BEYOND TOKENISM: ABORIGINAL INVOLVEMENT IN

ARCHAEOLOGICAL RESOURCE MANAGEMENT IN BRITISH COLUMBIA

by

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ABSTRACT

This thesis provides an analysis of aboriginal involvement in archaeological resource management in British Columbia and explores the potential of co-operative arrangements for the development of a more inclusive management regime. The objectives of the thesis are (i) to investigate the role of First Nations in the development of archaeology and archaeological resource management, (ii) to compare aboriginal community-based heritage management initiatives in B.C. with those operating within the Yukon and Northwest Territories and the U.S., (iii) to develop an aboriginal involvement framework to analyze aboriginal participation in archaeological resource management in B.C., and (iv) to assess the opportunities and constraints to increased aboriginal involvement in archaeological resource management in B.C.

Preliminary chapters outline the historical, legislative, and theoretical contexts for this study. Relevant literature is reviewed to provide a discussion of the development of archaeology and its effects on aboriginal people. The creation of a management ethic for archaeology is presented together with the nature of aboriginal participation in the management process. Secondly, literature pertaining to aboriginal involvement in resource management is surveyed to provide a context for analyzing aboriginal participation in archaeological resource management.

From this review an aboriginal involvement framework is developed. Based on the themes discussed in preceding chapters and the proposed framework, six key concepts of aboriginal involvement in archaeological resource management are identified to provide structure for an analysis of aboriginal involvement in archaeological resource management in B.C. Next, in case study format, the Sto:lo Nation's approach to heritage management is analyzed using the key concepts distilled from the framework. The Sto:lo Nation's experience with managing archaeology is followed by a discussion of the provincial approach to archaeological resource management. The contrasting nature of both the Sto:lo Nation's and the

Province's approaches to archaeological resource management is discussed and the difficulties inherent in developing a more inclusive management regime are highlighted.

Finally, a set of opportunities and constraints to the development of a co-operative approach to archaeological resource management is outlined. This set is derived both from the events and literature discussed in the previous chapters as well as the results of the case study investigation. A pilot project for the co-operative management of archaeological resources is suggested and the benefits of such an approach are discussed. The thesis closes with the presentation of conditions to facilitate the development of co-operative management of archaeological resources in B.C.

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CHAPTER ONE

INTRODUCTION

1.1 Thesis Goal and Objectives

An overwhelming proportion of the archaeological remains in British Columbia is of aboriginal origin. The perception of these remains as resources of common property has alienated First Nations from this important part of their heritage and led to the application of a conventional resource management approach for archaeological resources. Such an approach places the future of the resource base under the authority of a technical management agency within the provincial government, effectively excluding First Nations and other interest groups from meaningful involvement in management decisions. This exclusion has resulted in conflicts between the Province, which retains centralized control over these resources, and First Nations who are demanding greater resource control at the community level.

The goal of this thesis is to analyze First Nations involvement in the management of archaeological resources in British Columbia through a case study of a community-based approach to management initiated by First Nations. A number of objectives have been identified in order to achieve this goal. These include (i) an investigation of the role of First Nations in the development of archaeology and archaeological resource management, (ii) a review of the range of First Nations community-based heritage management initiatives in British Columbia, the Yukon and Northwest Territories, and the U.S., (iii) the development of an aboriginal involvement framework to analyze aboriginal participation in archaeological resource management in B.C., and (iv) an assessment of the opportunities and constraints to greater First Nations involvement in archaeological resource management in B.C.

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1.2 Rationale

> There is a sense in which all human history is the rightful inheritance of all human beings, which everyone is entitled to share. But the present overriding concern is to secure greater equality of access to the past and control over its re-creations for the aboriginal minority long deprived of both.[1]

Until very recently in British Columbia, archaeological resources have been considered the exclusive domain of academics, consultants, and government bureaucrats. Increasing awareness of the political and social dimensions of the archaeological record by First Nations has placed pressure on decision-makers for changes in the legislation to create an ethically and morally responsible management regime. To date, however, changes that reflect the integration of First Nations concerns in archaeological resource management have been slow and largely ineffectual. First Nations involvement in various consultative processes with the Province during the last 10 years has not resulted in any significant progress toward the recognition of First Nations' pleas for more access to and meaningful control over the management of archaeological resources.

The current archaeological resource management system in British Columbia sets strict limits on First Nations involvement in decisions regarding archaeological research within their respective traditional territories. These limitations have led to frustration and mistrust on the part of many First Nations. First Nations feel that archaeological resources constitute a large part of their aboriginal heritage and are rightfully theirs to manage and control.

Presently, First Nations' only involvement in the daily decisions which affect archaeological resource management in their traditional territories is via the permitting process. Permits are administered by the Archaeology Branch, an agency of the provincial Ministry of Small Business, Tourism, and Culture. Archaeology permits regulate the activities of

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[1] Creamer, H. "Aboriginal perceptions of the past: the implications for cultural resource management in Australia" in Gathercole, P. and Lowenthal, D. (eds.) *The Politics of the Past* (London: Unwin Hyman, 1990): 137.

archaeologists and other individuals who may be involved in the disturbance of archaeological remains. The Archaeology Branch distributes permit applications for archaeological investigations and inspections to the relevant First Nation for their review. Fifteen to thirty days is allotted for this review in keeping with other provincial referral processes. First Nations are asked to provide written comments regarding the methodologies in the application for archaeological research within their respective traditional territories. These concerns are then forwarded to the applicant who has no legal obligation to address these concerns, and, in almost all cases, the permit is granted.

This kind of consultation has been interpreted by many First Nations as a form of tokenism which continues to exclude First Nations from meaningful involvement in the management of archaeological resources within their respective traditional territories. While some First Nations are involved in this limited role, others do not have the human or financial resources necessary to adequately review permits for archaeological investigations. In this system a lack of response within the set commentary period is generally perceived as consent. The lack of effective involvement in decisions regarding the management of archaeological resources has prompted some First Nations to develop their own community-based heritage management policies and permits, none of which are officially recognized by the provincial government.

The resulting conflicts are reflective of contrasting views of the nature of the resource and the legitimacy of ownership rights to the resource. The resource management regimes which follow from these views are necessarily guided by different and sometimes irreconcilable cultural frames of reference. According to Usher:

> Every system of resource management is based on certain assumptions, frequently unstated, about social organization, political authority, and property rights, all of which are closely interrelated. As no two societies or cultures are identical in these respects, there can be no such thing as a scientifically or technically neutral management regime that is equally applicable and acceptable to both.

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Consequently, where two social systems share an interest in the same resources, there must be some accommodation in the sphere of property, as well as in the system of management, unless one is completely obliterated by the other.[2]

Given the need for accommodation and greater cooperation between both interested parties, this thesis addresses the difficulties inherent in archaeological resource management in conflicting cultural contexts and explores the opportunities and constraints to the development of a co-operative management system to address these conflicts.

1.3 Research Questions

In light of the above, this thesis addresses the following research questions:

1. How has the development of archaeology as a field of study affected the relationship between archaeologists and aboriginal people?

2. How has the conventional view of archaeological resources as common property and the development of a management ethic for archaeology affected the role of aboriginal people in the management of their archaeological resources?

3. To what extent does the power and authority of aboriginal people in differing jurisdictions influence their role in the management of archaeological resources?

4. To what extent can co-operative arrangements for accommodating conflicts between traditional and conventional approaches to natural resource management be applied in an archaeological resource management context?

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[2] Usher, P. J. "Property Rights: The Basis of Wildlife Management" in National and Regional Interests in the North. Report of the Third National Workshop on People, Resources, and the Environment North of 60, Yellowknife, NWT, 1-3 June 1983 (Ottawa: Canadian Arctic Resources Committee, 1984): 390.

5. What are the opportunities or constraints to the development of a more co-operative approach to archaeological resource management in B.C.?

These questions are addressed through a synthesis of the growing literature on the changing relationship between government, archaeologists and aboriginal people and a conceptualization of the current conflicts within a broad framework of aboriginal involvement. Following this a case of a First Nation heritage strategy in B.C. is studied to illustrate the contrasting nature of an aboriginal community-based approach to heritage management and the provincial government's archaeological resource management system. The Sto:lo Nation's experience in the management of archaeological resources in Sto:lo traditional territory is presented. With over fifteen years of involvement in archaeological issues, the Sto:lo Nation represents one of the few First Nations organizations in the province with such considerable experience in managing archaeology. The case is analyzed to identify the opportunities and constraints to the development of a more inclusive archaeological resource management regime.

1.4 Limitations and Scope

It is important to note the limitations and scope of this study. The first limitation concerns the analytical framework. The aboriginal involvement framework presented in Chapter 5 is derived largely from literature based on participation in a *natural* resources management context. It does not deal specifically with aboriginal involvement in the management of archaeological resources which are non-renewable, non-traditional common property, *cultural* resources. While the framework provides a structure with which to analyze aboriginal involvement in archaeological resource management, it cannot fully address the particular attributes of archaeological resources and their special significance for aboriginal people.

A second limitation concerns the case study. The Sto:lo Nation currently represents 19 member Sto:lo communities and maintains a well established infrastructure to deliver programs to its members. As an organization the Sto:lo Nation may not be reflective of the structure of other First Nations tribal organizations and band administrations in the province. Indeed the capacity, experience, and attitudes regarding archaeological resource management will vary considerably among aboriginal communities in British Columbia.

The scope of this thesis is also limited. While the focus of this study is an analysis of aboriginal involvement in archaeological resource management in B.C., comparisons with management arrangements in other jurisdictions is limited to that of the Yukon and Northwest Territories and recent tribal initiatives in the U.S. The difficulties in obtaining additional information, and a limited amount of available time, restricted the scope of jurisdictional comparisons which would have benefited from a broader Canadian and global perspective.

The thesis does not discuss the legal, socio-economic, and political dimensions of aboriginal involvement in archaeological resource management in any great detail. Where some of these issues are addressed, they often provide background information or are used to consider the potential opportunities and constraints to the development of a co-operative management system. To attempt a more comprehensive presentation of each of the many complex and interrelated aspects inherent in the creation of a more inclusive management regime would entail a much larger research study requiring considerably more time and additional contributions to an already lengthy project.

1.5 Organization and Methodology

The preliminary chapters of the thesis outline the historical and legislative context, relevant literature and rationale. Subsequent chapters present the theoretical context and introduce the case-study. The closing chapter presents an analysis of the case and offers

suggestions to facilitate the development of co-operative management arrangements for archaeology.

Chapters 2 and 3 are intended to provide background information necessary to understand how the provincial government assumed exclusive jurisdiction over the management of archaeological resources and the extent of First Nations involvement in this management system. Chapter 2 provides a discussion of the evolution of archaeology as a discipline and its attitudes towards and impact on living First Nations. Examples from the literature are drawn from western Europe and North America which form the basis of the general precepts of archaeology in Canada. Chapter 3 focuses on the development of a management ethic in archaeology and the legislation enacted to ensure the protection of archaeological 'resources'. Pertinent sections of successive pieces of heritage legislation are reviewed together with all documents and processes pertaining to aboriginal involvement in the amendments to the *Heritage Conservation Act* (1994). The current decision-making process in archaeological resource management is presented followed by First Nations responses to opportunities for meaningful involvement in this process. Special attention is devoted to ethical issues in archaeological resource management relating to the rights to ownership and control of the past.

A review of existing First Nations community-based heritage management initiatives in British Columbia, the Yukon and Northwest Territories, and the U.S. is presented in Chapter 4 to illustrate the range of aboriginal approaches to heritage management and the differing roles of aboriginal groups within these different jurisdictions.

Chapter 5 presents a framework for analyzing aboriginal involvement in archaeological resource management through the integration of a number of well established public involvement systems' based largely within the natural resources management sector. Co-management is discussed as a potential means of integrating varying perspectives on archaeological resource management and encompassing the special nature of the resource. Based on the themes

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discussed in previous chapters and the aboriginal involvement framework presented here, six key provide structure for an analysis of the case study.

Chapter 6 involves an in-depth discussion of an approach to heritage management developed by a First Nations organization in British Columbia to exercise control over archaeological resource management in their traditional territory. The case is that of the Sto:lo Nation which has developed its own Heritage Policy and Heritage Investigation Permit to provide guidelines and mechanisms for archaeological resource management at the community level. Discussion of this approach is then followed by a presentation of the provincial approach to archaeological resource management. The presentation of both the Sto:lo Nation's and the Province's approaches to archaeological resource management is intended to illustrate the contrasting nature of these approaches and highlight the difficulties inherent in developing a co-operative management regime. Personal interviews were conducted with both Sto:lo Nation and provincial representatives involved in archaeological resource management. The results of these interviews, together with a review of relevant documents, were then synthesized and analyzed using the key concepts outlined in the previous chapter.

Chapter 7 outlines a number of opportunities and constraints to the development of a more inclusive archaeological resource management regime. These findings are derived both from the events and literature discussed in the previous chapters as well as the results of the case study investigation. A pilot project for the co-operative management of archaeological resources is suggested and the benefits of such an approach are discussed. This chapter closes with the presentation of conditions to facilitate the development of co-operative management of archaeological resources in B.C. While these conditions focus on co-operative management in an archaeological context, they are intended to be of general relevance for other resource management regimes which would benefit from co-operative relationships between First Nations and government.

CHAPTER TWO

THE EVOLUTION OF ARCHAEOLOGY AND ITS RELATIONSHIP TO

ABORIGINAL PEOPLE

This chapter examines the development of archaeology as a distinct field of study and explores its effects on living aboriginal people.

Firstly, the historical relationship between Euro-American archaeologists and aboriginal people and the use of the reconstructed past in perpetuating prevailing ideologies is reviewed. The scientific approach to the reconstruction of the past is discussed as a means of discovering the 'true' nature of the past and resulting in the continued alienation of living aboriginal people from their heritage.

This chapter then explores the role of archaeology in contemporary society and the growing realization among the discipline of the political and social consequences of the reconstructed past. Aboriginal demands for greater involvement in Canadian archaeology are discussed and a collaborative approach is suggested as an alternative for the future.

2.1 What is Archaeology?

Archaeology is defined as the study of the human past through the empirical study of material remains which include physical evidence of past land use and settlement. Archaeological remains include any materials or substances that were manufactured, altered, modified, or transported by past human activity or human influence. From the study of these remains archaeologists attempt to reconstruct past lifeways by documenting cultural change over time and developing explanations for how and why such change occurred.

Unlike anthropology, which is defined as the holistic study of humankind's past, present and future, archaeology's focus is strictly on the past and its varied physical manifestations. The

reconstructed past resulting from archaeological inquiry is therefore limited to and necessarily biased in favor of past behaviors that left the most evidence. Several aspects of past human behavior such as social and political systems leave little or no material trace. The reconstruction of these systems is therefore based largely on what can be inferred given the overall context of those archaeological remains which do exist. Such inferences regarding past human behavior have been criticized as mere speculation with political and social consequences for the living descendants of these reconstructed pasts.[1]

2.2 Early Developments in the Study of Archaeology

It is difficult to trace exactly when archaeology as we recognize it today first came into being. Humans have always had a fascination with the past and its associated physical remnants. This fascination became evident in Europe during the Renaissance which marked the beginning of a period of antiquarianism in archaeology.[2] Excavation and collection of antiquities at this time were largely funded by the wealthy and ruling classes of society for display in private museums. Many of these collections are now housed in public institutions.

While these early collectors can hardly be called archaeologists, the collections they helped to amass sparked a growing interest in the past. The study and display of the remains of past civilizations quickly achieved wide appeal and recognition as a phenomenon of mass interest and participation. By the 19th century, however, the reconstructed European past came to serve a very different purpose. The past became a valuable tool in the creation of long histories

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[1] Deloria, V. Jr. "Indian, Archaeologists, and the Future," *American Antiquity* 57(4) (1992): 596; Kristmanson, H., "The Micmac and New Brunswick Archaeology: Historical Perspectives and Contemporary Experiences," in Nicholas, G. P. and Andrews, T. D. (eds.) *At a Crossroads: Archaeology and First Peoples in Canada*, (Burnaby: Archaeology Press, 1997): 22.
[2] Knudson, S. J. *Culture in Retrospect: An Introduction to Archaeology* (Boston: Houghton Mifflin Company, 1978): 455.

of cultural continuity in support of the peoples and nation-states which were then emerging as important political entities.[3]

In North America archaeology began as the study of the prehistory of Native Americans. As in Europe, much of the early work consisted of the collection of archaeological remains of the Native American past. European scholars became preoccupied with documenting the past of a people they thought would quickly die out. Their interpretations of archaeological materials of Native American origin were influenced by an assumption that past Native cultures closely resembled those Native groups who had lived in the same area in historic times. This assumption was based largely on the belief that Native people could not have been long-time residents of the area given the 'primitive' conditions in which they lived. It was also believed that Native Americans were generally incapable of any kind of technological innovation, their cultures remaining essentially static prior to the arrival of Europeans.[4]

These early studies in the archaeology of Native Americans helped perpetuate the stereotypical image of aboriginal peoples as primitive and unevolved. Through their investigations, European scholars could provide 'scientific proof' as to the validity of this image. It would not be until many years later that archaeologists would come to realize the social significance of their studies.

2.2.1 Who Needs the Past?

The past is a human construct. It exists in the collective mind of humankind as a distinct entity, separate from our conception of the present that we know and experience and the future which remains unknown. The past helps to legitimize what we know to be true and real. In this

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[3] Shennan, S. "Introduction: archaeological approaches to cultural identity," in Shennan, S (ed.) *Archaeological Approaches to Cultural Identity* (London: Unwin Hyman, 1989): 7.
[4] Trigger, B. "Giants and pygmies: the professionalization of Canadian Archaeology," in Daniel, G. (ed.) *Towards a History of Archaeology*, (London: Thames and Hudson Ltd., 1981): 80.

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way it can be argued that we all need the past. Our identities or conceptions of who we know ourselves to be rests firmly on an understanding of where we came from, where others came from, and who came before us. To a large extent present values, attitudes, customs, and lifestyles are deeply rooted in the past. The collective past or heritage has been defined as "a kind of living context from which society's members derive sustenance, coherence, and meaning in their individual and collective lives".[5]

With ever-increasing development pressures on archaeological remains, the past assumes even greater importance in our society. As Mayer-Oakes states:

> Knowledge and understanding of our long, continuous and ever-changing human development – our heritage – is one of our most precious assets. It will become even more precious as the forces of modernization continue to accelerate.[6]

Within aboriginal communities these pressures have created a sense of urgency. The physical remains of previous generations are considered to be essential cultural resources for living aboriginal communities. In many circumstances they provide the only link to a past which once existed solely in oral traditions. Much of this knowledge has been lost over time as a result of various assimilation processes and is only now slowly being pieced back together with the aid of archaeological investigations.

2.3 Eurocentric Bias in Archaeology: Ideologies and Identities

The study of archaeology, which is by its very nature an interpretive endeavor, has been and continues to be influenced by prevailing ideologies. Whether consciously or unconsciously these interpretations have been promoted as scientific, objective 'truths' in support of the dominant interests of society. Control of the past in the creation of these truths have long been

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[5] Ontario Heritage Policy Review, *A Strategy for Conserving Ontario's Heritage: The Report of the Ontario Heritage Policy Review* (1990) Ontario Ministry of Culture and Communications, Toronto.

[6] Mayer-Oakes, W. J. "Science, service and stewardship – a basis for the ideal archaeology of the future," in Cleere, H. (ed.) *Archaeological Heritage Management in the Modern World* (London: Unwin Hyman, 1989): 57.

recognized and abused as a means of validating the power and authority of particular interest groups.[7]

The role of archaeology in past nationalistic enterprises and above all in the construction of national identities is well known.[8] In many totalitarian countries the recognition of the significance and potential influence of archaeology has led to strict control over interpretations of archaeological data.[9] Throughout Europe the beliefs inherent in such political ideologies have significantly influenced the type of questions archaeologists have been willing to ask and dictated what kinds of data they have collected. In many cases this influence has resulted in the creation of interpretations which inevitably supported the cultural and racial superiority of dominant interest groups and the derogatory stereotypical images of minority interests.

European nationalistic ideologies continued to persist in North America. The colonial spirit was fed by the belief that Europeans were far more civilized and culturally progressive than the aboriginal inhabitants which they had 'conquered'. Previous archaeological investigations in Europe had already successfully 'proven' the continued cultural progression of various European cultural groups. In contrast, aboriginal people were seen as primitive and inferior.

This view of America's aboriginal people had archaeological implications. It suggested that in the past, aboriginal cultures had remained simple and unevolved. Early archaeological interpretations reflected and perpetuated these beliefs. During the 19th century, many

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[7] See Kohl, P. L. and Fawcett, C. "Archaeology in the service of the state: theoretical considerations," in Kohl, P. L. and Fawcett, C. (eds.) *Nationalism, Politics, and the Practice of Archaeology* (New York: Cambridge University Press, 1995): 3-18; Layton, R. "Introduction: who needs the past?" in Layton, R. (ed.) *Who Needs the Past?: Indigenous Values and Archaeology* (London: Routledge, 1989): 1-20; Trigger, B. "Alternative Archaeologies: Nationalist, Colonialist, Imperialist," *Man* 19 (1984): 355-370; Woodall, J. N. "Comments on Archaeological Ethics: Past, Present, Future," *Public Archaeology Review* 2(1) (1994): 9-10; Ucko, P.J. "Foreward," in Layton, R. (ed.) *Who Needs the Past?: Indigenous Values and Archaeology* (London: Routledge, 1989): ix-xvi.
[8] Kohl, P. L. and Fawcett, C. "Archaeology in the service of the state: theoretical considerations" in Kohl, P. L. and Fawcett, C. (eds.) *Nationalism, Politics, and the Practice of Archaeology* (New York: Cambridge University Press, 1995): 9.
[9] Trigger, B. "Prehistoric Archaeology and American Society" in Meltzer, D. J., Fowler, D. D. and Sabloff, J. A (eds.) *American Archaeology Past and Future* (Washington: Smithsonian Institution Press, 1986): 87.

archaeologists assumed that aboriginal artifacts of exceptional quality must have been produced after European contact when the iron tools needed to effectively work stone, bone, and native copper would have been available.[10] The manner with which such artifacts and other material culture were displayed in museums served to further strengthen European beliefs. It has been suggested that while the exhibition of prehistoric artifacts in European institutions helped satisfy white curiosity about aboriginal people, it also signified European dominance over the people represented by these artifacts and the land in which they were found.[11] Of particular relevance was the placement of these displays in relation to other museum exhibitions. Aboriginal material culture was presented alongside collections of rocks and stuffed animals in museums of natural history rather than in museums of fine arts which housed collections of the cultural achievements of European and Asian cultures.[12] The placement of these collections among aspects of the natural or untamed world lent support to widespread stereotypical images of aboriginal people as primitive and uncivilized.

During the 19th century there was also a general reluctance to attribute any evidence of past cultural development or technological prowess to the ancestors of living aboriginal people. Spectacular earthworks or mounds discovered throughout the Ohio and Mississippi watersheds were assumed to have been constructed by a civilized and advanced race that had disappeared prior to the arrival of Europeans.[13] It was accepted as fact that this civilized race bore no relation to those aboriginal people living in the vicinity at the time of these 'discoveries'. What was popularly referred to as the 'myth of the Moundbuilders' persisted for over a century and

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[10] Trigger, B. "The Past as Power: Anthropology and the North American Indian," in McBryde, I. (ed.) *Who Owns the Past?*, (London: Oxford University Press, 1986): 16.
[11] Trigger, B. "Prehistoric Archaeology and American Society," in Meltzer, D. J., Fowler, D. D. and Sabloff, J. A (eds.) *American Archaeology Past and Future* (Washington: Smithsonian Institution Press, 1986): 193.
[12] Trigger, B. "The Past as Power: Anthropology and the North American Indian," in McBryde, I. (ed.) *Who Owns the Past?*, (London: Oxford University Press, 1986): 21.
[13] Willey, G. R. and Sabloff, J. A. *A History of American Archaeology* (New York: W. H. Freeman and Company, 1980): 20.

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remains one of the most powerful examples of Eurocentric bias in early North American archaeology.

2.4 Archaeology's Link to Living Aboriginal People

With its exclusive focus on the interpretation of remnants of the past and an emphasis on the scientific method, archaeology has increasingly alienated itself from living aboriginal people. As noted previously, archaeological interpretation during the 19th century perpetuated Euro-American myths and stereotypes of aboriginal people as uncivilized and incapable of progress. European intellectual superiority was promoted through early studies which measured and compared the brain cavity sizes of both Europeans and aboriginal people with the goal of 'scientifically documenting' these varying capacities.[14] While research of this nature is no longer pursued, the detrimental effects of such early studies continue to persist in the minds of many living aboriginal people.

During the first half of the 20th century, archaeologists became more interested in documenting cultural changes over time. These changes were interpreted from variations in different 'types' of archaeological remains. The research goal was to gather data that could be used in the creation of typologies representing different stages of cultural development. Curiously, archaeologists essentially ignored the connection between these remains and living aboriginal people.[15] This kind of analysis effectively separated the past from living aboriginal people and deprived them of a sense of cultural continuity and pride. Such studies also directed attention away from the present social and economic conditions of aboriginal people and promoted the notion that aboriginal cultures existed only in the past.

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[14] Shennan, S. "Introduction: archaeological approaches to cultural identity," in Shennan, S (ed.) *Archaeological Approaches to Cultural Identity* (London: Unwin Hyman, 1989): 8.
[15] Trigger, B. "Archaeology and the Image of the American Indian," *American Antiquity* 45(4) (1980):670.

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The research or 'scientific' goals of the archaeologist have always assumed primary importance in archaeological studies over the concerns of any other interest group. Consequently, the results of such work were of very little relevance to anyone outside of what became a very elite academic arena. Today the continued importance granted to the scholarly community have led to hard feelings from existing aboriginal communities. Deloria has openly challenged the assumption "that only scholars have the credentials to define and explain American Indians and that their word should be regarded as definitive and conclusive".[16] Similar sentiments have been expressed by Wylie who also challenges "the notion that the interests and work of science take automatic precedence over all other interests where access to archaeological resources is concerned".[17] Aboriginal conceptions of the past were and continue to be dismissed as folklore in favor of strongly held Western beliefs that only through an application of scientific methods can we hope to unravel the 'true' version of the past.

Through the scientific approach to archaeological inquiry, the remains of past aboriginal cultures have been treated as objects, separate from and of no relation to living aboriginal people. The human remains of the ancestors of aboriginal people were dug up, studied, stored in boxes and displayed with little reverence for existing customs or traditions. While many collections of human remains of aboriginal origin have since been repatriated and strict laws have been enacted to ensure their protection, feelings of deep-rooted mistrust remain among many living aboriginal people. The persistence of such feelings is evident in a recent report resulting from consultation between the federal government and First Nations regarding proposed heritage legislation in Canada entitled "My Grandfather is Not an Artifact".[18]

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[16] Deloria, V. Jr. "Indian, Archaeologists, and the Future," *American Antiquity* 57(4) (1992): 595.
[17] Wylie, A. "Facts and Fictions: Writing Archaeology in a Different Voice," *Canadian Journal of Archaeology* 17 (1993): 12.
[18] Dunn, Martin *My Grandfather is Not an Artifact.* A Report on the Aboriginal Archaeological Heritage Symposium, February 17-18, 1991. Hull, Quebec. Department of Communications Archaeology Heritage Branch, March 1, 1991.

Archaeologists today can no longer ignore the social and political implications of the work they do. Even such widely held doctrine as the Bering Land Bridge origin theory are in need of re-evaluation. The belief that the aboriginal people of North America originated in Asia and migrated at some time during the last ice age is perceived as degrading to the history and culture of aboriginal Canadians. This theory presents aboriginal people as just another wave of immigrants to the New World and compromises their position as the original inhabitants of North America with a unique and valuable cultural heritage and a legitimate claim to land and resources.[19]

2.5 Where is Archaeology Today?

The state of archaeology in the 1990s has often been described as "at a crossroads"[20], nearing a very critical point in its development. From the relative seclusion of the halls of academia and museums, the discipline has grown to include government bureaucrats and an exploding community of private consultants. In North America, the creation of heritage protection laws and increasing development pressures has led to an unprecedented amount of archaeological survey and excavation. Unlike any other time in its short history, archaeology is being exposed to the public.

With this increased exposure comes increased responsibilities and criticism. Only recently have archaeologists started to realize that their obligations go well beyond the limits of their professional community.[21] As aboriginal people worldwide continue to assert political pressure for rights to self-governance of land and resources, archaeologists have been forced to

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[19] McGhee, R., "Who Owns Prehistory?: The Bering Land Bridge Dilemma," *Canadian Journal of Archaeology*, 13 (1989): 14.

[20] See Nicholas, G.P. and Andrews, T., "Preface," in Nicholas, G.P. and Andrews, T. (eds.) *At a Crossroads: Archaeology and First Peoples in Canada*, (Burnaby: Archaeology Press, 1997): xiv; Zimmerman, L., "Indigenous Peoples and the World Archaeological Congress Code of Ethics," *Public Archaeology Review* 2(1) (1994): 5.

[21] Ucko, P.J. "Foreward," in Layton, R. (ed.) *Who Needs the Past?: Indigenous Values and Archaeology* (London: Routledge, 1989): xiii; Wylie, A., "Facts and Fictions: Writing Archaeology in a Different Voice," *Canadian Journal of Archaeology* 17 (1993):12.

recognize the social and political implications of the work they do. In many cases, the negative consequences of previous archaeological work have left a lasting impression on aboriginal people and contributed to a legacy of mistrust that will be difficult to change.

In Canada, as in other colonial nations, archaeology has been perceived among aboriginal people as *the study of the colonized by the colonizer*. As members of a dominant political system, white archaeologists and their work are seen as just parts of a system designed to suppress the aspirations of aboriginal people. White interests in aboriginal heritage are viewed as yet another attempt to appropriate what belongs to native people: "Many native people deeply resent archaeologists, whom they accuse of denigrating the native past and trying to appropriate their cultural heritage."[22]

Such sentiments place archaeologists in a very perilous position. Some archaeologists prefer to ignore the socio-political context in which they work and carry on like business as usual. These actions only serve to contribute to their alienation from aboriginal people and increase the risk of being denied access to the archaeological remains of aboriginal descent in the future. Other archaeologists see this situation as an opportunity to initiate a dialogue with aboriginal people.[23] It is perceived as a chance for discussion which could potentially lead to an increased understanding of concerns stemming from what are essentially two very different world views. While the reconciliation of these differences is perhaps an unrealistic expectation, it is believed that increased communication will ultimately lead to the creation of relationships based on greater trust and mutual respect.

The recognition of the need for relationship-building between archaeologists and aboriginal people has resulted in the development of ethical codes of conduct and guidelines for

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[22] Trigger, B. "The 1990s: North American archaeology with a human face?" *Antiquity* 64 (1990): 779.
[23] See Deloria, V. Jr. "Indian, Archaeologists, and the Future," *American Antiquity* 57(4) (1992): 598; Lawson, K. L., "Cultural Interpretation in Times of Change," in Nicholas, G. P. and Andrews, T. D. (eds.) *At a Crossroads: Archaeology and First Peoples in Canada*, (Burnaby: Archaeology Press, 1997): 49; McGuire, R. H., "Archaeology

archaeologists whose studies involve aboriginal heritage. It seems that museums and professional associations and societies worldwide have felt it necessary to explicitly state their views on the appropriate treatment of aboriginal people with regard to their heritage and ensure the behavior of their members complies. The extent to which these codes and guidelines reflect the importance of archaeological remains to living aboriginal peoples varies. They range from the need to be sensitive and respect the legitimate concerns of groups whose culture histories are subjects of archaeological investigation[24] to a recognition of aboriginal ownership of the archaeological record.[25] Perhaps the strongest statement of aboriginal concerns regarding the management of archaeological resources is present in the World Archaeological Congress Code of Ethics. Drafted by indigenous people, it outlines the terms of an archaeologist's behavior with the single goal of indigenous control over indigenous heritage.[26] In 1992, a joint task force of the Assembly of First Nations and the Canadian Museum Association completed a set of recommendations which recognize aboriginal concerns regarding the curation and presentation of First Nations cultural history and proposed the sharing of authority to manage cultural property.[27] Recently, the Canadian Archaeological Association (CAA) published its concerns in the "Statement of Principles for Ethical Conduct Pertaining to Aboriginal Peoples". In this document the Aboriginal Heritage Committee of the CAA (consisting of 5 aboriginal representatives) outlines principles regarding consultation, communication and interpretation,

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and the First Americans," *American Antiquity* 94(4) (1992): 828; Mackie, Q., "Prehistory in a Multicultural State," in Ucko, P. J. (ed.) *Theory in Archaeology: A World Perspective* (London: Routledge, 1995): 190.
[24] Society of Professional Archaeologists 1991 Guidelines in Levy, J. E. "Archaeology and Ethics," *Public Archaeology Review* 2(1) (1994): 3.
[25] Australian Archaeological Association 1982 Guidelines in Flood, J., "Tread softly for you tread on my bones: the development of cultural resource management in Australia," in Cleere, H. (ed.) *Archaeological Heritage Management in the Modern World* (London: Unwin Hyman, 1989): 83.
[26] Zimmerman, L. "Indigenous Peoples and the World Archaeological Congress Code of Ethics," *Public Archaeology Review* 2(1) (1994): 7.
[27] Hill, T and T. Nicks "The Task Force on Museums and First Peoples," *MUSE*, Summer/Fall (1992): 81-84.

and the need to encourage more aboriginal involvement in archaeology.[28] These publications reinforce the need to respect the inherent rights and interests of aboriginal people in the archaeological study of their past and are expected to ultimately lead to a fundamental change in the way archaeology is practiced in those countries. It is interesting to note that these codes and guidelines exist primarily because current laws and regulations fail to adequately address these sensitive issues.

