canada.

9. Beacons, Buoys, Lighthouses, and Sable Island.

10. Navigation and Shipping.

11. Quarantine and the Establishment and Maintenance of Marine Hospitals.

12. Sea Coast and Inland Fisheries.

13. Ferries between a Province and any British or Foreign Country or between Two Provinces.

14. Currency and Coinage.

15. Banking, Incorporation of Banks, and the Issue of Paper Money.

16. Savings Banks.

17. Weights and Measures.

18. Bills of Exchange and Promissory Notes.

19. Interest.

20. Legal Tender.

21. Bankruptcy and Insolvency.

22. Patents of Invention and Discovery.

23. Copyrights.

24. Indians, and Lands reserved for the Indians.

25. Naturalization and Aliens.

26. Marriage and Divorce.

brefs ordonnant l'élection de cette chambre; toutefois, le parlement du Canada peut prolonger la durée d'une chambre des communes en temps de guerre d'invasion ou d'insurrection, réelles ou appréhendées, si cette prolongation n'est pas l'objet d'une opposition exprimée par les votes de plus du tiers des membres de ladite chambre.

[NOTE: Ajouté par l'Acte de l'Amérique du Nord britannique (No 2), 1949, 13 Geo. VI, c. 81 (R.-U.) (No 31 infra).]

1A. La dette et la propriété publiques.

[NOTE: Renuméroté 1A par l'Acte de l'Amérique du Nord britannique (No 2), 1949, 13 Geo. VI, c. 81 (R.-U.) (No 31 infra).]

2. La réglementation du trafic et du commerce.

2A. L'assurance-chômage.

[NOTE: Ajouté par l'Acte de l'Amérique du Nord britannique, 1940, 3-4 Geo. VI, c. 36 (R.-U.) (No 27 infra).]

3. Le prélèvement de deniers par tous modes ou systèmes de taxation.

4. L'emprunt de deniers sur le crédit public.

5. Le service postal.

6. Le recensement et les statistiques.

7. La milice, le service militaire et le service naval, et la défense du pays.

8. La fixation et le paiement des salaires et honoraires des officiers civils et autres du gouvernement du Canada.

9. Les amarques, les bouées, les phares et l'île de Sable.

10. La navigation et les bâtiments ou navires (*shipping*).

11. La quarantaine et l'établissement et maintien des hôpitaux de marine.

12. Les pêcheries des côtes de la mer et de l'intérieur.

13. Les passages d'eau (*ferries*) entre une province et tout pays britannique ou étranger, ou entre deux provinces.

14. Le cours monétaire et le monnayage.

15. Les banques, l'incorporation des banques et l'émission du papier-monnaie.

16. Les caisses d'épargne.

17. Les poids et mesures.

18. Les lettres de change et les billets promissoires.

19. L'intérêt de l'argent.

20. Les offres légales.

27. The Criminal Law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters.

28. The Establishment, Maintenance, and Management of Penitentiaries.

29. Such Classes of Subjects as are expressly excepted in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

And any Matter coming within any of the Classes of Subjects enumerated in this Section shall not be deemed to come within the Class of Matters of a local or private Nature comprised in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

21. La banqueroute e. la faillite.

22. Les brevets d'invention et de découverte.

23. Les droits d'auteur.

24. Les Indiens et les terres réservées pour les Indiens. ←

25. La naturalisation et les aubains.

26. Le mariage et le divorce.

27. La loi criminelle, sauf la constitution des tribunaux de juridiction criminelle, mais y compris la procédure en matière criminelle.

28. L'établissement, le maintien, et l'administration des pénitenciers.

29. Les catégories de sujets expressément exceptés dans l'énumération des catégories de sujets exclusivement assignés par le présent acte aux législatures des provinces.

Et aucune des matières énoncées dans les catégories de sujets énumérés dans le présent article ne sera réputée tomber dans la catégorie des matières d'une nature locale ou privée comprises dans l'énumération des catégories de sujets exclusivement assignés par le présent acte aux législatures des provinces.

Exclusive Powers of Provincial Legislatures

92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next herein-after enumerated; that is to say,—

1. The Amendment from Time to Time, notwithstanding anything in this Act, of the Constitution of the Province, except as regards the Office of Lieutenant Governor.

2. Direct Taxation within the Province in order to the raising of a Revenue for Provincial Purposes.

3. The borrowing of Money on the sole Credit of the Province.

4. The Establishment and Tenure of Provincial Offices and the Appointment and Payment of Provincial Officers.

5. The Management and Sale of the Public Lands belonging to the Province and of the Timber and Wood thereon.

6. The Establishment, Maintenance, and Management of Public and Reformatory Prisons in and for the Province.

7. The Establishment, Maintenance, and Management of Hospitals, Asylums, Charities, and Eleemosynary Institutions in and

Pouvoirs exclusifs des législatures provinciales

92. Dans chaque province la législature pourra exclusivement faire des lois relatives aux matières tombant dans les catégories de sujets ci-dessous énumérés, savoir:

1. L'amendement de temps à autre, nonobstant toute disposition contraire énoncée dans le présent acte, de la constitution de la province, sauf les dispositions relatives à la charge de lieutenant-gouverneur;

2. La taxation directe dans les limites de la province, dans le but de prélever un revenu pour des objets provinciaux;

3. Les emprunts de deniers sur le seul crédit de la province;

4. La création et la tenure des charges provinciales, et la nomination et le paiement des officiers provinciaux;

5. L'administration et la vente des terres publiques appartenant à la province, et des bois et forêts qui s'y trouvent; ←

6. L'établissement, l'entretien et l'administration des prisons publiques et des maisons de réforme dans la province;

7. L'établissement, l'entretien et l'administration des hôpitaux, asiles, institutions et

Subjects of
exclusive
Provincial
Legislation

Sujets soumis au
contrôle exclusif
de la législation
provinciale

for the Province, other than Marine Hospitals.

8. Municipal Institutions in the Province.

9. Shop, Saloon, Tavern, Auctioneer, and other Licences in order to the raising of a Revenue for Provincial, Local, or Municipal Purposes.

10. Local Works and Undertakings other than such as are of the following Classes:—

a. Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province:

b. Lines of Steam Ships between the Province and any British or Foreign Country:

c. Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces.

11. The Incorporation of Companies with Provincial Objects.

12. The Solemnization of Marriage in the Province.

13. Property and Civil Rights in the Province.

14. The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.

15. The Imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province made in relation to any Matter coming within any of the Classes of Subjects enumerated in this Section.

16. Generally all Matters of a merely local or private Nature in the Province.

hospices de charité dans la province, autres que les hôpitaux de marine;

8. Les institutions municipales dans la province;

9. Les licences de boutiques, de cabarets, d'auberges, d'encanteurs et autres licences, dans le but de prélever un revenu pour des objets provinciaux, locaux, ou municipaux;

10. Les travaux et entreprises d'une nature locale, autres que ceux énumérés dans les catégories suivantes:—

a. Lignes de bateaux à vapeur ou autre bâtiments, chemins de fer, canaux, télégraphes et autres travaux et entreprises reliant la province à une autre ou à d'autres provinces, ou s'étendant au-delà des limites de la province;

b. Lignes de bateaux à vapeur entre la province et tout pays dépendant de l'empire britannique ou tout pays étranger;

c. Les travaux qui, bien qu'entièrement situés dans la province, seront avant ou après leur exécution déclarés par le parlement du Canada être pour l'avantage général du Canada, ou pour l'avantage de deux ou d'un plus grand nombre des provinces;

11. L'incorporation des compagnies pour des objets provinciaux;

12. La célébration du mariage dans la province;

13. La propriété et les droits civils dans la province;

14. L'administration de la justice dans la province, y compris la création, le maintien et l'organisation de tribunaux de justice pour la province, ayant juridiction civile et criminelle, y compris la procédure en matières civiles dans ces tribunaux;

15. L'infliction de punitions par voie d'amende, pénalité, ou emprisonnement, dans le but de faire exécuter toute loi de la province décrétée au sujet des matières tombant dans aucune des catégories de sujets énumérés dans le présent article;

16. Généralement toutes les matières d'une nature purement locale ou privée dans la province.

Property in
Lands, Mines,
etc.

109. All Lands, Mines, Minerals, and Royalties belonging to the several Provinces of Canada, Nova Scotia, and New Brunswick at the Union, and all Sums then due or payable for such Lands, Mines, Minerals, or Royalties, shall belong to the several Provinces of Ontario, Quebec, Nova Scotia, and New Brunswick in which the same are situate or arise, subject to any Trusts existing in respect thereof, and to any Interest other than that of the Province in the same.

[NOTE: The Provinces of Manitoba, British Columbia, Alberta and Saskatchewan were placed in the same position as the original provinces by the *British North America Act, 1930*, 21 Geo. V, c. 26 (U.K.), (No. 25 *infra*).

Newfoundland was also placed in the same position by the *British North America Act, 1949*, 12-13 Geo. VI, c. 22 (U.K.) (No. 30 *infra*).

With respect to Prince Edward Island, see the Schedule to the *Order of Her Majesty in Council admitting Prince Edward Island into the Union* (No. 12 *infra*.)

109. Toutes les terres, mines, minéraux et réserves royales appartenant aux différentes provinces du Canada, de la Nouvelle-Écosse et du Nouveau-Brunswick lors de l'union, et toutes les sommes d'argent alors dues ou payables pour ces terres, mines, minéraux et réserves royales, appartiendront aux différentes provinces d'Ontario, Québec, la Nouvelle-Écosse et le Nouveau-Brunswick, dans lesquelles ils sont sis et situés, ou exigibles, restant toujours soumis aux charges dont ils sont grevés, ainsi qu'à tous intérêts autres que ceux que peut y avoir la province.