2.6 Aboriginal Involvement in Canadian Archaeology

It is only within the last few decades that First Nations in Canada have become actively involved in archaeology. There is a growing realization among First Nations of the important role of archaeology in strengthening aboriginal cultural heritage and rebuilding vanishing cultural traditions. There is also a recognition of the potential weight of archaeological interpretations in the negotiation of aboriginal land claims. This awareness has prompted some First Nations to apply increased political pressure in their demands for greater involvement and control in the study of their ancestors. These demands are inextricably tied to a much larger struggle between aboriginal people and the provincial and federal governments for greater control over land and resources.

Governmental response to aboriginal demands has been generally slow but have resulted in a few agreements for greater First Nations involvement. Perhaps the greatest progress in the recognition of aboriginal concerns regarding involvement in archaeological heritage management have occurred in the Yukon and Northwest Territories. Negotiations between the federal government and First Nations have resulted in agreements which specifically address the importance of archaeological remains to aboriginal people and their responsibilities pertaining to

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[28] *Statement of Principles for Ethical Conduct Pertaining to Aboriginal Peoples: A Report from the Aboriginal Heritage Committee*, Nicholson, B, Pokotylo, D., and Williamson, R (eds.), Canadian Archaeological Association, 1996.

the conservation and management of these remains. Such provisions have been included in the Council of Yukon Indians (1993), Gwich'in (1992), Sahtu (1993), and Nunavut (1993) agreements with the Government of Canada.[29]

Where the management of land and resources falls within the jurisdiction of the provinces, such agreements are non-existent. The provinces continue to maintain exclusive authority over archaeological investigations outside of reserve lands and other areas under federal jurisdiction. Despite increasing pressure from aboriginal groups and growing public awareness of First Nations issues, provincial governments have been slow to react. At this time, British Columbia is the only province which has developed policy regarding minimal standards for First Nations consultation prior to archaeological work in their associated traditional territories.

In the absence of adequate regulatory mechanisms at the provincial level to address First Nations involvement concerns, many archaeologists have developed their own professional standards for working with First Nations. In the interest of building relationships with First Nations and promoting a greater understanding of archaeology, many archaeologists are employing First Nations as assistants in archaeological field work. While this level of involvement is by no means universal on any level, such practices have established common practices for archaeological work in many areas.

Many First Nations seeking more long-term involvement in archaeology and greater recognition of their concerns have sought alternative opportunities for exerting greater control over their heritage. Many First Nations have developed their own cultural heritage policies/strategies which explicitly state their concerns regarding the treatment and interpretation of archaeological remains of aboriginal origin. These policies help establish guidelines for any

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[29] Andrews, T. D. Arnold, C, Hart, E. J., and Bertulli, M. M. "Native Claims and the Future of Archaeological Research in the Northwest Territories," in Nicholas, G. P. and Andrews, T. D. (eds.) *At a Crossroads: Archaeology and First Peoples in Canada*, (Burnaby: Archaeology Press, 1997): 241.

archaeological work conducted within a First Nation's traditional territory. Unfortunately, none of these policies are officially recognized by government at any level. They are, however, effective in establishing informal protocols for communication between First Nations, archaeologists, and government.

It has become clear that there are no easy or quick solutions for greater First Nations control over the management of archaeological remains. Addressing these concerns through land claims processes and legislative changes is slow, frustrating, and uncertain and cannot occur independently of a resolution of the major grievances aboriginal people have against modern Canadian society. In the interim there remain unanswered demands for greater aboriginal involvement: "If we cannot control our own heritage, what the hell can we control?"[30]

Many archaeologists and First Nations are calling for a more collaborative approach to the control of the past.[31] Such an approach would help address First Nations concerns for integrating archaeological interpretations of the past together with history and traditional knowledge to produce a more holistic picture of aboriginal heritage that is richer and of greater relevance to aboriginal people. Government recognition of the merits of such a co-operative approach is necessary and presents a fundamental challenge for the future management of archaeological remains. As McGhee comments:

> By approaching the past as something which can and must be shared, we open the door to opportunities of joining purpose with other users of the aboriginal past, people whose interest is increasing rapidly in both breadth and purpose.[32]

[30] Langford, R. F. "Our heritage – your playground," *Australian Archaeology* (1983): 4.
[31] Deloria, V. Jr. "Indian, Archaeologists, and the Future," *American Antiquity* 57(4) (1992): 598; McGuire, R. H., "Archaeology and the First Americans," *American Antiquity* 94(4) (1992): 830; Nicholas, G. P., "Education and Empowerment: Archaeology With, For, and By the Shuswap Nation " in Nicholas, G. P. and Andrews, T. D. (eds.) *At a Crossroads: Archaeology and First Peoples in Canada*, (Burnaby: Archaeology Press, 1997): 85.
[32] McGhee, R., "Who Owns Prehistory?: The Bering Land Bridge Dilemma," *Canadian Journal of Archaeology*, 13 (1989): 19.

CHAPTER THREE

MANAGING ARCHAEOLOGY

The previous chapter has outlined some of the developments in the evolution of archaeology as a discipline. It has been shown how archaeology has contributed to the perpetuation of Western ideologies and the creation of stereotypical images of aboriginal people. The persistence of these images and the drive for aboriginal self-determination have led to ever increasing demands among aboriginal people for greater involvement and control over archaeological investigations.

This chapter addresses how Western conceptions of archaeological materials as "resources" has led to the development of a management ethic in archaeology and how such conceptions sharply contrast with aboriginal philosophies. A discussion of the application of resource management techniques in archaeology is presented and it is suggested that the adaptation of such techniques for archaeological resource management (ARM) is both inappropriate and ineffective.

A summary of the development of the legislation governing archaeological resources is then presented with a particular focus on the situation in British Columbia. The extent of aboriginal participation both in the creation and implementation of this legislation is discussed followed by aboriginal responses to the nature of this involvement.

3.1 Archaeology as a Resource

In Canada, the first explicit acknowledgement of archaeological sites and objects as *resources* took place in 1960 in Calgary at the first and last meeting of the Western Canadian

Archaeological Council.[1] This event marks the beginning of the first phase in the process of incorporating culture into a resource dependent economy.[2] Archaeological remains were considered much the same as natural resources, not as property. In British Columbia, as in other provinces, jurisdiction over archaeological materials were subsumed under Section 109 of the *British North America Act of 1867* which delegated provincial title to "Lands Mines, Minerals and Royalties". As Spurling states:

> ...archaeological resources were equivalent to timber, fisheries and other provincial resources...Archaeological sites and objects no longer were strictly viewed as objects of purely scientific or antiquarian interest. Rather they began to be considered as common property owned by, and to be used for the benefit of, Western Canadians...[3]

Equating archaeological *resources* with natural resources has been referred to as a "conceptual breakthrough".[4] This breakthrough, however, has had serious implications for the control of archaeological materials. As in the case of natural resources, provincial jurisdiction over archaeological materials became, and to a certain extent remains, the "unchallenged assumption".[5]

The use of the word 'resource' to denote archaeological materials carries with it implicit and powerful presumptions. Resources have been defined as "assets for the creation of human satisfaction or utility".[6] There is an understanding in this definition that resources are useful and considered valuable. This value, however, does not exist outside of the cultural context in which

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[1] Spurling, B. E. *Archaeological Resource Management in Western Canada: A Policy Science Approach*, Ph.D. Dissertation, Department of Archaeology, Simon Fraser University, Burnaby, B.C.: (1986): 90.
[2] Yellowhorn, E. "Archaeology and the Sechelt Indian Self-Government Act," in Nicholas, G. P. and Andrews, T. D. (eds.) *At a Crossroads: Archaeology and First Peoples in Canada*, (Burnaby: Archaeology Press, 1997): 257.
[3] Spurling, B. E. *Archaeological Resource Management in Western Canada: A Policy Science Approach*, 90.
[4] Ibid.
[5] Yellowhorn E. "Archaeology and the Sechelt Indian Self-Government Act," in Nicholas, G.P. and Andrews, T. (eds.) *At a Crossroads: Archaeology and First Peoples in Canada*, 257.
[6] Grima, A. P. L. and Berkes, F. "Natural Resources: Access, Rights-to-Use and Management," in Berkes (ed.) *Common Property Resources: Ecology and Community-Based Sustainable Development* (London: Belhaven Press, 1989): 33.

it is defined and consequently varies from one culture to the next. This concept has been concisely described by Zimmerman who states "resources are not, they become".[7]

In the Canadian context, as in other resource-based economies, the word 'resource' is usually conceived of in relation to exploitation and harvesting. Components of the environment, including landforms and landscapes, are viewed as distinct objects and commodities usually of exclusive economic value. There is an implied human superiority over the environment in this view. It is based largely on the notion of Western domination over and the perceived undisputed use rights to the natural world. This belief forms the basis on which Western political and economic systems are founded and by which they operate. It does not acknowledge the possibility of alternative conceptions of the natural environment and relationships between its constituent 'resources'.

For many aboriginal groups the natural environment is viewed holistically. The existence of water, trees, fish, and wildlife are necessarily intertwined with both the natural and spiritual world in which humans play an almost subordinate role. The traditional relationship between aboriginal people and the environment is perceived as symbiotic in nature rather than exploitative. As Lawson states "aboriginal people can speak of resources, meaning the plants and animals and land and everything on and in them, but without meaning that their purpose in existing is to be used or exploited".[8] There is inherent value in the natural environment which contrasts sharply with the Western conception of resources which are taken advantage of for capital gain.

As with components of the natural environment, thinking of archaeological remains as resources is considered inappropriate. There is an implied notion of abuse and greed stemming

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[7] Zimmerman. E. W. (1951) as quoted in Grima, A. P. L. and Berkes, F. "Natural Resources: Access, Rights-to-Use and Management," 34.

[8] Lawson, K. L. "Cultural Interpretation in Times of Change," in Nicholas, G.P. and Andrews, T. (eds.) *At a Crossroads: Archaeology and First Peoples in Canada*, 41.

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from previous experience with resource extraction in the name of 'management'. Considering burials, sacred sites, and other archaeological remains as resources is viewed as demeaning. As resources and common property these aspects of aboriginal heritage are effectively appropriated from the living descendants of this heritage to be managed for the public good. In this way it is not surprising that many aboriginal people see the management of archaeological resources[9] as something less than innocent.[10]

3.2 A Management Ethic for Archaeological Resources

The perceived need to manage archaeological resources is derived from the Western conception of these resources as common property much like natural resources. According to Berkes and Farvar[11], within conventional resource management regimes, the term common property refers to resources which are not open to private ownership by an individual nor collective ownership by a group. In essence, common property is not owned by anyone and freely available to any user. According to Hardin's model, however, without government control, such resources are doomed to overexploitation.[12]

This premise has been transformed into doctrine and continues to guide resource management systems worldwide. Its assumes that natural resources such as trees and wildlife (and in this case archaeological resources) are best managed as state property (*res publica*) where ownership and management control are held by the nation state or crown in trust for the public.[13] The resource is seen as a national asset that requires formal protection. To ensure the survival of the resource it is not automatically available to all. Its use is restricted through government

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[9] In the following chapters, archaeological remains will be referred to as *resources*. This terminology has become so ingrained in the literature that its use is unavoidable. No other word exists to replace it.

[10] Nicholas, G. P. and Andrews, T. D. "Indigenous Archaeology in the Post-Modern World," in Nicholas, G. P. and Andrews, T. D. (eds.) *At a Crossroads: Archaeology and First Peoples in Canada*, 5.

[11] Berkes, F. and Farvar, M. T. "Introduction and Overview," in Berkes (ed.) *Common Property Resources*, 7.

[12] Hardin, G. "The tragedy of the commons," *Science*, 162 (1968): 1243.

[13] Berkes, F. and Farvar, M. T. "Introduction and Overview," 10.

licensing, permitting, and regulations.[14] In this scenario the government essentially takes on the role of self-appointed steward of all common property resources.

There are problems inherent in grouping archaeological resources together with natural resources based solely on the characterization of both as common property. Difficulties arise in adapting conventional resource management regimes to fit a resource base that is so radically different from natural and living resources. In natural resource terminology, archaeological resources could be considered to exist as stocks. Like other stock resources such as coal or mineral deposits, the physical quantity of archaeological resources available for use is more or less finite but it is essentially impossible to calculate with certainty the size of the resource base.[15] However, unlike other stock resources, archaeological resources are inexhaustible. It is argued that archaeological resources that are now uncovered continue to remain available for use in the future.[16] In this way the fundamental objective of resource management to limit use in order to conserve the resource base does not equally apply to archaeological resources which have the quality of *not* being diminished through use. The archaeological resource base and the past it represents are considered large enough to provide for all users.[17]

The values associated with natural and archaeological resources are very different. The value of the natural resource base is closely tied to the benefits it provides to its users. Depending on the nature of the resource these benefits usually involve the input of raw resources for the satisfaction of one or more human needs or wants. These could range from food, and

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[14] Grima, A. P. L. and Berkes, F. "Natural Resources: Access, Rights-to-Use and Management," 37.

[15] Gibbs, C. J. N. and Bromley, D. W. "Institutional Arrangements for Management of Rural Resources: Common Property Regimes," in Berkes (ed.) *Common Property Resources*, 22.

[16] Re-analysis of previously recorded archaeological material is becoming more common as evidenced in recent research projects including *Recycling Archaeology: Analysis of Material from the 1973 Excavation of an Ancient House at the Maurer Site*, Schaepe, D., Unpublished Masters Thesis, Simon Fraser University, Burnaby , B.C., 1997. It is important to note, however, that while physical archaeological remains such as artifacts can potentially survive in perpetuity, the knowledge associated with the context of these remains is lost when archaeological sites are disturbed unless previously subject to proper excavation and recording.

[17] McGhee, R. "Who Owns Prehistory?: The Bering Land Bridge Dilemma," *Canadian Journal of Archaeology* 13 (1989): 19.

shelter to transportation, electricity, and the financial means to fulfill other needs and wants. The value of archaeological resources is much less tangible. The financial value of archaeological resources is negligible. Its value lies in the potential knowledge associated with these resources. For aboriginal and non-aboriginal people alike, archaeological resources represent potent symbols of cultural identity. For professional archaeologists, they have educational value and are considered integral to the maintenance of a database for the academic discipline of archaeology.[18]

Given the different qualities of and the values associated with natural and archaeological resources, the application of resource management techniques to the archaeological resource base has been seriously questioned.[19] As it is being practiced today, archaeological resource management (ARM) involves the identification, evaluation, and management of cultural resources as an element of the environment.[20] Whether implicit or explicit, each of these activities involves making value judgements. Research objectives and professional interests necessarily bias which archaeological resources are considered relevant, and consequently which are identified and recorded. As in the case of natural resource management, evaluation in an ARM context implies the need to make choices. It has been suggested that these choices are based on criteria which necessarily reflect government priorities. As Ucko states:

> ...it is clear that legislators and governments are, by definition, seeking to grade sites (archaeological) according to some criteria of relative importance since, they insist, total preservation can not be afforded and would, in any case, see the end of 'development' as they define it.[21]

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[18] Cleere, H. "Introduction: the rationale of archaeological heritage management," in Cleere, H. (ed.) *Archaeological Heritage Management in the Modern World* (London: Unwin Hyman, 1989): 9.

[19] See Lawson, K. L. "Cultural Interpretation in Times of Change," in Nicholas, G. P. and Andrews, T. D. (eds.) *At a Crossroads: Archaeology and First Peoples in Canada*, 33-52 and Yellowhorn E. "Archaeology and the Sechelt Indian Self-Government Act," in Nicholas, G. P. and Andrews, T. D. (eds.) *At a Crossroads: Archaeology and First Peoples in Canada*, 252-266.

[20] In the context of ARM, cultural resources are considered to be synonymous with archaeological resources.

[21] Ucko, P. J. "Foreward," in Cleere, H. (ed.) *Archaeological Resource Management in the Modern World*, xiii.

While such attitudes toward management and development are hardly new and generally accepted in other resource management regimes, they are not considered appropriate guidelines for ARM strategies. There continue to remain unresolved issues regarding the legitimate role of government in the ownership and control of archaeological resources which are clearly of aboriginal descent. Questions persist over who should decide what is worth protection and what is not. Currently, different levels of protection are assigned to archaeological resources on the basis of an assessment of their significance. Significance assessments are based on values, but whose values are actually taken into consideration and whose values are more important in these decisions? As Linklater comments "at least some aboriginal people would argue that archaeological resources are part of First Nations heritage and as such have an importance that cannot be arbitrarily assessed or rejected".[22] The whole idea of determining significance and making decisions reflects a definite cultural bias. It has been argued that such decisions are considered the result of a self-conscious application of how a society values its past and intends to use it in the future.[23]

This approach in effect places the interests of science, and the discipline of archaeology in particular, over the inherent rights of aboriginal people with respect to the cultural remains of their ancestors. It applies a piecemeal approach to the study of aboriginal heritage whereby sites and their associated physical remains are managed as distinct entities rather than as part of a larger and much richer aboriginal cultural landscape. Archaeological sites and other aspects of aboriginal heritage become management units which fail to take into account aboriginal concepts of sacredness and property and are therefore considered meaningless to many aboriginal

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[22] Linklater, E. (1992) in Syms, E. L. "Increasing Awareness and Involvement of Aboriginal People in their Heritage Preservation: Recent Developments at the Manitoba Museum of Man and Nature," in Nicholas, G. P. and Andrews, T. D. (eds.) *At a Crossroads: Archaeology and First Peoples in Canada*, 53.
[23] Barnes, M. R. "Review of Cleere, H. (ed.) Approaches to the Archaeological Heritage, A Comparative Study of World Cultural Resource Management Systems," *American Antiquity* 51 (1986): 666.

people.[24] As in many other resource management regimes, archaeological resource managers tend to view their work strictly as an application of scientific expertise and rigid management techniques. Their pursuit for effective resource conservation is considered of primary importance separate from the larger social and political context in which they operate. This perceived distance is becoming increasingly challenged as aboriginal issues are being brought into the public arena and native cultural and political leaders are becoming more vocal in their assertion of aboriginal rights.

3.3 The Management Framework

The following sections present an historical overview of the management framework for archaeological resources in British Columbia and highlight the extent of aboriginal involvement in both the development and implementation of these management processes.

3.3.1 The Development of Heritage Legislation in British Columbia: The early years (1925-1960)

Provincial jurisdiction over archaeological resources is defined within the British North America Act of 1867. While not explicitly stated, archaeological and other cultural resources are subsumed under those sections which grant provincial powers over land and resources.[25] In 1925 British Columbia was the first province to pass legislation to protect its heritage properties through the development of *An Act to Provide for the Preservation of Historic Objects* This legislation was intended to protect rock art sites and other objects or structures of historic or natural importance.[26] Spurling suggests that the primary motive for this legislation was to stop

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[24] Spurling, B. E. *Archaeological Resource Management in Western Canada: A Policy Science Approach,* 348.
[25] Since 91% of the land base of the Province of British Columbia is under provincial jurisdiction, laws governing the management of archaeological resources on the remaining 9% of land in the province under federal jurisdiction (reserves, other Federal Crown lands) will be excluded from this discussion.
[26] Carlson, R. L. "Archaeology in British Columbia," in Carlson, R. L. (ed.) *Archaeology in British Columbia, New Discoveries, BC Studies,* Special Issue 6-7 (1970): 12.

the growing demands for ethnographic artifacts, such as totem poles, by American collectors and institutions.[27] While commended as the first of its kind in Canada, it has been criticized for its failure to incorporate a complementary enforcement policy or strategy.[28] Nevertheless it remained an important step forward in the recognition of the value of and the need to protect heritage resources.

Other provinces were slow to follow this first initiative. The decades which followed this first piece of legislation in British Columbia witnessed little interest in the protection of heritage resources. No action took place in archaeological conservation until the post-war period. Manitoba and Saskatchewan did not enact heritage legislation until 1946 and 1960 respectively.

In British Columbia renewed interest in archaeological conservation did not occur until the 1950s. The development boom in the province at that time prompted two anthropologists to seek support in the conservation of archaeological resources which were being increasingly threatened. Charles Borden of the University of British Columbia and Wilson Duff of the Royal British Columbia Museum mounted a public campaign to increase public awareness of the responsibility of government and the private sector toward the protection of these resources. They were successful in gaining both national and international support and in 1959 Duff was asked to draft new legislation which incorporated their concerns.[29]

In 1960 the *Archaeological and Historic Sites Protection Act* (AHSPA) became law. According to Apland, this act offered the first significant legislative protection for archaeological sites in British Columbia.[30] Under this new act provincial permits were required to authorize any archaeological work at sites. The AHSPA also established the Archaeology Sites Advisory Board (ASAB) comprised of both government, academic, and general public representatives

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[27] Spurling, B. E. *Archaeological Resource Management in Western Canada: A Policy Science Approach,* 82.
[28] Apland, B. "The Roles of the Provincial Government in British Columbia Archaeology," *BC Studies* 99 (1993): 9.
[29] Borden, C. E. "Wilson Duff (1925-1976): His Contributions to the Growth of Archaeology in British Columbia," *BC Studies* 33 (1977): 7.
[30] Apland, B. "The Roles of the Provincial Government in British Columbia Archaeology," 9.

(including 2 First Nations representatives) which served as the first provincial body specifically devoted to advising government on matters concerning archaeology. This act also broadened the range of automatically protected sites from an earlier emphasis on rock art sites to include shell middens, housepits, caves or other archaeological remains on provincial Crown land. This legislation was the first to view archaeological sites more or less the same as other natural provincial assets which can and should be "managed".[31]

These first two pieces of legislation lacked any recognition of the importance of archaeological sites to living aboriginal people. For the most part, aboriginal cultures represented in the archaeological record were viewed as distinct, almost disconnected from living aboriginal people. In some ways this division mirrored the conspicuous separation of many aboriginal people on designated reserve land away from mainstream society. Tensions were high over the pressures from white society for integration and the fundamental need among aboriginal people to remain separate. Traditional ways of life were quickly disappearing as a result of a significantly reduced land base and various assimilation programs. Together with traditional lands and resources, archaeological remains were appropriated from aboriginal people in order to be "effectively managed" for the greater public good.

It is important to note the motives behind the development of protective legislation for archaeological remains. The legislation of 1925 was enacted prior to the establishment of the discipline of archaeology in the province. Its main purpose was to curtail the sale of artifacts and other heritage properties outside of British Columbia. There is an implied possessiveness and assertion of dominance in this law which presumes the value of these materials in satisfying the curiosity and fascination of the wider Euro-Canadian society. The *Archaeological and Historic Sites Protection Act* (AHSPA) which followed in 1960 took place after the institutionalization of the Royal British Columbia Museum in Victoria and the establishment of an anthropology

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[31] Spurling, B. *Archaeological Resource Management in Western Canada: A Policy Science Approach*, 90.

department at the University of British Columbia. Concerns which emanated from these institutions stressed the importance of conserving the archaeological record not only for the public, but perhaps more importantly to ensure the survival of the discipline. As Apland comments:

> There is perhaps no other field of scientific endeavor that is as strongly dependent upon legislative intervention for the resource protection needed to ensure its future.[32]

3.3.2 Archaeological Resource Management in the Seventies and the Early Eighties

Interest in archaeology grew throughout the 1960s with the posting of many American archaeologists to anthropology departments throughout Canada. It was during this time that the University of Calgary created a stand-alone department of archaeology. The development of a distinct department of archaeology at Simon Fraser University in British Columbia in 1966 was not far behind. Unlike any other time in its short history, archaeology was establishing itself as a credible discipline within Canadian academia.

As might be expected, the increasing number of academic archaeologists led to the creation of stricter protection laws on a nationwide level. In British Columbia amendments to strengthen the AHSPA were passed in 1972. These amendments led to the establishment of the Office of the Provincial Archaeologist (PAO) which had direct government regulatory involvement in archaeology.[33] The creation of the PAO also marked the beginning of a management role in archaeology which had up to this time been considered solely an academic discipline. The PAO (later known as the Archaeology Branch) was responsible for administering the legislation and its accompanying regulations in order to ensure the conservation and preservation of archeological resources. This was accomplished through the administration of

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[32] Apland, B. "The Roles of the Provincial Government in British Columbia Archaeology," 11.
[33] Ibid., 10.

the provincial permit process to regulate the activities of archaeologists as well as through establishing referral contacts with other ministries in order to gain advance notice of proposed land developments.

It was not until 1977 that completely new legislation was introduced. The *Heritage Conservation Act (HCA)* provided more power over heritage matters to municipalities and established the Heritage Trust which provided both public and private funds for programs to promote public understanding and appreciation of heritage. In addition, the *HCA* provided additional protection of archaeological resources by extending provincial control over those resources on private lands. It established an administrative body known as the Heritage Conservation Branch and replaced the PAO with a larger agency called the Archaeology Branch. All of these changes were considered necessary in light of the huge growth of archaeological research projects and large-scale, development-oriented "salvage" investigations.

By the end of the 1970s archaeological resource management had established itself as an important part of the development process. Archaeological excavation and survey projects were undertaken prior to many development projects to ensure the identification and proper conservation of archaeological resources as now required under the *Heritage Conservation Act* [4] (1977, revised 1979). In 1982 impact assessment guidelines were introduced to ensure that all development proponents were fully aware of their obligations to the archaeological resource. At much the same time similar guidelines were being developed for an environmental impact assessment review process. Through the development of legislation and impact guidelines, archaeological issues had been effectively been integrated into the development process together with much larger environmental concerns.

What role did aboriginal people play in the development of this legislation and impact assessment guidelines? The short answer is none. Aboriginal communities remained essentially excluded from archaeological investigations except where their involvement was considered

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necessary to ensure the success of the project. Consultation with aboriginal people was left largely at the discretion of the individual archaeologist. The *HCA* did, however, include a *provision* for the provincial government to require the permit holder (archaeologist) to consult with or obtain the consent of one or more parties whose heritage the property represents or may represent.[34] At this time obtaining aboriginal consent was never considered *mandatory*.

On the broader political scene, aboriginal concerns were being voiced unlike at any other time in history. Organizations such as the Union of British Columbia Indian Chiefs (UBCIC) and the National Indian Brotherhood (later known as the Assembly of First Nations) that had been established during the 1950s and 60s were gaining political prominence in both the local and national aboriginal issues of the 1970s. Outrage over the proposed federal 1969 White Paper on Indian Policy united and mobilized First Nations in a way that had never happened before. Toward the end of the 1970s the UBCIC had developed an Aboriginal Rights Position Paper that outlined self-government powers for the First Nations in a wide range of areas.[35] Aboriginal rights to traditional resource activities such as fishing were being tested in the B.C. provincial courts with decisions favoring First Nations.

By the beginning of the 1980s aboriginal people had gained considerable political ground in Canada. The media coverage of aboriginal negotiations in Canada's Constitution of 1982 had significantly increased public awareness of and sympathy toward native rights and grievances. The Constitution recognized *existing* aboriginal and treaty rights of Canada's aboriginal people including the aboriginal right to self-government. Aboriginal participation in subsequent First Ministers conferences established aboriginal people as a distinct third order of government in the Canadian political arena. For the first time aboriginal people were becoming a strong political

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[34] Province of British Columbia, *Heritage Conservation Act* (1977), Chapter 165, Section 5 (b).
[35] McFarlane, P. *Brotherhood to Nationhood: George Manuel and the Making of the Modern Indian Movement* (Between the Lines: Toronto, 1993): 248.

force questioning government authority over lands and resources and asserting what had now become constitutionally entrenched aboriginal rights to these same lands and resources.

This momentum quickly spread throughout the provinces. In British Columbia aboriginal leaders struggled harder than ever for inclusion in resource and land use decisions. Admittedly, archaeological resources comprised an obvious small, but still significant part of the Province's land-based resources. Given the recent cultural and political revival of aboriginal people these resources assumed an even greater importance. It would not be for some years later, however, that the provincial government would begin to recognize aboriginal concerns over matters of heritage.

3.3.3 Project Pride and Beyond (1987-1991)

The political climate in British Columbia with regard to aboriginal people was changing dramatically during the late 1980s. The Social Credit administration of Premier William Vander Zalm, which began in 1986, devoted increased attention to aboriginal issues. There was a growing willingness on the part of this government to meet with native groups to discuss positions on aboriginal title and negotiations. Unlike ever before, communication on the land question had opened up between the two parties in the absence of serious antagonism. Provincial recognition of the need to establish a dialogue with aboriginal people soon spread throughout the provincial ministries. Tennant comments on the shift in government sentiment at this time stating "in other policy areas, new and better relations were developed with Indian communities, tribal groups, and political organizations, all of which were now generally accepted as legitimate interest groups within the political process".[36]

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[36] Tennant, P., *Aboriginal People and Politics*, (UBC Press: Vancouver, 1990): 235.

With this new government also came a renewed emphasis on public participation in the policy process. Public consultation processes were being initiated in many policy fields. Heritage policy was no exception. In 1987, the Heritage Conservation Branch, with the support of the Ministry of Tourism, Recreation and Culture, embarked on a review of heritage legislation and practices entitled 'Project Pride'. According to the Project Pride Task Force "this reassessment was needed because of the experience gained in the ten years since the passage of the *Heritage Conservation Act* (1977/79). Many of the objectives, standards, and technologies of the heritage conservation movement [had] changed in that time. Public perceptions of heritage [had] also changed".[37]

The Project Pride Task Force was comprised of seven individuals considered to have a particular interest in and knowledge of heritage matters. This group included various local and provincial government bureaucrats, and one local Vancouver resident. Of particular interest to those concerned with archaeological resources and aboriginal issues was the appointment of a professor of archaeology and the chief of an Indian Band to this task force. For the first time, aboriginal heritage concerns were being acknowledged at the provincial level. This acknowledgement would have a significant impact on the direction and findings of the task force.

The mandate of the Project Pride Task Force was to review heritage legislation, policy, and programs in British Columbia through a process of broad public consultation.[38] This consultation included the mailout of nearly 6000 preliminary discussion papers to 2900 individuals and organizations including heritage organizations, post-secondary educational institutions, and aboriginal bands and tribal councils throughout the province to encourage widespread public input on various heritage issues. Public hearings in 12 communities followed.

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[37] Project Pride Task Force, *Stewardship and Opportunity*, Report of the Ministerial Task Force on Heritage Conservation, Government of British Columbia (Queen's Printer: Victoria, 1987): 15.
[38] Ibid., 5.

In all 388 written submissions were received from both concerned organizations and individuals. It is important to note that only 13 of the 260 submissions from organizations were received from aboriginal organizations and none of the public hearings were held on aboriginal reserves. It seems that in targeting a broad public audience, the task force had diminished the capacity for many First Nations to effectively voice their concerns.

Despite the limited input from First Nations in Project Pride heritage discussions, aboriginal issues were strongly expressed in the findings presented in the task force's final report. A sample of the comments made on the main issues raised by the public is included in the report, the first of which features native heritage. These statements are especially noteworthy:

> It was noted that Native groups view heritage very broadly, almost synonymously with their culture, encompassing such things as their language and music. It was also noted that Native groups need a much stronger role in developing policy and in managing their off-reserve resources. Native groups feel they must play a direct role in interpreting their own culture.[39]

The task force itself assumed a very strong voice for aboriginal concerns and saw this heritage review process as a key opportunity to develop a better relationship between aboriginal communities and the provincial government. They saw this as "a propitious time for the government to use heritage as a medium for encouraging unity through the increased involvement of the Native community in the identification and management of our heritage".[40] They acknowledged the wider political context in which the review was taking place stating that their recommendations "cannot resolve the outstanding issues of land tenure, but ...offer an excellent opportunity to build bridges of understanding that can be mutually rewarding and

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[39] Ibid., 17-18.
[40] Ibid., 46.

enrich our heritage legacy".[41] For the first time questions of ownership of archaeological resources were being raised. The task force recommended that the provincial government initiate a consultation process with aboriginal communities to discuss the ultimate ownership and stewardship of Native archaeological resources.

The task force's message was loud and clear. They were disappointed in the lack of aboriginal involvement in the management of native heritage resources and saw it as a definite weakness in the current regulatory structure that needed to be addressed. Although the recommendations of the task force were generally strong and laudable, ultimate authority rested with the Minister to decide which would become legally binding and which would not.

3.3.4 White Papers (1990-1991)

Since the completion and distribution of the Project Pride Task Force's recommendations in the *Stewardship and Opportunity* report in 1987, both the ministry and minister responsible for heritage matters had changed. This shuffle resulted in a delay of the heritage review process and slowed the momentum initiated by Project Pride. It was not until January 1990 that the ministry's interest in heritage resumed. That year a White Paper entitled "Toward Heritage Legislation: A Proposal for Public Review" was released. It was distributed widely throughout the province including all First Nations bands and tribal organizations.