[NOTE: Les provinces du Manitoba, de la Colombie-Britannique, de l'Alberta et de la Saskatchewan ont été placées dans la même situation que les provinces originaires par l'*Acte de l'Amérique du Nord britannique, 1930*, 21 Geo. V, c. 26 (R.-U.) (No 25 *infra*).

Terre-Neuve a également été placée dans la même situation par l'*Acte de l'Amérique du Nord britannique, 1949*, 12-13 Geo. VI, c. 22 (R.-U.) (No 30 *infra*).

Quant à l'Île-du-Prince-Édouard, voir l'annexe à l'*Arrêté en conseil de Sa Majesté admettant l'Île-du-Prince-Édouard* (No 12 *infra*.)

Propriété
terres min.



- APPENDIX B:
1. INSTITUTIONAL SURVEY
 2. SURVEY RESPONDENTS
 3. DISPOSITION OF INSTITUTIONAL SURVEY
 4. SURVEY RESULTS

The Centre for Communication,
Culture and Society
Carleton University
Ottawa K1S 5B6

Name of Institution

INSTITUTIONAL SURVEY

For the purposes of this survey, we are defining archaeology as the discovery, curating and interpretation of material remains of human cultural behaviour in the past. Such material remains include human-made artifacts, environmental remains regarding the human use of the natural world, and the relationships (the provenience) among these various remains.

Specifically, for the purposes of our survey, archaeological remains are viewed as having been recovered from sites that are no longer inhabited by the persons who produced them. Thus, unlike ethnographers, it is not possible for archaeologists to directly observe how these remains were produced, used or came to be deposited at such sites.

Our definition of archaeology refers to remains from such unoccupied sites from both the prehistoric and historic periods of Canada.

1. Given this general definition of archaeology, is your institution involved in archaeology?

Yes _____

No _____

IF YES, PLEASE ANSWER THE FOLLOWING QUESTIONS;

2. Approximately what percentage of your institution's workload is dedicated to activities (apart from administration) aimed at discovering archaeological sites and recovering remains from them? (eg. surveys and excavation).

_____ 0-25%
_____ 26-50%
_____ 51-75%
_____ 76-100%

7. a) From the following list of interpretive activities, cross out those that do not apply to your Institution.
- b) Of the remaining activities, please indicate, using approximate percentages, which three comprise the bulk of your workload.

_____ scholarly publications
_____ educational programs
_____ written educational materials
_____ displays and exhibits
_____ other, (please specify)

8. From a total staff of _____ (number of staff) please indicate, using the following chart, the number of people involved in each activity.

	Paid Full-time	Paid Part time	Volunteer
a) Primarily discovery/recovery, interpretation			
b) Primarily curatorial/display			
c) Both (a) and (b)			
d) Primarily administration			
e) Primarily other support services eg. secretarial and security			
f) Other (please specify)			

9. a) If your organization is involved in curatorial activities, please indicate, using approximate percentages, how much of your current collection was acquired in the following ways:

_____ excavation by your own personnel
_____ excavation by other institutions,
(please specify) _____
_____ private donation
_____ purchase
_____ loan
_____ exchange
_____ other (please specify)

- b) Have the ways in which your institution obtains collections changed significantly within the past ten years? If so, how?

10. a) In what year was your institution founded? _____
b) How is your institution funded?

11. a) Please indicate, using approximate percentages, the number of projects (including discovery/recovery, research, exhibition and/or interpretive reports) your institution has undertaken in the past five years, which were:

I) conducted using in-house
archaeological resources _____
II) conducted in association with
outside agencies _____

- b) Using the back of this sheet, please list these agencies, indicating the form of their participation (eg. funding, personnel).

12. Finally, what changes in federal, provincial and/ or territorial legislation and/or policy regarding the management of Canada's archaeological resources would you like to see?

We invite you to send your written comments to this question, along with any related documents, to:

The Centre for Communication,
Culture and Society
Carleton University
Ottawa, Canada
K1S 5B6

For the purpose of sorting these later submissions according to the type of organization to which they apply, we request that they include a clear identification of your institution.

Thank you for your co-operation.

Miriam Rautiainen
Susan Nevins
Researchers
1-613-564-3723

2. INSTITUTIONAL SURVEY RESPONDENTS

Federal

Archaeological Survey of Alberta
Parks Canada

British Columbia

Arcas Associates
Archaeo-Tech Associates
British Columbia Heritage Conservation Branch
British Columbia Provincial Museum
Campbell River Museum
Morris Sutherland

Alberta

Archaeological Survey of Alberta
Aresco Ltd.
Ethos Consultants
Fort Calgary
Fort Museum
Provincial Museum of Alberta
Red Deer and District Museum and Archives

Saskatchewan

Archaeological Resources Management Section,
Saskatchewan Culture and Recreation
Saskatchewan Museum of Natural History
University of Regina, Department of Anthropology

Manitoba

Eskimo Museum
Manitoba Archaeological Section, Historic Resources Branch
Manitoba Museum of Man and Nature
University of Manitoba, Department of Anthropology

Ontario

Archaeological Survey of Laurentian University
Archaeological Unit, Heritage Branch, Ministry of
Citizenship and Culture
Bruce County Historical Museum

Carleton University, Sociology/Anthropology Department
Huronla Museum
Macauley Heritage Park
Mayer, Pihl, Poultou and Associates Inc.
McMaster University Department of Anthropology
Museum of Indian Archaeology
Sainte-Marie Among the Hurons
Save Ontario's Shipwrecks
Scarlett Janusas and Associates Ltd.
Sir Wilfrid Laurier University, Department of Anthropology
Thunder Bay Historical Society Museum
Trent University, Department of Anthropology
University of Toronto, Department of Anthropology
Walpole Island Research Centre
Woodland Indian Cultural Education Centre

Quebec

Arkis
Association des archeologues du Quebec
Commission des biens culturels
Direction de l'Environnement Hydro-Quebec
Ministere des Affaires Culturelles, Section de l'aide-conseil
Musee d'Odonak
Service de l'Environnement, Transport Quebec
Universite Laval, Arts et Traditions Populaires
Universite du Quebec a Chicoutimi, Departement des Sciences
Humaines
Universite du Quebec a Montreal, Laboratoire d'archeologie
Universite du Quebec a Trois Rivieres, Musee d'archeologie

New Brunswick

Archaeology Unit, Department of Historical and Cultural
Resources
University of New Brunswick, Department of Anthropology

Nova Scotia

Nova Scotia Museum
St. Mary's University, Department of Anthropology

Prince Edward Island

Confederation Centre Art Gallery and Museum
Public Archives, Department of Education

Newfoundland

Memorial University, Department of Anthropology
Newfoundland Museum

Yukon

Yukon Heritage Branch, Department of Economic Development and
Tourism

Northwest Territories

Inuit Cultural Institute
Nunatta Sunaqtangit
Prince of Wales Northern Heritage Centre, Archaeology Unit

3. DISPOSITION OF INSTITUTIONAL SURVEY

	<u>sent</u>	<u>rec'd</u>	<u>n/a</u>	<u>unable to contact*</u>	<u>late*</u>
museums	66	20	15	7	24
federal authorities	8	3	1	0	4
provincial authorities	12	12	0	0	0
aboriginal organizations	9	2	1	0	6
private consultants	22	7	0	4	11
archaeological associations	11	3	0	1	7
universities	26	14	1	0	11
other	<u>9</u>	<u>3</u>	<u>2</u>	<u>0</u>	<u>4</u>
TOTALS	163	64	20	12	67

* 'unable to contact' includes institutions whose surveys were returned to us by the Post Office; or whose telephone numbers were incorrect in our original information and were not listed with Directory Assistance.

* 'late' includes institutions in which we were unable to make contact with the correct person within our time limit; or whose completed questionnaires were received by mail too late for processing.

4. SURVEY RESULTS

Percentage of Workload per Archaeological Activity over all Institutions

	<u>0-25%</u>	<u>26-50%</u>	<u>51-75%</u>	<u>76-100%</u>	<u>total responses</u>
Interpretive	33*	22	7	2	(64)
curatorial	47	11	5	0	(63)
discovery/ recovery	43	13	4	1	(61)

*number of respondents

Percentage of Workload per Archaeological Activity
by Institutional Type

MUSEUMS	<u>0-25%</u>	<u>26-50%</u>	<u>51-75%</u>	<u>76-100%</u>	<u>total responses</u>
Interpretive	10*	7	2	1	(20)
curatorial	13	4	3	0	(20)
discovery/ recovery	17	2	0	0	(19)
 FEDERAL AGENCIES	 <u>0-25%</u>	 <u>26-50%</u>	 <u>51-75%</u>	 <u>76-100%</u>	 <u>total responses</u>
discovery/ recovery	2	1	0	0	(3)
curatorial	2	1	0	0	(3)
Interpretive	2	1	0	0	(3)
 PROVINCIAL/ TERRITORIAL AUTHORITIES	 <u>0-25%</u>	 <u>26-50%</u>	 <u>51-75%</u>	 <u>76-100%</u>	 <u>total responses</u>
Interpretive	7	3	2	0	(12)
curatorial	7	2	2	0	(11)
discovery/ recovery	8	3	0	0	(11)
 PRIVATE CONSULTANTS	 <u>0-25%</u>	 <u>26-50%</u>	 <u>51-75%</u>	 <u>76-100%</u>	 <u>total responses</u>
discovery/ recovery	0	2	4	1	(7)
Interpretive	4	3	0	0	(7)
curatorial	7	0	0	0	(7)

*number of respondents

UNIVERSITIES	<u>0-25%</u>	<u>26-50%</u>	<u>51-75%</u>	<u>76-100%</u>	<u>total responses</u>
Interpretive	7*	5	1	1	(14)
discovery/ recovery	10	4	0	0	(14)
curatorial	11	3	0	0	(14)
 ABORIGINAL ORGANIZATION	 <u>0-25%</u>	 <u>26-50%</u>	 <u>51-75%</u>	 <u>76-100%</u>	 <u>total responses</u>
Interpretive	1	1	0	0	(2)
curatorial	2	0	0	0	(2)
discovery/ recovery	1	0	0	0	(1)
 AMATEUR ASSOCIATION	 <u>0-25%</u>	 <u>26-50%</u>	 <u>51-75%</u>	 <u>76-100%</u>	 <u>total responses</u>
Interpretive	1	0	1	0	(2)
curatorial	1	1	0	0	(2)
discovery/ recovery	2	0	0	0	(2)
 PROFESSIONAL ASSOCIATION	 <u>0-25%</u>	 <u>26-50%</u>	 <u>51-75%</u>	 <u>76-100%</u>	 <u>total responses</u>
Interpretive	0	1	0	0	(1)
curatorial	1	0	0	0	(1)
discovery/ recovery	1	0	0	0	(1)

*number of respondents

Percentage of Workload per Curatorial Task
by Institutional Type

MUSEUMS	<u>none</u>	<u>1-25%</u>	<u>26-50%</u>	<u>51-75%</u>	<u>76-100%</u>	<u>total responses</u>
storage	1*	5	10	2	1	(19)
cataloguing	3	9	5	1	0	(18)
conservation	10	5	2	1	0	(18)
restoration	11	7	0	0	0	(18)
FEDERAL AGENCIES	<u>none</u>	<u>1-25%</u>	<u>26-50%</u>	<u>51-75%</u>	<u>76-100%</u>	<u>total responses</u>
cataloguing	0	0	0	2	0	(2)
storage	0	1	1	0	0	(2)
conservation	1	1	0	0	0	(2)
restoration	2	0	0	0	0	(2)
PROVINCIAL/ TERRITORIAL AUTHORITIES	<u>none</u>	<u>1-25%</u>	<u>26-50%</u>	<u>51-75%</u>	<u>76-100%</u>	<u>total responses</u>
cataloguing	3	1	2	2	3	(11)
storage	3	5	2	1	0	(11)
conservation	4	5	2	0	0	(11)
restoration	10	0	0	1	0	(11)
PRIVATE CONSULTANTS	<u>none</u>	<u>1-25%</u>	<u>26-50%</u>	<u>51-75%</u>	<u>76-100%</u>	<u>total responses</u>
cataloguing	1	0	0	0	5	(6)
storage	4	2	0	0	0	(6)
conservation	4	2	0	0	0	(6)
restoration	6	1	0	0	0	(7)

*number of respondents

UNIVERSITIES	<u>none</u>	<u>1-25%</u>	<u>26-50%</u>	<u>51-75%</u>	<u>76-100%</u>	<u>total responses</u>
cataloguing	4*	2	6	0	1	(13)
storage	4	5	1	2	1	(13)
conservation	4	4	4	0	0	(12)
restoration	7	2	2	0	1	(12)

ABORIGINAL ORGANIZATION	<u>none</u>	<u>1-25%</u>	<u>26-50%</u>	<u>51-75%</u>	<u>76-100%</u>	<u>total responses</u>
cataloguing	0	0	0	0	1	(1)
storage	1	0	0	0	0	(1)
conservation	1	0	0	0	0	(1)
restoration	1	0	0	0	0	(1)

AMATEUR ASSOCIATIONS	<u>none</u>	<u>1-25%</u>	<u>26-50%</u>	<u>51-75%</u>	<u>76-100%</u>	<u>total responses</u>
cataloguing	0	0	1	0	1	(2)
conservation	1	1	0	0	0	(2)
restoration	1	1	0	0	0	(2)
storage	2	0	0	0	0	(2)

PROFESSIONAL ASSOCIATION	<u>none</u>	<u>1-25%</u>	<u>26-50%</u>	<u>51-75%</u>	<u>76-100%</u>	<u>total responses</u>
cataloguing	0	0	0	0	1	(1)
storage	1	0	0	0	0	(1)
conservation	1	0	0	0	0	(1)
restoration	1	0	0	0	0	(1)

*number of respondents

Percentage of Workload per Interpretive Task
by Institutional Type

MUSEUMS	<u>none</u>	<u>1-25%</u>	<u>26-50%</u>	<u>51-75%</u>	<u>76-100%</u>	<u>total responses</u>
displays/ exhibits	0*	4	8	3	5	(20)
educational programmes	3	8	9	0	0	(20)
written material	8	10	2	0	0	(20)
scholarly reports	10	8	2	0	0	(20)
FEDERAL AGENCIES	<u>none</u>	<u>1-25%</u>	<u>26-50%</u>	<u>51-75%</u>	<u>76-100%</u>	<u>total responses</u>
scholarly reports	0	1	2	0	0	(3)
displays/ exhibits	0	2	1	0	0	(3)
written material	1	2	0	0	0	(3)
educational programmes	0	3	0	0	0	(3)
PROVINCIAL/ TERRITORIAL AUTHORITIES	<u>none</u>	<u>1-25%</u>	<u>26-50%</u>	<u>51-75%</u>	<u>76-100%</u>	<u>total responses</u>
written material	0	7	2	1	0	(10)
displays/ exhibits	2	7	3	0	0	(12)
scholarly reports	1	4	4	1	0	(10)
educational programmes	2	6	2	0	0	(10)

*number of respondents

PRIVATE CONSULTANTS	<u>none</u>	<u>1-25%</u>	<u>26-50%</u>	<u>51-75%</u>	<u>76-100%</u>	<u>total responses</u>
scholarly reports	1*	3	1	0	2	(7)
displays/exhibits	2	5	0	0	0	(7)
educational programmes	2	4	0	0	0	(6)
written material	4	2	0	0	0	(6)
UNIVERSITIES	<u>none</u>	<u>1-25%</u>	<u>26-50%</u>	<u>51-75%</u>	<u>76-100%</u>	<u>total responses</u>
scholarly reports	2	1	6	1	3	(13)
educational programmes	3	3	3	2	1	(12)
displays/exhibits	4	9	0	0	0	(13)
written material	9	3	0	0	0	(12)
ABORIGINAL ORGANIZATION	<u>none</u>	<u>1-25%</u>	<u>26-50%</u>	<u>51-75%</u>	<u>76-100%</u>	<u>total responses</u>
educational programmes	0	0	0	0	1	(1)
scholarly reports	1	0	0	0	0	(1)
written material	1	0	0	0	0	(1)
displays/exhibits	0	0	0	0	0	(0)

*number of respondents

AMATEUR ASSOCIATIONS	<u>none</u>	<u>1-25%</u>	<u>26-50%</u>	<u>51-75%</u>	<u>76-100%</u>	<u>total responses</u>
written material	0	2	0	0	0	(2)
educational programmes	1	0	1	0	0	(2)
scholarly reports	1	1	0	0	0	(2)
displays/ exhibits	1	1	0	0	0	(2)
 PROFESSIONAL ASSOCIATION	 <u>none</u>	 <u>1-25%</u>	 <u>26-50%</u>	 <u>51-75%</u>	 <u>76-100%</u>	 <u>total responses</u>
written material	0	0	1	0	0	(1)
scholarly reports	0	0	1	0	0	(1)
educational programmes	1	0	0	0	0	(1)
displays/ exhibits	1	0	0	0	0	(1)

APPENDIX C: CASE STUDIES

1. The Export of Archaeological Stone Sculptures from B.C.
2. The Auction of Indian Artifacts, Aldrie, Alberta, 21 May 1984
3. Governments and Site Protection: the Musee de la Civilisation, Quebec City
4. Native Community Based Research: A Cooperative Approach with Archaeologists

Case Study No. 1: The Export of Archaeological Stone Sculptures from British Columbia

This appendix provides supplementary information and discussion regarding the legal export of four archaeological stone sculptures from B.C. during the past five years (see illustrations below). The pieces are:

- 1) 1981- A human-faced bowl c. 1000 B.C. found near Chilliwack in 1935 by parents of Mrs. G. Taylor. Described on British Columbia Archaeological Site Survey Form as "one of the most beautifully executed pieces of NW Coast art".
- 2) 1982- Beaver Tobacco Mortar, Halda, from Masset. Collection of Mr. and Mrs. R.E.B. Gore-Langton of Victoria, B.C. Shown in "Arts of the Raven" (Vancouver Art Gallery, 1967: no. 425) and Images Stone B.C., (1975: no. 119).
- 3) 1982- Seated Human Figure Bowl. Collection of Mr. and Mrs. R.E.B. Gore-Langton of Victoria, B.C. Dug up in 1960 in the Gore-Langton's rose garden. Shown in Images Stone B.C., (1975: no. 30).
- 4) 1985- Seated Human Figure bowl. Collection of Mr. and Mrs. R.E.B. Gore-Langton, Victoria, B.C.. Dug up with #3 above. Shown in Images Stone B.C., (1975: no. 32).

The circumstances surrounding three of these exports were summarized in Section VI (F) but we believe that this case is so central to the current debate surrounding the management of archaeological resources in Canada that additional documentation would be useful.

In all four cases it was Howard Roloff, a Victoria dealer specializing in ethnographic objects, who applied for permits to export the well known and highly important pieces of stone sculpture. Three of the pieces can be dated to

the prehistoric period and the fourth was of a type found to be both archaeological and in use during the early contact period.

Export permits were granted for the objects because the expert examiners called upon to assess the objects, both archaeologists from the British Columbia Provincial Museum, followed the letter of the CAA policy regarding such evaluations. This policy, which was largely written by one of the two B.C.P.M. archaeologists, Dr. Thomas Loy, was first adopted in 1979 two years before the first of the exports. One of the examiners wrote in granting one of the export permits:

"This is the procedure required of me by (the) Canadian Archaeological Association resolution that archaeological expert examiners should '...avoid monetary evaluation of any archaeological object by granting all permit applications referred to them and immediately apprising the public through the media of the permanent export from Canada of any such archaeological cultural property.'"