The paper outlined preliminary proposals for new heritage legislation stressing the importance of enabling local governments in the conservation of aspects of the built environment. This bias may have reflected the broader mandate of the ministry which now included municipal affairs. The need for greater First Nations involvement in heritage management that had been so strongly expressed in the Project Pride review was somewhat downplayed in this paper amongst a myriad of other heritage concerns. Some of the

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[41] Ibid., 46.

recommendations with regard to aboriginal heritage resources were vague stating that the province assumed a *"special* [my emphasis] stewardship responsibility"[42] of prehistoric heritage sites and recognized *various* kinds of heritage value, not just archaeological (scientific) significance. Others, such as the creation of an advisory committee to develop appropriate guidelines for the conservation of aboriginal heritage, were more defined.

Another White Paper soon followed in March 1991. Entitled "Heritage Legislation: A White Paper for Public Review", this document included a draft bill which outlined in legal language many of the previous recommendations. According to Lyall Hanson, then Minister of Municipal Affairs, Recreation and Culture, this proposed legislation "significantly increased the protection afforded to aboriginal heritage sites and archaeological artifacts and provides a framework for a closer working relationship between the Province and the Native community with respect to the stewardship of Native heritage resources".[43]

This White Paper package included a rather lengthy community heritage conservation guide booklet as well as a much shorter pamphlet outlining guidelines for improving stewardship of native heritage resources. This pamphlet stressed the need for consultation and negotiation with Native leaders to discuss the specific format for native involvement in the impact assessment and management of aboriginal heritage resources. Discussion, consultation, and negotiation were also suggested as the preferable means to resolve any disputes over ownership of artifacts of aboriginal origin. For the first time, provisions for the Minister to recognize ownership or assign possession of artifacts to aboriginal descendants were suggested. The proposed legislation was purposely open-ended, flexible and somewhat vague in order to

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[42] Ministry of Municipal Affairs, Recreation, and Culture, *Toward Heritage Legislation: A Proposal for Public Review*, Government of British Columbia (Queen's Printer: Victoria, 1989): 9.
[43] Hanson, Lyall, Introductory letter accompanying *Heritage Legislation: A White Paper for Public Review*, Ministry of Municipal Affairs, Recreation, and Culture, Government of British Columbia (Queen's Printer: Victoria, 1991).

accommodate a wide range of working arrangements with First Nations.[44] Its intention was to "provide a framework within which appropriate policies and programs could be established, and new, more positive working relationships could evolve".[45]

As with the preceding White Paper, this draft bill and the accompanying support documents were sent to all First Nations organizations throughout the province for their review and comments. Response was limited. This lack of involvement would later be addressed by the New Democratic Party (NDP) which formed the next provincial government within the following few months.

3.3.5 The New Democratic Consultative Approach to Heritage Management

Under the newly appointed NDP government heritage matters became the responsibility of Darlene Marzari, Minister of Tourism and Culture. The lack of First Nations feedback from the 1991 White Paper prompted her to initiate a process of consultation consistent with the new government's Throne Speech commitment to greater aboriginal input in the development of legislation. At this time the government had also created the B.C. Treaty Commission stressing its willingness and pledge to deal with ongoing First Nations' concerns regarding lands and resources.

This commitment by the NDP led to a new consultation process in October 1992. A First Nations Heritage Symposium was held with a general invitation to all bands in the province. In her opening address, Marzari referred to the gathering as "the kind of symposium that had never been held before: consultation about aboriginal culture and heritage with First Nations people

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[44] Mr. Bill Huot, Policy Analyst, Heritage Conservation Branch; (pers. comm.), 2nd April 1998.
[45] Ministry of Municipal Affairs, Recreation, and Culture, *Heritage Legislation: Improving Stewardship for Heritage Resources of Native Origin*, Government of British Columbia (Queen's Printern for British Columbia: Victoria, 1991): 5.

themselves, moving toward consensus decision making and partnership".[46]   In the same

welcoming address, Miles Richardson, President of the Council of Haida Nation, noted that "the

challenge faced by those attending the symposium would be to create an ongoing dialogue which

would recognize the different and heterogeneous definitions of what constitutes heritage and

culture to First Nations peoples".[47]

The three day symposium was not intended as a means to seek approval for the proposed

legislation. Instead its focus was on facilitating focussed discussion on the main heritage issues

of concern to First Nations. Workshops were designed around four main themes including

language and oral history, the role of museums, self-management of heritage resources, and

legislation. Recommendations from the last two workshops were particularly noteworthy. In the

self-management workshop it was generally agreed that First Nations should have responsibility

for the permit process now under the control of the provincial government. It was also agreed

that First Nations and government should be moving toward the co-management of aboriginal

heritage resources. Some of these themes carried over into the legislation workshop's concerns

over the discretionary nature of the proposed legislation which did *not* require consultation or

permission from First Nations. Perhaps the most significant recommendation to come out of this

process was the need for new legislative clauses which would recognize the jurisdiction of First

Nations governments by facilitating *agreements in heritage* between First Nations and the

Province.

Overall, the First Nations Heritage Symposium was considered a success among many

First Nations delegates. In the self-management workshop, one of the delegates commented that

"this is [was] the first time we have been asked for our input".[48] It was perceived as "a start at

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[46] Cooper, A. and Crosby, M. *First Nations Heritage Symposium: Analysis and Review*, (Queen's Printer for British Columbia: Victoria, 1993): 1.
[47] Ibid.,1-2.
[48] Ibid., 13.

overcoming communication gaps – a beginning to build a basis for trust and understanding"[49] and the start of a government-to-government relationship based on mutual respect.

The final report of the symposium was distributed to all First Nations in British Columbia. Further consultation followed in May 1993 with the First Nations Heritage Legislation Consultation Meeting in Victoria. This workshop was organized to review the results of the symposium and a newly revised legislative package. At long last this package included a provision to enable the provincial government to enter into formal, government-to-government treaty-like agreements with regard to First Nations heritage matters. For the first time it also included a non-derogation clause which confirmed that the new legislation could not infringe on First Nations rights or land claims.

Participation in the meeting was limited to 21 individuals including 8 representatives from First Nations organizations, 1 lawyer, and 12 government agency representatives. This meeting was seen as part of an ongoing consultation process which could only result in interim measures. According to John Walsh, Deputy Minister of Culture, "participants were not being asked to sign-off on the package politically", rather, the meeting was seen as "a bridge between the present and the treaties, with First Nations and government working together".[50] What came out of this meeting was the recognition of the need for enabling language to guide future relationships between government and First Nations. There was an agreement on the part of government to participate further in the consultation process and engage in more discussion with aboriginal leaders and representatives of specific First Nations communities.

Consultation was later initiated with some of the larger First Nations political organizations in the province. These discussions were limited to the Union of British Columbia Indian Chiefs (UBCIC) and the First Nations Summit. It was understood that any proposed

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[49] Ibid., 16.
[50] Minutes of First Nations Heritage Legislation Consultation Meeting, Dunsmuir Lodge, Victoria, B.C. May 4, 1993: 3.

legislative amendments which did not satisfy the concerns of the organizations would be removed and considered unacceptable. All that would remain would be the legislative provisions which did not affect First Nations and the new 'enabling provisions'.[51]

These consultations occurred on separate occasions between the Province and the UBCIC and the Province and the Summit during the summer of 1993. These bilateral meetings became the official method of consultation. They were parallel to those negotiations taking place within the B.C. Treaty Commission process. It was recognized by all parties that the outcome of these consultations would constitute only interim measures or agreements. At the end of this process only those newly proposed provisions both First Nations organizations felt comfortable with were left in while others they did not like were taken out.[52]

3.3.6 New Legislation At Last

In 1994, almost 7 years after the Project Pride Task Force review began in 1987, amendments to the *Heritage Conservation Act* (1977/79) were finally passed. These amendments also included additions to other acts as they related to heritage resources (e.g. *Forest Act, Coal Act*). Of particular interest to First Nations were the new definitions of "heritage site" and "heritage object" in this amended act which now recognized the heritage value of these resources to an aboriginal people. As recommended in many of the previous consultation processes, these amendments also included a new subsection pertaining to agreements with First Nations. According to subsection 3.1(later re-numbered as 4.1):

> The Province may enter into a formal agreement with a first nation with respect to the conservation and protection of heritage sites and heritage objects that represent the cultural heritage of the aboriginal people who are represented by that first nation.[53]

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[51] Cooper, A. Letter from the First Nations Heritage Symposium Steering Committee to all First Nations in British Columbia, dated May 14, 1993: 2.
[52] Mr. Bill Huot, Policy Analyst, Heritage Conservation Branch; (pers. comm.), 2nd April 1998. He referred to this process as 'agreement on first principles'.
[53] Province of British Columbia, *Heritage Conservation Act* (1994) Chapter 187.

According to Bill Huot, senior policy analyst with the Heritage Conservation Branch, this subsection was left intentionally open-ended and flexible to accommodate a broad range of agreements. He envisioned these agreements functioning not as an official delegation of provincial authority but as some kind of "operational relationship" between the Province and First Nations.[54] The agreements would be interim measures and could not encroach on aboriginal treaty rights or land claims. Any agreements would require formalization through an order-in-Council. To date, however, there is no established policy which would enable this provision of the amended *HCA* to take place.

At the time the amendments were passed in 1994 there remained a lack of consensus between the provincial government and the UBCIC as to the consultation requirements for upcoming archaeological investigations. As a result the proposed provisions for consultation during the permit application process were excluded from the amended legislation package. Consultation processes remained undefined until January 1996 when the provincial Archaeology Branch developed operational procedures for First Nations consultation prior to the issuance of permits. These guidelines were prompted by a B.C. Supreme Court decision which required formal consultation with First Nations when Archaeology Branch permit applications were made.[55] This requirement has since been added as a further amendment to the *Heritage Conservation Act* (1994) last revised late in 1996.[56]

Today First Nations consultation with the provincial government is conducted on two different levels. On a broader planning level, an ongoing dialogue which began last year continues between the Archaeology Branch and both the First Nations Summit and the Union of B.C. Indian Chiefs with regard to the practice of archaeological resource management (ARM). It

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[54] Mr. Bill Huot, Policy Analyst, Heritage Conservation Branch; (pers. comm.), 2nd April 1998.
[55] This decision involved a case between the *Nanoose Indian Band et al. v. Her Majesty the Queen, Province of B.C. and Intrawest* (November 14, 1994).
[56] This requirement is now included under Section 12 *Permits* as subsection 2.1 of the *Heritage Conservation Act* (1996) Chapter 187.

is expected that this dialogue will continue for some time and will ultimately result in some policy recommendations.[57] On the local band and/or tribal council level, consultation is limited to those requirements under Section 12 *Permits* of the *Heritage Conservation Act* (1996). Subsection 2.1 of this section states that prior to the issuance of permits to do archaeological work, the minister must provide an opportunity for comment by informing the appropriate First Nation. This kind of consultation involves the distribution of the permit applications to First Nations for their comment and review. Fifteen to thirty days is allotted for this review in keeping with many other provincial referral processes.

First Nations' responses to this kind of consultation have been generally negative. As is the case with other provincial referral processes,[58] First Nations consultation in ARM has been perceived by many aboriginal people as a form of tokenism or court proofing.[59] This consultation is seen as just another step in the approval of an ever-increasing number of developments in First Nations' traditional territories which many aboriginal communities feel powerless to change.[60] While some First Nations participate in this limited role, others do not have the human or financial resources to adequately review permit applications for archaeological studies. Unfortunately in this consultative process, once the set review period has lapsed , a lack of response is generally perceived as consent. The lack of meaningful First Nations involvement which results from this review process has prompted some First Nations to

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[57] Wright, Milt, Manager, Aboriginal Liaison and Public Education Department of the B.C. Archaeology Branch, E-mail communication, 3rd March 1998.

[58] The provincial referral process as it exists today was designed in 1994 (revised 1997) to fulfill the fiduciary responsibility of the provincial government to consult with First Nations in order to avoid infringement of aboriginal rights linked to site-specific, ongoing, and traditional land use on Crown land (see *Crown Lands Activities and Aboriginal Rights Policy Framework*, Province of British Columbia, revised January 29, 1997). The need for such a process came out of the 1993 Delgamuukw case which found that the Province had a fiduciary duty to consult with First Nations prior to resource management activities in their traditional territories.

[59] Fraser Basin Management Program, *The Provincial Referral Process: First Nations and provincial perspectives on the process as a mechanism for identifying and avoiding infringement of aboriginal rights*, Discussion Paper, 1997: 13.

[60] These sentiments have been consistently expressed by First Nations during the B.C. Archaeology Forums held annually (see Fedemma, V. "The Second Annual B.C. Archaeology Forum: Archaeology, Ethics and Responsibility," *The Midden*, 25(5): 9-11 and Fedemma, V. "B.C. Archaeology Forum, Kamloops, 1994: A Winter Village in Winter," *The Midden*, 26(5): 3-4.)

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develop their own heritage management policies and permits, none of which are formally recognized by the provincial government.

The provincial permit system can coexist with the First Nations' permit systems provided that the permit terms are not in conflict with one another. At present, an archaeologist conducting studies which may impact archaeological sites is required to apply for a permit prior to any site disturbance and is bound to the conditions of this permit. Obtaining the appropriate First Nations permit for archaeological work in a traditional territory remains at the discretion of the individual archaeologist. In the case of any conflict or confusion over the nature of the fieldwork and report interpretations, the conditions and requirements of the provincial permit will always take precedence. Despite this lack of legal authority, there are currently 24 aboriginal policies and protocols with more underway as First Nations become increasingly interested in ARM and demand greater involvement in the decisions affecting these resources.

CHAPTER FOUR

ABORIGINAL APPROACHES TO HERITAGE MANAGEMENT

This chapter addresses the nature of aboriginal responses to limited involvement in archaeological resource management in B.C. An overview of the development and range of aboriginal heritage policies, permits, and protocols in B.C. is presented. Distinction is made between those initiatives developed at the band and tribal level as well as those recently finalized at the negotiating table. This overview is followed by a discussion of similar aboriginal heritage initiatives outlined in land claim agreements in the Yukon and Northwest Territories. Recent legislative developments in the U.S. leading to the development of tribal management of archaeological resources are also discussed. A focus is given to the jurisdictional differences within the provincial, territorial and American contexts which dictate the role of aboriginal people in the management of archaeological resources.

4.1 The Development of Aboriginal Heritage Management Initiatives in British Columbia

One of the first formal aboriginal heritage initiatives in B.C. was developed in 1992 by the Union of B.C. Indian Chiefs. This position paper, entitled *Ownership, Jurisdiction, Repatriation: Draft Position Paper on First Nation Graveyards, Burial Areas, Sacred Sites and Heritage Objects,* was written in response to a formal opportunity to respond to the draft of a new provincial *Heritage Conservation Act* later passed in 1994.[1] Appended to the draft position paper is a copy of a draft *First Nation Heritage Protection Law* intended to be applicable to any First Nation in B.C. This position paper and its accompaniments are significant as they represent the first official statement of First Nations perspectives on what were and continue to be the key

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[1] This draft of the new *Heritage Conservation Act* was passed on October 14, 1994 as the *Heritage Conservation Statutes Amendment Act* rather than as a completely new heritage act as was originally intended.

issues in aboriginal heritage management in B.C. While the proposed *First Nation Heritage Protection Law* was never formally adopted by any First Nation in B.C., variations of the law and its provision for First Nations heritage research permits were later independently developed by many bands and tribal organizations in the province.

The consultative processes between First Nations and the Province during the drafting of new provincial heritage legislation, and the dialogues and documents which it inspired, served to increase awareness of aboriginal heritage issues among First Nations provincewide. While the eventual passage of the *Heritage Conservation Statutes Amendment Act* in 1994 failed to address the need for First Nations consultation prior to any heritage investigations or inspections, it did include additions to other acts such as the *Forest Act* and the *Coal Act* that relate to heritage resources. These additions resulted in a huge increase in the amount of archaeological and other heritage related research required for any proposed forestry or mining development in the province. Unlike at any other time in history, archaeologists, anthropologists and historians were identifying, documenting, and making management decisions regarding aboriginal heritage in these and other land use planning contexts.

This unprecedented amount of aboriginal heritage research continued to be conducted without any requirement for formal consultation with First Nations within whose traditional territory the research took place. The first few aboriginal heritage management initiatives were developed in response to the lack of First Nations involvement in this influx of development-driven research. It was not until 1996 that the provincial government was forced to recognize its obligation to consult with First Nations on heritage matters. As a result of the B.C. Supreme Court decision, *Nanoose Indian Band et al. v. Her Majesty the Queen, Province of B.C. and Intrawest* (November 14, 1994), consultation with First Nations prior to the issuance of archaeological permits was required by the B.C. Archaeology Branch. In January of 1996 an operational procedure adopted by the Branch required that any permit for archaeological research

be distributed to those First Nations "asserting traditional interest in the proposed study area, with a request for comment, preferably in writing, within a reasonable time, usually 15-30 days"[2]. In many cases this distribution for comment was the first time many First Nations had seen an archaeological investigation or inspection permit application and realized the potential impacts of the current management regime.

Prior to the implementation of this operational procedure it was possible for archaeological work to be conducted and management decisions to be made without any contact with the local First Nations. While the required 'request for comment' increased the level of First Nations involvement in archaeological resource management, it did so in a very limited way. Only those comments related to study methodology were and continue to be taken into consideration.

Typically, First Nations responses to this 'opportunity for comment' address a number of legitimate concerns. These include the right to ownership of archaeological resources of aboriginal origin, the involvement of First Nations people in the research and interpretation of findings, and the disposition of discovered archaeological remains, among other concerns. This operational procedure, and the provincial law to which it relates, remain silent on these issues. In response to the Province's unwillingness to address these concerns, many First Nations have developed their own heritage policies, permits, and/or protocols, none of which are officially recognized by the provincial government. The Province's disregard for these initiatives, however, does not diminish their importance as strong declarations of self-determination and the need for aboriginal control over aboriginal heritage.

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[2] Ministry of Small Business, Tourism and Culture, Archaeology Branch Operational Procedures on Heritage Permits, January 26, 1996: page 3.

4.1.1 Key Components of Aboriginal Heritage Initiatives

B.C. First Nations heritage initiatives vary in both scale and scope. Some heritage policies and permits are applicable at the band level while others address the heritage concerns of First Nations within a tribal organization. Some heritage initiatives involve statements of aboriginal heritage philosophies while others deal specifically with procedural issues in the management of heritage resources through such mechanisms as permits. Even the scope of heritage and heritage resources varies. There are those initiatives which deal with aboriginal heritage holistically as a combination of history, spirituality, traditional knowledge, oral histories, and archaeology. Still others focus on the identification and management of particular heritage resources such as culturally modified trees.

Each of these heritage initiatives has been developed out of a perceived need to have more involvement and ultimately more control over a process which has failed to adequately address the concerns of First Nations within B.C. The diversity of the needs and requirements expressed in these initiatives is reflective of the diversity of First Nations communities and organizations throughout the province. In many cases these documents have resulted from different (sometimes negative) experiences with archaeologists and other heritage researchers who conduct the majority of development-related heritage impact assessments. In other cases, the formalization of these initiatives has been prompted by increasing threats to and the ongoing disturbance of heritage resources in particular areas of the province heavily impacted by resource development activities.

A summary of the key components of B.C. aboriginal heritage management initiatives are presented in Table 1. This summary is derived from an analysis of existing aboriginal heritage

Statement of Cultural Values:

- Ensure that cultural heritage resources are protected, conserved and managed in a manner consistent with respect for the values and culture of First Nations.

Definition of Heritage:

- Includes a broad definition of heritage which encompasses cultural and physical landscapes, archaeological sites, ceremonial sites, place names, songs and dances.

Ownership of Cultural Heritage and Heritage Resources:

- First Nations ownership and responsibility for all aspects of aboriginal cultural heritage and heritage resources.
- Ownership of materials and reports resulting from heritage projects or studies.

Jurisdiction:

- First Nations have the right to make laws and regulations regarding all aspects of aboriginal cultural heritage.
- Aboriginal policies and permits take precedence over all other permits and approvals to carry out heritage investigations.

Burials:

- First Nations are the rightful heirs to human remains found within their traditional territories and these remains should be repatriated to First Nations upon their request.
- Special procedures to be followed in the event of discovery of human remains.

Consultation:

- Requirement for consultation and approval by the relevant First Nation before any kind of heritage-related work takes place.
- Level of community involvement and control over the research.

Interpretation:

- Involvement of knowledgeable community members (elders) in the interpretation of heritage sites.
- Requirement for First Nations input regarding the ethnic significance of any archaeological remains found.
- The development of joint recommendations for the management of heritage sites.

Employment and Training:

- Requirements for the employment of members of the aboriginal community in all cultural heritage projects.
- Training component in heritage projects and studies.

Quality Assurance Measures:

- Guidelines for consistency in recording and reporting standards.
- Review of qualifications and experience of principle heritage investigators.

Monitoring:

- Provision that any archaeological work may be monitored and assessed by an individual selected by the First Nation.

Table 1. Key components of aboriginal heritage management initiatives

management initiatives collected through a review of relevant reports[3], and correspondence with archaeologists and aboriginal bands and tribal organizations throughout the province. Overall there is a strong emphasis on cultural values, aboriginal ownership, and jurisdiction over all aspects of aboriginal cultural heritage. Aboriginal ownership typically involves control over all information and objects resulting from heritage studies including field notes, maps, photos, artifacts, and copyright of all reports. Focus is often placed on defining what constitutes aboriginal heritage. Many aboriginal heritage initiatives stress the holistic nature of aboriginal heritage which extends beyond archaeological sites, artifacts, and human remains to include language, oral traditions, and entire cultural landscapes. Special attention is given to the treatment and repatriation of all human remains of aboriginal descent identified during heritage investigation studies.

Consultation and community involvement are also prominent components of aboriginal heritage management initiatives. Consultation ensures that aboriginal perspectives regarding heritage management are heard and respected. Typically this component involves face to face contact with representative(s) of a First Nations community or tribal organization at which time an agreement or permit is signed and/or endorsed. Community involvement may be limited to this kind of consultation but often involves the training and employment of members of the aboriginal community as well. It is not uncommon for community members to form part of a research team. There is a range of involvement noted in the initiatives from participation as a field crew assistant to equal representation in the interpretative and management processes.

Many aboriginal heritage management initiatives require a review of the principle researcher's education and experience to ensure he or she is qualified to undertake the proposed

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[3] Many of the documents reviewed for this summary were derived from a report entitled *Cultural Heritage Policy Overview* prepared by Deva Heritage Consulting in April 1997 for the Nelson Forest District.

research. As part of this review, standards and guidelines for certain kinds of research may be imposed. Some initiatives also include a provision for the monitoring and assessment of research by a peer professional of the First Nation's choosing. Together, these components seek to ensure a high standard of research is promoted and maintained.

As might be expected, aboriginal heritage management initiatives vary significantly from similar provincial government heritage management mechanisms. As legislation of general application, provincial heritage management laws and policies manage for *all* interests. Implicit in the Province's mandate is the assumption that all interests are *equal* and that the values associated with heritage resources are *universal*. The provincial scope of heritage and heritage resources is therefore necessarily limited. The Province has adopted a piecemeal approach to heritage management well suited for application in a land use and planning context. Aboriginal heritage management initiatives, on the other hand, tend to deal less with the technical aspects of management and more with the holistic nature of aboriginal heritage. Their goal is to ensure that cultural values associated with aboriginal heritage resources are respected and promoted. These initiatives express inherent rights to and ownership of heritage resources of aboriginal origin rooted in an intimate connection with the resource and what it represents.

4.1.2 Existing Aboriginal Heritage Initiatives in British Columbia

This section presents a discussion of existing aboriginal heritage initiatives in B.C. with a particular focus on temporal and administrative trends in their development. These initiatives were collected through a review of relevant reports and correspondence with archaeologists and aboriginal bands and tribal organizations throughout the province. Table 2 shows the range of B.C. First Nations heritage initiatives and, where available, the year in which each was developed. These dates can be grouped roughly into 3 different time periods discussed briefly in the previous section. The first includes those initiatives developed during and immediately

Band Level Heritage Initiatives

- Ahousaht First Nation Confederacy Culturally Modified Tree (CMT) Guidelines 1997
- Haida Tri-Council Forestry Committee Culturally Modified Tree Management Procedure, Vancouver Forest Region 1997
- Heiltsuk Nation Heritage Policy 1994
- Heiltsuk Nation Heritage Investigation Permit 1994
- Draft Statement: Archaeological Resource Overview (ARO) Archaeological Impact Assessments (AIAs) and "Use" Studies Within Heiltsuk Traditional Territory 1995
- Terms of Reference: Heiltsuk CMT (Culturally Modified Tree) Investigation Strategy 1995
- Cultural Heritage Policy for the Kamloops Band 1997
- Kamloops Indian Band Heritage Conservation *By-Law* 1997
- Kamloops Indian Band Heritage Investigation Permit Application 1997
- Kamloops Indian Band Field Survey or Impact Mitigation Permit 1997
- Musqueam Nation Policy Statement on Heritage Resources
- Permit to Conduct Archaeological Investigations on a Musqueam Reserve
- Agreement to Conduct Archaeological Research Within Musqueam Traditional Lands
- Request for Professional Archaeological Services
- Agreement to Conduct Anthropological Research Pertaining to the Musqueam People
- Skeetchestn Indian Band Territorial Heritage Conservation Law 1998
- Squamish Nation Archaeological Investigation Permit, 1994
- Taku River Tlingit First Nation Heritage Strategy 1994
- T'Sou-ke Nation Heritage Permit, 1998
- Westbank First Nation Crown Land Use Referrals Policy 1995

Tribal Level Heritage Initiatives

- Ktunaxa/Kinbasket Tribal Council Archaeological Heritage Resource Protection Policy (Draft)
- Ktunaxa/Kinbasket Tribal Council Department of Land and Resources Heritage Investigation Permit (Draft)
- Stolo Heritage Policy 1995
- Stolo Heritage Investigations Permit
- Stolo Nation Cultural Heritage Research Registry 1995
- Tsilhqot'in Nation Archaeological Investigation Permit 1998

Band level business organizations

- Chunta Resources (Ulkatcho Band), 1995
- Creekside Resources Inc., (Lil'wat Nation), 1997

Other aboriginal organizations

- Union of British Columbia Indian Chiefs. Ownership, Jurisdiction, Repatriation: Draft Position Paper on First Nations Graveyards, Burial Areas, Sacred Sites, and Heritage Objects. October 20, 1992
- Union of British Columbia Indian Chiefs. First Nation Heritage Protection Law (Draft), 1992

B.C. Land Claim Agreements

- Chapter 17: Cultural Artifacts and Heritage. *Nisga'a Final Agreement.* Canada, British Columbia, Nisga'a Nation, 1998.

Table 2. Aboriginal heritage management initiatives in British Columbia (derived in part from Deva Heritage Consulting 1997).

following the passage of amendments to the *Heritage Conservation Act*. These initiatives, dated between 1994 and early 1996, can be attributed largely to a growing awareness of provincial heritage management procedures resulting from consultation with First Nations during the drafting of heritage legislation and the consequent rise in development-related heritage research. Those initiatives which followed in 1997 may have also been developed in response to the growing number of development-driven heritage impact assessments but were more likely formalized in response to the contents of provincial heritage permits now distributed to First Nations for comments. In many cases the initiatives developed at this time involved parallel First Nations permits directed specifically at archaeological resources.

The final phase of First Nations heritage initiatives takes place in 1998. While Table 2 shows only two entries for this time period, their presence is nonetheless significant. Since the most recent *Delgamuukw* decision in December of 1997, archaeological and other heritage research have assumed even greater importance among B.C. First Nations. This decision places the onus on First Nations to prove aboriginal title by providing evidence of ongoing use and occupation of traditional lands. From the perspective of many First Nations, as well as the legal community, archaeology and oral tradition have the potential to document this ongoing use and occupation necessary to achieve aboriginal title. This potential has resulted in further awareness of provincial heritage laws and management procedures and led to increasing demands for harsher protection measures and involvement of First Nations as a significant stakeholder in heritage management. There is little doubt that as the full effects of *Delgamuukw* are realized, many more First Nations heritage initiatives will be forthcoming.

Another review of Table 2 shows the distribution of initiatives among both band and tribal levels. In many cases, expression of heritage values through initiatives at the band level have developed where there has been considerable experience and expertise regarding heritage issues. Often these experiences have included the disturbance or destruction of sites of particular

cultural significance to the band. Expertise usually takes the form of a person or persons within the community with a background or particular interest in the cultural heritage of the band. If needed outside experts are also consulted. Ultimately, however, the creation of heritage initiatives at the band level may be more a question of resources. Does the band have the human and/or financial resources to devote to the development and ongoing implementation of heritage management initiatives? Other, more critical issues may be of immediate priority.

The development of heritage initiatives at the tribal level usually occurs in circumstances where the tribal association characteristically takes responsibility for the creation and implementation of policies of general application. This situation is typical of those organizations whose band affiliates are small and isolated and lack the resources to deal with such issues independently. In the absence of recognized cultural heritage advisors, it is often the case that individuals within the tribal association assume responsibility for heritage resources as part of a larger natural resources management portfolio.

Of special note is the presence of two band level business organizations which are involved in heritage management and research activities. Chunta Resources is a forestry company owned and operated by the Ulkatcho Band. Described as a forestry company with a multidisciplinary approach, Chunta Resources manages all aspects of forestry developments from archaeology to silviculture. Their goal is to have all aspects of heritage management in Ulkatcho territory conducted by band members and capitalize on the traditional knowledge of members of the community. Developing these skills within the community has also led to opportunities to conduct archaeological investigations for other forestry companies thereby continuing to foster employment and skills training within the Ulkatcho Band.

Creekside Resources Inc. (CRI) is the business arm of the Mount Currie Band. The goals of CRI are to create economic development opportunities and employment and to ensure the proper care and management of cultural and natural resources for the Mount Currie Band and the

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Lil'wat people. A cultural resource management division within CRI has been created to evaluate the potential impact on archaeological resources and traditional use activities of both Band and third party development within their traditional territory. This division provides archaeological consulting services to industry, government, and other First Nations. Expertise is developed 'in-house' to manage and protect all aspects of the Band's cultural heritage.

Both Chunta Resources and CRI have taken a bold step in the management of archaeological resource management. Unlike other bands who have sought first to develop heritage management policies and permits, these organizations have taken a more direct approach. They are developing teams of experts and have essentially become competitors in the field of archaeological and heritage resource management.

4.1.3 Cultural Heritage Management in a B.C. Aboriginal Land Claims Context

In November of 1998, the *Nisga'a Final Agreement* was accepted by the Nisga'a people of British Columbia. This agreement marked the culmination of more than 100 years of effort on the part of the Nisga'a to establish a new relationship with the Province of British Columbia and the Government of Canada. The agreement recognized the Nisga'a Nation as another level of government with powers equal to those of its provincial and federal counterparts. Within their negotiated land claim, the Nisga'a now have full jurisdiction to make laws regarding the care and management of Nisga'a Lands. These laws pertain to a range of interests from fisheries and forests to judicial processes and taxation. Of particular significance to this discussion are those laws which focus on matters of cultural heritage.

Chapter 17 of the *Nisga'a Final Agreement* deals specifically with Nisga'a cultural artifacts and certain heritage issues of concern to the Nisga'a people. The provisions of this chapter are based on a recognition of "the integral role of Nisga'a culture, values, and traditions"

and the Nisga'a Nation's "traditional and sacred connection with Nisga'a artifacts"[4]. There is a strong focus on the identification and repatriation of Nisga'a artifacts currently in the possession of the Canadian Museum of Civilization and Royal British Columbia Museum. The return of these objects to Nisga'a Lands is considered critical in the process of nation-building and strengthening Nisga'a cultural identity. The importance of cultural artifacts extends to the development of Nisga'a laws to protect and manage archaeological and other heritage sites on Nisga'a Lands thereby effectively replacing provincial heritage management statutes[5].

The ability to make laws regarding the repatriation, protection and management of Nisga'a cultural heritage is directly related to the Nisga'a's position at the negotiating table. As another level of government, Nisga'a expressions of cultural values and appropriate management of Nisga'a cultural heritage carry with them the force of law. Unlike other band and tribal level heritage management initiatives where compliance relies heavily on the good will of researchers, all individuals are legally bound to respect Nisga'a cultural heritage laws.

4.2 Aboriginal Involvement in Heritage Management in the Yukon Territory

In 1993 the *Umbrella Final Agreement between The Government of Canada, the Council for Yukon Indians and the Government of the Yukon* was completed. This umbrella agreement outlines a broad framework to which all 14 Yukon First Nations are expected to comply. Chapter 13 of this agreement deals exclusively with all matters related to heritage. This chapter and its specific provisions are mirrored in subsequent final agreements signed with four Yukon First Nations. These include the Champagne and Aishihik First Nations, the First Nation of the Nacho Nyak Dun, the Teslin Tlingit Council, and the Vuntut Gwichin First Nation.

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[4] *Nisga'a Final Agreement*, Canada, British Columbia, Nisga'a Nation, 1998, page 223.
[5] Provisions for Nisga'a laws regarding heritage management can be found in paragraph 36 of Chapter 17 as well as in paragraph 8(f) of Chapter 10 and paragraphs 41-43 of Chapter 11 of the *Nisga'a Final Agreement*.

The objectives of the Heritage chapter focus on the recognition of Yukon Indian values pertaining to heritage and the equitable involvement of Yukon First Nations and Government in the management of the heritage resources of the Yukon. They range from the promotion of public awareness, appreciation, and understanding of all aspects of culture and heritage in the Yukon and the protection and conservation of heritage resources and the traditional cultural knowledge of the Yukon Indian People to the involvement of First Nations in heritage management and the integration of heritage management processes within land use planning and development in the Yukon. There is a strong emphasis on the importance of management with respect for Yukon Indian values and culture through the incorporation of traditional knowledge and oral history both in the research design and interpretation phases of heritage management.