According to the provisions of the Cultural Property Export and Import Act, expert examiners are asked to assess the significance to Canada of objects for which export permits have been requested. Although expert examiners are not asked to provide a monetary evaluation themselves, such evaluations must be carried out at a later stage of the process if the significance of the object is judged to be such that the export permit is denied and a Canadian purchaser is then sought. The reasons for the CAA position, as restated in the recent 1984 discussion paper, are that:

"It is a fact that wherever a market in archaeological treasures has developed, there has been a dramatic increase in the illicit excavation and plunder of undisturbed archaeological sites...Although the Canadian Archaeological Association does not wish to deny the right of Canadian citizens to dispose of personal property, we question the inclusion of archaeological specimens within traditional concepts of property ownership. Our position is that archaeological material is rightfully the property of the Crown and should therefore not be subject to the export provisions of the Cultural Property Export and Import Act."
(CAA 1985)

The position of the CAA and the adherence of the two B.C.P.M. expert examiners to it was apparently well known to Mr. Roloff. He has been accused of deliberately making use of the loopholes in the enforcement of the legislation created by the CAA position by making sure that the permits would come before individuals whose views were known to him.

However, it is clear from the statements cited above and from the summary provided in Section VI that the difference in opinion goes deeper than this. A central issue is that of private ownership versus public trust. The four stone sculptures which were exported were all owned or inherited by private individuals who had, or whose relatives had, found them accidentally on their own property. Mr. Roloff and his clients uphold the rights of private individuals to the ownership of archaeological objects acquired this way and also their right to realize the market value such objects have. They also state, however, that they would prefer to see these objects acquired by Canadian institutions if possible.

The sale of the stone sculptures received visible publicity. This well-suited the intentions of the archaeologists to generate public pressure for changes to the Cultural Property Export and Import Act. The artifacts were well known through their inclusion in the Images Stone B.C. exhibitions and catalogue, and they were also valued for their exceptional aesthetic and iconographic features and for their precise documentation. In all cases, the sites where they had been found were known, lending additional scientific value. Thus, they were pieces to which exceptional value was attributed according to nearly all criteria outlined in Section VI (C).

As mentioned in Section VI (F), the case of the stone bowl most recently exported (#4 above) is somewhat different because of the experience of the export of the previous pieces. The B.C.P.M. tried to stop the sale of the piece to the U.S. by having it declared a heritage object under the recent B.C. Heritage Conservation Act. Mr. Roloff was able to remove the bowl to Alberta before the process was completed, however. The incident illustrates the difficulty of enforcing provincial legislation in the absence of parallel legislation in other provinces or on a federal level.

The reaction to these incidents in the press has already been referred to in Section VI (F). Further detail is provided in the appended articles from The Vancouver Sun, The Midden, and The McKillop Report.



SEATED HUMAN FIGURE BOWL - EXPORTED 1982

ex-collection Mr. and Mrs. R.E.B. Gore-Langton

Victoria, B.C.



TOBACCO MORTAR - EXPORTED 1982

ex-collector Mr. and Mrs. R.E.B. Gore-Langton
Victoria, B.C.



SEATED HUMAN FIGURE BOWL - EXPORTED 1985

ex-collection Mr. and Mrs. R.E.B. Gore-Langton

Victoria, B.C.

Cutting Off Your Nose (Canadian Version)

When Canadian dealer Howard Roloff wanted to take these two superb stone bowls out of Canada to sell to U.S. buyers, he unwittingly spotlighted a certain self induced blindness in the interpretation in that country's Cultural Property Act. In accordance with the section that stipulates all archeological material (even arrowheads) must have an export permit to leave Canada, Roloff applied for the permit. The British Columbia's Provincial Assistant Archeologist approved the permit, writing, "Although the loss of these 2 pieces from the irreplaceable heritage of the Province of B.C. and Canada to the commercial market is to be deplored and displays a disregard on the part of the owner and the exporter for their high importance to the people of this country, the Canadian Archeological Association has recommended that all archeological export permits be approved so as not to establish official



Haida Frog Tobacco Mortar

sanction of commercial market value for any artifact."

The Cultural Property Act provides for the refusal of permits on *ethnological* objects, giving Canadian museums and private buyers a chance to buy them at the market price. (For a detailed look at the law, see "Canada's Act, MR, February 1983). I sympathize with the Archeological Association's stand. Site looting is a problem all over the world. But, neither of the two bowls were looted from sites as the AA well knows. Major objects of these types already have well established commercial values. If these two pieces were treated like ethnological objects, perhaps the Canadian Review board could have found buyers for them. As it is, they are lost to Canada. I sympathize with the AA's wish to keep these pieces up there. But, their denial of reality is really producing the opposite result. Cutting off your nose to spite your face.



Salish Human Seated Figure Bowl

~Cutting off your nose to spite your Face,~ from

The McKillop Report , October - November, 1983

Editorial

How many stone bowls will it take?

ANOTHER PREHISTORIC stone bowl is about to be exported from Canada—legally, with a new twist.

The artifact, a seated human figure bowl (see cover photo and below), had been in a private collection in Victoria.

It was recovered from a midden site on private property in 1960 together with another similar bowl that was sold and exported to the US two years ago. Both were featured in the Images Stone B.C. exhibit (nos. 30 and 32 in the catalogue).

Last year a Victoria art dealer applied for a permit to export the artifact. The permit was refused. The dealer appealed the decision. Under provisions of the Cultural Property Export and Import Act, if the artifact cannot be sold "at fair market value" within Canada during the ensuing six months, an export permit is automatically granted.

The delay period expires May 29, 1985. At press time there is still no Canadian purchaser.

The expectation was that a museum or similar institution would apply for a grant from the federal government with which to buy the artifact.

Most Canadian archaeologists refuse to buy artifacts or even to recognize that they have monetary value. The insistence that archaeological significance cannot be measured in commercial terms is a fundamental position of the Canadian Archaeological Association as



Rear view of the seated human figure bowl illustrated on the cover. Photo courtesy of the BCPM.

well as the ASBC. The CAA has requested Canadian museums to refrain from purchasing archaeological artifacts.

Provincial Archaeologist Art Charlton approached the current crisis from a different angle: he asked the Cabinet to designate the stone bowl under the B.C. Heritage Conservation Act. A designated heritage object cannot be legally removed from the province without the written consent of the Minister.

On May 2, 1985, British Columbia acquired by order in Council its first, and to date only designated archaeological artifact.

"Acquired" is probably the wrong word, since it is still in private hands, and reportedly out of the province.

It seems that the dealer shipped it out of B.C. as soon as he heard about the designation. According to informed sources, he was tipped off by a local archaeologist.

The dealer claims that he took the artifact out of the province before he was notified that it had been designated, and he expects an export permit to be issued at the expiration of the delay period. There is no provision in the federal law to halt export at this stage of the proceedings.

The question of fraternization between archaeologists and antiquities dealers aside, the incident does demonstrate the ineffectiveness of the federal legislation. Something is grossly wrong when an export permit can be legally issued for an artifact that has been designated under a provincial Heritage Conservation Act.

The ASBC has sent a telegram to Victoria demanding that the full course of the law be applied, and to Ottawa requesting cooperation with the province so that the artifact remain in Canada. Letters will follow giving details of the case and pointing out, once again, that the solution is to change the federal law so that permanent export of all archaeological artifacts is disallowed.

But that's only half the battle.

Now that we have a designated heritage object in B.C. the question of ownership looms large. The provincial Act allows for compensation if designation "decreases the economic value of land"—but it does not provide for artifacts. We should anticipate the next step of the dealer/collector community and overhaul our provincial legislation—after all, it is hardly state-of-the-art heritage protection. □

- Kathryn Bernick

ARCHAEOLOGICAL PROTECTION

The way they do it in Saskatchewan

by Nick Russell

ARCHAEOLOGICAL RESOURCES may have better legal protection in Saskatchewan than in any other province of the country, according to the man who administers them.

Brian Spurling, describing Saskatchewan's archaeological legislation for *The Midden*, noted that the laws apply to all land in the province, not just Crown land, as in B.C.

The law, amended in 1984, makes all recently-collected artifacts Crown property, but allows people to collect and keep artifacts at home under permit. Despite these seemingly draconian rules, Spurling, who is the province's Archaeological Resource Management Supervisor, said that the level of cooperation from the public is unusually high.

The crucial provision requires citizens to register collections, and all material collected since 1980 automatically becomes the property of the Crown.

"That sounds great," said Spurling, "but does the Crown need all those things? How is it going to manage them?"

The solution to this *embarrass de richesse* is permits.

"Amateurs can get a permit to survey and collect, if they fulfill certain obligations," he explained.

This procedure was instituted in 1984, but although only a couple of dozen individuals came forward in the first year to apply for such collection permits, Spurling was already seeing a healthy number of applications in 1985. The system covers only surface collecting, not digging.

Meanwhile, existing collections are also being registered. Does the concept of collections becoming state property deter people from registering their finds?

"People are reluctant to part with their collections," said Spurling. "We are finding a problem with that, so as an interim measure, we will allow them to keep the artifacts in their homes".

Effectively, this means that people can hang onto their finds for their lifetimes, but cannot sell them. Selling artifacts is illegal in

Saskatchewan, though one auctioneer found a neat loophole last year, auctioning Saskatchewan and B.C. artifacts in Alberta, and hence outside provincial jurisdiction. Efforts are being made to educate auctioneers, and the hope is that the provincial heritage boards can get together to formulate a reciprocal agreement.

"I'm not aware that anyone is collecting for financial gain (today)," Spurling said. For the most part, it's a favorite leisure activity.

This was confirmed by Margaret Hanna, who, as a curator at the Museum of Natural History in Regina, handles registration of collections. She said that people tend not to want to put a monetary value on their collections, though sometimes they ask for insurance purposes. Hanna's response to that is simple: A collection should be valued on the time the collector has spent in gathering and recording the material.