The umbrella agreement clearly states that each Yukon First Nation shall own and manage all heritage resources within their respective settlement lands. These rights are extended to those ethnographic heritage resources of aboriginal origin found within the larger traditional territory of each Yukon First Nation. Heritage sites in the traditional territory of a First Nation will be co-managed by the Government and the affected First Nation who will both be responsible for the issuance of research permits for these areas. The agreement also provides for a priority in the allocation of Government program resources for the development and management of Yukon Indian heritage resources until such time as an equitable distribution of funds between aboriginal and non-aboriginal programs is achieved.

The emphasis on equality present throughout the *Umbrella Final Agreement* is perhaps most obvious in the provision for the creation of a Yukon Heritage Resources Board. Membership on the board is comprised of equal numbers of individuals nominated by the Council for Yukon Indians and of appointees nominated by Government. Its purpose is to make recommendations to the Minister and to Yukon First Nations regarding the development of heritage legislation and a comprehensive strategic plan to ensure the preservation and

management of Yukon heritage resources. The board's recommendations apply to *all* Yukon heritage resources, not only those attributed to the Yukon First Nations. This distinction is significant. It acknowledges that the Council for Yukon Indians has authority equal to that of the Government to make decisions regarding all aspects of heritage and heritage resource management in the Yukon Territory. The Yukon Heritage Resources Board represents a co-operative arrangement between equal governing bodies and as such explicitly recognizes the value of aboriginal perspectives on heritage within a broad territorial context.

In addition to the Yukon Heritage Resources Board, the Council for Yukon Indians' Umbrella Final Agreement also created the Yukon Geographical Place Name Board. The board is composed of equal numbers of representatives from the Council for Yukon Indians and from the Government. Its purpose is to review submissions from individual Yukon First Nations for the naming or re-naming of places or geographical features located within their traditional territory. The creation of such a board recognizes the holistic nature of Yukon Indian heritage which extends beyond objects and sites to entire cultural landscapes.

There are three persistent themes in the *Umbrella Final Agreement between the Government of Canada, the Council for Yukon Indians and the Government of the Yukon* which are stressed in the Heritage chapter. These are consultation, cooperation, and equality. While they are presented here separately, these themes are necessarily intertwined. Recognition as another level of government has given the Yukon Indians power and authority equal to that of the territorial and federal governments. With this equality in status comes the obligation to consult with Yukon First Nations in the creation of legislation, policies and procedures which affect the management of Yukon Indian heritage. While the Yukon First Nations clearly assert ownership and jurisdiction over their heritage resources, the terms of the agreement are drafted in the spirit of cooperation between all parties.

4.3 Aboriginal Involvement in Heritage Management in the Northwest Territories

To date, four land claim agreements have been finalized between the Indigenous peoples of the Northwest Territories and the Government of Canada. These include the Inuvialiut Final Agreement, the Gwich'in Comprehensive Land Claim Agreement, the Sahtu Dene and Metis Comprehensive Land Claim Agreement, and the Nunavut Final Agreement. As might be expected, the extent to which each of these agreements addresses matters of cultural heritage varies.

Completed in 1984, the Inuvialuit Final Agreement (IFA) is the first negotiated land claim agreement in northern Canada. Unlike those agreements which followed, the IFA remains silent on matters of archaeology and heritage issues. It has been suggested that this absence is likely the result of the prevailing political climate at that time rather than a deliberate omission.[6] Regardless of the omission, however, archaeologists and other heritage researchers are still required to obtain a permit in order to gain access to Inuvialuit private lands. Under the land use regulations administered by the Inuvialuit Land Administration these permits may be denied if the proposed research affects Inuvialuit activities in those areas, or if the project is perceived not to be in the Inuvialuit's best interest.

The next northern land claim agreement was completed in 1992 with the settlement of the Gwich'in Comprehensive Land Claim Agreement. Chapter 25 of this agreement deals exclusively with heritage resources including archaeological objects and sites. Its purpose is to ensure that the Gwich'in are actively involved in the conservation and management of Gwich'in heritage resources so that heritage management decisions and policies are reflective of Gwich'in cultural values. The Gwich'in Tribal Council is to be formally consulted in the development of government legislation or policy pertaining to Gwich'in heritage resources in the Mackenzie

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[6] Yellowhorn, E. "Archaeology and the *Sechelt Indian Self-Government Act*," in Nicholas, G. P. and Andrews, T. D. (eds.) *At a Crossroads: Archaeology and First Peoples in Canada*, (Burnaby: Archaeology Press, 1997): 259.

Valley. The agreement also provides for Gwich'in representation on any boards, agencies or committees established to manage Gwich'in heritage resources. Of particular interest to this discussion is the inclusion of Section 25.1.9 which is devoted to the management of proposed archaeological research. All permits dealing with Gwich'in archaeological resources require consultation with the local Gwich'in communities and the submission of a technical and a non-technical report on the work completed in an effort to make the research more relevant to the Gwich'in. With the land claim agreement also came the creation of the Gwich'in Social and Cultural Institute (GSCI). The GSCI was established to promote and preserve Gwich'in culture and language and is now conducting its own traditional knowledge, archaeological, and other heritage studies in the Gwich'in Settlement Area. These studies are designed to encourage awareness and appreciation of Gwich'in knowledge about land, culture, and language and provide an opportunity for elders and youth to work together in identifying culturally significant areas in need of protection. Such projects are considered critical in the social and cultural well-being of the Gwich'in Nation.

Chapter 26 of the Sahtu Dene and Metis Comprehensive Land Claim Agreement (1993) outlines the terms of heritage resource management on Sahtu settlement lands. Like the agreement signed by the Gwich'in, the Sahtu claim recognizes the spiritual, cultural, religious, and educational significance of heritage resources. Many similar sections can be found in both agreements often expressed with the same wording. There is a strong emphasis on the need for the Sahtu Tribal Council to be consulted in the formulation of government policy and legislation with respect to Sahtu heritage resources in the Mackenzie Valley. Sahtu cultural values are to be taken into account in any decisions regarding the use and protection of Sahtu heritage resources. Like the Gwich'in Tribal Council, the Sahtu Tribal Council should be represented on any government boards established to administer or protect Sahtu heritage resources in their traditional territory. All archaeology permits are reviewed by the Sahtu Tribal Council after

consultation between the applicant and the local Sahtu communities and issued only with the consent of the council. Unlike the Gwich'in claim, however, the Sahtu agreement explicitly states that the Sahtu Tribal Council is *responsible* for management of Sahtu historic sites and burials on Sahtu lands, unless otherwise agreed. In addition, the Sahtu agreement establishes a joint working group composed of equal representatives appointed by government and by the Sahtu Tribal Council, with one chairperson selected by all four members. Its mandate is to provide recommendations to government regarding the management of culturally significant Sahtu heritage sites and places.

The Nunavut Final Agreement (1993) is the only northern land claim agreement where archaeology is dealt with exclusively in its own chapter rather than subsumed under the general heading of heritage resources. Article 33 of the Nunavut Final Agreement recognizes that the Inuit have a special relationship with the archaeological record which is expressed in terms of special rights and responsibilities. The agreement states that responsibility for the management and conservation of archaeological sites and specimens should be balanced between the government and the Inuit. It establishes the Inuit Heritage Trust which is responsible for the management and conservation of archaeological sites and specimens within the Nunavut Settlement Area. The Trust is also expected to participate in the development of government legislation on archaeology in the Nunavut Settlement Area and coordinate the disposition of artifacts found on Inuit lands. All permits for archaeological activity are reviewed by the Trust which has the opportunity to object to the application if the proposed project does not include adequate Inuit participation and benefits or includes the disturbance of a site of Inuit religious or spiritual significance. Qualified Inuit contractors are given preferential treatment in any government contract for archaeological work in the Settlement Area. Unlike other current land claim agreements in the Northwest Territories, the Nunavut Final Agreement explicitly refers to

the title of archaeological specimens. It clearly states that the government and the Trust *jointly* own all archaeological specimens that are found within the Nunavut Settlement Area.

The emphasis on heritage resources included in land claim agreements in the Northwest Territories has grown stronger since the Inuvialuit Final Agreement in 1984. In general, there are many similarities among the heritage management provisions of the land claim agreements in the Northwest Territories. There is a strong emphasis on provisions for more Native involvement through greater consultation, the creation of training and employment opportunities and the establishment of heritage management boards or committees. Most of the agreements strive to protect and conserve all aspects of Native heritage including traditional knowledge, archaeology, history, and oral tradition and make it important and relevant to younger generations. There are often a number of provisions included to ensure the repatriation of artifacts of particular spiritual or educational significance and to promote aboriginal place names in an effort to reclaim part of the cultural landscape. It is anticipated that forthcoming land claim agreements will include many of these same provisions and will feature an even stronger emphasis on Native ownership and jurisdiction of Native heritage resources.

4.4 Tribal Management of Archaeological Resources in the U.S.

In recent years the role of tribal authorities in the management of archaeological resources in the U.S. has changed significantly. The introduction of the Native American Graves Protection and Repatriation Act (NAGPRA) (1990) and amendments to the National Historic Preservation Act (NHPA) (1992) have completely altered the way Native Americans and archaeologists interact. Under NAGPRA, Native Americans now have legal ownership of

cultural items such as human remains and funerary objects.[7] It has ushered in a new era of consultation acknowledging that individual archaeologists and government managers no longer maintain total control over the archaeological record. Native Americans now have the legal authority to make decisions as to the management of burials and associated remains with powers greater than those of other concerned parties. The environment created by NAGPRA has been referred to as a "new world order,"[8] one in which communication and understanding between archaeologists, managers and Native Americans can be fostered.

In 1992 amendments to the NHPA served to further the participation of Native Americans in managing archaeology. One of these amendments gave formal recognition to traditional cultural and religious places as historic sites worthy of protection.[9] Together with archaeological resources, other heritage sites of value to Native Americans now also needed to be identified and conserved. This amendment has opened up further opportunities for Native American involvement in the ethnographic research of traditional cultural properties now legally mandated when historic properties are threatened. The second amendment to the NHPA allowed for tribal assumption of functions formerly fulfilled by State Historic Preservation Officers (SHPOs). Currently 15 tribes have assumed SHPO responsibilities including resource inventory, protection, education, planning, and enforcement of the NHPA requirements.[10] Tribal Historic Preservation Officers (THPOs) are expected to comply with professional standards and guidelines in historic as well as archaeological preservation activities. In addition the NHPA also mandates the integration of tribal values with conventional SHPO responsibilities thereby allowing each tribe to cater a preservation program to meet its own particular needs.[11]

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[7] Swidler, N, Dongoske, K. E., Anyon, R and Downer, A. S. (eds.) *Native Americans and Archeologists: Stepping Stones to Common Ground* (Walnut Creek: Altamira Press and the Society for American Archeology, 1997): 18.
[8] Downer, A.S. "Archeologists-Native American Relations," in Swidler, N. et al. (eds.) *Native Americans and Archeologists: Stepping Stones to Common Ground,* 32.
[9] Ferguson, T.J. "NHPA: Changing the Role of Native Americans in the Archaeological Study of the Past," *Society for American Archaeology Bulletin,* 17(1), January 1999: 33.
[10] Ibid., 34.
[11] Ibid.

While NAGPRA and the NHPO have contributed to an unprecedented amount of Native American involvement in archaeological and broader heritage resource management, this involvement remains limited. The authority of NAGPRA applies only to federal and reserve lands. Likewise Tribal Historic Preservation Officers can enforce tribal regulatory processes only within reservation boundaries. Nonetheless these laws represent significant developments for the assertion of tribal sovereignty over heritage resource management.

4.5 Aboriginal Involvement in Different Jurisdictions

The varying roles of aboriginal people in the management of heritage resources in the provinces and the territories are directly related to the political power of aboriginal groups within these jurisdictions. The settlement of land claims in the Yukon and Northwest Territories has completely changed the dynamic of the relationship between native organizations and the federal and territorial governments. In this new relationship both native and non-native governments are encouraged to work together co-operatively as equals. In the area of heritage management this changing relationship has led to a recognition of the need for new legislation and other protective measures which incorporate native cultural values. Provisions of many of the land claim agreements guarantee that heritage management will directly involve and benefit the native people of the territories. Previous definitions of heritage are broadening to include places whose values rest solely in oral histories and the blend of traditional knowledge and science is contributing to a new, more culturally relevant interpretation of the past.

Several factors have contributed to the development of this new relationship. Since the early 1970s the Government of Canada has taken an active role in the negotiation of land claims in the territories. There is a recent history of positive interaction between government and the Native peoples of the territories. In the Yukon and Northwest Territories there is often a higher appreciation of Aboriginal concerns by legislators as well as the general public. Many aboriginal

people continue to live in isolated areas where aspects of traditional ways of life remain prevalent. A small population base relative to that of the provinces may contribute to an environment where there is less competition for land and resources and a greater willingness to negotiate. There has also been considerable experience and success in the co-operative management of natural resources in the territories. These co-operative arrangements acknowledge the important contribution of traditional knowledge in effective resource management and create a situation where aboriginal groups and government are more willing to collaborate.

In the U.S. Native American involvement in archaeology and historic preservation programs has been formalized through the passage of NAGPRA and amendments to the NHPA. These developments have created a situation where aboriginal consultation and participation are mandatory and tribal regulatory processes administered through THPOs now have the force of law. Statistics show that since the implementation of these laws, Native American participation in archaeology has grown to include almost 10 percent of all tribes in the United States.[12] It is only with the formal recognition of the special rights of Native Americans with regard to archaeological resources that this level of participation has been possible. The absence of similar laws to recognize the concerns of First Nations in B.C. continues to preclude the meaningful involvement of aboriginal communities in provincial management processes.

The empowerment of native groups in the territories together with a favorable political climate have made a more collaborative approach to heritage management both possible and necessary. The legal recognition of Native American rights to archaeological resources have laid the foundation necessary for the development of co-operative management. To a large extent none of these conditions exist in the province of British Columbia.

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[12] Ibid.

Without the formal recognition of First Nations as another level of government, as in the Nisga'a Treaty and the provisions of NAGPRA and the NHPA, there is no legal obligation on the part of government or the general public to recognize the heritage permits, policies, and protocols established by B.C. First Nations. In the provincial context, such initiatives can only be formalized at the negotiating table. Currently, compliance is left to the discretion of the individual.

The political climate in British Columbia is uncertain and negotiations, while firmly underway, continue at a slow pace toward completion. The political will of the government is heavily influence by the public whose level of appreciation for Native culture and values is somewhat lower than that in the territories. Results from a recent survey of public opinion on archaeological heritage in B.C. show that while the majority of those surveyed showed an interest in archaeology and heritage issues in the province, they also hold a strong negative attitude toward aboriginal control over matters pertaining to aboriginal heritage.[13] The survey also showed a strong public tendency to associate aboriginal control of heritage with the pursuit of Native land claims. Aboriginal control of any kind is perceived by many as a threat to the stability of the land-based resource economy of the province, a theme which has been prevalent in the media since the ratification of the Nisga'a Final Agreement. In the absence of settled land claims and/or new heritage legislation, many B.C. First Nations are forced to seek alternative opportunities for more involvement in aboriginal heritage management.

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[13] Pokotylo, D. And Guppy, N. "Public Opinion and Archaeological Heritage: Views from Outside the Profession." Revised manuscript submitted to *American Antiquity*, January 1999, pp. 18, 22. (Article in press, *American Antiquity*, July 1999).

4.6 Toward a Detailed Look at Aboriginal Involvement in ARM in British Columbia

The preceding chapters have laid out the historical and legislative context for the development of archaeology and the bureaucratic approach in B.C. established to ensure archaeological resources are *properly* managed. Emphasis has been placed on how current management approaches are largely based on a conventional resource management ethic which is considered inappropriate for archaeological resources and does not accurately reflect aboriginal cultural values.

This chapter has taken a more detailed look at aboriginal approaches to archaeological resource management. Focus has been placed on the key concepts of these approaches and how the extent of aboriginal involvement in archaeological resource management is directly attributable to the level of aboriginal power and authority in different jurisdictions.

The thesis now turns to a more detailed consideration of the theme of aboriginal involvement. Indeed all of the aboriginal permits, policies and treaty provisions previously discussed are expressions of the need for more aboriginal involvement in heritage management. Each of these, however, affords different levels of involvement in which aboriginal groups assume varying roles. The next chapter presents a framework for looking at these different levels and their corresponding roles in greater detail which can then be applied to the case study.

CHAPTER FIVE

A FRAMEWORK FOR ABORIGINAL INVOLVEMENT IN ARCHAEOLOGICAL

RESOURCE MANAGEMENT

This chapter presents an overview of the nature of aboriginal participation in resources management in Canada. A framework outlining a spectrum of participation types and corresponding roles in decision-making is developed to provide a context for the level of First Nations involvement in archaeological resources management. The growing movement towards community-based co-management regimes is discussed as a means of more effectively integrating aboriginal concerns in resources management. The nature of archaeological resources as non-traditional common property resources and the challenges this imposes for the effective co-operative management of these resources are also discussed.

5.1 The Evolution of Aboriginal Participation in Resources Management

The following discussion is not intended to be an exhaustive description of traditional and contemporary aboriginal systems of resource management in Canada. Great diversity exists among aboriginal groups with respect to cultural lifeways and the customs and traditions which guide them. What is presented is a brief account of general cultural traits and values which formed the basis of traditional systems of what we now refer to as 'resource management'. This account is then followed by a discussion of the changing nature of aboriginal involvement in resources management since the introduction of Euro-Canadian property and management structures.

5.1.1 Traditional Systems of Resource Management

Prior to contact with Europeans, aboriginal societies had self-sufficient economies based primarily on the harvesting of renewable resources. This usually involved some combination of hunting, trapping, fishing, and plant gathering. Semi-sedentary societies generally persisted throughout Canada. An annual transhumant settlement and subsistence pattern was practised which emphasized seasonal aggregation and dispersal of people to maximize resource procurement efficiency.

Resources were of a communal nature. Individual self-interest was inextricably linked with tribal or group interests. The general good and the individual good were considered to be identical. Group members defined themselves in terms of a 'spiritual compact' rather than a social contract.[1] This spiritual principle emphasized sharing and cooperation rather than private property and competition.

Collective responsibility for the well-being of all members of society, of future generations, and for the maintenance of all parts of creation constituted the foundation of many aboriginal communities. There was an inherent 'caretaker' responsibility among many aboriginal groups to ensure survival for the seventh generation and for restoring the balance between different elements of life on Earth which relates directly to the principles of fairness and equity.[2]

Traditionally, many aboriginal communities were conscious of the intricacies of the ecosystems within which they lived and had contact with. They had evolved a balance between their needs and those of nature. This balance was and continues to be reflected in their social organizations, their systems of beliefs and their intimate relationship with the land. The concept

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[1] Svensson, F. "Liberal Democracy and Group Rights: The Legacy of Individualism and Its Impact on American Tribes," *Political Studies*, 27 (1980): 432.

[2] Clarkson, L., Morrissette, V. and Regallet, G. *Our Responsibility to the Seventh Generation: Indigenous Peoples and Sustainable Development* (Winnipeg: International Institute for Sustainable Development (IISD), 1992): 4.

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of sustainability, now recognized as necessary for our future development, formed an integral part of most indigenous cultures.

Respect for nature was imperative for the survival of aboriginal cultures. Natural laws provided the limits and constraints within which aboriginal cultures could exist. Through experience and knowledge passed down from past generations, aboriginal peoples were aware of what the environment had to offer, how much it would give and at what times it was prepared to do this. These laws are reflected in traditional aboriginal institutions and systems based on the extended family, decision-making through consensus, and careful divisions of labour. Such systems were essential for survival and reinforced the value of sharing, social cohesion, respect for life, and an intimate connection to the land and its resources.

Traditional aboriginal cultural systems perceived nature as a living system. Many aboriginal people saw themselves as just another species living on the land, on an equal footing with other species. There existed a profound sense of empathy and kinship with other forms of life rather than a sense of separateness from them and superiority over them. There was a sense of complete oneness with the totality of a living natural world.

Traditional aboriginal worldviews tended to emphasize the cyclic, temporal processes of nature that sustained all life. Time was considered to be circular with the present inextricably linked to the past as well as the present. Rituals, myths, taboos, and traditions acted as constant reminders of the interconnectedness of all living and spiritual beings. Everything that aboriginal people did was believed to have consequences for something else in the natural world. This circular pattern of thinking reinforced the intimate relationship between aboriginal people and Creation. This concept of time promoted a responsibility and accountability to those who came before and the messages they had handed down. This responsibility also extended to future generations whose survival would depend upon ongoing sustainable interaction with the environment.

5.1.2 Aboriginal Resource Management in the 20th Century

Both European and aboriginal worldviews hold tightly to contrasting conceptions of the definition of resources and what constitutes a workable arrangement for the sustainable management of resources. The conventional European view of resources as common property has been discussed at some length by Grima and Berkes[3] who link its development to the culture of colonial expansion so prevalent over the last few centuries. They contend that Europeans developed their own particular view of land and resources over many centuries. This view assured that resources were used to their fullest potential and served to further support their colonial interests and capitalism very well. Resources were exploited to serve the self-interested profit-driven goals of Europeans. Not to use these resources would have been considered "wasteful".

Grima and Berkes suggest that part of the conception of resources at this time was based on the fact that colonial-era Western man considered himself to be a superior being, essentially the master of his own environment. This view of land and resources served to reinforce the belief that Europeans had achieved an advanced level of civilization and justified the colonization of America whose indigenous populations had not reached, and were deemed incapable of achieving, the same level of 'development'.

This colonial view of land and resources persists, albeit in a more subtle way, and has become enshrined in contemporary approaches to resource management. In contrast to this Western perception of the environment, many aboriginal people continue to see the natural environment as sacred. As such many Native people feel it should be treated with reverence and respect. There is in this perception of holiness an inherent responsibility for its maintenance and protection.

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[3] Grima, A.P.L. and Berkes, F. "Natural Resources: Access, Rights-to-Use and Management," in Berkes (ed) *Common Property Resources*, 37.

Western thinking, however, does not relate to this responsibility on the same level. The relationship in this case is secularized. The environment is no longer considered under the sacred control of nature but is now controlled by humans. This perspective does not entail a harmonious relationship between humans and nature. Instead, entire landscapes are perceived as hostile frontiers to be conquered and tamed. Humans are considered to have dominion over and possession of the natural environment. It becomes individual rather than communal property to be exploited at will for personal gain. Competition and 'progress' form the guiding principles of this Western perspective.

Until recently aboriginal voices had been essentially excluded from any kind of significant participation in resource management in Canada. Conventional management systems continue to be deeply routed in a western scientific perspective which often fails to recognize the value of aboriginal knowledge because the cultural and religious forms in which it is recorded and transmitted are considered to be unscientific and consequently illegitimate. In many circumstances aboriginal knowledge is considered to be primitive, superstitious and naïve.

It is conventional wisdom in the West that western technological society is superior to traditional aboriginal society. The western dominant perspective intentionally ignores and minimizes all other perspectives assuming itself to be correct above all others. Knudtson and Suzuki comment:

> According to modern science, the further back in time we go, the more erroneous are men's conception of the world. Modern consciousness regards the thinking of previous ages not simply as other legitimate forms of consciousness, but as misguided worldviews that we have happily outgrown.[4]

Indigenous knowledge is associated with the ways of the past. Traditional knowledge and associated subsistence activities are often considered inefficient and wasteful when they may in fact be the most appropriate and efficient mode of production for particular areas.

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[4] Knudtson, P. and Suzuki, D. *Wisdom of the Elders* (Toronto: Stoddart Publishing, 1992): 132.

The essential point here is that the conventional view of resources and the management structures derived from it are cultural phenomena which have suited western civilization well and served its interests. While these views form the basis of contemporary approaches to resource management they remain merely cultural phenomena, restricted to western thinking and as such may not be appropriate in all contexts. While such wisdom may have maintained stable management regimes for many years, the recurrent failures of conventional approaches suggests that other forms of knowledge may be necessary.

In the past few decades the growing number of resource crisis situations together with strong environmental and aboriginal movements have led to a greater willingness on the part of resource managers to incorporate alternative views. Noztke[5] notes that a recognition of the need to fundamentally rethink established western resource use practices and power structures is gradually permeating many sections of North American society. She contends that this rethinking has opened up many communication channels between aboriginal and non-aboriginal stakeholders in the environment and rendered a two-way exchange of environmental knowledge increasingly attractive and feasible. She relates this growing interest in traditional knowledge and experience to the 1987 Brundtland Report by the World Commission on Environment and Development. This report was the first of its kind to acknowledge the contribution which aboriginal people are able to make towards sustainable development and effectively endorsed aboriginal self-government with regard to natural resources.

Unlike at any other time before, the 1980s and 1990s have witnessed a growing opportunity on the part of aboriginal people to practise, develop, preserve and share their ideas and experiences in sustainable resource management. Traditional environmental knowledge has become particularly significant in this age of environmental crisis. While the recognition and

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[5] Notzke, C. *Aboriginal Peoples and Natural Resources in Canada* (North York, Ontario: Centre for Aboriginal Management Education and Training (CAMET), Claudia Notzke and Captus Press Inc., 1994): 3.

integration of this knowledge is still a slow process with numerous obstacles, Notzke[6] remains optimistic stating that government resource managers and policy makers are now increasingly willing to listen to what aboriginal resource users want to say and to devolve part of their decision-making power.

This devolution of decision-making power and increasing willingness to listen to and incorporate aboriginal perspectives in resource management have resulted in numerous co-management arrangements being established throughout Canada.[7] While some of these new management arrangements may involve an equal sharing in resource decisions others may simply involve token aboriginal involvement and information sharing. The level of aboriginal involvement tends to vary from one context to another depending upon the nature of the resource and the political, cultural and economic environment which surrounds it.

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[6] Ibid., 4.
[7] Various accounts of Aboriginal involvement in co-management agreements in Canada are given in Notzke, C *Aboriginal Peoples and Natural Resources in Canada*; Osherenko, G. *Sharing Power with Native Users: Co-management regimes for Arctic Wildlife* (Ottawa: Bonanza Press Limited, 1988); Freeman, M.M.R. and Carlyn, L. N. (eds) *Traditional Knowledge and Renewable Resource Management in Northern Regions* (Edmonton: Boreal Institute for Northern Studies, 1988); Benidickson, J. "Co-management Issues in the Forest Wilderness: Stewardship Council of Temagami," in Ross, M. and Saunders, J.O. (eds.) *Growing Demands on a Shrinking Heritage: Managing Resource-Use Conflicts* (Calgary: Canadian Institute of Resources Law, 1992); Monoghan, H. J. "The Caribou Management Board and Its Early Growth," in Canadian Arctic Resources Committee *National and Regional Interests in the North: Third National Workshop on People, Resources, and the Environment North of 60°* (Ottawa: Canadian Arctic Resources Committee, 1983); Freeman, M.M.R. *Proceedings of the First International Symposium on Renewable Resources and the Economy of the North* (Ottawa: Association of Canadian Universities for Northern Studies, 1981); Pinkerton, E. W. *Co-Operative Management of Local Fisheries: New Directions for Improved Management and Community Development* (Vancouver: UBC Press, 1989); and and Pinkerton E. W. and Weinstein, M. *Fisheries that Work: Sustainability Through Community-Based Management* (Vancouver: The David Suzuki Foundation, 1995).

5.2 Developing a Framework of Aboriginal Involvement in Resources Management

The previous section has presented an overview of the contrasts between traditional aboriginal conceptions of the environment and western views of land and resources. It has been shown how these differences have resulted in widely divergent models of resource management that have until recently remained largely separate from one another. Crises resulting from conventional resource management regimes have prompted some resource managers to seek alternative modes of environmental knowledge. Recent resource management regimes have witnessed a growing trend toward the integration of traditional environmental knowledge and an overall higher level of aboriginal involvement in resource decisions.

This section develops an analytical framework to illustrate the range of aboriginal roles and levels of participation in contemporary resource management decisions. The framework is developed from a few well established public participation spectrums and adapted to fit aboriginal experiences in resource decisions. For the sake of convenience, each of these spectrums has been presented separately. Firstly, Arnstein's ladder of citizen participation is discussed as the earliest model of public participation and the foundation upon which other models were built. This discussion is followed by a presentation of Berkes' continuum of co-management arrangements and its various elaborations upon which the new framework for aboriginal involvement is closely based. While each of the models is presented separately, many of the underlying principles of each frequently overlap.

5.2.1 Arnstein's Ladder of Citizen Participation

Sherry Arnstein's model of citizen participation is often considered the seminal work on the conceptualization of public participation. The model continues to be cited in recent publications and taught in classrooms today, nearly 30 years after it was first widely published.

Its longevity is based largely on the simplicity of the model and the universality of the ideas it represents.

Arnstein's model is based on a typology of citizen participation in U.S. federal social programs. In it citizen participation is conceived of as a ladder with each rung corresponding to the extent of citizens' power in determining public plans or programs. It rests on the assumption that citizen participation would climb as a linear extension of the rights of citizenship. Arnstein views citizen participation as a term for citizen power with society divided into 2 distinct categories: the 'have' who possess the power to influence their future (the affluent) and the 'have-nots' who are considered powerless to affect public decisions (the poor). According to Arnstein, citizen participation involves "the redistribution of power that enables the have-not citizens, presently excluded from the political and economic processes, to be deliberately included in the future; means by which they can induce significant social reform which enables them to share in the benefits of the affluent society"[8].

Arnstein suggests that in many cases the 'have-nots' are engaged in an empty ritual of participation without being given any real power to affect the outcome of the process. Participation without the redistribution of power is seen as a frustrating process for the 'have-nots' especially when these processes serve only to maintain the status quo.

Arnstein's ladder illustrates a simple point never before articulated: there are significant gradations of citizen participation. The eight rungs in the ladder serve to encapsulate these gradations of participation. She feels that such a ladder is equally applicable in any situation where "the underlying issues are essentially the same – 'nobodies' in several arenas are trying to become 'somebodies' with enough power to make the target institutions responsive to their views, aspirations, and needs"[9].

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[8] Arnstein, S.R. "A ladder of citizen participation," *Journal of the American Institute of Planners* 35 (1969): 216.
[9] Ibid., 217.

While there are only 8 rungs on the ladder of citizen participation she admits that there could be as many as 150 rungs to represent more subtle distinctions in a citizen's ability to influence the 'end product' of any policy or process. The 8 rungs which are presented signify varying degrees of nonparticipation and tokenism (rungs 1 to 5) to the exercise of real citizen power (rungs 6 to 8). Each of these is summarized in Figure 1.

Citizen Control	
Delegated power	Degree of Citizen Power
Partnership	
Placation	
Consultation	Degree of Tokenism
Informing	
Therapy	
Manipulation	Nonparticipation
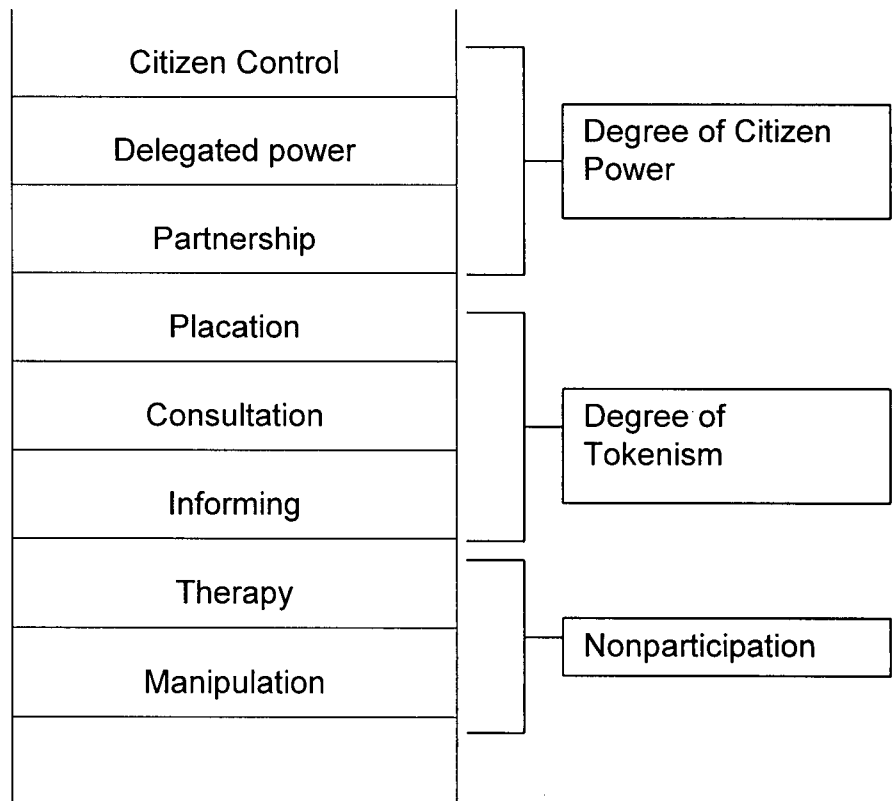
Figure 1. Arnstein's Ladder of Citizen Participation.

Arnstein's ladder typology has had considerable influence on conceptual thinking in the realm of public participation. According to Abbott[10] the ladder represents 4 themes which are central to many of the public participation models which followed. Firstly, the ladder reinforces the notion of duality through its distinction between the 'have' and the 'have-nots'. She stresses the point that participation is "of the governed in their government"[11]. Secondly, the ladder illustrates the notion of intensity, with each of the rungs corresponding to the different degrees to which people can become involved in decision-making processes. At different rungs governments can support, manipulate, reject or neglect people's demands. The ladder of participation suggests that government attitude is essential in determining the potential results of citizens' efforts.

The third important aspect of Arnstein's typology is in her view of power as that which is granted from governments to citizens in a simple transfer from top to bottom. The degree of citizen power is directly related to the openness of government to the inclusion of citizens in the decision-making process. The final important aspect of Arnstein's work is in the placement of power within the framework of a continuum. As mentioned earlier, while only 8 rungs are identified, there is a realization of the potential for many other gradations of power between these. The ladder effectively illustrates a power continuum whose opposite poles are manipulation and citizen control. Perhaps above all others, this final aspect of Arnstein's typology has become a widely accepted tenet of public participation, highly evident in nearly all of the participation models which followed.

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[10] Abbott, J. *Sharing the City: Community Participation in Urban Management* (London: Earthscan Publications Ltd., 1996): 35.
[11] Arnstein, S.R. "A ladder of citizen participation," 216.

5.2.2 Berkes' Spectrum of Co-management

Following Arnstein's example, Berkes' model of public participation also features a continuum of involvement. Developed in an aboriginal context, Berkes' continuum focuses predominantly on varying amounts of power and responsibility sharing, from limited amounts of local participation in government management to the delegation of full management authority to the local level. In Berkes' model, state-level and local-level management fall at opposite extremes of a continuum much like the rungs occupied by manipulation and citizen control in Arnstein's ladder.

Berkes refers to the various degrees of integration of local- and state-level systems within his continuum as co-operative management or 'co-management'. He stresses that while the ideal type of co-management involves shared decision-making power by partners and the devolution of government power to the local level, in reality what exists are a wide variety of partnership agreements which involve varying degrees of power-sharing.[12]

In the context of co-management between government and aboriginal peoples; Berkes makes a clear distinction between state-level and local-level systems. In this model state-level management is carried out by some centralized authority such as a federal or provincial agency. Its management ethic is based on scientific data and analysis and enforces its authority through government laws and regulations. In contrast, local-level systems are decentralized. They tend to be consensus based and can usually be managed effectively through self-regulation and social sanctions. Local systems are more likely to be based on traditional ecological knowledge and to enforce rules locally.

Citing traditional local-level management systems in the Canadian North, Berkes[13] notes that such systems are often embedded in the local social/cultural milieu. Hunters, for example,

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[12] Berkes, F. "Co-management: Bridging the Two Solitudes" *Northern Perspectives* 22 (2-3), (1994): 18.
[13] Ibid., 18.

are considered both the users and the managers of wildlife. Management functions are specific to the local area and are guided by moral and ethical concerns. On the other hand, state-level management involves the separation of the user from the manager, nature from culture, and the objective data from the subjective. In many cases government managers are inclined to disregard local-level systems based on customary practice and traditional ecological knowledge in favour of more scientifically 'valid' approaches to resource management.

Using Arnstein's terminology, the 'have' citizens in Berkes' spectrum of co-management could be seen to correspond to government managers who, as representatives of a centralized authority, hold the power to make decisions and enforce regulations. In the same theme, the 'have-not' citizens in many of the cases discussed by Berkes usually refer to local aboriginal communities whose local authority continues to be undermined by outside government forces.

In an aboriginal context, conflicts between the state-level and local-level management systems and the 'have' and the 'have-nots' are largely reflective of fundamental cultural and philosophical differences. On a more practical level, however, these conflicts are deeply rooted in on-going and often frustrating land and resource claims. Underlying Berkes' model showing gradations of power and responsibility sharing are the critical and contentious issues of property rights and resource ownership. In many cases these rights are related not only to the question of access to resources but are considered central to issues concerning the social and economic health, resource conservation, and self-government in aboriginal communities, particularly in northern regions.[14]

In the interest of 'better' management, state-level systems have essentially transformed that land and its resources, considered communal property to aboriginal groups, to state property to be controlled for the greater public interest. In a highly paternalistic fashion, governments

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[14] Ibid., 19.

have appropriated the role of traditional systems and underestimated the capabilities of local-level resource management based on many generations of culturally transmitted learning.

While both state-level and local-level management systems can be said to be two ideal types of management, what exists in reality are various combinations of both of these systems. Within the last two decades, the rapid rate of development activity, resources crises, increased political pressure, and land claims settlements have resulted in a number of hybrid approaches to resource management. Berkes has encapsulated these into 7 levels of co-management ranging from low levels of power sharing where informing and consultation take place, to increasing levels of real power sharing in which joint decision-making takes place between equal partners. Each of these co-management levels is presented in Figure 2.

7	Partnership/Community Control	Partnership of equals; joint decision-making institutional-ized; power delegated to community where feasible
6	Management Boards	Community is given opportunity to participate in develop-ing and implementing management plans
5	Advisory Committees	Partnership in decision-making starts; joint action on com-mon objectives
4	Communication	Start of two-way information exchange; local concerns begin to enter management plans
3	Co-operation	Community starts to have input into management, e.g., use of local knowledge, research assistants
2	Consultation	Start of face-to-face contact; community input heard but not necessarily heeded
1	Informing	Community is informed about decisons already made.

Figure 2. Berkes' Levels of Co-management.

Berkes' spectrum of co-management provides a useful way of conceptualizing the nature of aboriginal involvement in resource management decisions. It focuses not only on the levels of power sharing as a continuum but also addresses the unique interrelationship between local-level or aboriginal management and state-level or governmental management. The choice of levels or rungs of co-management effectively illustrates a transformation in the role of an aboriginal community from one of passive or limited involvement in resource management to that of active or full participation in decision-making.

5.2.3 Elaborations on Berkes' Model

In her discussion paper on the nature of co-management of aboriginal resources, Tracy Campbell[15] uses Berkes' co-management model to highlight the different kinds of co-management operating at both the provincial and territorial levels in Canada. She contends that the widespread use of the term co-management to refer to any kind of dispute resolution arrangement used for resources management, from token consultation to a partnership of equals, can be very misleading.

Campbell points out a direct correlation between the political and legislative context of resources and the level of co-management functioning within territorial and provincial boundaries. She cites the Inuvialuit Final Agreement (1984) as the first comprehensive settlement in the territories to feature the creation of successful co-management committees that involve aboriginal peoples as equal partners in decision-making. Later land claim settlements in the North such as the Council of Yukon Indians Agreement (1990), the Gwich'in Agreement (1992), the Sahtu/Dene/Metis Agreement (1993) and the Nunavut Agreement (1993) also included similar arrangements for the joint management of resources. She attributes the success

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[15] Campbell, T. "Co-management of Aboriginal Resources" *Information North* 22(1) (March 1996).

of co-management in these territorial agreements to the clarification of rights and access to land and resources surrounding aboriginal communities formalized in the land claims process. Campbell emphasizes this point stating that "First Nations in the territories have a legally defined place at the negotiating table to develop, implement, and institutionalize co-management structures, which in turn, gives them a clear voice in the process of resource management and development"[16].

In contrast to the territorial situation, aboriginal resource rights in the provincial context remain largely ill-defined. Treaty rights to resources are not explicit and subject to varying legal interpretations. In British Columbia where few historical treaties exist, conflicts over resource rights and ownership continue to be played out in the judicial system and in land claims negotiations, often at what seems glacial speed. In a few limited instances, legal cases regarding traditional aboriginal use of resources, such as *Sparrow,*[17] have served to clearly define resource rights in favour of First Nations. In the general absence of legally defined aboriginal rights, however, co-management arrangements in the provincial setting continue to be formulated. According to Campbell, such arrangements are usually confined to the lower levels of authority transfer in Berkes' co-management spectrum, at the opposite extreme of co-management operating in Northern land claims agreements.

Pinkerton[18] discusses another way of conceptualizing the range of local/state accommodations depending on what aspect of a particular management situation is being illustrated. Her schematic illustrates a vertical range of local/state accommodations where the government is perceived as holding all of the legal authority and power but voluntarily devolving

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[16] Ibid.

[17] *R. v. Sparrow* [1990], 1 S.C.R. 1075. The Supreme Court of Canada's decision in this case established the priority of aboriginal fishing rights. The court in this decision also ruled that aboriginal and treaty rights are capable of evolving over time and must be interpreted in a generous and liberal manner.

[18] Pinkerton, E.W. "Summary and Conclusions," in Dyer, C.L. and McGoodwin, J. R. (eds.) *Folk Management in the World's Fisheries: Lessons for Modern Fisheries Management* (Niwot, Colorado: University Press of Colorado, 1994): 317-337.

limited management responsibilities to local bodies. This model is much like that of Arnstein's ladder and Berkes' co-management spectrum involving a top-down approach to state management and co-management where power essentially moves down from the state to local communities. Pinkerton's continuum is simple yet powerful with state management and local management at either extreme and various levels of co-management or power sharing in between.

5.2.4 A New Framework for Aboriginal Participation

This section presents a new framework for aboriginal participation in resource management decisions based upon an adaptation of those models previously established by Berkes (1994), Campbell (1996) and Pinkerton (1994) and discussed above. In addition to the 7 levels of co-management presented by Berkes, this new framework includes an eighth level of aboriginal participation involving complete community control. Examples of some of the general types of aboriginal participation have been borrowed from Campbell's model and elaborated to include all 8 levels of involvement. Pinkerton's continuum of state, local, and co-management has also been incorporated into this new framework. Figure 3 shows the combination and adaptation of each of these models and includes a separate component to illustrate the range of aboriginal roles in decision-making. A sampling of specific aboriginal co-management initiatives in Canada is presented in Table 3.

Unlike the other participation models cited above, this framework involves a horizontal rather than a vertical continuum of participation levels. This orientation is intended to de-emphasize the top-down approach which has become so prevalent in participation models. Instead, the focus of this new framework is on the balance or *sharing* of power between aboriginal communities and the state or industry, rather than on the *transfer* of power to enable aboriginal participation.

Figure 3. Levels of Aboriginal Participation

Type of Participation	1. Informing	2. Consultation (tokenism)	3. Co-operation	4. Communication	5. Advisory Committees/Councils	6. Management Boards	7. Partnership	8. Community Control
Characteristics	Community is informed about decisions already made; one-way communication between government agencies and the community.	Start of face-to-face contact; community input heard but not necessarily heeded (usually involved late in the decision-making process); limitations of involvement continue to be set by the government agency	Community starts to have input into management; local knowledge is solicited; community members are involved at a low level as assistants or guides; still limited by management agency's agenda	Start of two-way information exchange; local concerns begin to enter management plans; joint action on common objectives; local communities have advisory powers only, decisions are non-binding	Partnership in decision-making given the opportunity to participate in developing and implementing management agreement plans; communities have advisory powers only, decisions are non-binding	Community is given the opportunity to participate in decision-making; institutionalized and formally recognized; control delegated to the community where feasible; more than just an advisory role	Partnership of equals; joint decision-making independent of government or with very limited governmental involvement; most or all of the management power is formally delegated to the community for local resources	Aboriginal groups can make decisions independent of government
Examples	First Nations participation within the provincial setting (Provincial land use referral system)		Agreements between Aboriginal groups and private resource companies (joint forestry initiatives such as Tsi Del Enterprises and Tsilqot'in Forest Products) and First Nations and government agencies and communities including Aboriginal participation in broad land-use planning initiatives (LRMPs, CORE) and research projects.		Co-management operating within Northern Land Claim Agreements; Joint Resource Boards in Inuvialuit, Sahtu, and Gwich'in Agreements; James Bay and Northern Quebec Agreement for wildlife and fisheries management.		Nunavut Final Agreement (in 1999 Nunavut became a separate territory and assumed resource management in its borders)	

Management Regime

Government Management ———→ Co-management ———→ Community or Local Management

Aboriginal Role in Decison Making

Participation as a citizen, as an interest group, as a stakeholder, or another level of government
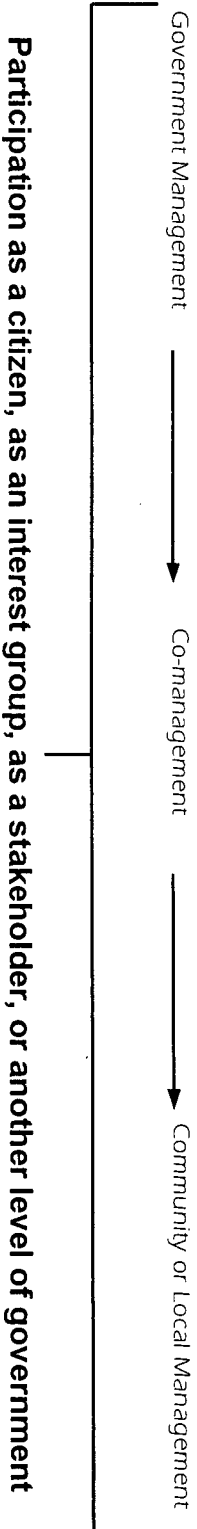
Figure 3. Levels of Aboriginal Participation (Adapted from Berkes *et al.* 1991, Campbell 1996, Pinkerton 1995)

Type of Participation	Co-management Arrangements
Co-operation: Community starts to have input; community members involved as assistants or guides	-Salmonid Enhancement Program
Advisory Committee/Council: Participation in decision-making starts; advisory powers only	-Skeena Watershed Committee -Skeena Fisheries Commission -James Bay and Northern Quebec -Agreement: Coordinating Committee on Hunting, Fishing and Trapping -Inuvialuit Final Agreement: Wildlife Management Advisory Committee -The Beverly-Kaminuriak Barren Ground Caribou Management Board -Waterhen Moose Management Board -NorSask Forestry Co-management Partnership
Management Board: Community participation in developing and implementing plans	-Kennedy Lake Salmonid Technical Working Group -Hecate Logging: co-venture between the Nuu-chah-nulth Band and a non-native forestry company -Tsi Del Del Enterprises: co-venture between the Alexis Creek Band and Riverside Forest Products -Tsilqot'in Forest Products: co-venture between the Tsilqot'in National Government and West Fraser Mills -Hook Lake Wood Bison Management Plan -Northern Buffalo Management Board -Sipanok Area Management and Development Agreement
Partnership: Joint resource boards with equal aboriginal and government representation	-Nunavut Final Agreement: Nunavut Water - Board, Nunavut Wildlife Management -Board; North Baffin Island National Park -Inuvialuit Final Agreement: Fisheries -Joint Management Committee; Ivvavik National Park -Archipelago Management Board: Gwaii Haanas Park -Vuntut Gwich'in Final Agreement: Vuntut National Park

Table 3. A sampling of existing Aboriginal co-management resource systems in Canada.

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A horizontal continuum is also employed to provide more emphasis on the fluid nature of aboriginal roles in decision-making. This method of representation more accurately displays the highly variable nature of aboriginal roles within each level of participation. These roles tend to change depending upon the specific nature of the resource, the social, political, and cultural context which surrounds it and the range of associated management functions. Any one level of participation or related management regime has the potential to include several kinds of power sharing and involve aboriginal groups in a number of decision-making roles.

A brief description of the different types of participation and aboriginal roles in decision-making included in the framework is presented below.

5.2.4.1 Types of Participation

The following descriptions are based largely on the work of Berkes, George and Preston (1991).

(1) **Informing:** This is the lowest level of aboriginal participation in resource management decisions. It involves the one-way communication between government agencies to the users about rules and regulations affecting resource use. Technical jargon may be used and some input may be sought from local users but complete control and management of the resource is centred within a government agency. The resource managing agency may perceive local users as being incapable of contributing to the management efforts. Local users are usually involved late in the decision-making process after many decisions have already been finalized.

(2) **Consultation:** Often referred to as tokenism, consultation typically involves explicit efforts by the managing agency to acquire input from resource users and may involve face-to-face discussions. The agenda and limitations of this involvement continue to be set by the

government agency. While an opportunity is provided for local people to share their concerns with resource managers, there is no assurance that local concerns will be understood or heeded.

(3) **Co-operation:** This level of participation involves more than just talk. In some cases local environmental knowledge is actively sought. The use of aboriginal research assistants falls into this stage. It is important to note that research continues to be conducted according to the government's agenda and local users are usually involved at a low level as assistants or guides.

(4) **Communication:** At this level, 2 way communication begins, leading to the potential inclusion of community concerns into research agendas and resource management decisions. Decision-making power continues to rest with the government but local concerns begin to be treated more fairly. Local knowledge may be used to address community concerns instead of only externally defined research needs.

(5) **Advisory Committees/Councils:** The establishment of committees or councils marks the stage at which effective partnership in decision-making may start. There is an agreement to share responsibility for resource management and work together toward the implementation of common objectives. Often such joint bodies are the result of land claims negotiations or an attempt to deal with irreconcilable differences. Advisory committees or councils often have advisory powers only and are limited to making non-binding decisions. In some instances this level may represent a government or development agency's effort to provide for greater aboriginal participation with no intent for sharing in decision-making about the resource.

(6) **Management Boards:** The formalization of management boards represents the first level of co-management where local input plays more than just an advisory role in resource decisions. These boards typically involve equal representation of government and resource users. Board decisions are usually binding though government typically retains ultimate jurisdiction over the resource. At this level resource users can effectively become decision-makers rather than merely advisors or makers of recommendations.

(7) **Partnership:** At this level aboriginal communities are increasingly perceived as another level of government. Decision-making involves a partnership of equals and joint decision-making becomes fully institutionalized. Formal agreements often define the roles and responsibilities of each party in managing the resource.

(8) **Community Control:** This is the highest level of aboriginal involvement in resource decisions. Most or all of the management power is formally delegated to the community for local resources. Some Northern land claims agreements provide for exclusive rights and management responsibilities over resources. Berkes, George and Preston characterize this level of participation as involving "as much local-level management as possible; only so much government regulation as necessary"[19].

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[19] Berkes, F., George, P., and Preston, R. *Co-management. The evolution of the theory and practice of the joint administration of living resources.* (Hamilton, Ontario: Mc Master University, 1991)

5.2.4.2 Changing Aboriginal Roles in Decision-Making

The different aboriginal roles in decision-making featured in the framework are discussed below. Again emphasis is placed on the fluidity of these roles within any decision-making context. Roles are not mutually exclusive; any level of aboriginal participation may involve any one or a combination of these.

Participation as a Citizen: Aboriginal people have the democratic right to vote in local, provincial, and federal elections. This right is a relatively new privilege granted in 1961. In the role of citizen aboriginal people have the opportunity to voice their opinions through a very limited and constrained electoral process. Issues of interest have been set by political parties and may not be reflective of aboriginal concerns. In the role of citizens aboriginal people are indistinct and often considered part of a much larger homogeneous public.

Participation as an Interest Group: As an interest group aboriginal people assume a more distinct identity. They share an interest in common which is directly associated with the property they bear as members of a group. This property distinguishes them from other groups with common interests. One way of viewing society then is as a patchwork of different interest groups each with distinct interests. There is limited public recognition of aboriginal people as a community of interest with special concerns.

Participation as a Stakeholder: As a stakeholder in decision-making aboriginal people are viewed as an interest group involved in a specific activity with a well-defined agenda. In this role there is a growing recognition of aboriginal people as a legitimate voice with valuable contributions that need to be included in decision-making processes. There are varying degrees

of inclusion or recognition depending on the role of aboriginal people as primary, secondary or token stakeholders.

Participation as Another Level of Government: As another level of government aboriginal people are recognized as a legitimate political community that have a distinct territorial base and enjoy an historical continuity. It suggests that aboriginal people have a common past and a shared destiny for which they are collectively responsible. In this role aboriginal people are seen to possess an established set of rules and cultural norms and conventions. There are varying levels of recognition of aboriginal government rule or authority over a designated area depending on the political and legal context of the decision-making process.

5.3 Aboriginal Involvement in Archaeological Resource Management (ARM)

The purpose of this section is to trace the level of aboriginal involvement in ARM using the framework presented above. Particular attention will be placed on aboriginal participation in ARM in British Columbia.

Aboriginal involvement in ARM in British Columbia is largely confined to the first three levels of participation as laid out in the framework. Informing and limited consultation regarding proposed archaeological research consistently take place as a requirement of Section 12 (3) (b) of the *Heritage Conservation Act (HCA)* (1996). This part of the *HCA* requires a potential permit holder "to consult with or obtain the consent of one or more parties whose heritage the property represents or may represent"[20] prior to the issuance of any permits to conduct archaeological work.

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[20] Province of British Columbia, *Heritage Conservation Act* (1996), Chapter 187, Section 12 (3) (b).

Typically this consultation is conducted by the Planning and Assessment Department of the Archaeology Branch, Ministry of Small Business, Tourism and Culture. Permit applications are referred to appropriate aboriginal Bands and/or other parties with an interest in the land subject to the proposed permit and general comments are requested within 15 to 30 days of the referral date. Aboriginal responses to these requests tend to range from no response, to refusal in the form of a declaration of aboriginal rights and title to the subject land and its resources, to consent or approval of the permit application. In most cases permits are granted after the designated waiting period, regardless of the nature of aboriginal responses.

The nature of aboriginal involvement in the ARM in British Columbia involves a number of elements from both the informing and consultation participation types outlined in the framework. Consistent with participation at the informing level, permit application referrals are full of technical jargon or 'archaeology-speak'. Applications are highly standardized. Little effort is made to make the contents of these documents relevant in a First Nations context. The format of the information contributes to the alienation of First Nations from meaningful involvement in ARM. The limitations of aboriginal involvement continue to be set by the Archaeology Branch which administers those sections of the *HCA* which pertain to archaeological resources.

As is the case with many other consultation processes, input is sought from First Nations but in very prescribed ways. While comments are explicitly requested, there is no assurance that First Nations concerns will be addressed or understood. There is little opportunity in the permit referral process to adequately address First Nations' values towards archaeological resources. This type of involvement has been perceived by many First Nations as a form of tokenism which serves only to fulfill the government's legal obligation to consult with First Nations. In this kind of participation First Nations remain essentially powerless to affect the results of the permitting process.

During the permitting process, face-to-face contact between First Nations and government managers rarely takes place. Communication is normally characterized by written correspondence between government bureaucrats in Victoria and aboriginal representatives scattered throughout the province. Face-to-face contact is more likely to occur between archaeologists and First Nations. In many cases archaeologists have developed working relationships with First Nations in an effort to address aboriginal concerns regarding ARM and facilitate community involvement in research projects. It has become common practice on the part of many archaeologists to employ First Nation community members as field work and research assistants. Traditional use knowledge is often sought from local aboriginal informants. The kind of information collected, however, is usually confined to previously established research agendas and is rarely amended to include the research needs of First Nations.

First Nations participation in ARM as research assistants and local informants corresponds well with the third level of aboriginal involvement known as co-operation. While First Nations are actively involved in research and management activities, this level of involvement is typically at a low level and continues to be limited by the agenda of others.

5.3.1 Towards Increasing Recognition as Another Level of Government

The experience of First Nations in ARM in British Columbia is perhaps best described by Arnstein who states that "...participation without redistribution of power is an empty and frustrating process..."[21]. This frustration has led many First Nations to develop their own community-based cultural heritage policies and permits. Such initiatives essentially serve to by-pass all of the intermediate forms of participation in an effort to achieve complete community

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[21] Arnstein, S.R., "A ladder of citizen participation" 216.

control over the management of archaeological resources in their traditional territories. In the absence of any attempt on the part of the provincial government to involve First Nations on any greater level of participation, these initiatives present the only opportunity for First Nations to effectively express their interest to control the resource.

While these policies and permits are specific to the needs and values of First Nations, they often perform management functions parallel to those instituted by government. The number of these policies and permits have increased significantly over the past decade, yet they remain largely unrecognized by the provincial government whose actions continue to be guided by the provisions of the *Heritage Conservation Act* (1996). At this time both aboriginal and provincial policies continue to co-exist with the Province retaining ultimate jurisdiction over the management of archaeological resources.

The role of First Nations in decisions concerning ARM tends to vary and is often very situation-specific. In the provincial permit referral process, First Nations are considered to be legitimate stakeholders in matters affecting archaeological resources in their traditional territories. While their inclusion in the process endorses their role as stakeholders, their lack of influence to affect decisions limits their involvement to that of a concerned interest group.

On a more local level the dynamics of the situation again change and with them the role of First Nations in ARM. At the community level individual archaeologists are generally inclined to respect aboriginal heritage policies and protocols as are many resource developers. Whether through genuine concern for First Nations issues or out of their own self-interest to facilitate successful working arrangements, their compliance with aboriginal policies effectively recognizes the authority of First Nations as another level of government[22]. As greater contact on

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[22] A similar level of recognition may also be achieved through increased political pressure, confrontation or violence [e.g. Adams Lake road block (1994) and Gustafson Lake standoff (1995)], or through legal decisions which clearly define resource rights and ownership [testing of the Delgamuukw (1997) decision].

a local level occurs compliance with these policies and protocols become commonplace and serve to further reinforce First Nations as third level of government.

5.4 The Movement Towards Community-based Co-management

Having discussed the limited nature of First Nations participation in ARM and the increasing number of aboriginal initiatives for greater community involvement, this next section turns to a discussion of co-management and its particular attraction for accommodating aboriginal concerns in resource management decisions.

There is no widely accepted definition of co-management. The term broadly refers to various levels of integration of local and state level management systems. In their treatise on co-management Berkes, George and Preston use the term to describe "the sharing of power and responsibility between government and local users"[23]. From an aboriginal perspective co-management holds the promise of regaining greater community control in resource management and acknowledging the long awaited recognition of aboriginal rights to resources. As Notzke elaborates:

> With regard to aboriginal people's thrust towards a right to resources – no matter whether we are concerned with treaty rights, aboriginal rights, or rights evolving from comprehensive claims settlements – it is important to realize that native groups do not just want access to and a fair share of the resources in question, but they also strive for participation in the management of these resources. They want to share in the power to make decisions about the fate of the land and resources it supports. Native people are also interested in opportunities to contribute their traditional knowledge to the resource management regimes they helped to set up. In short, they want to be partners in resource management. The arrangement which has been used to pursue this goal has become known under several names, such as co-management, joint management or joint stewardship.[24]

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[23] Berkes, F., George, P., and Preston, R. "Co-management. The evolution of the theory and practice of the joint administration of living resources," *Alternatives* 18(2) (1991): 12.
[24] Notzke, C. *Aboriginal Peoples and Natural Resources in Canada*, 3.

5.4.1 Goals of Co-management

Pinkerton[25] identifies three primary goals for co-management: (1) that it provide for a more appropriate approach to management; (2) that it provide a more efficient management system; and, (3) that it provide for a more equitable management approach between resource users and resource managers. These primary goals become more concrete when considered in association with three secondary goals or processes. These include: (a) co-management as a means toward community-based economic and social development; (b) co-management as a route toward decentralization of resource management decisions; and, (c) co-management as a mechanism for reducing conflict among resource users and managers through a process of participatory democracy. Resource users have the benefit of increased participation and influence in management decisions that affect their welfare and government managers have the benefit of reducing challenges to their authority.

The relative importance of any of these goals depends largely on what role one plays in the co-management arrangement. As resource users, aboriginal communities may consider more equitable management and increased community-based development of primary importance in any co-management arrangement, while government bureaucrats may view efficiency as a more important goal of such a process.

At this point it may be necessary to emphasize the variable nature of co-management experiences. In Canada, the majority of aboriginal co-management arrangements have taken place in the context of land claims settlements in the North.[26] According to Campbell[27], the success of these arrangements is due in large part to the formalization of well defined roles and

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[25] Pinkerton, E. W. "Introduction: Attaining Better Fisheries Management through Co-Management – Prospects, Problems, and Propositions," in Pinkerton, E. W. (ed.) *Co-operative Management of Local Fisheries* (Vancouver: UBC Press, 1989): 5.

[26] Some of the most successful co-management structures were created as part of the Inuvialuit Final Agreement (1984), the Nunavut Land Claims Agreement (1993), and the Gwich'in Agreement (1992), the Sahtu/Dene/Metis Agreement (1993) and the Council of Yukon Indians Agreement (1990).

[27] Campbell, T. "Co-management of Aboriginal Resources," *Information North* 22(1) (March 1996).

responsibilities for all the parties involved. Depending on the nature of the resource and the political context of the situation, co-management developed in these agreements may involve structures such as advisory committees or management boards with varying levels of aboriginal and governmental representation.[28] Other forms of co-management have developed in response to perceived resource crises. Again, many of these arrangements have taken place in the North where aboriginal groups continue to struggle to maintain a traditional lifestyle based on hunting, fishing and trapping. In these situations, roles and responsibilities may be somewhat more vague and ill-defined with more limited forms of aboriginal involvement in decision-making[29].

5.4.2 Benefits of Co-management

The benefits of co-management in an aboriginal context are many. Existing co-management arrangements offer real-life examples of building trust, sharing ideas and generating new values between First Nations and government who may appear at the outset to have irreconcilable differences. Cassidy and Dale refer to co-management involving government and First Nations as a process whose intended outcome is one in which potential *adversaries* can become *allies* in resource management and development.[30]

The key to the success of many co-management agreements is in their flexibility. The lack of any uniform recipe for co-management makes it flexible enough the include any number of arrangements in order to determine the most appropriate system given the unique circumstances of any situation. Co-management schemes have the capability of addressing a wide range of local politics as well as the variable nature of the resource being managed. From

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[28] A sampling of some of these co-management arrangements is presented in Figure 4.

[29] A comprehensive account of these kinds of co-management arrangements is presented by Notzke, C. *Aboriginal Peoples and Natural Resources in Canada* (North York, Ontario: Centre for Aboriginal Management Education and Training (CAMET) and Captus Press Inc., 1994).

[30] Cassidy, F. and Dale, N. *After Native Claims? The Implications of Comprehensive Claims Settlements for Natural Resources in British Columbia* (Lantzville, B.C.: Oolichan Books, 1988): 58.

an aboriginal perspective, co-management allows the integration of a local component to resource management which takes place through structures that people in the community understand and consider meaningful.

One of the main attractions of co-management is in its ability to resolve jurisdictional issues. Conventional attempts to settle these kinds of issues have traditionally involved land claims and court cases. Land claims, however, have been slow to reach negotiation, settlement or implementation phases and litigation has proven to be both lengthy and costly. Co-management offers the possibility to resolve outstanding resource issues through negotiation rather than litigation to the benefit of all parties involved. Co-management agreements will likely be implemented as interim measures in British Columbia where land claims remain unsettled and will take some time to resolve. In the meantime, legal decisions such as *Delgamuukw* (1997) will need to be addressed. Co-management initiatives will likely be developed as a safe-guard for resources now considered by many First Nations to be a matter of aboriginal title as well as of aboriginal rights.

Despite its relatively short history of operation, co-management has become a buzzword in the field of natural resource management. As Campbell comments:

> Although research on co-management is still quite new, the principles of co-management as non-confrontational, inclusionary, and consensus-based have been hailed by the academic community, industry leaders, government representatives, and First Nations alike as a viable means by which resource conflicts on aboriginal territory may be resolved. [31]

The potential benefits associated with co-management transcend resource management issues to include a wide range of aboriginal community concerns. These include increased community empowerment, community economic development, and strengthened community confidence, leadership, and cultural identity. Co-management provides an opportunity for

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[31] Campbell, T. "Co-management of Aboriginal Resources," *Information North* 22(1) (March 1996).

aboriginal groups to promote the exercise of self-determination within their communities over resource issues crucial to community and cultural well-being.

Co-management has the potential to provide a framework for the establishment of new government-to-government relationships. It offers a possible means to reduce historical conflict by fostering the integration of customary or traditional knowledge and beliefs with conventional management systems. Through the sharing of power and responsibility co-management helps build trust and improve communication between aboriginal groups and government. Co-management agreements work toward helping aboriginal communities and government overcome entrenched perceptions of one another and re-define their roles in resource decisions.

5.4.3 Challenges of Co-management

The challenges to co-management in any situation are considerable. In a cross-cultural context these challenges are perhaps even more exaggerated. When dealing with co-management arrangements between aboriginal groups and government one cannot deny the fact that both systems are based on and operate within two profoundly different social realities. Berkes, George and Preston contend that one of the fundamental challenges of co-management in this context lies in the recognition of the strength and potential contributions of both these systems of knowledge.[32]

In a cross-cultural context government managers are particularly reluctant to relinquish management control to an indigenous system they do not understand. In many cases aboriginal people are forced to deal with the proprietorial and often paternalistic attitudes of resource managers who are inclined to disregard aboriginal approaches to management in favour of 'better', more 'scientific' management. The difficulty that many government managers have in

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[32] Berkes, F., George, P. and Preston, R.J. "Co-management: The Evolution in Theory and Practice of the Joint Administration of Resources," 12.

acknowledging the merits of aboriginal systems has been discussed by Pinkerton with reference

to the James Bay Cree of northern Canada. She writes:

> Self-managing systems such as that of the Cree...have been able to regulate,
> allocate, and maintain adequate information, but it is not always apparent to
> modern governments how they do this. It is often difficult for government to
> believe that there may be viable management methods other than a particular
> hierarchical form of standardized procedures and use of expertise.[33]

In many cases re-instituting local-level control through the practice of co-management

requires reversing well established conventional management trends and overcoming deeply

entrenched mutual distrust. For many aboriginal groups establishing what is considered an

appropriate co-management arrangement can be a frustrating process which often relegates

aboriginal communities to the roles of resource users and managers and fails to recognize any

special ownership rights. Citing Wesley, Berkes, George and Preston comment that:

> For many, the issue of aboriginal rights is at the top of the agenda: ...natives are
> not merely one of the "user groups" in the managers' parlance, they are the
> owners of the resources of "their" land. The issue of co-management is,
> therefore, one of the more tangible aspects of sovereignty and the applicability of
> the laws of the land. Indeed, some native leaders believe that genuine co-
> management is possible only with native self-government.[34]

While balancing the needs of aboriginal groups for self-determination and those of the

government for proper management of the resource can often be a frustrating process, it may be

the only practical road left open to First Nations to begin dialogues with government and

industry managers.[35]

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[33] Pinkerton, E.W. "Introduction: Attaining Better Fisheries Management Through Co-Management – Prospects, Problems and Propositions," 14.
[34] Berkes, F., George, P. and Preston, R.J. "Co-management: The Evolution in Theory and Practice of the Joint Administration of Resources", 17.
[35] Campbell, T. "Co-management of Aboriginal Resources," *Information North* 22(1) (March 1996): 5.