What DO people collect in Saskatchewan, and what is the nature of archaeological sites? Typical sites include stone circles and other alignments such as "medicine wheels," teepee rings, a few burial mounds, pictographs and petroglyphs, some 150 fur-trade posts, buried multi-component sites, and lithic scatters.

Many sites are long gone, as about one-third of the entire province has been cultivated. In addition, the fierce, dry winds of the Thirties uncovered a lot of material, at a time when many people had enforced leisure time to collect. Artifacts developed a certain currency: Spurling recalled the story of a Regina doctor who built a collection—decades ago—of 100,000 complete projectile points, many of them received in lieu of payment from patients. (As far as is known, the collection is long since dispersed.)

Over the last couple of years, Hanna has documented some 80 private collections, averaging 400 to 500 pieces (the smallest collection was four objects, the largest contained 5,606). She already has "three or four hundred on file" requesting registration, so there's no shortage of offers.

"A lot of collections are mainly points," she told *The Midden*, "because those are easily recognized. But occasionally there are knives and scrapers, beads and even musket balls." Hanna noted that some amateurs are so meticulous they gather butchered bone, flakes,

cores and fire rocks, and keep such good records they are almost as good as professional collections.

Other collections are worthless: "One character in the Thirties paid people 25¢ for a gunny sack of artifacts." The material, from all over the province, was just thrown together, and now is virtually worthless for research, she said.

Hanna added that the Museum isn't actively seeking more artifacts, being hardly able to cope with all it already has. However, management hopes to computerize the records, making access and research far easier.

In 1984 the law was amended so that the contentious issue of ownership was somewhat defused: There is now no threat of confiscation of unregistered collections.

"If we ever tried to confiscate a collection, that would be it, game over . . . We've got to get at it (locating collections) through information and education," said Hanna.

Spurling sees public awareness and public participation in archaeology as vital tools in protecting and developing the heritage environment. He works actively with the large and ancient archaeological society, whose activities and positive approach he warmly applauds.

The SAS has more than 350 members, spread among five chapters, the oldest of which—Saskatoon—this year celebrates its 50th anniversary—possibly the oldest continuously-operating archaeological society on the continent.

The society receives support from provincial lottery funds. Its activities include publishing memoirs and books, running a field school, providing speakers to outlying areas and supporting a modest research grant program. Spurling said the SAS often helped map sites and do emergency excavations.

He spoke particularly enthusiastically about the group's Five Year Plan: an approach to planning which he strongly recommended.

Both Hanna and Spurling therefore characterize Saskatchewan as being well-protected in terms of strong legislation effectively administered, and having a good rapport between government and an increasingly-cooperative public. □

Historic pieces sold to U.S.

By EVE JOHNSON
Sun Art Critic

Late in July, Victoria art dealer Howard Roloff sold two prehistoric B.C. stone carvings to a private collector in the U.S.

The loss to Canada of these artifacts focused attention on a dispute between Canada's archeologists, who believe such pieces are to be held in public trust, and the federal government, which defends the rights of private ownership.

The two carvings, the first important pieces to be sacrificed in the dispute, raise an important question: Why didn't the federal government's Cultural Properties Export and Import Act of 1977 — legislation designed to prevent the export of Canada's national heritage — prevent the loss of these pieces?

The 2,000-year-old "seated human figure bowl" is among the best of the 60 known examples of its kind, a relic of a prehistoric culture that stretched from the San Juan Islands in the south to Lytton in the north. How it was used is not known, but an educated guess is that it played a part as a symbol of fertility in puberty rites.

The late Wilson Duff, a leading authority on Northwest Coast Indian art, called it "one of the largest and most terribly powerful of all the seated human figure bowls."

Dr. Roy Carlson, professor of archeology at Simon Fraser University, called the bowl "the choice, the best, the most elaborate bowl of that type. If any were to leave the country permanently it should not have been that one."

The second sculpture was a Haida tobacco mortar from pre-European times which had been exhibited in the ground-breaking Arts of the Raven exhibition in 1967. Both pieces had been bought by Roloff from the private collection of Victoria resident Beverly Gore-Langton.

Roloff would not reveal the price, but I've learned it was \$50,000.

Why were the pieces exported?

The short answer is that Tom Loy,

assistant curator for archeology at the B.C. Provincial Museum, acting as an expert examiner under the act, granted an export permit.

The long answer is that the bowl and the tobacco mortar were casualties in the struggle between the Canadian Archeological Association (CAA) and the federal government.

Since the creation of the Cultural Properties Export and Import Act, all archeological, ethnographic and cultural materials for export have required an export permit.

Marg Preston, manager of the act's moveable cultural properties program, explains how the act works once a foreign buyer wants to buy any part of Canada's cultural heritage, from an Indian mask to a Group of Seven painting.

The exporter must go to a customs officer, who sends the piece to an expert examiner, who decides if the object is important enough to be kept in the country. The exporter has 30 days to appeal denial of a permit.

If the review board upholds the denial, institutions across Canada are offered a chance to buy at the dealer's price. If the review board feels the dealer's price is inflated, the dealer may be forced to accept a lower price.

And if a museum wants to buy the piece but can't afford it, the department of communications, which administers the act, may provide up to 75 per cent of the purchase price from its \$2.19 million annual budget.

In the six years that the act has been in place, Preston says, there have been only two or three cases in which a piece has left the country because no institution could afford it.

John McKillop, a Seattle art dealer and author of a business newsletter on Northwest Coast art, says: "The law is designed to give Canadians a chance to purchase. When the law was drawn up the government didn't want to make dealers into martyrs or to drive them into taking things across the border."

What it appears to have done is give dealers a guaranteed market. Once a dealer has an offer to buy from outside the country he has, in effect, two customers. As soon as he appeals a denied export permit, the review board is committed to finding a Canadian buyer or granting the export permit.

In effect, only members of the Canadian Archeological Association act as examiners under the act when an archeological artifact is under consideration for export.

But archeologists haven't played by the rules since 1979, when the CAA

adopted Tom Loy's recommendation that all applications for export be approved, "in order to avoid entrenchment of the concepts of valuation in the act."

The archeologists argue that in seeking to keep archeological artifacts in the country, the government sanctions a private trade in items that should be held in public trust.

Thus the archeologist who, acting as an expert examiner, assents to the export of an artifact is refusing to put a monetary value on an object he believes to be a public trust.

On the other hand, if an archeologist were to deny an export permit, he would set in motion a process whereby a Canadian institution would have to establish a price.

It is that establishment of price, the archeologists believe, which encourages further sales, which in turn encourages the pillage of archeological sites by amateur "pot-hunters."

Loy says, "If an art market in this material is developed, we are very much afraid that people will go out and start mining their local sites, as they do in Mexico and South America. That destroys the site."

Since 1971 it has been illegal to dig on B.C.'s 16,000 known archeological sites without a permit. But the law is difficult to enforce.

Marg Preston argues: "Certain types of archeological artifact had and have a market. Many archeological objects have been in private hands for a long time. And people who have inherited an object from their parents feel they own it."

"In a country like Canada we can't say that people don't own them any more."

But Don Abbott, curator of archeology at the Provincial Museum, says: "We talk not of ownership but of stewardship, of holding it in trust for the people in general, and, in particular, for the Indian people of the area from which it came."

But the paradox is that by insisting on stewardship as a principle, archeologists must allow export of the very artifacts they want to protect.

"It burns me up to see the bowl go, but where do you draw the line?" Abbott asks.

In fact, the loss of the bowl and mortar, the first important artifacts to be affected by the CAA's recommendation, is certain to provoke reconsideration at the association's spring meeting in Victoria.

SUITE

CONTINUED

SUITE

CONTINUED

"There is considerable variation in attitude toward this," says CAA president Leigh Syms. "It was voted on and passed as a resolution at a business meeting. I don't think it is adequately resolved."

"The weak link in this chain of events is the expert examiner," says Ron Vastokas, a member of the Moveable Cultural Properties Review Board. "He was obliged to make his judgment in accordance with the act, and not with a recommendation of his professional association."

Abbott argues that this job action, which he hesitates to call a strike, is "the only alternative that is given by this legislation."

Ethnologists, many of whom are outraged that the export permit was granted, recognize that there is an established art market in Northwest Coast artifacts and cooperate with the legislation.

Dr. Marjorie Halpin, acting director of the Museum of Anthropology calls the archeologists' stance "a position of such utter purity that it ignores the reality of the world."

"There is a global traffic in archeological materials," Halpin says. "Their position won't affect it."

But the stone carvings were not ethnographic artifacts (bought or obtained from the people who used them) but archeological artifacts (material that has been lost, abandoned or hidden away and never recovered by its original owners).

For the archeologists, the break in the chain of ownership is the key to their suggested alternative — public trusteeship of all archeological material until the legal heirs can be determined.

In addition, they believe that all export of archeological material should be banned, with the exception of temporary permits for research or exhibitions.

In the meantime they will continue to grant export permits.

Case Study No. 2: The Auctions of Indian Artifacts at Aldrie, Alberta

During the course of our conversations with archaeologists, frequent reference was made to the existence of a private market and trade in artifacts obtained by pot-hunters and collectors. The most recent example given to illustrate the active existence of such trade was an auction of a collection of Indian artifacts (the "Earl Federspiel" collection) held in Aldrie, Alberta on 21 May 1984.

We have obtained a copy of the internal report completed on this auction by an archaeologist of the Archaeological Survey of Alberta, along with his descriptions of the 289 artifacts and the prices for which they sold (totalling \$5,266.50). We had hoped to be able to reproduce this document as an appendix to this Report. We requested the permission of the Government of Alberta to do so but were denied by the Deputy Minister of Culture.