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5.5 The Promise of Co-management for Archaeological Resources

Until this point the discussion of co-management has focused on its potential for power and responsibility sharing between aboriginal communities and government in strictly a natural resources management context. In these cases there is considerable cultural experience in the care and management of these resources and numerous examples of co-management operating between both parties.

The chapter now turns to a discussion of the promise of co-management in the context of archaeological resource management (ARM) in British Columbia. This particular field of resource management is only decades old and lacks both the historical and traditional components to management associated with more common resources such as wildlife and fisheries. The unique nature of archaeological resources as non-traditional common property resources is presented followed by a discussion of the challenges involved in adapting other common property co-management regimes to non-renewable cultural resources.

5.5.1 Archaeological Resources as Non-Traditional Common Property Resources

Archaeological resources are not *natural* resources; they are *cultural* resources. They are not the result of natural systems, but instead are the remains of human activity. Unlike water, wildlife, fish, or forests, archaeological resources are *not* renewable. Sustainability principles so heavily embedded in other resource management contexts do not equally apply to archaeological resources which are not ecosystem-based.

Archaeological resources exist in finite quantities but their total quantity and location remain uncertain. They have no associated economic value and as such their management is not influenced by market pressures. Their value is somewhat more intangible. It lies in the potential information and knowledge these resources can provide. Regardless of these differences, however, archaeological resources are considered resources of common property.

As common property, archaeological resources in British Columbia fall under the jurisdiction of the Province which maintains management control in the interest of the public trust. Much like other common property resources, archaeological resources are managed according to very conventional resource management regimes.

Unlike all other common property resources, however, archaeological resources do not equally share two important characteristics. These are excludability and subtractability. According to Berkes and Farvar, excludability refers to the problematic nature of excluding access or use of resources while subtractability refers to the capability of each user to subtract from the welfare of other users.[36] Both terms involve the concept of competition or competing users. Archaeological resources, however, are not *used* in the same sense as other common property resources. They are not consumed or harvested in the same way as natural resources. Archaeological resources have the unique quality of *not* being consumed through 'use'. The resource can be shared without necessarily diminishing its benefits for other users.

For many aboriginal people archaeological resources are considered essential to survival, not in a subsistence or sustenance sense as with other common property resources, but in a cultural and spiritual sense. The aboriginal values associated with these resources and the land where they are situated are considered essential components in the social and cultural development of aboriginal communities. These resources have heightened meaning to a culture which has lost so many of its traditions and connection with the past as a result of different assimilation processes. Their importance lies in their potential to recreate and piece together those aspects of traditional culture that have been lost. For many aboriginal people, the 'life-force' of their ancestors is directly connected to and remains part of the objects and features which constitute archaeological resources.

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[36] Berkes, F. and Farvar, M.T. "Introduction and overview," 7.

5.5.2 Challenges for the Future

As resources that do not relate well with common property principles, archaeological resources present different challenges for the establishment of appropriate co-management arrangements. Unlike other co-management agreements between aboriginal communities and government, co-management in an ARM context does not involve the integration of traditional management systems with those of the state. Neither aboriginal communities nor governments have a long established history of ARM on which to draw from. Those few existing examples of the co-management of archaeological resources in Canada typically involve almost a greater emphasis on the rights to the resource than on guidelines to ensure its conservation.[37] These arrangements have been confined to the Yukon and Northwest Territories where aboriginal groups exercise considerably higher levels of political power as compared to First Nations within the provinces. At this time, however, the potential of co-management for the effective management of archaeological resources on a provincial level remains unrealized.

There are significant obstacles to the implementation of co-management for archaeological resources in British Columbia. There is a general reluctance on the part of government bureaucrats to devolve power and responsibility to aboriginal communities in the fear that the resource will be 'mismanaged', that access to the resource could be prohibited or that valuable information could be lost. This reluctance is due in large part to the lack of well defined and stable institutions for the management of archaeological resources at the local level.

Conflict persists over what exactly constitutes appropriate management. Unlike renewable resources whose effective management may be measured according to population size and health, there are no similar ways to assess the status of archaeological resources. Their total quantity and location remain unknown. In the absence of this data it is difficult to evaluate the

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[37] Provisions for the co-management of archaeological resources have been included in the Council of Yukon Indians Umbrella Final Agreement, the Nunavut Final Agreement, the Gwich'in Final Agreement and the Sahtu/Dene/Metis Agreement.

success of any management approach to ARM. In this way it is difficult to argue for or against any particular management regime for archaeological resources.

Perhaps the most contentious issue facing ARM in British Columbia is that of aboriginal rights to the resource. For many aboriginal people the lack of control over archaeological resources is seen as yet another attempt by governments to alienate First Nations from their cultural heritage. It is difficult for many First Nations to understand how a government could assume ownership of these resources which so clearly belong to aboriginal peoples and are considered so vital to their cultural development. First Nations continue to demand greater involvement in ARM and some kind of formal recognition of aboriginal ownership rights. At this time these demands remain unanswered.

In the interest of better and fairer ARM, these challenges need to be addressed. How can more appropriate local management institutions be created and integrated with those at the government level? How can trust between First Nations and government be restored to some level that would allow the sharing of power and responsibility for the resource? How can aboriginal demands for rights to the resource be addressed to the satisfaction of both First Nations and government? The successful co-management of archaeological resources depends largely on a critical recognition of the nuances of the resource and the effective integration of the needs of aboriginal groups with those of government.

5.6 A Closer Look at Aboriginal Involvement in Archaeological Resource Management in B.C.

Based on the aboriginal involvement framework outlined in this chapter and the key themes discussed in previous chapters, a number of key concepts have been identified which will be applied to a case study of aboriginal involvement in ARM in B.C. To provide some structure for the following chapters, these key concepts are re-iterated below in summary form.

1. Level of Government Interaction:

The level of government interaction in any decision making process is necessarily dictated by the conditions of a management regime. The aboriginal involvement framework identifies a spectrum of government interaction involving the progressive devolution of government authority to the aboriginal community level. Within this progression are a number of co-operative arrangements with varying levels of power sharing toward eventual aboriginal self-government. The level of government interaction with aboriginal communities in archaeological resource management in B.C. is limited and falls toward the complete government management end of the spectrum. The nature of this interaction as well as aboriginal responses to limited involvement will be further investigated in the case study.

2. Changing Aboriginal Roles in Decision-Making:

The aboriginal participation spectrum identifies a range of aboriginal roles in decision-making from that of citizen, interest group, and stakeholder towards recognition as another level of government. As discussed in the previous chapter, these roles are dictated by the level of aboriginal authority in different jurisdictions. In B.C., aboriginal roles in decision-making are strongly influenced by legislation, legal precedents, and land claim negotiations. Until recently, aboriginal roles in decisions which affect archaeological resource management in B.C. were

confined to that of citizen and interest group. The case study will involve a closer look at these roles and identify opportunities used to redefine aboriginal roles in ARM.

3. Varying Types of Participation:

Closely related to the level of government interaction and changing aboriginal roles in decision-making are varying types of participation. Participation types deal specifically with the different forms of involvement which take place within a range of management regimes. Any one management regime or aboriginal role in decision-making may involve a number of associated types of participation. Within the provincial management structure, aboriginal participation in archaeological resource management is limited to that of being informed and consulted by government, both participation types situated at one extreme of the aboriginal participation spectrum. The case study component of the thesis will investigate the nature of aboriginal responses to this limited participation and identify the presence of co-operative/collaborative arrangements created outside of this restrictive government regime in pursuit of greater aboriginal community control over archaeological resource management.

4. The Potential for Co-management:

Given the success of numerous co-management agreements between government and aboriginal people in the realm of natural resources management, this thesis investigates the potential for co-management of archaeological resources. As a hybrid version of government and community control, co-management offers a real alternative to conventional resource management regimes. Co-management agreements have proven successful in building trust, improving communication, and overcoming resource conflicts, particularly in cross-cultural contexts, but have yet to be established for archaeological resource management in B.C. The case study provides an excellent opportunity to gauge both aboriginal and government responses to the potential for co-

management of archaeological resources and identify possible opportunities and constraints to its effective implementation.

5. Recognition of Aboriginal Rights to Archaeological Resources:

At the root of all conflict between government and aboriginal groups regarding the management of archaeological resources is the lack of recognition of aboriginal rights to the resource. The aboriginal heritage initiatives presented in chapter 4 are all expressions of aboriginal rights to heritage resources of aboriginal origin not adequately addressed in existing legislation and management policies. The extent to which these initiatives and aboriginal rights to archaeological resources are formally recognized is directly related to the role aboriginal communities continue to play in archaeological resource management in British Columbia. This relationship will be further explored in the case study through the identification of mechanisms developed at the aboriginal community level to assert aboriginal rights to archaeological resources.

6. Traditional vs Conventional Approaches to Resource Management:

Both traditional and conventional approaches to resource management are firmly grounded in cultural values. Where these cultural values vary, conflicts are likely to arise. Conventional resource management regimes focus on the scientific or technical aspects of management whereas traditional management systems tend to incorporate a more holistic vision of nature and its components. Similar approaches can also be found in the management of archaeological resources. In B.C., archaeological resources are the responsibility of a technical management agency which deals with heritage on a piecemeal basis. At the aboriginal community level these resources form part of a much broader and richer conception of heritage which includes history, traditional knowledge, and oral history as well as archaeology to create a more culturally

relevant interpretation of the past. The case study will provide a more detailed look at a traditional aboriginal approach to heritage management and help identify the cultural values which underlie such approaches.

CHAPTER SIX

A CASE STUDY OF ABORIGINAL INVOLVEMENT IN ARCHAEOLOGICAL

RESOURCE MANAGEMENT IN BRITISH COLUMBIA

The thesis now turns to a detailed discussion of an aboriginal community approach to archaeological resource management in British Columbia. The Sto:lo Nation's experience in the management of archaeological resources in Sto:lo traditional territory is presented. With almost fifteen years of involvement in archaeological issues, the Sto:lo Nation represents one of the few First Nations organizations in the province with such considerable experience in managing archaeology. Therefore, the Sto:lo Nation provides an excellent example of how aboriginal involvement in managing archaeological resources has changed and continues to evolve within the dynamic social and political contexts of British Columbia.

The Sto:lo Nation's experience with managing archaeology is followed by a discussion of the provincial approach to archaeological resource management. While previous chapters have dealt with the development of heritage legislation, this chapter focuses on the implementation of these laws and the roles, responsibilities and challenges facing the provincial agency entrusted with this task. The presentation of both the Sto:lo Nation's and the Province's approaches to archaeological resource management is intended to illustrate the contrasting nature of these approaches and highlight the difficulties inherent in developing a more inclusive management regime. Personal interviews were conducted with both Sto:lo Nation and provincial representatives involved in archaeological resource management. The results of these interviews, together with a review of relevant documents, are synthesized and analyzed using the key concepts outlined in the previous chapter.

6.1 The Sto:lo Nation and Its Approach to Archaeological Resource Management

6.1.1 The Evolution of the Sto:lo Nation

The Sto:lo Nation currently represents 19 member Sto:lo communities situated within the lower and upper Fraser Valley and the lower reaches of the Fraser Canyon. The traditional territory of the Sto:lo encompasses a much larger area extending across the entire lower Fraser River Watershed from the headwaters of Harrison and Pitt lakes to the north, the Nooksack and Chilliwack river drainages to the south, the Coquihalla River to the east and the Fraser River delta to the west.[1] The Sto:lo, or *river* people, speak *Halq'emeylem*, a dialect of the Coast Salish language group and refer to their traditional lands as *solh temexw* meaning "our land" or "our world".

The Sto:lo Nation, as it is known today, evolved from the Chilliwack Area Indian Council.[2] Together with many other aboriginal organizations formed in response to the 1969 federal "White Paper", the Chilliwack Area Indian Council was created in 1971 to promote and protect aboriginal rights. Composed of the majority of Sto:lo bands, it was the first aboriginal administrative organization in the valley to deliver government-devolved programs and services to its member bands. Known to the Department of Indian Affairs as the Fraser East District Council, the Chilliwack Area Indian Council persisted until 1985 when its member bands split into the Sto:lo Tribal Council and the Sto:lo Nation Canada, each composed of 11 Sto:lo bands.[3] With the importance of the newly created B.C. Treaty Commission in 1993, discussions between the two groups were initiated and in 1994 both tribal councils were dissolved and

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[1] Schaepe, D., From Plain to Peak: Results of the Chilliwack River Watershed Archaeological Inventory Study, conducted by the Sto:lo Nation. Report on file, Heritage Resource Centre, Ministry of Small Business, Tourism and Culture, Victoria, B.C. and Sto:lo Nation Archives, Sardis, B.C.

[2] Carlson, K. "Early Nineteenth Century Sto:lo Social Structures and Government Assimilation Policy," in Carlson, K (ed.) *You Are Asked To Witness: The Sto:lo in Canada's Pacific Coast History*, (Chilliwack: Sto:lo Heritage Trust, 1996): 104.

[3] The Chilliwack Area Indian Council was transformed into the administrative arm of the Sto:lo Nation Canada.

reunited to form the Sto:lo Nation.[4] At that time the Sto:lo Nation was composed of 21 bands. Today, having undergone slight fluctuations in membership, member bands now total 19; however, the Sto:lo Nation continues to provide programs and services to 23 of the 24 bands in the Sto:lo area.

The umbrella organization that is currently the Sto:lo Nation is composed of a political arm and a bureaucratic arm similar to that of the provincial and municipal governments.[5] The political arm consists of three branches: *Lalem Ye Sto:lo Si:y:am* ("House of Respected Sto:lo Leaders"), *Lalem Ye Si:yelyo:lexwa* ("House of Elders") and the House of Justice.[6] These branches can be likened to the provincial legislature, the Senate and the current justice system respectively, but with representation and accountability solely to Sto:lo communities. The administrative/bureaucratic arm of the Sto:lo Nation is divided into 5 departments which include: Health and Social Development; Community Development and Education; Aboriginal Rights and Title; *Xolhmi:lh* (Child Welfare); and Finance. Together these departments provide a wide range of programs and services to Sto:lo communities. Of particular significance to the following discussion is the Aboriginal Rights and Title Department of the Sto:lo Nation for it is here that issues of heritage management and archaeology are presently addressed.

6.1.2 Archaeology and the Sto:lo Nation

Sto:lo involvement in archaeological resource management began in 1984 in response to the proposed CN Twin Tracking Project. At that time there was growing concern among many

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[4] From an interview with Clarence Pennier, Executive Director of the Aboriginal Rights and Title Department, Sto:lo Nation; (Chilliwack, 26th February 1999).

[5] Carlson, K. "Early Nineteenth Century Sto:lo Social Structures and Government Assimilation Policy," in Carlson, K (ed.) *You Are Asked To Witness: The Sto:lo in Canada's Pacific Coast History*, 106.

[6] This branch of the political arm of the contemporary Sto:lo Nation is not yet fully functional (see Carlson, K. "Early Nineteenth Century Sto:lo Social Structures and Government Assimilation Policy," in Carlson, K (ed.) *You Are Asked To Witness: The Sto:lo in Canada's Pacific Coast History*, 106.). As one of the substantive issues in the

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aboriginal groups that the proposal to double-track the existing railway would lead to the destruction of many heritage sites. While an initial heritage study had been conducted, little, if any, contact had been made with the First Nations whose traditional territories encompassed sections of the railway right-of-way. The provincial statute which protected archaeological remains at that time did not require consultation with First Nations affiliated with particular archaeological resources. As a result aboriginal groups were effectively excluded from participating in the heritage resource impact assessment process. As one heritage consultant stated:

> *I was told that someone had done a heritage study but that they* [the First Nations] *hadn't had any input into it. Their heritage concerns were not being addressed and that there was a final report on the heritage that was out. Three Tribal Nations were involved. Seventy-two Indian reserves and 38 Bands* [were] *impacted by this development and nobody asked for their input.*[7]

This lack of involvement prompted the formation of the Tribal Alliance composed of the *Secwepemc* (Shuswap) Nation, the *Nlaka'pamux* (Thompson) Nation and the Sto:lo Tribal Council. The alliance of these 3 Tribal Nations provided a strong voice for the heritage concerns of the First Nations affected by the proposed development. A lawyer and an archaeologist were hired to protect the interests of the Tribal Alliance and a co-operative working arrangement with the archaeological consultant retained by CN Railway was established.[8] While economic conditions eventually prevented the implementation of the Twin Tracking Project, the controversy surrounding it sparked interest and concern among many B.C. First Nations as to how archaeological resources were managed and why First Nations were excluded from this process.

Sto:lo treaty negotiation process, issues related to justice and policing will likely be formalized at the negotiating tables.
[7] (HL 1999)
[8] Arnoud Stryd, President, Arcas Consulting Archeologists Ltd.; (pers. comm.).

6.1.2.1 Sto:lo Heritage Permits and Policies

In 1985 the same archaeologist involved with the Tribal Alliance was hired by the Sto:lo Tribal Council to deal with issues related to archaeological resources in Sto:lo traditional territory. It was at this time that the Sto:lo Tribal Council established the first aboriginal archaeological permitting system. While closely modeled on the provincial Heritage Investigation Permit, the primary goal of the Sto:lo permit was to ensure that the Sto:lo Tribal Council was aware of archaeological work conducted in the traditional territory of its member bands.[9] Shortly after its adoption, the Sto:lo Heritage Investigation Permit quickly became the template for other aboriginal permitting systems throughout the province. Although the Sto:lo permit was not a legal instrument with the authority to affect proposed archaeological work, its existence was nonetheless very significant. It effectively helped to raise awareness of the Sto:lo Tribal Council's concerns regarding archaeological resources and essentially asserted their position as legitimate stakeholders in the management of these resources.

In 1990 the first Sto:lo Heritage Policy was drafted. Its purpose was to declare Sto:lo jurisdiction and ownership over archaeological resources in Sto:lo territory including burials and spiritual places. It stressed the need for approval by Elders and political representatives prior to conducting any archaeological or anthropological studies.[10] Compliance with the Sto:lo Heritage Policy became a condition of the Sto:lo Heritage Investigation Permit. Like the Sto:lo permitting system, copies of the heritage policy were distributed among First Nations throughout the province and served to inspire future aboriginal heritage policies and procedures.[11]

Subsequent revisions to the Sto:lo Heritage Policy took place in 1992 and 1995. The first revision saw the original declaration of Sto:lo jurisdiction expanded to include descriptions

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[9] From an interview with Gordon Mohs, former archaeologist with the Sto:lo Nation (Mission, 29th January 1999).
[10] Sto:lo Heritage Policy, 1990.
[11] From an interview with Gordon Mohs, former archaeologist with the Sto:lo Nation (Mission, 29th January 1999).

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and policies related to a wide range of heritage concerns including archaeology, traditional use sites and traditional designs, images and songs. Definitions of Sto:lo heritage were broadening from an earlier focus on archaeological resources to encompass a more *holistic* interpretation of heritage. Further revisions in 1995 resulted in a more condensed version of the previous policy. This final version stresses the philosophy behind the Sto:lo Nation's Heritage Policy as "based on Respect and Protection for the people, land, resources and environment"[12] and maintains Sto:lo jurisdiction and management over a broad range of cultural resources within traditional Sto:lo territory.

This evolution in heritage policies reflects a progression from position paper to quasi policy back to position paper. Discussions are currently taking place to once again revise the policy to include specific guidelines and procedures for dealing with certain aspects of Sto:lo heritage.[13] Many of these guidelines and procedures will be based on advice from Elders and community members, integrating traditional approaches within the current management of Sto:lo heritage resources.[14] There is strong interest in developing a policy with legislative powers where violations of the Sto:lo Heritage Policy and the Sto:lo Heritage Investigation Permit could be dealt with through an internal Sto:lo justice system, effectively replacing provincial heritage legislation and enforcement procedures.[15]

Recently there have also been changes to the Sto:lo permitting system. While the Sto:lo Heritage Investigation Permit has remained largely unchanged, the procedures surrounding its issuance have been slightly modified. Whereas Sto:lo permits were once only intended as a way of keeping informed of archaeological work in Sto:lo territory, there is now a greater

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[12] Aboriginal Rights and Title Department, Sto:lo Nation, Sto:lo Heritage Policy, February 1995, page 1.

[13] From an interview with David Schaepe, Archaeologist, Aboriginal Rights and Title Department, Sto:lo Nation (Chilliwack, 22nd February 1999).

[14] From an interview with Sonny McHalsie, Cultural Advisor, Aboriginal Rights and Title Department, Sto:lo Nation (Chilliwack, 8th February 1999).

[15] From an interview with David Schaepe, Archaeologist, Aboriginal Rights and Title Department, Sto:lo Nation (Chilliwack, 22nd February 1999).

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interest in carefully scrutinizing permit applications.[16] As Sonny McHalsie, Cultural Advisor

for the Sto:lo Nation explains:

> *The permit was pretty loose and it's only been recently now where we start addressing the methodology that they* [archaeologists] *use. Prior to that it almost seemed like a rubber stamping; like all we want to know is what you guys are doing. There didn't seem to be anything that stopped it. It seemed like the request went in and the permit went out. And if you look at the Heritage Policy, there really isn't anything in there that establishes any criteria so that when someone requests a permit, do they do it* [the work] *this way? When they do an impact assessment are there certain standards that they are following? Or if it's an inventory, are there certain standards? There's nothing like that. There's nothing established. It's only been recently when we're seeing piles of these reports coming back and then they're just sitting there. What do we get from these? We should be getting more from these.*

Together with referred provincial permit applications, applications for Sto:lo Heritage

Investigation Permits are now reviewed as to the proposed study methodology. If deemed

necessary, questions or comments are submitted to the applicant and in most cases revisions are

made so that the permit application may be acceptable.[17] In much the same way as the

provincial permitting system, applicants for a Sto:lo Heritage Investigation Permit are evaluated

as to their qualifications and ability to effectively carry out the proposed archaeological work.

Familiarity with the Sto:lo Heritage Policy and the Sto:lo Nation's interests are also considered

necessary. Ideally at least one Sto:lo individual with both training and experience in

archaeology is expected to assist in the proposed study. Permit terms and conditions also allow

the Sto:lo Nation to inspect any project conducted under a Sto:lo Heritage Investigation

Permit.[18]

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[16] From an interview with Sonny McHalsie, Cultural Advisor, Aboriginal Rights and Title Department, Sto:lo Nation (Chilliwack, 8th February 1999).

[17] From an interview with David Schaepe, Archaeologist, Aboriginal Rights and Title Department, Sto:lo Nation (Chilliwack, 22nd February 1999).

[18] In 1998, a separate page outlining 12 permit terms and conditions was appended to Sto:lo Nation Heritage Investigation Permit applications. Many of these requirements had previously been incorporated into earlier versions of the Sto:lo Heritage Policy.

In a few recent instances applications for Sto:lo Heritage Investigation Permits have been refused.[19] As with the provincial permitting system, if an applicant has failed to satisfy the conditions and requirements of a pre-existing permit, future permits will not be granted. Unlike the provincial system, however, the Sto:lo Nation may choose not to grant a permit if the proposed development area is in a part of Sto:lo territory where the Sto:lo Nation does not wish to facilitate development. The project may be in an area of particular cultural significance for the Sto:lo where development is not considered appropriate. In nearly all cases, the applicant has respected the interests of the Sto:lo Nation and withdrawn from the proposed project even though they may have been eligible for a provincial permit to do the work. As David Schaepe, Archaeologist for the Sto:lo Nation, comments:

> *For the most part I've been very pleased at how the archaeological community has stood by the Sto:lo Nation's desires and supported the restrictions of conducting archaeological work in the area when we've specified that. I was curious to see how that was going to work the first time it came up and everyone has been really good. I can't complain. I'm actually quite happy about the way people are respecting the permitting system.*

In these instances, by asserting authority through the Sto:lo permitting process, the Sto:lo Nation and its permit have effectively assumed priority over the Province and its permitting system. Rather than simply 'rubber stamping' permit applications, the Sto:lo Nation has now taken a lead role in influencing not only how, but to a certain extent where, archaeology is conducted in Sto:lo territory.

While the Sto:lo Nation's and the Province's permitting system perform many of the same kinds of functions, they continue to operate largely independently of one another. Contact is essentially limited to provincial permit referrals sent to Sto:lo Nation for review. It is common practice, however, for archaeological projects conducted by Sto:lo Nation to be

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[19] Material for the following discussion is drawn from an interview with David Schaepe, Archaeologist, Aboriginal Rights and Title Department, Sto:lo Nation (Chilliwack, 22nd February 1999).

regulated by a provincial as well as a Sto:lo permit. Sto:lo Nation's compliance with the conditions of provincial permits is intended to ensure the maintenance of established provincial work standards and contribute to the Province's archaeological database.

The number of Sto:lo permits issued continues to grow every year. From a handful of permits granted annually during the late 1980s, the number of permits grew to 44 in 1998.[20] This increase is due in large part to the growth of development-related consulting archaeology but can also be attributed to a growing awareness of Sto:lo cultural values.[21] The presence of the Sto:lo Heritage Policy and Heritage Investigation Permit are symbolic of Sto:lo self-determination. Together with other Sto:lo protocols, they serve to raise awareness among people and governments, change behaviors, and essentially facilitate more equitable relations.

The same principles applied to the management of archaeology in Sto:lo territory have also been extended to other kinds of research pertaining to the cultural heritage of the Sto:lo. In 1995 the Sto:lo Nation Cultural Heritage Research Registry was created to monitor research projects which focus on any aspect of Sto:lo heritage. Its primary purpose is to ensure that Sto:lo history and culture are interpreted with accuracy and respect for the interests of Sto:lo Nation.[22] Research requests are subject to review by at least 3 appropriate staff members with final approval at the discretion of the Executive Director of the Aboriginal Rights and Title Department. In addition, any interviews involving Sto:lo Nation community members are conditional upon the completion of a Sto:lo Nation Archives Oral Interview Consent and Release Form. This form was designed to allow the interviewee to specify conditions for the use of the interview material. These processes effectively place the control of research within

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[20] David Schaepe, Archaeologist, Aboriginal Rights and Title Department, Sto:lo Nation; (pers. comm.).

[21] The Aboriginal Rights and Title Department have recently established an internal referral process whereby referrals that are sent to the environmental planning department for review are also forwarded to the archaeology department in order to identify any heritage concerns pertaining to the proposed development. This process has contributed significantly to the number of archaeological impact assessment studies in Sto:lo territory.

[22] Aboriginal Rights and Title Department, Sto:lo Nation, Sto:lo Nation Research Registry Purpose and Procedures, June 16, 1998.

the hands of Sto:lo Nation to ensure that the research is meaningful to the Sto:lo people and conducted in a culturally appropriate manner.[23]

6.1.2.2 Archaeology by the Sto:lo Nation

As well as monitoring and regulating archaeological work in traditional Sto:lo territory, the Sto:lo Nation has taken a lead role in conducting its own archaeological research. In the past collaborative research projects with the University of British Columbia and more recently, Simon Fraser University, have resulted in multi-year joint excavations of two important archaeological sites in Sto:lo territory. Excavations continue on a seasonal basis at Scowlitz, an ancient Sto:lo village and burial site at the confluence of the Harrison and Fraser River, providing valuable information on past Sto:lo lifeways. Excavations at Xa:ytem (Hatzic Rock) take place on a less frequent basis but the site continues to be the focus of an intensive public interpretation program.[24]

Often referred to as a model of collaboration between archaeologists and local communities, Xa:ytem represents a unique opportunity to promote archaeology and emphasize the site's cultural continuity with contemporary First Nations in the area.[25] As well as being the oldest dwelling site in B.C.,[26] Xa:ytem is a sacred site of great importance to the Sto:lo people. As such, any work at the site necessitates special care and attention. Careful consideration is taken to ensure the scientific and spiritual interpretations of the site are equally featured and respected. The interpretive program at Xa:ytem provides public tours of the site and offers cultural programs focussing on education through experience. Every year thousands of students

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[23] David Smith, Archivist, Aboriginal Rights and Title Department, Sto:lo Nation; (pers. comm.).

[24] Linnea Battel, Executive Director, Xa:ytem Longhouse Interpretive Centre; (pers. comm.).

[25] Pokotylo, D., and Brass, G. "Interpreting Cultural Resources: Hatzic Rock," in Jameson, J (ed.) *Presenting Archaeology to the Public: Digging for Truths*, (Walnut Creek: Altamira Press, 1997): 157, 160.

[26] Radiocarbon dates of up to 9000 BP have been reported for a habitation structure at Xa:ytem. These and other findings may be found in Pokotylo, D., Excavations at Xa:ytem (Hatzic Rock Site), 1994. Interim Report in partial fulfilment of Province of British Columbia Heritage Investigation Permit 94-049 and Sto:lo Nation Permit 94-004. Unpublished manuscript, Laboratory of Archaeology, University of British Columbia, Vancouver.

from throughout British Columbia and Washington State participate in these programs.[27] In 1993 the government of B.C. designated Xa:ytem as a Provincial Heritage Site and acquired the property to protect the site from proposed development impacts. Since that time the site has been co-managed by a committee of Sto:lo Nation and government representatives.[28] Plans are underway to create a World Class Heritage Interpretive Centre to showcase Sto:lo cultural, archaeological and spiritual traditions to the more than 13,000 annual visitors.[29] The challenge in the site's vision statement will be to promote these values "without compromising the natural and spiritual integrity of this very special place."[30]

With a full-time archaeologist and Cultural Advisor on staff and trained community members, the Aboriginal Rights and Title Department of the Sto:lo Nation continues to be active in providing heritage overviews and impact assessments for proposed development sites. There is a strong interest in ensuring local and provincial governmental agencies and private developers are kept aware of the Sto:lo Nation's heritage concerns.[31] Research funding sources are pursued for archaeological inventory and excavation studies which help provide greater understanding of Sto:lo occupation and pre-contact settlement patterns in Sto:lo territory.[32] The Sto:lo Nation has also participated and continues to take part in collaborative ethnobotanical research projects investigating traditional Sto:lo subsistence patterns and technologies.[33] By

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[27] According to a Xa:ytem Longhouse Interpretive Centre paper entitled, "Background to Xa:ytem, 1998" in a 12 month period extending through 1997 and 1998, 10,000 students toured Xa:ytem Interpretive Centre.

[28] LORD Cultural Resources Planning and Management, "Master Planning Study for Xa:ytem Interpretive Centre: Executive Summary," October 1995: 5.

[29] Smyth, D., "Xa:ytem: A Sto:lo Nation Sacred Site," Historic Sites and Monuments Board of Canada Agenda Paper, July 1997.

[30] Xa:ytem Interpretive Centre, "9000 Years of History in the Valley of the Stone People: Xa:ytem Longhouse Interpretive Centre, Hatzic Rock Site" (Chilliwack, 1996): 16.

[31] For example, David Schaepe, archaeologist for the Sto:lo Nation, is involved in giving workshops to forestry employees to educate them as to the nature of Sto:lo heritage sites often found in forestry development areas so as to increase their awareness and understanding of the importance of these areas and help ensure their protection.

[32] Recent archaeological inventory and excavation projects initiated by the Sto:lo Nation include the 1997 Chilliwack River Watershed Archaeological Inventory Study, the 1998 Allison Poole Forest Recreation Site excavation, and the 1999 Silver Hope Creek Archaeological Inventory Study.

[33] Collaborative research projects focussing on Sto:lo ethnobotany are ongoing between the Departments of Archaeology and Resource and Environmental Management, Simon Fraser University and the North Cascades National Park Service Complex.

taking an active role in both archaeological research projects and development-related archaeological impact assessments, the Sto:lo Nation exerts considerable influence in ensuring that the archaeological work is not only meaningful to the Sto:lo people, but is also conducted with respect for Sto:lo cultural values.[34]

6.1.2.3 Sto:lo Perceptions of Heritage

While the Sto:lo Nation has taken a particular interest in archaeology in Sto:lo territory, archaeology is but a small part of a much broader Sto:lo view of heritage. In *Halq'emeylem*, there is no single term which collectively describes Sto:lo heritage and heritage sites.[35] It includes not only Sto:lo archaeology and history in the conventional sense, but encompasses the oral history, traditions, Sto:lo family names and songs, Sto:lo place names, and language. There are places throughout Sto:lo territory which are of particular cultural and spiritual significance to the Sto:lo people. These include spirited places, ceremonial sites, transformer sites and traditional resource procurement areas. In most cases these places are not easily recognized by mainstream Canadians who may not be aware of their significance to the Sto:lo people. Together all of these elements capture what it means to be Sto:lo and define a Sto:lo presence on the landscape.