The description of the sale provides a good sense of the popular interest in the collection of archaeological artifacts. The sale was apparently attended by well over 100 people, some of whom had travelled from Saskatchewan. The document also testifies, by the style in which it is written, to the anger which such sales provoke in the archaeological community.

The sale is also an important case in point regarding the uneven development of provincial legislation and the resulting consequences. The legislation in the province of Alberta, which is in other respects thought to be highly developed, does not prevent the sale of artifacts which have originated in other provinces. The collection sold at Aldrie originated in Saskatchewan and was transported into Alberta in order to circumvent the Saskatchewan law prohibiting the sale of archaeological artifacts.

Case Study No.3: The Case of the Musée de la Civilisation

Au Gouvernement du Québec, les activités législatives et administratives ainsi que les activités pour la promotion des projets de développement s'entrecroisent. Cette interaction nous fournit une illustration privilégiée de la complexité inhérente à la préservation des ressources archéologiques.

L'histoire du complexe muséologique du "Musée de la Civilisation" (située Place Royale dans la Basse Ville de Québec, îlot Farques) révèle les difficultés du gouvernement à assumer son rôle d'agent de recontextualisation des ressources archéologiques. Nous utilisons un exemple concret afin de faire ressortir les problèmes à articuler les différents rôles d'un organisme gouvernemental.

Cette affaire présente un grand intérêt et elle a soulevé maintes controverses à cause des difficultés rencontrées par le gouvernement dans la protection des ressources archéologiques historiques. Toutefois, cela n'en aucun cas suggère que cette histoire est inhabituelle.

Rappel des principaux faits relatifs au "Musée de la Civilisation"

Les renseignements sur les faits décrits plus avant sont tirés de la Revue de presse du Ministère des Affaires culturelles et du Dossier de presse de l'Association des archéologues du Québec.

- Août 1979: Proposition visant la construction d'un complexe muséologique interdisciplinaire; par M.D. Vaugeois, Ministère des Affaires Culturelles (MAC).

- Decembre 1980: Ouverture d'un concours de sousmissions pour la construction du "Musée de la Civilisation", sous la tutelle du Ministère des Travaux publics et Approvisionnement (MTPA).
- Mai 1981: Adoption d'un projet architectural (Equipe Belzile).
- Juin 1981: Présentation publique de la maquette du projet Belzile.
- Aout 1981: Mémoire présenté par le Conseil des Monuments et Sites du Québec (CMSQ) au MAC et au MTPA; on recommande la protection du patrimoine de l'Ilot Fargues.
- Mai 1983: L'Association des archéologues du Québec (AAQ) intervient auprès du MAC pour que les recherches archéologiques entreprises dans le quadrilatère du futur musée soient complètes et pour réclamer qu'une étude de synthèse soit faite.
- Septembre 1983: Suite à une série d'échanges entre le CMSQ et le Ministère des Affaires Culturelles, le MAC assure qu'il veillera à contrôler la qualité du travail archéologique, par le biais du permis d'excavation qu'il émettra.
- Aout 1984:
 - Annonce du début imminent des travaux de construction.
 - Le Conseil des Monuments et Sites du Québec dénonce publiquement: a) l'absence de modification au plan architectural original suite à ses recommandations; b) le manque de volonté pour préserver et intégrer les ressources archéologiques à la nouvelle construction.
- Septembre 1984:
 - L'Association des archéologues du Québec appuie les revendications du CMSQ.
 - Le ministre Richard du MAC sollicite l'avis de la Commission des Biens culturels (CBC).
 - La CBC recommande: a) la modification des plans et devis du musée pour préserver les bâtiments anciens et intégrer la dimension archéologique au cours des travaux de construction; b) la planification des fouilles d'urgence dans le cas de découvertes importantes qui pourraient nécessiter une interruption

"localisée" ou chantier, conformément à l'article 41 de la loi sur les biens culturels.

- La Société Immobilière du Québec (SIQ), chargée de la construction et le MAC se conforment en grande partie à l'avis de la Commission des biens culturels.
 - Le ministre Richard assure qu'un archéologue mandaté par la SIQ, entouré d'une équipe de 4 personnes surveillera l'ensemble des travaux d'excavation.
 - Les modifications gouvernementales sont assez bien acceptées par l'ensemble des organismes voués à la protection du patrimoine. L'AAQ craint cependant que le mandat qui sera confié à l'archéologue ne soit pas conforme aux normes d'éthique et de pratique de la profession.
- Novembre 1984:
- La SIQ passe outre aux modifications adoptées par le ministre Richard et démolit la maison Page-Quercy, classée monument historique (qui aurait dû, d'après le permis de construction, être conservée et intégrée au musée).
 - Travaux d'excavation sous surveillance archéologique.
 - Découverte d'importants vestiges.

Dans l'affaire du "Musée de la Civilisation", l'un des principaux intervenants est le Ministère des Affaires culturelles. Ce dernier agit à titre d'initiateur et de promoteur du projet. Ce rôle diffère, en l'occurrence, de celui de législateur et de protecteur du patrimoine qu'il est appelé à jouer à d'autres moments. A titre de promoteur, il semble que le gouvernement a pu occasionnellement modifier ses priorités et accorder le cas échéant, plus d'importance aux questions économiques (budget, échéancier, etc) qu'à des mesures de préservation des ressources archéologiques.

L'histoire du Musée de la Civilisation révèle que la Loi sur les biens culturels (dans la partie se rapportant à la protection du patrimoine archéologique) ne semble pas avoir toujours été suivie prioritairement par le MAC.

Ainsi dans le choix du site, le MAC n'a pas entièrement suivi les recommandations de l'UNESCO afin de protéger le site historique que constitue la Ville de Québec (Basse-Ville). Il n'a pas non plus semble tenu compte des résultats d'une étude historique réalisée en 1974, ni des avis des

archéologues qui soutenaient que cet emplacement du nouveau musée avait été à tour de rôle le site d'une brasserie, d'une tonnellerie, d'un moulin vers 1725, de residences, d'entrepôts et de quais fortifiés entre 1690 et 1770; de banques, de bureaux et d'entrepôts de marchandises entre 1860 et 1950.

Lors de l'ouverture du concours de soumissions pour la construction, le MAC émettait une grande quantité de directives touchant la muséologie. Cependant, presque rien ne se rapportait au patrimoine architectural et archéologique du site. Les seules contraintes exigées par le ministère - client pour se résumaient ainsi à ceci: ne conserver qu "une partie" des anciens "quais" (batterie Dauphine); l'essentiel "réutiliser" seulement l'ancienne Ecole de marine et la maison Estebe (classée); s'inscrire dans la "trame urbaine" à "caractère historique".

Comme le CMSQ l'a fait remarquer le plan architectural choisi par le jury, ne permettait pas d'intégrer à la nouvelle construction les richesses architecturales du passé.

Tel que prévu par la loi, le MAC a effectivement consulté la Commission des Biens culturels (CBC). Mais cette consultation est venue à la toute veille de la mise en chantier, ne rendant possible qu'un type de travail archéologique à cette étape de la planification du projet (en l'occurrence, l'archéologie de sauvetage). On sait par ailleurs qu'en dépit de l'acceptation par le MAC des modifications proposées par la CBC, la SIQ a commis une "erreur" dans l'interprétation des plans et devis qui a conduit à la démolition entière de la maison Page-Quercy (or, selon le permis de construction, on n'en prévoyait que la démolition partielle).

Il apparaît donc que le comportement du Ministère relativement à la localisation du Musée, au choix du plan de l'architecte, de même qu'aux conditions dans lesquelles s'est effectuée la construction, n'ont pas permis que la priorité soit la préservation des ressources archéologiques. A tout le moins, on pourrait croire que le MAC s'est trouvé, dans une position conflictuelle: son rôle de promoteur du Musée et les exigences administratives que cela supposait n'étaient pas nécessairement conjugués à son rôle de protecteur du patrimoine.

Case Study No. 4 : Native Community Based Research: A
Cooperative Approach With Archaeologists

1. Introduction

In 1983, the Walpole Island Band Council rejected a request from a professional archaeologist to conduct research on its reserve lands. Members of the community did not believe such research could benefit them; instead, they viewed archaeology with suspicion.

This year the Walpole community drafted its own proposal for an archaeology inventory project which will be conducted as a community-based endeavour in cooperation with outside professionals.

This case study considers how this community has come to believe that archaeological research can benefit them. We are grateful to Dean Jacobs, a member of the Walpole Island Community, for permission to summarize here his report, published by the Reserve (1986).

2. Background

Located in southwestern Ontario, between Sarnia and Windsor, Walpole Island is the southernmost Indian reserve in Canada. The Walpole Island Band has been in the forefront of efforts by Canadian aboriginal peoples to achieve self-government and self-sufficiency. Since 1959, the band has administered its own revenue accounts, and since 1965 the band has administered its own programmes without a resident agent from the Indian Affairs Branch. Such programmes now include those in the areas of "public works, education, economic development, health, welfare, police and fire protection, recreation, tourism, housing and research" (Jacobs, 1986:4).

The band is also involved in issues regarding aboriginal rights and claims settlements. A Claims project initiated in 1973 has paid "particular attention to circumstances surrounding land dealings between the Walpole Island Indian Band and the federal government" (p. 5). As this Claims project has unfolded, various research projects have been undertaken as spin-offs. They have included assessments of environmental, socio-economic and resource management problems on the reserve.

Central to these have been the control by and involvement of the community itself rather than its dependency upon outside "experts". This is in contrast to many other resource management studies on reserves in Canada. According to Jacobs, such community-based research "differs from the traditional academic approach to research" in that it involves "the mutual involvement of community members and outsider 'experts'. Rather than being simply the object of the inquiry, the community thus becomes an active subject and integral part of the study" (p. 10). To date, joint research endeavours have been undertaken with the National Indian Brotherhood (now AFN), the Universities of Wisconsin, Waterloo and Windsor, Dartmouth College, Marysville Historical Museum and Indian and Northern Affairs Canada. Jacobs concludes that the results of such research on Walpole Island have been beneficial to both the band and to the university researchers.