The essence of Sto:lo history and culture is present in Sto:lo oral narratives known as *sxwoxwiyam* and *sqwelqwel*. *Sxwoxwiyam* are stories or legends about the distant mythical past[36] which explain the existence of the Sto:lo people and their relationship with the world. They speak of a time when the Xexa:ls (transformers) traveled through Sto:lo territory and

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[34] For example, excavations in Sto:lo territory such as at Xa:ytem, Scowlitz and on the Chilliwack River have incorporated the cultural tradition of ceremonial burning as a means of paying respect and providing for the Sto:lo ancestors who once occupied the area.

[35] Aboriginal Rights and Title Department, Sto:lo Nation, Sto:lo Heritage Policy, February 1995: 1.

[36] Carlson, K. with McHalsie, S. *I Am Sto:lo* (Chilliwack: Sto:lo Heritage Trust, 1998): 100.

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"made the world right."[37] *Sxwoxwiyam* express Sto:lo values and explain the intimate kin relationship between certain resources and Sto:lo communities. They also help explain the origin of certain geographical features in Sto:lo territory as well as how certain animal and plant resources used by the Sto:lo people were created and help explain their behavior and/or characteristics.[38] These stories are considered to be truths and are passed down from one generation to another reinforcing the connection with Sto:lo ancestors. Carlson *et al* elaborate:

> ...*sxwoxwiyam give expression to the intimate "living" connection between the Sto:lo past, present, and future. Sto:lo existence, therefore, is a never ending story in which the ancestors of the past interact with people of the present in shaping the future.*

Compared with *sxwoxwiyam, sqweqwel* describe more recent events in Sto:lo history. *Sqwelqwel* include stories about both daily activities and special events in the lives of Sto:lo people and convey important aspects of Sto:lo traditions and values.[39] Both *sxwoxwiyam* and *sqwelqwel* are integral to understanding Sto:lo culture.

The documentation of Sto:lo oral histories continues to be the focus of the Sto:lo Oral History Project which started in the early 1970s. Preserving oral histories and maintaining an archive of this information is considered essential given that much of this material is not available in written form and persists only in the minds of Elders. The gathering of this information continues to reveal new insight into important places and events in Sto:lo history. In the words of Sonny McHalsie, Cultural Advisor for the Sto:lo Nation:

> ...*places become important when you realize what was there and what had happened there. Like I said, we are in a time of cultural revival and we are in a time of learning as well, getting all that cultural knowledge back because of the whole fact that the Government imposed their assimilation policies on us and the residential school experience and things like that. And plus with the epidemics*

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[37] From an interview with Sonny McHalsie, Cultural Advisor, Aboriginal Rights and Title Department, Sto:lo Nation (Chilliwack, 8th February 1999).
[38] Carlson, M.T., Carlson, K, Thom, B., and McHalsie, A. "Spoken Literature: Sto:lo Oral Narratives," in Carlson, K (ed.) *You Are Asked To Witness: The Sto:lo in Canada's Pacific Coast History*, 185-186.
[39] Ibid., 193-195.

*there's quite a big loss in culture and traditions. I think the more we bring out,
the stronger we get to be able to take more back.*

Another essential component of Sto:lo heritage is language. The preservation of
Halq'emeylem is considered fundamental to the cultural identity of the Sto:lo. Much of Sto:lo
history is closely tied to the *Halq'emeylem* language. Sto:lo given names provide connections to
Sto:lo ancestors and the land.[40] Deconstructing and learning the language is considered critical
to understanding and re-establishing the Sto:lo worldview.[41] An orthography and dictionary for
Halq'emeylem have been created and courses are currently offered through the Coqualeetza
Cultural Education Centre[42] and the Sto:lo Nation's Sto:lo *Shxweli* language program.[43]

Elements of Sto:lo heritage have been incorporated into public school curriculum in the
Fraser Valley. The Sto:lo Nation has taken a lead role in developing curriculum materials for
both high school and elementary level courses. Both of these curricula have been made
accessible to the general public with positive response.[44] While directed toward different
audiences, both books are successful in conveying the Sto:lo people's relationship to the land
and the importance of traditional culture to the Sto:lo people. These publications complement
continuing public education programs at *Shxwt'a:selhawtxw*, The House of Long Ago and
Today. The goal of the Longhouse Extension Program at *Shxwt'a:selhawtxw* is to allow
students, teachers, the Sto:lo community, and the public to experience aspects of the Sto:lo way

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[40] Sonny McHalsie as quoted in Carlson, K *I Am Sto:lo* (Chilliwack: Sto:lo Heritage Trust, 1998): 67.

[41] From an interview with Sonny McHalsie, Cultural Advisor, Aboriginal Rights and Title Department, Sto:lo
Nation (Chilliwack, 8th February 1999).

[42] The Coqualeetza Cultural Education Centre was established in 1973 and was instrumental in developing and
adopting the *Halq'emeylem* writing system.

[43] The Sto:lo Shxweli Halq'emeylem Language Program started in 1994. Work is currently underway to have the
language certified so that it may be incorporated into school curricula.

[44] From an interview with Keith Carlson, Historian, Aboriginal Rights and Title Department, Sto:lo Nation
(Chilliwack, 8th February 1999). These books are readily available in bookstores throughout the Lower Mainland.
The material in the first book, *You Are Asked to Witness*, was selected from a comprehensive Grade 11 and 12
Sto:lo high school curriculum and modified for presentation in publication form. The second book, *I Am Sto:lo,*
was designed to update the standard Native Indian component of Social Studies taught in Grade 4.

of life, philosophy, technology, and culture.[45]   Together these components form part of the

Sto:lo Nation's legacy of promoting cross-cultural awareness and understanding.

To accommodate this broad conception of Sto:lo heritage, the Sto:lo Nation is in the

process of developing an equally broad and all-encompassing approach to heritage

management.   Rather than working in isolation from one another, the members of the

Aboriginal Rights and Title Department try to approach heritage issues collaboratively. In this

way experts in archaeology, history, Sto:lo culture, environment, linguistics, and genealogy can

combine their knowledge to produce a more comprehensive account of people, events, places

and traditions in the Sto:lo past. This process can be likened to collecting the pieces of a puzzle

or gathering "snap-shots"[46] that together help reconstruct a more complete picture of Sto:lo life,

with archaeology representing just one piece of the puzzle.

> So the archaeology is just one element of it. By itself it's a small element really
> if you look at just the material remains of their activities on the landscape. What
> I've found is that it forms a part of a much greater whole when you fit it into
> history, to the traditional uses, to the stories, and all that other information that
> documents the culture as well. And it really becomes very fascinating from an
> archaeology point of view. It makes it much more real and tangible beyond just
> the remnant stones and flakes of the sites that you find when you can go back and
> put a place name to a site. At the site we've been working on there are actually
> stories that relate to that. It gets way beyond what you can get at from just an
> archaeological perspective. So, in general, it's one subsidiary element of a
> larger group, of a larger whole.[47]

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[45] Sto:lo Nation, "*Shxwt'a:selhawtxw*: The House of Long Ago and Today", 1998 information pamphlet.
[46] From an interview with Sonny McHalsie, Cultural Advisor, Sto:lo Nation (Chilliwack, 8th February 1999).
[47] (ET 1999)

The Sto:lo approach to heritage management is multi-disciplinary. It has been referred to as a holistic approach which reflects a continuum of the occupation of the Sto:lo people in their traditional territory.[48] David Schaepe, archaeologist for the Sto:lo Nation elaborates:

> ...you are not isolated in the sense that you are the archaeologist and that's all there is to know about this culture is through what you can dig up. There's so much more to it and there are other people who can add so much more to what you do. It's that interaction; that interplay; that exchange of ideas; a real multi-disciplinary approach to a culture that is still existing and where you can ask the people themselves about things, which is great.

6.1.3 The Future of Heritage Resource Management by the Sto:lo Nation

In July 1995, the Sto:lo Nation entered into the B.C. Treaty Process with the ultimate goal of self-sufficiency and self-government for all member bands. Two and a half years later in January of 1998, the Sto:lo Nation completed Stage 3 of the B.C. Treaty Process and, together with provincial and federal representatives, officially approved a Framework Agreement. One of the 29 substantive issues outlined in this framework includes Language, Culture and Heritage. The inclusion of heritage within the negotiation framework effectively provides a platform from which to discuss a wide range of Sto:lo concerns regarding matters of heritage. Although a background paper on Language, Culture and Heritage as a substantive issue has yet to be completed, it is likely to involve an integrated approach to heritage management in order to capture the full breadth of Sto:lo cultural heritage.[49]

Negotiations dealing with heritage issues will likely involve the ability of the Sto:lo Nation to determine exactly what constitutes heritage as well as which aspects of Sto:lo heritage require formal protection. Currently, the provincial *Heritage Conservation Act* (1996) which regulates heritage in British Columbia provides protection only to those sites or objects which

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[48] From interviews with David Schaepe, Archaeologist, Sto:lo Nation (Chilliwack, 22nd February 1999) and Keith Carlson, Historian, Sto:lo Nation (Chilliwack, 8th February 1999).
[49] (ET 1999); (TN 1999); (ID 1999)

pre-date 1846.[50] By attributing value and significance specifically to these places or things, the *Act* has excluded the voice of First Nations throughout B.C. whose perception of heritage differs greatly from that of the Province. The use of this date has also served to inadvertently influence public perceptions of heritage value and significance.

> *It frustrates me that the Ministry isn't attuned to that. That really bothers me. It still reinforces the idea that Indians are only important in as much as they are in the pre-contact and in the post-contact they cease to be; they cease to exist. They are no longer an older part of society. So let's protect all those quaint things about their distant past but anything they've done since then, well that's been produced by the white man. I find that really insulting myself.*[51]

The treaty process provides the opportunity for the Sto:lo Nation to move beyond the confines of the *Heritage Conservation Act* to include protection for a broad range of cultural heritage of significance to the Sto:lo people and continue a process that started long before the establishment of the B.C. Treaty Commission.

> *There's been this ongoing push and there will continue to be this direction to deal with and establish what the Sto:lo people want as adequate protection for the most part on things that they consider to be culturally significant. Whether it's a site where there used to be a longhouse; whether it's a pithouse village; whether it's a rock; anybody outside of the Sto:lo culture wouldn't even recognize as a significant cultural spot. Some of these rocks on the landscape; some of the whirlpools which exist; some of the lakes that exist; some of the mountains; all of those things that often have the most meaning, the deepest cultural meaning and continuing meaning as well and continuing association with the culture and its preservation. It's still an active part of the maintenance of the Sto:lo culture. And that's the primary reason to make sure that they're protected adequately; identified and protected. Right now most of those aren't afforded protection. They're bulldozed and promptly run through by forestry operations or some other resource developments Maybe not constantly but it does happen.*[52]

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[50] The year 1846 marks the signing of the Oregon Treaty which established the 49th parallel as the boundary between western Canada and the United States. The selection of 1846 as the cut-off date between protected and unprotected archaeological sites and objects is arbitrary. Protection under the *Heritage Conservation Act* also extends to human remains of any age found within B.C. as well as pictographs and petroglyphs whose exact age may be difficult to determine.
[51] (ID 1999)
[52] (ET 1999)

There is a sense of urgency associated with the preservation of Sto:lo cultural heritage as urbanization continues at an almost feverish pace within traditional Sto:lo territory. While some areas of heritage value to the Sto:lo people may be obvious, most are not easily identified by the general public, including developers. There is concern that once development permanently alters the landscape, memories associated with these places will be forever lost together with the potential contribution of this information to the revival and maintenance of Sto:lo culture.[53] There is strong interest in developing a strategic plan which will identify culturally sensitive areas within traditional Sto:lo territory. Such a plan would essentially act as a tool for guiding development within Sto:lo territory and place the Sto:lo Nation within a proactive rather than a reactive position in the development planning process within the region.[54]

There is also much concern over the ability of the *Heritage Conservation Act* to effectively protect those heritage sites currently afforded legal protection. Violations of the *Act* involving the willful destruction of protected heritage sites have never been successfully tried in court. The Sto:lo Nation has recently been involved in three such cases. The constraints of a six month time limit to present violations in court coupled with the inability of the RCMP to properly investigate infractions of provincial heritage laws have made the enforcement of the *Act* through the courts impossible. The frustration resulting from these processes has given the Sto:lo Nation more resolve to seek alternative means to deal with these issues more effectively.

The particulars of what heritage management by the Sto:lo Nation will entail awaits discussion at the negotiating tables. In the interim the Aboriginal Rights and Title Department has established a repatriation committee. The purpose of this committee is to bring Sto:lo artifacts and human remains now stored or on display in museums and other institutions back

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[53] (ID 1999)
[54] (ID 1999), (ET 1999)

into the possession of the Sto:lo people.[55] This process is considered critical to the strengthening of Sto:lo cultural identity and a necessary step in the assertion of Sto:lo authority and jurisdiction over their heritage.

The future of heritage management by the Sto:lo Nation remains uncertain but it is likely to involve a continued emphasis on establishing heritage policies and permits that reflect Sto:lo perceptions of heritage and directing research in Sto:lo territory to the needs of the Sto:lo people. The formal recognition of Sto:lo ownership and jurisdiction over heritage on settlement and non-settlement lands will ultimately be determined by the Agreement-In-Principle finalized in Stage 4 and the outcome of negotiations in Stage 5 of the Treaty Process. Changes will undoubtedly occur, but in what ways? Is there the possibility of compromise or sharing of responsibility for the management of Sto:lo heritage? What would such an agreement look like? The answers to these questions can only be speculative at this time but will soon become real topics for discussion among treaty negotiators. Members of the Sto:lo Nation's Aboriginal Rights and Title Department offer the following suggestions:

> *How's it going to change? I think largely it's going to change, I think the hope is that it will change toward self-government of these sites; whether it's archaeological sites or whether it's any number of sites that have cultural significance. The maintenance, the preservation, the recording, just the whole dealings will be done through the Nation themselves; through the Sto:lo people themselves without the reliance if it's not wanted; without the input if it's not wanted from the Archaeology Branch and from the Province. And that's not to say that there can't be, as far as I see it, I don't see any reason why there couldn't be a sharing of responsibilities between the Province and the Sto:lo Nation working out an agreement about how to manage and deal with heritage sites.. I think there's great potential to do something out that way, just something that would make everybody happy.[56]*

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[55] The repatriation of museum collections to First Nations in B.C. is taking place more frequently since the 1992 Task Force on Museums and First People organized by the Assembly of First Nations and the Canadian Museums Association established recommendations for the return of Aboriginal artifacts and human remains to concerned First Nations. The most recent repatriation event in B.C. occurred on March 13, 1999 between the Haida Nation and the Museum of Anthropology at the University of British Columbia.
[56] (ET 1999)

There are definitely options that are going to have to be looked at but which aspects of our heritage are things that would need to be solely under the jurisdiction of the Sto:lo and which parts can be within co-management? So it all depends on the plans and the objects and there are a lot of things that have to be considered as well.[57]

...you've got the Archaeology Branch established and you have their definitions of archaeology sites established. Well that's good. In some instances maybe maintain that. You've got the laws established to protect those types of sites. What you need to do is add to that. It's weighted towards one point of view and those sets of definitions that the Archaeology Branch has [were] established without any input from First Nations. So establishing legislation that does apply to things that First Nations establish would counterbalance that. You bring those two things up together. I can see a balance of sharing of information in that way or a balance in maintaining sets of information that way without excluding one from the other. I think the more people we have looking after the resource in general that's good. I see it working together to create a holistic continuum of protection for a whole range of heritage sites that exist out there.[58]

So the treaty process will give us [the Sto:lo Nation] *the opportunity to now apply Sto:lo measures of heritage value to resources not as an aspect of an assertion of aboriginal rights or as an assertion of demands for financial compensation or whatever, but as a way of viewing the world and saying, "Here's what we see in the world as being important and protected and here's how we think it should be protected." So that's the exciting thing about treaty because it's going to in theory elevate these things out of the politics that they're all caught up in right now. And I think that's the most exciting thing about the future for heritage resource management, that it's actually going to be driven by heritage concerns because it's not right now.*[59]

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[57] (TN 1999)
[58] (ET 1999)
[59] (ID 1999)

6.2 The Provincial Approach to Archaeological Resource Management

6.2.1 The Role of the Archaeology Branch

As part of a larger portfolio encompassing lands and resources, the regulation of archaeology in Canada currently falls under the jurisdiction of the provincial governments. In British Columbia, this responsibility presently resides within the Archaeology Branch of the Ministry of Small Business, Tourism and Culture. Over the past 40 years the provincial body entrusted with this task has undergone several reincarnations as the Archaeology Sites Advisory Board, the Provincial Archaeologist's Office, the Archaeology and Outdoor Recreation Office, and the Heritage Conservation Branch, within a number of provincial ministries including the Ministry of Tourism and Culture, the Ministry of the Provincial Secretary and Government Services, and the Ministry of Municipal Affairs, Recreation and Culture. Concurrent with these name changes and movements within government offices have been varying roles and responsibilities.

During the 1960s and 1970s the majority of archaeological investigations in B.C. were research-oriented inventory projects supported by the Province in an effort to contribute to the Provincial Heritage Register.[60] A much smaller percentage of the archaeological projects during this period were conducted by academic institutions and archaeological consultants. Agencies which managed archaeological resources at this time were responsible for organizing and conducting their own research inventories as well as monitoring academic research projects and the few consulting projects. Numbered permits were issued to keep track of these investigations in keeping with heritage legislation requirements.

In the 1980s and 1990s, subsequent changes to heritage legislation and other provincial statutes including the *Forest Act*, and the *Coal Act* resulted in a dramatic increase in

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[60] The Provincial Heritage Register is a listing of all protected archaeological sites in the Province.

development-related archaeological impact assessments, essentially replacing an original focus on research-oriented projects. This growth in impact assessment archaeology is reflected in both the composition and direction of provincial archaeological resource regulatory agencies. From a staff predominantly composed of regional research-focussed archaeologists in the 1960s and 1970s, the 1980s witnessed a trend toward the centralization of regulatory functions in Victoria and an increased emphasis on staff archaeologists as resource managers. Archaeological resource management through the issuance of permits and the maintenance of a provincial archaeological site inventory became the primary functions of the then Heritage Conservation Branch, now known in more specific terms as the Archaeology Branch.

Today the Archaeology Branch continues to focus on the maintenance of an archaeological site database and the regulation of ongoing archaeological work through the issuance and enforcement of permit requirements by project officers. There are currently three program areas administered by the Archaeology Branch which together work to encourage and promote the protection and conservation of archaeological resources in B.C. These include Planning and Assessment, Inventory and Mapping, and Aboriginal Liaison and Public Education. There is a strong development focus in these programs or departments in keeping with the Branch's role "not to prohibit or impede land use and development, but rather to assist the development industry, the province, regional authorities, and municipalities in making decisions which will ensure rational land use and development."[61] Each of the Branch's program areas is summarized below.[62]

The Planning and Assessment Department of the Archaeology Branch is currently composed of 6 project officers under the supervision of a manager. This department is

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[61] Ministry of Small Business Tourism and Culture, Archaeology Branch, *British Columbia Archaeological Resource Management Handbook*, (Victoria: Queen's Printer, 1990): 10.
[62] Material for this table and the following discussion is drawn from Archaeology Branch Program Descriptions, Archaeology Branch, Ministry of Small Business, Tourism and Culture, April 1998 and the Archaeology summary prepared for the Ministry of Small Business, Tourism and Culture Annual Report 1996/1997.

responsible for reviewing, issuing and ensuring compliance with the heritage permitting system, the primary mechanism for regulating archaeology in B.C. Under the authority of the Minister and in compliance with Sections 12 and 14 of the *Heritage Conservation Act*[63], the Archaeology Branch issues permits to archaeologists whose work may involve the alteration of archaeological sites. Members of this department are also engaged in reviewing inter-agency development referrals to identify potential impacts to archaeological sites resulting from development proposals for highways, subdivisions, oil and gas exploration, among other projects. In addition, the Planning and Assessment Department is involved in the Environment Assessment Review Process and participates in a number of integrated resource management plans including Land and Resource Management Plans (LRMPs) and Official Community Plans.

The Inventory and Mapping Department is responsible for ensuring the coordinated and effective management of the province's archaeological information database. The 5 staff members in this department are currently involved in the development and maintenance of a central computer-based inventory of all the archaeological and other heritage sites in B.C. They control access to the Provincial Heritage Register of archaeological sites and process hundreds of information requests annually.

The Aboriginal Liaison and Public Education program was initiated in the early 1990s to enable the Branch to deal more effectively with issues relating to First Nations. As representatives of the branch and the ministry in treaty negotiations, program staff provide advice and guidance to provincial negotiators on issues related to archaeology. In addition, staff members are involved in supporting educational initiatives to promote public appreciation of archaeology. Incidents involving the accidental discovery of human skeletal remains are

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[63] Province of British Columbia, *Heritage Conservation Act*, Chapter 187, RSBC, 1996.

managed by this department in coordination with the B.C. Coroner's Office, the RCMP, and affected First Nations. There are currently 3 staff members involved in this program area.

The creation of a separate department in the Archaeology Branch to deal with First Nations issues is particularly noteworthy. Over the last two decades First Nations interests in land and resources have significantly increased in British Columbia. This province has been the site of many ground-breaking legal cases affecting the rights of First Nations, not only in B.C., but throughout Canada.[64] By acknowledging the existence of aboriginal title, the 1997 *Delgamuukw*[65] decision only served to escalate First Nations' interests. It effectively placed the burden of proof of ongoing use and occupation upon the shoulders of First Nations and expressly referred to oral history and archaeological data as admissible evidence for establishing this proof. From a First Nations perspective, archaeological resources now were not only potent symbols of cultural identity, but also had the potential to prove aboriginal title. As a result of these developments the work archaeologists do and the way the Province manages archaeology have received increased attention from First Nations who continue to demand a greater role in management decisions. Some of the responsibilities of the Aboriginal Liaison and Public Education Department are to address First Nations' concerns in these areas and to encourage understanding and cooperation between parties.[66]

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[64] *Calder v. Attorney General of B.C.* [1973], S.C.R. 313.; *Guerin v. R.* [1984], 2 S.C.R. 335; *R. v. Sparrow* [1990], 1 S.C.R. 1075.; *R. v. Gladstone* Provincial Court of British Columbia, Lemiski Prov. Ct.J., October 3, 1990. (Original trial.); *R. v. Van Der Peet*, British Columbia Provincial Court: [1991], 3 C.N.L.R. 155. (Original trial).
[65] *Delgamuukw v. British Columbia* [1997] 3 S.C.R. 1010 (S.C.C.)
[66] Archaeology Branch Program Descriptions, Archaeology Branch, Ministry of Small Business, Tourism and Culture, April 1998.

6.2.2 Limited Resources and Growing Demands

When compared to other provinces in Canada, British Columbia's commitment to archaeological resource management stands apart. The Archaeology Branch is currently the largest provincial agency in Canada dedicated to the protection and conservation of archaeological resources. From a staff of 9 during the 1970s,[67] the Archaeology Branch has grown to employ 19 individuals. This increase in staffing was necessary to accommodate the growing number of Branch responsibilities particularly within the last 20 years.

From an early emphasis on research in the 1960s and 1970s, the Province's approach to archaeology in the following decades adopted a strong resource management focus. Changes in heritage legislation and the inclusion of heritage concerns in the other key pieces of legislation[68] have resulted in a huge increase in development-related archaeological resource management projects on both Provincial Crown and privately owned lands. The Archaeology Branch has been instrumental in developing an inter-agency referral system to review small-scale development proposals from other provincial line ministries for potential impacts to archaeological resources.[69] Participation in the Environmental Review Process also ensures that archaeological concerns are addressed in large land altering developments.[70] While these processes have worked well to ensure the protection of B.C.'s archaeological resources, the demands associated with these responsibilities have placed increasing pressure on the Archaeology Branch which continues to struggle to meet these obligations.

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[67] Information provided by Brian Apland, Archaeology Branch Director as cited in Young, Jean C. "Towards an Assessment of Archaeological Resource Management in British Columbia", Paper written for Applied Archaeology, University of British Columbia, December 1996.

[68] Provisions for the assessment of potential impacts to archaeological resources have been incorporated into the *Coal Act* (1994), the *Forest Act* (1994), the *Forest Practices Code Act* (1995), and the provincial *Environmental Assessment Act* (1995).

[69] Some of the provincial referring agencies include Environment Canada, BC Lands, BC Parks, BC Forests, Highways Subdivision Approving Offices, Regional Districts, and municipalities, among others.

[70] Such developments include proposed electrical generation (i.e. dams) and transmission projects, pipelines, and mines.

Staffing at the Archaeology Branch reached its peak in 1994 with a total of 24 employees.[71] This year also marked the passage of amendments to the *Heritage Conservation Act* which included changes to the Forest and Coal Acts to accommodate archaeological concerns. During the following year the *Forest Practices Code Act* was passed incorporating provisions to ensure the protection of archaeological resources. These pieces of legislation and the agreements[72] which flowed from them resulted in a large increase in archaeological impact assessments, each subject to regulation by Archaeology Branch permits. While the number of permits has continued to rise each year since 1985, the most significant increase occurred between 1994 and 1995 reflecting this influx of legislative-driven assessments. From a total of 171 in 1994, the number of archaeology permits rose dramatically in 1995 to 273.[73] Additions to staff at this time were necessary to deal with this increased workload.

In recent years the number of permits has continued to increase sharply. A total of 355 archaeology permits were issued in 1998 with the total for each successive year surpassing the last.[74] In addition, the number of inter-agency referrals continues to grow with over 3000 development referrals reviewed in 1998 alone.[75] It is very likely that these general trends will persist placing increased pressure on the Planning and Assessment Department. In other Branch program areas treaty negotiations continue to be the focus of the Aboriginal Liaison and Public Education Department. With more First Nations entering the negotiation stages of the Treaty Process the demands on this program will grow. Inventory and Mapping staff continue to be

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[71] This figure is derived from a copy of the Archaeology Branch directory dated to 1994.

[72] In 1994 the Ministry of Forests and the Ministry of Small Business, Tourism and Culture (Archaeology Branch) formalized a protocol agreement outlining the obligations of each ministry with regard to the protection and conservation of archaeological resources in the province and defined a process for its effective implementation. (Revised in 1996)

[73] These statistics were compiled from permit lists published in *The Midden*, a quarterly publication of the Archaeological Society of British Columbia.

[74] The number of permits is not directly reflective of the amount of archaeological work conducted in the province. In the 1990s "blanket permits" were issued for forestry operations, often on a per forest district basis. In any one blanket permit the total number of investigation areas may range from 10 to 150 individual inspection areas. Such permits generate both larger and more reports, each of which must be reviewed by the Archaeology Branch.

[75] Milt Wright, Aboriginal Affairs Branch, Ministry of Aboriginal Affairs; (pers. comm.), 1999.

devoted to the development of a computer-based archaeological site database[76] and process ever increasing numbers of information requests annually.[77]

Despite this increase in workload, however, Branch staff have steadily declined. From 24 employees in 1994, Archaeology Branch staff now total 19 placing ever increasing demands on a shrinking workforce.

> *We have a very small staff and few resources to cover a very large province with thousands of archaeological sites which have a wide variety of community interests from First Nations, to development, to tourism, to general non-aboriginal public. Time has become a valuable commodity here these days.*[78]

It is anticipated that the coming year will bring the dissolution of a separate Aboriginal Liaison and Public Education Department.[79] From a staff of 5 in 1995, employees in this program area currently number 3. Travel budgets have been significantly slashed severely limiting the extent of First Nations liaison in local aboriginal communities.[80] To reduce the number of inter-agency referrals, the review of oil and gas developments in the province as well as the issuance of archaeology permits for these projects, will soon become the responsibility of the newly created B.C. Oil and Gas Commission. In these times of fiscal restraint, the decentralization or dissolution of other Branch responsibilities may also need to be considered. In addition, Branch office space has consistently diminished over the past 5 years to accommodate other pressing needs within the ministry.

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[76] Inventory and Mapping staff are in the process of converting information on over 20,000 archaeological sites to a GIS compatible database.

[77] Statistics compiled for the Ministry of Small Business, Tourism and Culture 1996/97 Annual Report show that 715 requests for information from other government resource managers, consulting archaeologists, aboriginal groups and other interests were processed during the 1996/97 fiscal year.

[78] CB, e-mail correspondence, June 17, 1998.

[79] Olga Klimko, Manager, Aboriginal Liaison and Public Education, Archaeology Branch, Ministry of Small Business, Tourism and Culture; (pers. comm.).

[80] (NA 1999)

For Branch staff and others who rely on their services, this squeeze on resources is believed to be indicative of the amount of support for archaeology within the Ministry of Small Business, Tourism and Culture.

> *I think the perspective I see right now is that there is a limited amount of recognition in the Ministry of Small Business, Tourism and Culture that there are substantial issues in archaeology and that archaeology in and or itself is a substantial issue and it deserves consideration.*[81]

There is a perception that the placement of archaeology within varying ministries over the last 4 decades is reflective of the government's general lack of interest or understanding of archaeology. There is interest in moving archaeology into more mainstream ministries which perform similar regulatory functions to increase the profile and effectiveness of archaeological resource management within the provincial government.

> *...archaeology wherever it is placed in provincial governments is always placed in ministries that are hodge-podges or what I like to call "garbage ministries". So whatever is left over goes together at the end. And I think the archaeological resource suffers as a consequence of that because it tends to be amongst a whole bunch of other stuff which are not necessarily related because they are grab-bags. When ministry executive are trying to deal with those kinds of catch-alls they can't be cognizant of all the important issues.*
>
> *So my view is that archaeology is ill-served by being in these garbage can ministries. There either has to be an affiliation with dirt ministries like environment, parks, resource-based* [ministries] *because that's where it inputs into them because it does have that regulatory function. But because it is not part of a mainstream ministry, it tends to get the short shrift. It tends to be more obstacle creating than enabling.*[82]

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[81] (NA 1999)
[82] (NA 1999)

6.2.3 The Archaeology Branch and First Nations

Of all those parties with an interest in archaeology in British Columbia, First Nations are perhaps the most vocal, emotional, and affected. It is difficult to dispute the intimate relationship between archaeology and First Nations yet the current provincial approach to archaeological resource management has been slow to fully recognize this connection. The Archaeology Branch which regulates archaeology on behalf of the province is bound by the responsibilities delegated to it by Minister under the *Heritage Conservation Act*. Deficiencies within this legislation, coupled with the lack of resources or interest within the Ministry of Small Business, Tourism and Culture, have severely limited the capabilities of the Archaeology Branch to address First Nations demands for more involvement in the management of B.C.'s archaeological resources.

Currently the majority of interaction between the Archaeology Branch and First Nations takes place during the permitting process. Permit applications are distributed to the relevant First Nations for review of the proposed methodology requesting a response within 15-30 days. This "opportunity for comment" was formalized in response to a Provincial Court decision in 1994.[83] Not to be confused with consultation in any *Delgamuukw* sense, these referrals simply address the Ministry's legal obligation to inform the affected First Nations. Comments received within the allotted time are forwarded to the applicant for response. Failure to reply within 30 days is generally perceived as consent.

First Nations have been critical of this 'opportunity for comment' claiming it fails to ensure any kind of meaningful involvement in the regulatory process. Only those comments pertaining to standard archaeological field methods are considered relevant. Those First Nations who do respond to these requests are often frustrated by the lack of follow-through on

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[83] *Nanoose Indian Band v. British Columbia* (November 14, 1994), Doc. Victoria 94 3420.

the part of the provincial government and perceive the process to be one of empty, token involvement.

> *But the only comments they consider valid coming out of this office are those that have something to do with the way these people* [archaeologists] *are proposing to do survey or what kind of sites they are looking for. But the fact is that if I said, "There's no methodology here for transformer sites" or something like that, I don't even know how they would respond since they don't acknowledge transformer sites as valid sites anyway. I'm sure they would say, "Thank you for your concern. We passed along this along to the applicant and we have issued permit number 1999." This is like a slap in the face. It doesn't work. There's something terribly wrong with that.[84]*

Meanwhile the Archaeology Branch continues to issue permits confident that it is fulfilling all of its legal obligations yet increasingly frustrated by the expectations and demands of First Nations which it cannot adequately address within its current mandate.

> *Most of what we deal with is what First Nations think the Archaeology Branch does and what the Archaeology Branch really does. I think the First Nations expect more of the Branch than the Branch can actually do. The Branch's legal mandate is to issue permits, well not the Branch but the Minister who has delegated it, is to issue permits to conduct archaeological research and to maintain the Provincial Heritage Register database. So that is really what the Branch's responsibilities are and our consultation processes in which the permit applications are sent to First Nations for comments on the methodologies. But the comments that we get back don't deal with the methodologies. That's where the misconception comes in that we actually have powers to aid and tell people what consultant to hire or refuse a permit on the basis of the fact that First Nations don't like a particular consultant or that they don't like what's going to happen to the land. It's a land use question or a management question but it's not our ministry that deals with that. And others* [comments] *deal with aboriginal rights and title and we can't acknowledge that or deal with it because it is not our ministry's responsibility to look at or confirm rights and title. So I think they expect more from us than we can really do.[85]*

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[84] (ET 1999)
[85] (PL 1999)

Earlier attempts to acknowledge First Nations interests in archaeological resource management resulted in the creation of Section 4 of the *Heritage Conservation Act* (1996) entitled *Agreements with First Nations*.[86] Paragraph 1 of this section states that "the Province may enter into a formal agreement with a First Nation with respect to the conservation and protection of heritage sites and heritage objects that represent the cultural heritage of the aboriginal people who are represented by that First Nation."[87] The wording of this provision would suggest that such an agreement is intended to accommodate the specific interests of First Nations with regard to archaeological resources. There is an implied willingness on the part of the provincial government to consider and implement these agreements yet to this date none have ever been formalized. Since the legal opportunity for agreements was created in 1994 there has been little movement on the part of government to make this part of the legislation operational. It has been suggested that this lack of initiative may be the result of a combined lack of funding and interest on the provincial level to address First Nation concerns within such a mechanism.