3. Archaeological Research at Walpole Island

Community-based research on Walpole Island is now being extended to an archaeological project. An Ontario regional archaeologist has been cooperating with the Walpole Island community in preparing the way for such research. As a result, a proposal has now been developed by the Band Council for an archaeological inventory to be undertaken by the community in cooperation with outside professionals. This project has been made possible, according to Jacobs, because a programme was first initiated to make the local community aware of the goals of archaeology and its potential benefits to them. For example, a community newsletter now features articles about local archaeological discoveries, with articles written by the cooperating Ontario archaeologist. An Indian Heritage Conference held in 1985 provided the community with information about archaeology. Jacobs summarizes some of the potential benefits that the community now believes archaeology can include:

- "1. Creation of a heritage site inventory for developmental planning/resource conservation purposes.

2. Creation of summer employment opportunities for several Band youth as survey crew members. This could lead ultimately to careers in Native heritage studies.
3. Development in a few years of a "hands on" archaeological field program for Walpole Island Day School students.
4. Enhanced tourist dollar inflow as a result of visitation to heritage site interpretive displays developed on the basis of survey findings.
5. Adding to the growing body of literature on the history of Walpole Island, thus, contributing to the knowledge of Canada's rich and complex prehistory.
6. Supportive evidence and documentation in the Native claims resolution process.
7. Practical experience in implementing an approach that can be characterized as from the "bottom-up" which has some very real application in the Indian self-government question.
8. Community confidence by doing things for ourselves by ourselves." (Jacobs, 1986:16)

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BIBLIOGRAPHY

- ALLEN, Robert S. 1982 Native Studies in Canada: A Research Guide. Treaties and Historical Research Centre. Ottawa: Indian and Northern Affairs, 1982.
- AMES, Michael. "What Is a Social Anthropologist doing in a Museum of Anthropology ?" , Paper Presented to the Annual Meeting of the Canadian Ethnology Society, Vancouver: 11 May, 1982.
- ANDERSON, Richard L. Art in Primitive Societies. Englewood Cliffs, New Jersey: Prentice-Hall, 1979.
- ARNOLD, Charles D. "Archaeology in the Northwest Territories: An Intellectual Context", Northern Perspectives, 1982, vol.10/6 (November-December): 3.
- L'ASSOCIATION DES ARCHEOLOGUES DU QUEBEC. Recherches Archeologiques au Quebec 1983/1984. Quebec: L'Association des Archeologues du Quebec, 1986.
- BANKES, Nigel. Resource-leasing Options and the Settlement of Aboriginal Claims. Ottawa: Canadian Arctic Resources Committee, 1983.
- BAXI, Smita J. "Museum Exhibitions and Display Techniques" In S.J. Baxi and V.P. Divivedi, Modern Museum Organization and Practice in India. New Delhi: Abhivan Publications, 1973.
- BERGER, The Honourable Mr. Justice T.R. "Native Rights in the New World: A Glance at History", papers from the Sixth Annual Congress of the Canadian Ethnology Society, Marie-Francoise Guedon and D.G. Hatt (eds). Ottawa: National Museums of Canada, 1979.
- BLUNDELL, Valda and Ruth PHILLIPS. "Images of Indianness in Woodlands Legend Painting", paper presented to the Ninth Annual Meeting of the Canadian Ethnology Society. Vancouver: 10 May 1982.
- "If Its Not Shamanic, Is It Sham ?: An Examination of Media Response to Woodland School Art", Anthropologica, 1986, Vol. XXV: 117-132.
- BOAS, Franz. Primitive Art. New York: Dover Publications, 1955 (Originally published 1927).

BOURDIEU, Pierre. Outline of a Theory of Practice. London: University of Cambridge, 1977.

BRASCOUPE, Simon. Handbook of Canada's Native Peoples, Vol. 1. Ottawa: Department of Economic and Regional Expansion, 1981.

BRASSER, Ted. "Bojou, Neejee!": Profiles of Canadian Indian Art. Ottawa: National Museum of Man, 1976.

BRODY, Hugh. The Peoples Land: Whites and the Eastern Arctic. Penguin Books, 1975.

----- Maps and Dreams. Penguin Books, 1981.

BROSE, David S., James A. BROWN, and David W. PENNEY. Ancient Art of the American Woodlands. New York: Harry N. Abrams, 1985.

BURLEY, David, ed. Archaeological Survey of Alberta Occasional Paper no. 23: Archaeology in Alberta 1983. Edmonton: Alberta Culture, Historic Resources Division, 1984.

----- Archaeological Survey of Alberta Occasional Paper no. 25: Archaeology in Alberta 1984. Edmonton: Alberta Culture, Historic Resources Division, 1985.

----- Canadian Archaeological Association Newsletters. 1983, vol.3/3 (December); 1984, vol.4/1 (April); 1986, vol.6/1 (Spring).

CAMERON, Duncan. An Introduction to the Cultural Property Export and Import Act. Ottawa: Department of Communications, Art and Culture Branch, 1980.

CANADIAN ARCHAEOLOGICAL ASSOCIATION. "The Cultural Property Export and Import Act and Canadian Archaeology: A Discussion Paper". 1985.

CANADIAN MUSEUMS ASSOCIATION. Official Directory of Canadian Museums and Related Institutions 1984/85. Ottawa: Canadian Museums Association, 1985.

CARRIER-SEKANI TRIBAL COUNCIL. Submission to the Task Force on Comprehensive Claims. Vancouver B.C. October 21, 1985:7.

CHOQUETTE, Wayne. "Developing a Kootenay Ecomuseum", paper presented to the First World Congress on Heritage, In Presentations and Interpretations. The Banff Centre: 3 October, 1985.

COE, Ralph T. Sacred Circles: Two Thousand Years of North American Indian Art. London, England: Arts Council of Great Britain, 1976.

COLE, Douglas. Captured Heritage: The Scramble for Northwest Coast Artifacts. Vancouver/Toronto: Douglas and McIntyre, 1985.

COMMISSION DES BIENS CULTURELS DU QUEBEC. La Patrimoine Maritime du Quebec (prepared by Francois Pichard). Quebec: Gouvernement du Quebec, 1983.

COOKE, Katie. "Images of Indians Held by Non-Indians: A Review of Current Canadian Research". Ottawa: Indian and Northern Affairs Canada - Research Branch, 1984.

COX, Bruce. "Prospects for the Northern Canadian Native Economy", Polar Record, 1985, 22/134: 393-400.

CUMMING, Peter A. and Nell H. MICKENBURG. Native Rights in Canada. Toronto: Indian-Eskimo Association of Canada and General Publishing Co. Ltd, 1972.

CYBULSKI, J.S. "Scientific Aspects of Archaeology in Canada: A Physical Anthropologist's View" In New Perspectives in Canadian Archaeology. Royal Society of Canada, 15th Symposium, October, 1976.

DENHEZ, Mark. "La protection de l'environnement bâti du Quebec", in Revue du Barreau, vol.38:606-610, 1978.

-----"Regulation of Fake Inuit Art: some legislative options in the light of international developments". (unpublished - produced for Inuit Tapirisat of Canada), March, 1983.

DICKASON, Olive Patricia. Arts Indiens au Canada. Ottawa: Indian and Northern Affairs, 1972.

DIXON, Brian, Alice E. COURTNEY, and Robert H. BARLEY. The Museums and the Canadian Public. Ottawa: Department of State, CulturCan Publications, 1974.

DOCKSTADER, Frederick J. Indian Art in America. New York: Promontory Press, 1960.

DUBOFF, Leonard D. and FRANZ, Julie E. "What is Real? Authenticity or Aesthetics in Art" In L.D. Duboff (ed). Art Law: Domestic and International. South Hackensack, N.J.: Fred B. Rothman and Co., 1975.

DUFF, Wilson. "Prehistoric Stone Sculpture of the Fraser River and Gulf of Georgia" In Anthropology in British Columbia, British Columbia Provincial Museum, Victoria, B.C., 1956, no.5.

----- Images stone B.C. Toronto: Oxford University Press, 1975.

THE FEDERAL CULTURAL POLICY REVIEW COMMITTEE. Summary of Briefs and Hearings. Ottawa: Department of Supply and Services, 1982a.

----- Report of the Federal Cultural Policy Review Committee. Ottawa: Department of Supply and Services, 1982b.

FEEST, Christian F. Native Arts of North America. Toronto: Oxford University Press, 1980.

FITZGERALD, Patrick. Salmond on Jurisprudence. 12th edition. London: Sweet and Maxwell, 1966.

FREEDMAN, Maurice. Main Trends in Social and Cultural Anthropology. New York: Holmes and Meres, 1978.

FRESE, H.H. Anthropology and the Public: The Role of the Museums. Leiden, 1960.

FRIDERES, James S. Native People in Canada: Contemporary Conflicts. (2nd edition). Scarborough, Ontario: Prentice Hall Canada Inc., 1983.

GIESECKE, Anne G. "Management of Historic Shipwrecks in the 1980's" Journal of Field Archaeology. 1985, v. 12/1 (Spring): 108-112.

GRABURN, Nelson. Introduction to "Ethnic and Tourist Arts: Cultural Expressions from the Fourth World", Nelson Graburn (ed.). Berkeley: University of California Press, 1976.

GRIFFITHS, David and McDANIEL, Neil. "Searchers in the Silent World" Canadian Heritage, Dec. 1985 - Jan. 1986: 21-25.

HALSBURY, H.S.G. Halsbury's Laws of England. vol.8, 1983.

HAMILTON, L. Wardlaw. "Museums Acquisitions: the Case for Self-Regulation" In L.D. Duboff (ed). Art Law: Domestic and International. South Hackensack, N.J.: Fred B. Rothman and Co., 1975.

HARRIS, D.R. "The Concept of Possession in English Law" In Oxford Essays in Jurisprudence. A.G. Guest (ed.), Oxford: Clarendon Press, 1961.

- HELLER, Ben. "The Protection of Artistic National Patrimony against Pillaging and Theft" In L.D. Duboff (ed), Art Law: Domestic and International. South Hackensack, N.J.: Fred B. Rothman and Co., 1975.
- HERMANN, Kathleen, Frank VALLEE and Peter CARSTENS (ed.). 1981-1982 Guide to Departments of Sociology, Anthropology and Archaeology in Universities and Museums in Canada. Ottawa: National Museum of Man, 1982.
- HERSCHER, Ellen. "House Passes Historic Shipwreck Legislation" Journal of Field Archaeology. 1985, v.12/1, (Spring): 112-116.
- HILL-DOWNHAM, Julia. Directory of Canadian Universities 1984-85. Ottawa: Statistic Canada and the Universities and Colleges of Canada, 1985.
- HOBBSBAMM, Eric. "Mass Producing Traditions: Europe 1870-1914" In E. Hobsbawm and T. Ranger (eds). The Invention of Tradition. Cambridge University Press, 1983.
- HORNE, Donald. The Great Museum: the Re-presentation of History. London: Pluto, 1984.
- JACOBS, Dean. "Native Community Based Research: A Cooperative Approach", Occasional Paper #13, Walpole Island Indian Reserve, 1986.
- JANES, Robert R. and Charles D. ARNOLD. "Public Archaeology In the Northwest Territories" The Musk-Ox. 1983, no.33, (Winter): 42-48.
- KABLOONA, Cheryl. "Baker Lake's Historic Sites Project" Inuktitut, 1984, (Winter):25.
- KEMP, Bill. "In Memory of Daniel Weetaluktuk" Northern Perspectives, 1982, vol.10/6 (November-December):11.
- KILLAN, Gerald. David Boyle: From Artisan to Archaeologist. Toronto: University of Toronto Press, 1983.
- KOSTYRA, E., Hon. Minister. Heritage Resources, Manitoba Culture and Recreation. Winnipeg: 1985.
- LESSARD, Camille, "Les Mechanismes Juridiques de Sauvegarde des Lieux du Patrimoine Culturel au Quebec", Cours de Perfectionnement, No. 87, Montreal: 1979.
- LESTER, Geoffrey S. Inuit Territorial Rights in the Canadian Northwest Territories: A Survey of the Legal Problems. Toronto: York University, 1981.

- MacCANNELL, Dean. The Tourist: A New Theory of the Leisure Class. New York: Schocken Books, 1976.
- MANITOBA DEPARTMENT OF CULTURE, HERITAGE AND RECREATION. Introducing Manitoba Archaeology, 2nd edition. Winnipeg: Manitoba Department of Culture, Heritage and Recreation, 1983.
- Introducing Manitoba Prehistory. Winnipeg: Department of Culture, Heritage and Recreation, 1984.
- MAQUET, Jacques. Introduction to Aesthetic Anthropology. Addison-Wesley, Modular Publications, 1971.
- MAROIS, Roger J.M. Archaeological Survey of Canada Annual Review 1977-1979. Ottawa: National Museums of Canada, 1980.
- MAURER, Evan M. The Native American Heritage: A Survey of North American Indian Art. Chicago: The Art Institute of Chicago, 1977.
- McFEAT, Tom. "The National Museum and Canadian Anthropology" In The History of Canadian Anthropology. Canadian Ethnology Society Proceedings 1976, No.3: 148-173.
- McGEE, Robert, ed. Archaeological Survey of Canada Annual Review 1980-1981. Ottawa: National Museums of Canada, 1983.
- McKAY, A.G. (ed). New Perspectives in Canadian Archaeology: Proceedings of a Symposium sponsored by the Royal Society of Canada, 22-23 October 1976. Ottawa: The Royal Society of Canada, 1977.
- McMURDO, John, ed. Annotated Bibliography of Archaeological Field Research in British Columbia. Victoria: Heritage Conservation Branch, Ministry of Provincial Secretary and Government Services, 1985.
- MINISTERE DES AFFAIRES CULTURELLES. L'archeologie au Quebec. Ministere des Affaires Culturelles. 1985.
- MOHS, Gordon. "Native Organizations and Archaeology-Heritage Studies". Session at 19th Annual CAA Conference, 1986
- MOORE, Christopher. "Shipwrecks: Plunder or Patrimony ?" Canadian Heritage, Dec. 1985 - Jan. 1986: 14-20.
- MUSQUEAM NATION. Submission to the Task Force Review on Comprehensive Land Claims Policy. September 1985: 14-15.
- NATIONAL GALERY OF CANADA. Masterpieces of Indian and Eskimo Art from Canada. Ottawa, 1970.

NATIONAL WORKSHOP ON PEOPLE, RESOURCES AND THE ENVIRONMENT NORTH OF 60 . National and Regional Interests in the North. Third National Workshop on People, Resources, and the Environment North of 60. Ottawa: Canadian Arctic Resources Committee, 1984.

NINGUIAK, Joanassie. "Avataq Activities" Inuktitut, Fall 1984:41-42.

OGILVIE, Robert, ed. Archaeology in Nova Scotia 1981-1984. Halifax: Nova Scotia Museum, Department of Education, 1985.

O'KEEFE, P.J. and PROTT, L.V. Law and the Cultural Heritage, vol. 1. Oxford: Professional Books Ltd, 1983.

PATTERSON, E. Palmer. The Canadian Indian: A History Since 1500. Collier McMillan, 1962.

PHILLIPS, Charles and Patricia HOGAN. The Wages of History. The AASLH Employment Trends and Salary Survey. Nashville: The American Association for State and Local History, 1984a.

-----A Culture at Risk: Who cares for America's Heritage? Nashville: The American Association for State and Local History, 1984b.

PHILLIPS, Ruth B. Patterns of Power: The Jasper Grant Collection and Great Lakes Indian Art of the Early Nineteenth Century. Kleinburg, Ontario: The McMichael Canadian Collection, 1984.

QUERRIEN, Max. Pour une nouvelle politique du patrimoine. Rapport au ministre de la culture. Paris: La Documentation française, 1982.

REISMAN, David Jr. "Possession and the Law of Finders" Harvard Law Review, 1939, vol.52: 1105-1134.

RERD, Dennis and Joan VASTOKAS. From the Four Quarters: Native and European Art in Ontario, 5,000 BC to 1867 AD. Toronto: Art Gallery of Ontario, 1984.

"Saskatchewan Archaeological Society Newsletter", Regina: 1986, vol. 7

"Saskatchewan Resource Management Programme". Regina: 1984.

Science, 1983, vol. 4.

SIMONSEN, Bjorn O. "The Role of Government in Archaeology" In Datum.Heritage Conservation Branch Newsletter, Victoria: Province of British Columbia, 1980, vol.5/4: 5-6.

SNOW, Dean. The Archaeology of North America. London: Thames and Hudson, 1976.

Swedish Archaeology Today. Stockholm: Central Board of National Antiquities, 1979.

SWINTON, George. Sculpture of the Eskimo. Toronto: McClelland and Stewart, 1972.

Task Force to Review Comprehensive Claims Policy. Living Treaties: Lasting Agreements. Report of the Task Force to Review Comprehensive Claims Policy. Ottawa: DIAND, 1985.

TAYLOR, William E. and George SWINTON. "Prehistoric Dorset Art" The Beaver. 1967, Autumn: 32-47.

THOMPSON, Ben W., ed. Who's who in Indian Relics no.5. Kirkwood, Missouri:(privately printed), 1980.

THOMSON, Jane Sproull and Callum THOMSON, ed. Archaeology in Newfoundland and Labrador 1983. St-John's: Historic Resources Division. Department of Culture, Recreation and Youth. Government of Newfoundland and Labrador, 1984.

-----Archaeology in Newfoundland and Labrador 1984. St-John's: Historic Resources Division. Department of Culture, Recreation and Youth. Government of Newfoundland and Labrador, 1985.

TUCK, James A. and GRENIER, Robert. "A 16th Century Basque Whaling Station in Labrador" Scientific American. 1981, (November):180-190.

TUNGAVIK FEDERATION OF NUNAVUT. Submission to the Task Force to Review Comprehensive Claims Policy. September 27, 1985: 38.

UNESCO. The Protection of Movable Cultural Property I. Compendium of Legislative Texts. Paris: Unesco, 1984.

USHER, Peter. "Property Rights: the Basis of Wildlife Management" In National and Regional Interests in the North. Third Annual Workshop on People, Resources and the Environment North of 60 , Ottawa: Canadian Arctic Resources Committee, 1984.

VASTOKAS, Joan. "Native Art as Art History: Meaning and Time from Unwritten Sources", Paper Presented at the Symposium "From the Four Quarters". Art Gallery of Ontario, forthcoming in the Journal of Canadian Studies.

WARD, G. "The Federal Aboriginal Act and Archaeology" In Australian Aboriginal Studies, 1985, No. 2.

WATSON, G. Organization In Archaeology. 1975

WHERE, K.C. Federal Government. London: 1976.

WILLIAMS, S.W. The International and National Protection of Movable Cultural Property: A Comparative Study. New York: Oceana Publications Inc., 1978.

WINTER, Barbara J. "Archaeological Collections and the Cultural Property Import and Export Act", Paper presented at The Canadian Ethnology Society Meetings, May 1983.

WRIGHT, J.V. Six Chapters of Canada's Prehistory. Toronto: Van Nostrand Reinhold Ltd., 1976.

WRIGHT, Patrick. On Living in an Old Country: The National Past in Contemporary Britain. London: Verso, 1985.