> *There's no policy, no resources, so there's really nothing I can tell you. I haven't even seen what's been done on it but I don't think it's very much. A lot of it would entail a lot of resources and there aren't any resources especially since the government's been cutting back. And there's no policy so there hasn't been anything done on that.[88]*

> *It's deemed to be an issue for staffing. Who will do these negotiations and then funding. Who will provision them? But more so there is a fundamental problem around what are they [agreements] going to do anyway and why are they needed? What is it that we are doing now that they will enable us to do better? And that conversation, although it happened internally within the Archaeology Branch, could never be brought out at a higher level in the executive to drive government policy because it is **provincial** agreements. They're not Archaeology Branch agreements. So until you get that kind of broad perspective nothing will happen. They will sit like an empty pot as they have done since 1994.*

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[86] The *Agreements with First Nations* section of the Act was originally included as Section 3.1 of the 1994 version of the *Heritage Conservation Act*.

[87] Province of British Columbia, *Heritage Conservation Act*, RS Chap. 187, Section 4(1): 4.

[88] (PL 1999)

It was put in place with maybe good intentions. It was also a politically expedient thing to do to enable the legislation to get through. It was a good objective but it was a short term commitment I think. They said, "Well we'll do this". But then ultimately they didn't end up doing anything with it. So there's a lack of follow-through.[89]

Ultimately what the Archaeology Branch can do and how archaeological resources are managed in British Columbia are governed by provincial law and legal decisions. As a provincial statute, the *Heritage Conservation Act* is considered to be a law of general applicability. As such it must be applied *equally* across the province. Under this legislation the Archaeology Branch is bound to manage the resource for *all* British Columbians. They see their role as a responsibility to many different legitimate parties including the resource, the archaeologist, the developer and the First Nations. It is considered a balancing act on all fronts to ensure that the work is conducted in an efficient manner while keeping all sides happy and within the limited resources of the Branch. They have tried to set policies that are fair, legal and geared toward the resource.[90]

Deciphering where First Nations fit into this jurisdictional context is unclear. It continues to be clouded by a number of significant socio-political complexities resulting from the current unsettled land claims and the treaty negotiating environment in British Columbia. In light of these complexities changes that reflect First Nations concerns in archaeological resource management are unlikely to take place unless such changes are required by law.

It is important to note, however, that perceived inadequacies in provincial heritage policies and in the regulation of professional archaeological work standards has recently led to the creation of the B.C. Association of Professional Consulting Archaeologists (BCAPCA). Standards and ethics adopted by the association seek to ensure that its members maintain a high standard of archaeological work and strive to consult with and facilitate the involvement of

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[89] (NA 1999)
[90] (SL 1998)

concerned First Nations. In so doing, the BCAPCA has transformed legal or governmental issues pertaining to aboriginal involvement into issues of professional practice. To date, however, full compliance has been difficult to enforce.

6.2.4 Archaeological Resource Management and First Nations in the Courts

Whereas in the past interaction between First Nations and the Province in heritage matters has been limited, First Nations are now taking an active role in scrutinizing the policies and procedures of the Archaeology Branch. Legal action on the part of First Nations has been instrumental in changing aspects of the Branch's permitting process. Currently, permits issued under Sections 12(2) and 14(2) of the *Heritage Conservation Act* (1996, RSBC, Chap. 187) are the primary regulatory mechanisms employed by the Archaeology Branch. Permits essentially outline the terms and conditions under which an archaeologist is allowed to alter or disturb archaeological remains. Before the Nanoose Indian Band took legal action against the Province in 1994, there was no formal procedure for ensuring contact with First Nations prior to the issuance of permits for archaeological work in their respective traditional territories. While the legal decision did not succeed in protecting an archaeological site of importance to the Nanoose Indian Band, the judge found the Province's archaeological permitting system lacking in adequate consultation with the affected First Nation.[91] As a result permit applications are now sent to the relevant First Nations requesting comments on the proposed study methodology within a specified time period, usually 15 to 30 days.[92]

A more recent case challenging the actions of the Archaeology Branch involved the Kitkatla Band on the central coast of British Columbia.[93] The Kitkatla Band initiated legal

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[91] *Nanoose Indian Band v. British Columbia* (November 14, 1994), Doc. Victoria 94 3420
[92] Heritage Permits, Archaeology Branch Operational Procedures, Ministry of Small Business, Tourism and Culture, April 7, 1998.
[93] *Kitkatla Band v. British Columbia* (October 21, 1998), Doc. Victoria 98 2223.

action against the Province in response to the issuance of a Site Alteration Permit. This permit was granted to a forestry licensee for the purpose of cutting down culturally modified trees within a proposed cutting permit in traditional Kitkatla territory. At issue was the granting of a permit to effectively destroy a number of sites in the cutting permit rather than ensure their protection as is the Archaeology Branch's mandate under the *Heritage Conservation Act*. In addition, there was a perceived absence of procedural fairness in the decision making process involved in issuing this particular permit. While the court's ruling upheld the authority of the Province to issue such permits, the judge's reasons for the decision expressed a strong recognition of the need for the involvement of aboriginal people in the regulation of archaeology within their traditional territories.[94]

There is little doubt that more legal challenges to the Province's authority in the regulation of archaeology will be forthcoming particularly when management decisions may have lasting impacts on First Nations' ability to prove aboriginal title. Provincial guidelines in response to the latest *Delgamuukw* decision caution Archaeology Branch staff against taking action that could be perceived to acknowledge or even suggest that aboriginal title existed in a given circumstance.[95] The current policies and procedures of the Archaeology Branch hold tightly to those responsibilities and powers delegated to it by the Minister as outlined in Chapter 187 of the *Heritage Conservation Act*. In the absence of a court ruling forcing the provincial government to do otherwise, there is little indication that these policies and procedures are likely to change.

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[94] Ibid.
[95] British Columbia Consultation Guidelines, September 1998.

6.2.5 The Future of Archaeological Resource Management by the Province

In many ways the immediate future of archaeological resource management by the Province will be much the same as the past. Guided by legislation based largely from an economic perspective on land and resources, Archaeology Branch policies and procedures are unlikely to change in the absence of a provincial or legal mandate to do so. In the complicated political climate that characterizes British Columbia, government bureaucrats have adopted a "wait and see" attitude.

In response to First Nations' demands for more involvement in archaeological resource management the provincial stance is very much passive or reactive as opposed to proactive. The Archaeology Branch's role in the treaty process is completely advisory in nature. Branch representatives do not negotiate. They simply provide information on archaeological policies and procedures and help clarify terminology for provincial treaty negotiators. There is no attempt to guide the process in any way and no uniform prescription for dealing with archaeological issues in a negotiation environment.[96] The terms of archaeological resource management in the Treaty Process are left to unfold on a case by case basis and tend to vary according to each First Nation.

> *Each First Nation has different capacities to deal with this* [archaeological resource management] *so some want more of a role and some are willing to let the Province's processes go ahead because they do not have the capacity or the personnel or the expertise to deal with it.*[97]

In addition to those First Nations in the Treaty Process, the provincial government also has an obligation to address the concerns of those aboriginal groups who have opted out of settling their grievances at the negotiating table. For these First Nations the legal system is the only remaining option available to pursue greater control over archaeological resources. Precedence

setting cases and the recent introduction of archaeological resource management in the courts have provided inspiration for challenging the authority of the Province within the legal system.

Both treaty negotiations and the pursuit of legal judgements can, however, be very time consuming and costly with the final outcome often uncertain. In the absence of finalized treaties and court decisions, provincial agencies like the Archaeology Branch will continue much like "business as usual".[98] Regardless of their personal sympathies toward First Nations' demands for more involvement, Branch staff will continue to be constrained by the parameters of provincial laws.[99] It has been suggested that if significant changes are to be implemented outside of these processes they need to be initiated on a broad provincial level rather than addressed on a piecemeal basis through localized provincial bureaucracies.[100]

There is currently no provincial forum for archaeological resource management discussions between First Nations and the Province to take place.[101] Provincial support has been conspicuously lacking in the annual B.C. Archaeology Forums, ongoing for the last 7 years. Attendance at these forums has grown significantly with progressively increasing First Nations representation. It is not uncommon for someone at these proceedings to question the absence of provincial representation. This absence is generally perceived as a lack of provincial interest and concern for both First Nations and archaeology.

The lack of opportunity for First Nations and the Province to have a dialogue, coupled with a great absence of trust among both parties, are seen as some of the major obstacles toward a more co-operative approach to archaeological resource management in B.C.[102] These

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[96] (SL 1998)
[97] (PL 1999)
[98] (PL 1999)
[99] (SL 1998)
[100] (NA 1999); (DQ 1999)
[101] Limited discussions between the Archaeology Branch and the UBCIC and the First Nations Summit took place sporadically between 1995 and 1997. Interest in pursuing these discussions has dwindled since the *Delgamuukw* decision on December 11, 1997 which affirmed the existence of Aboriginal title.
[102] (NA 1999)

obstacles, together with the large number of First Nations in the province[103] and their varying values and priorities, only serve to further complicate the possibility of any kind of resolution. Recent results from a province-wide archaeology survey confirm the presence of this diversity.[104] When asked what a Section 4 *Agreement* under the *Act* should include, some 50 First Nations respondents replied with over 150 different suggestions.[105] Regardless of the challenges inherent in accommodating this diversity, there are those within government who feel it is the Province's responsibility to initiate discussions with First Nations on a macro level, not simply as a means of token involvement, but with the full intention of changing the status quo.[106] The basis for any kind of a co-operative arrangement, however, must ultimately be nourished in an environment of trust and respect among both parties.

We could [have a co-operative permitting system]. *It's possible for us to do that but we have to get by the opposition we have in B.C. right now where the Province has a system of regulation and First Nations have their own systems. And that in theory it would be possible to integrate those but it isn't always possible because there are components and directives in each that are contradictory. And until that contradiction is taken away and that means to compromise and negotiate and I don't think there's any interest and no basis or forum to get into that negotiation.*

You know you've got things that you [First Nations] *wish in your* [their] *permit and we have things in our mandate under the legislation and there's no reason the two can't coexist. And who administers the permit is not really that important just as long as our mutual standards are accepted. Mind you it also becomes a symbolic thing as in who's doing the controlling and that's where the trust has to be. And it also has to come from parameters about what you are going to use this for. You know it's like I said before, co-operative agreements, co-management, decentralization, devolution, whatever you want to call it, won't work unless both parties are willing to work together.*[107]

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[103] Of all the bands currently recognized in Canada, over half reside in British Columbia.
[104] During the Fall of 1998, an Archaeology Review Survey was conducted under the direction of the Aboriginal Relations Department of the Ministry of Aboriginal Affairs. The final report is in progress.
[105] (NA 1999)
[106] (NA 1999)
[107] (NA 1999)

6.3 Key Characteristics of the Sto:lo Nation's and the Province's Approaches to Archaeological Resource Management

The previous sections have outlined both the Sto:lo Nation's and the Province's approaches to archaeological resource management. The thesis now focuses on the key characteristics of each approach using the six concepts distilled from the aboriginal participation framework established in chapter 5. While the concepts are presented here separately, the distinction between them can often be subtle and the nuances of each frequently overlap.

<u>1. Level of Government Interaction</u>

In the case study, as with other B.C. First Nations who have yet to settle land claims, the level of government interaction between the Sto:lo Nation and the provincial government in archaeological matters is extremely limited. The current archaeological resource management regime is controlled by the provincial government under the provisions established in provincial legislation. To use Arnstein's[108] terminology, the Province represents the 'haves' who possess the power to influence the future, while the Sto:lo Nation in this situation are the "have-nots" who are essentially excluded from any meaningful participation in the provincial management process.

This system is characterized by complete government management with token prescribed aboriginal involvement, without any redistribution of power. While the current method of permit referrals serves to notify the Sto:lo Nation of archaeological work in traditional Sto:lo territory, they are powerless to affect the final issuance of provincial permits and influence the overall regulatory structure. The management system as it is now established involves First Nations as "the governed in their government."[109] Apart from a legally mandated 'opportunity for comment'/referral process, this system fails to fully recognize the interests of the Sto:lo Nation as distinct from those of non-aboriginal British Columbians.

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The provincial government retains control over both how and where archaeology takes place within British Columbia. From a centralized office in Victoria permits are issued, referrals are sent out, and archaeological work is reviewed. All of these processes generally take place over the phone or via fax or mail, usually without ever leaving the confines of a downtown office building. In this structure, local or 'hinterland' issues are difficult to address and are often more easily ignored.

2. Changing Aboriginal Roles in Decision-Making

Within the parameters of the current regulatory structure, the Sto:lo Nation participates as both an interest group and a stakeholder. The permit referral system acknowledges the presence of the Sto:lo Nation as a distinct community with a special interest in the management of archaeological resources in Sto:lo territory. The long history of Sto:lo involvement in archaeology and their well-established positions in this field, however, effectively elevate the Sto:lo Nation's role to that of a stakeholder.

Given the prescribed nature of involvement in the provincial management system, the role of the Sto:lo Nation is confined to that of a "token" stakeholder, in Arnstein's terminology. While recognized as a legitimate voice in archaeological resource management, their contributions rarely affect the outcome of the provincial permitting system. To paraphrase Arnstein,[110] the Sto:lo are engaged in an empty and frustrating ritual of participation without being given any real power to affect the outcome of the process.

Outside of the provincial process, however, the role of the Sto:lo Nation in the management of archaeological resources in their territory changes. Individual archaeologists and development agencies are often more likely than government to recognize and respect the

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[108] Arnstein, S.R. "A ladder of citizen participation." *Journal of the American Institute of Planners* 35 (1969):216.
[109] Ibid.

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concerns of the Sto:lo Nation. Among these other stakeholder groups, established Sto:lo policies and permits can be more effective. The level of interaction in these situations is very often face to face, with the Sto:lo Nation as a primary stakeholder in the decision-making process. In this role the Sto:lo Nation has the power to influence the final outcome of the process. Indeed many archaeologists and developers have recently changed the nature of their projects to incorporate the interests of the Sto:lo Nation.

The position of the Sto:lo Nation and their policies and permits have provided an opportunity to build relationships with members of the archaeological community. Rather than prohibiting any archaeological work in their territory, the Sto:lo Nation has taken an open and collaborative approach to archaeological resource management. In a few cases, however, the Nation has found it necessary to recommend the avoidance of culturally sensitive areas limiting the work of archaeologists. In these situations there was nothing within the provincial management system which would have prohibited archaeologists from working in these areas, yet they chose to respect the wishes of the Sto:lo Nation. These instances illustrate the influence of the Sto:lo Nation and the recognition of their concerns above those of the provincial government, effectively elevating their role in the decision-making process to that of another level of government.

Universal recognition of the Sto:lo Nation as another level of government will be ultimately achieved through the Treaty Process. Whereas in the past Sto:lo concerns regarding heritage management may have been perceived as those of a special interest group, dealing with these concerns through the Treaty Process will bring the discussion to a higher level. Within treaty negotiations, the Sto:lo Nation's concerns will be seen as those of a nation whose authority to govern is *equal* to that of the provincial and federal governments. This process provides an opportunity for the Sto:lo Nation to regain sovereign governance of Sto:lo cultural

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[110] Ibid.

resources. It reinforces the concept of a nation with a central government and authority to deal with Sto:lo heritage, including archaeological permitting and management, within a much broader framework of rights and responsibilities. Outside of the Treaty Process, the provincial government is unlikely to recognize the Sto:lo Nation as another level of government unless legally mandated to do so.

3. Varying Types of Participation

As with other First Nations in British Columbia, the Sto:lo Nation's participation in the current archaeology regulatory system is relegated to that of being informed and consulted. By the time the Sto:lo Nation is informed of a proposed development requiring archaeological work, most of the decision-making pertaining to the development has already taken place. The Sto:lo Nation is asked to simply comment on the proposed methodologies outlined in the provincial archaeological permit application. This process is very rigid and highly standardized. There is no face to face contact in this kind of token consultation. Little effort is made to adapt the process to meet the particular needs or concerns of the Sto:lo Nation. They are rarely involved in the early stages of the archaeological planning/management process and asked only for limited input once decisions have been made and are difficult to change. The current referral process assumes permission after a set commentary period has passed with no assurance that any First Nations community input will affect the decision-making process.

In those situations where individual archaeologists and some developers choose to recognize the Sto:lo Nation's heritage policy and permit, cooperation and communication can take place. These protocols help facilitate cooperation whereby the Sto:lo Nation starts to have meaningful input into the management of archaeology in traditional Sto:lo territory. In this

environment projects are often conducted with the help of Sto:lo community members who can provide technical and academic expertise, cultural advice, and guidance.

Although compliance with the Sto:lo heritage policy and permit is currently based largely on the good will of researchers and developers, these protocols help develop relationships which can often lead to opportunities for partnerships in the management of archaeological resources. Collaborative archaeological research projects between local universities and the Sto:lo Nation have taken place in Sto:lo territory throughout the 1990s to the mutual benefit of both the academic and Sto:lo Nation communities. Some of these projects have also involved the joint presentation of Sto:lo archaeology to the public through various interpretive programs.

Whereas in the past the research agendas of these projects may have been dominated by academic interests, the Sto:lo Nation is now taking a lead role in establishing their own archaeological research projects. In these projects the Sto:lo Nation defines the research agenda. They are actively seeking funding to conduct research that more effectively meets the needs of the Sto:lo people. In such projects the Sto:lo Nation maintains complete community control over how archaeology is conducted in Sto:lo territory. An effort is made to ensure compliance with provincial research standards but the goals and objectives of these projects are ultimately determined by the Sto:lo Nation. By asserting community control over archaeology in these projects, the Sto:lo Nation is assuming a proactive position in archaeological resource management, rather than constantly reacting to the proposed work of outsiders.

4. Recognition of Aboriginal Rights to Archaeological Resources

The recognition of aboriginal rights to archaeological resources is intimately connected to the power and authority of First Nations in the provincial context. The government of British Columbia currently maintains jurisdiction over lands and resources in the Province except in those areas where federal or, most recently, aboriginal authority presides. In the Nisga'a and Sechelt agreements with the Province of British Columbia and Canada, First Nations were recognized as having a legitimate claim to provincial lands and resources. The processes surrounding these agreements assumed a level playing field among all parties. On settlement lands the Nisga'a and the Sechelt First Nations now have the right and the authority to manage lands and resources according to the provisions outlined in each negotiated agreement.

Land claims and aboriginal rights remain at the heart of First Nations' frustrations arising over the management of archaeological resources in B.C. First Nations' pursuit of ownership and control of archaeological resources is necessarily intertwined within a much broader struggle for aboriginal self-determination and self-governance. As tangible evidence of the presence and resilience of aboriginal people, however, archaeological remains have heightened significance. Within First Nations communities, archaeological issues often provoke highly emotive responses much to the surprise of provincial negotiators who may perceive archaeological remains as just another resource.

For the Sto:lo Nation, the recognition of their rights to Sto:lo archaeological resources continues to be played out on two different levels. Within the Treaty Process, archaeology forms part of the substantive issue of Language, Culture and Heritage to be discussed during Stage 4 negotiations of an Agreement-in-Principle. It is here, on a government to government level, that Sto:lo rights to archaeological resources on and off settlement lands will be formalized. In the interim, on a more local level, the Sto:lo Nation will continue to enforce

informal community rights to archaeological resources in Sto:lo territory. Through the presence and enforcement of the Sto:lo heritage policy and permit, the Sto:lo Nation has assumed informal rights to archaeological resources. These rights exist simply because of the creation of these protocols and their successful implementation independent of the provincial regulatory structure. While these mechanisms provide some measure of control over the resource on a local level, the broader planning and management of archaeological resources continue to take place by the provincial government. Outside of the Treaty Process, changes to the Province's authority over archaeological resource management will likely only be possible through the successful challenge of this authority in the courts.

5. Traditional vs Conventional Approaches to Resource Management

At the root of many conflicts regarding the management of archaeological resources in British Columbia are differing ideas as to what exactly constitutes appropriate management. These ideas are based largely on differing cultural values. The conventional provincial approach to archaeological resource management is derived mainly from an economic perspective of land and resources in which the protection of archaeological resources is weighed against the value of other competing land uses. It is very similar to other resource management regimes where risks are assessed and compromises are made. This type of approach is unacceptable to many First Nations who insist on complete protection of archaeological sites and a broadening of heritage sites considered worthy of conservation.

For the Sto:lo Nation archaeological sites as defined under the *Heritage Conservation Act* are but a small component of a much larger and richer conception of Sto:lo heritage, all of which is considered worthy of protection. This includes aspects of Sto:lo history and traditional knowledge as well as sacred and spiritual places that together form part of the Sto:lo cultural

landscape. Rather than categorizing heritage and dealing with it on a piecemeal basis, the Sto:lo Nation's approach encompasses a broad range of heritage values. This holistic vision of heritage involves the integration of cultural, historical, environmental, archaeological, genealogical and linguistic experts to create a more complete picture of Sto:lo cultural heritage. There is a vision for the development of a strategic plan for traditional Sto:lo territory which would include such an integrated resource management approach. The goal of such a plan would be to identify culturally sensitive areas within Sto:lo territory to provide guidance for future development activities in the region. In this way heritage concerns could be addressed or ultimately avoided during the very early stages of the development planning process. Such a proactive approach is in sharp contrast to the provincial approach whose main regulatory function deals with heritage issues on a more reactionary basis.

The provincial approach to archaeological resource management is highly centralized, operating at arms length from those directly affected by its policies and procedures. It is often perceived as a faceless bureaucracy heavily influenced by scientific values and resource management principles. The Province purports to manage archaeology for all British Columbians adopting universal values as incorporated into provincial heritage legislation. Where First Nations values fit within these universal values, however, is unclear. The Sto:lo Nation's approach to managing archaeology is by its nature decentralized. Rather than dealing with heritage issues on a province-wide level, the Sto:lo approach has been adapted to meet the needs of the Sto:lo people and to focus on those heritage issues of particular concern within Sto:lo territory. The values expressed in the Sto:lo approach are those unique to the Sto:lo communities. This approach relies heavily on the knowledge and guidance of local experts who have an intimate connection with Sto:lo culture and history. Individuals involved in Sto:lo heritage management are accessible and known within their community thereby effectively raising the profile of heritage at the local level.

It is obvious that significant differences between the Sto:lo and provincial approaches to archaeological resource management exist. The contrasts between the provincial corporate resource management approach to archaeology and the Sto:lo community-based holistic approach to heritage are many. Rather than continue in isolation from one another, however, opportunities for the successful integration of these approaches will need to be explored.

6. The Potential for Co-management

Although there is some experience in the co-management of natural resources in a provincial context, the potential for the co-operative management of archaeological resources remains as yet unrealized. While the nature of cultural versus natural resources varies significantly, the objectives of their co-operative management are similar. These include the desire for a more appropriate, efficient and equitable management system. From a First Nations perspective, these objectives must reflect a recognition of aboriginal rights to the resource. The extent of this recognition and the resolution of jurisdictional differences will ultimately determine the success of any co-management arrangement in this environment.

There is no secret recipe for the successful co-management of resources. The effectiveness of such an approach relies heavily upon its ability to be flexible to the needs of both First Nations and government and to remain cognizant of the particular characteristics of the resource in question. Within the field of archaeological resource management, it must be able to bridge the gap between the scientific, bureaucratic approach of the provincial government with that of the community-based, culturally driven approach of the First Nations.

The intended outcome of such an approach would be one in which potential *adversaries* can work together to become *allies* in resource management.[111]

It is difficult to speculate what the co-management of archaeological resources in British Columbia might look like. Neither the provincial government nor First Nations in B.C. have experience in this area. While agreements for the co-management of archaeological resources exist in the northern territories, they have yet to become fully operational. As such it would be difficult to use such agreements as examples of successful co-management arrangements. The varying political and jurisdictional environments in the provincial and territorial contexts would also make the transferability of these approaches problematic. It is clear that any kind of approach for the co-management of archaeological resources in British Columbia will necessarily be a "made in B.C." agreement.

For the Sto:lo Nation the possibility of the co-management of Sto:lo archaeological resources has yet to be formally considered. While the details of any kind of co-operative approach are speculative and remain very much in their infancy, they are likely to involve the recognition and protection of a broad view of Sto:lo heritage resources, in addition to those currently protected under provincial legislation. These ideas, however, exist in isolation from the provincial government which has little political will to deal with aboriginal heritage issues. The Sto:lo heritage policy and permit continue to operate independently of the provincial regulatory structure. There has been no attempt on the part of the Province to acknowledge the existence of these protocols nor any kind of provincial forum in which to discuss these issues. Given the current political situation it is likely that these discussions will be relegated to lengthy provincial treaty negotiations.

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[111] Cassidy, F. and Dale, N. *After Native Land Claims? The Implications of Comprehensive Claims Settlements for Natural Resources in British Columbia* (Lantzville/Hailfax: Oolichan Books and the Institute for Research on Public Policy, 1988): 58.

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For those First Nations outside of the Treaty Process there are few options for the co-management of archaeological resources. While co-operative agreements are possible under Section 4 of the *Heritage Conservation Act*, there is little political motivation to make this part of the legislation operational. An increasing scarcity of resources continues to be cited as an excuse for the lack of government interest to follow-through on the administration of these legislative provisions.

CHAPTER SEVEN

WHERE DO WE GO FROM HERE? THE FUTURE OF ABORIGINAL

INVOLVEMENT IN ARCHAEOLOGICAL RESOURCE MANAGEMENT

IN BRITISH COLUMBIA

I would like us to resume ownership of the [archaeological] *resources because they are all ours. Those are the things that prove that we were here. We need a lot more control and management over these things.*[1]

The new relationships necessary to achieve a truly inclusive archaeological resource management regime can only evolve over time, growing and adapting to the changing demands that are placed upon them. In the dynamic social and political climates that characterize British Columbia, the success of any co-operative management relationship relies on its ability to be flexible. Changing political agendas, court rulings and treaty negotiations will undoubtedly continue to influence the nature of this relationship. Given all of these variable factors it is difficult to present a 'blueprint' for a co-operative relationship in archaeological resource management in B.C. Indeed such a proposal would be inappropriate and could not accurately reflect the diverse nature of First Nations in British Columbia.

What this chapter does address, however, are the opportunities and constraints involved in the development of a co-operative approach to archaeological resource management. A pilot project for the co-operative management of archaeological resources is suggested. The section which follows outlines conditions to facilitate the development of co-operative arrangements in a provincial context. The conclusions and recommendations presented refer specifically to archaeological resource management in British Columbia, but are intended to be of general

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[1] (DQ 1999)

relevance for other resource management regimes which would benefit from co-operative relationships between First Nations and government.

7.1 Opportunities and Constraints

This section outlines a number of opportunities and constraints to the development of a more inclusive archaeological resource management regime. These findings are derived both from the events and literature discussed in the preceding chapters as well as the results of the case study investigation. They are presented below under the following headings:

Growing Pains and Shifting Agendas

The future of aboriginal involvement in archaeological resource management in British Columbia remains at a crossroads. From a discipline largely confined to academia, the field of archaeology has grown to include the objectives of a wider community of resource managers, consulting archaeologists and concerned First Nations. Within the last 30 years it has left the halls of relative seclusion and been thrust into the public realm. This has been a difficult transitional time for a field of study which has been transformed from a focus purely on research to one that is now predominated by resource management concerns. This struggle continues on a provincial level where government managers must continually rationalize the importance of archaeological resource management within the shifting agendas of senior government officials.

A Conventional Management Approach for Archaeological Resources

As with other resource management regimes, the current management approach deals with archaeological remains as resources of common property, addressing universal values on behalf of all British Columbians. Unlike many other resources, however, archaeological remains have heightened significance as tangible evidence of the cultural heritage and perseverance of

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First Nations peoples. As such their value transcends that attributed to them by the general public and has led to increasing First Nations demands for greater aboriginal involvement in the control and management of these resources to develop a more inclusive and appropriate management regime. A growing awareness of the social and political dimensions of the archaeological record by First Nations continues to place pressure on decision-makers for changes in provincial legislation and policies to create a more ethically and morally responsible management regime. To date, however, changes that reflect the integration of First Nations concerns in archaeological resource management have been slow and largely ineffectual.

Lack of Government Support

Archaeological resource management in British Columbia is at a critical point in its development. Shrinking resources and shifting government priorities have made it increasingly difficult for the Archaeology Branch to adequately address the requirements of its mandate. It is this struggle for recognition within the provincial government which continues to preclude the effective integration of aboriginal concerns within the current management regime. A lack of political will coupled with the lack of resources are believed to be the primary reasons for these shortcomings. If archaeological resource management is to survive and retain its integrity, however, many of these shortcomings will need to be addressed.

Lack of Public Support

Intimately connected to the limited nature of government support for archaeology is the lack of public recognition of the value of archaeology. There is a lot of confusion as to what exactly archaeology is and a general reluctance on the part of the public to acknowledge a special connection between archaeological resources and First Nations. This hesitation may largely be due to the fear that archaeological remains will be used to prove aboriginal title to land and

resources and a preference to think of the majority of the province as having long been 'abandoned' by First Nations. There has been little effort by the provincial government to encourage and promote public support for archaeology. Public interest is necessary in order to elevate archaeological management issues from inside the Archaeology Branch of the Ministry of Small Business, Tourism and Culture to a more open and accountable public forum.

Provisions for Legislated Agreements

Opportunities to address First Nations concerns exist within the Section 4 *Agreements with First Nations* as outlined in the provincial *Heritage Conservation Act*. Outside of the Treaty Process and the courts, an agreement under the *Act* remains the only mechanism available for increasing aboriginal involvement in archaeological resource management. Currently the pursuit of a co-operative agreement under this part of the law would be futile. There are no policies or procedures in place to make a Section 4 agreement operational. It remains an empty promise left unfulfilled by a lack of political will and fiscal restraint. The formal introduction of co-operative agreements into the legislation, however, remains a significant development with much potential.

Pursuing Cooperation Through The Courts

For many First Nations conflicts in the management of archaeological resources may best be pursued through the legal system. Increasingly the courts are becoming the mechanism by which First Nations seek to regain more control over managing archaeology. This process, however, is often slow and very costly with little guarantee of producing favorable results. Court cases also inevitably set up an antagonistic environment where the provincial government and First Nations assume the roles of adversaries rather than allies in archaeological resource management. Regardless of the court ruling, the results of this process can often be detrimental to the creation of co-operative relationships.

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Pursuing Cooperation Through The Treaty Process

There remain those within government and First Nations organizations who feel strongly that archaeology and broader heritage issues might be best dealt with at treaty negotiation tables. To a certain extent this may in fact be the case since the Treaty Process currently represents the only forum for discussing these issues. The management arrangements spawned from these negotiations are, however, likely to be confined to settlement lands which often comprise a small part of much larger asserted traditional territory. Conflicts with regard to archaeological resource management on non-settlement lands within traditional boundaries will persist. For those First Nations outside of the Treaty Process there remain still fewer opportunities for increased involvement in archaeological resource management.

Lack of Dialogue

Outside of the limited opportunities previously discussed the foundation for a more inclusive management regime can only begin through the initiation of a dialogue between the provincial government and First Nations. There is a need on the part of government to ethically make the effort to engage in a meaningful dialogue with First Nations with the intention of making changes. Communication in an honest and open environment is necessary if the concerns of both parties are to be fully understood and respected. This kind of dialogue has the potential to build trust and start the process of breaking down many of the barriers that currently impede the effective integration of First Nations concerns.

Overcoming Entrenched Positions

Although establishing and maintaining trust are integral to the success of any kind of co-operative arrangement, they present particular challenges for relationships between First Nations and government. The history of past struggles for self-determination and the legacy of the past

inevitably continue to create a degree of suspicion and mistrust that will be difficult to change. These factors militate against and undermine the development of shared understanding and co-operative action. Only through patience, trust, respect and a sincere commitment from both parties can a good and reasonable compromise be achieved.

7.2 Experimentation in the Co-operative Management of Archaeological Resources

The mutual mistrust and suspicion which underlies many interactions between the provincial government and First Nations in British Columbia will be difficult to overcome. There are often fears among government managers that co-operative management arrangements may lead to a loss of control and the mismanagement of resources. Among First Nations there are also fears that involvement in the management process will be limited and will not adequately address the specific rights and concerns of aboriginal communities. These fears can lead to hesitation among both parties who may perceive co-operative management as an uncertain and risky venture.

Many of these fears may best be alleviated through the development of a pilot project in the co-operative management of archaeological resources. It is clear that given the diverse nature of First Nations in B.C., instituting a universal province-wide integrated approach would be extremely difficult, if not impossible. Such an approach would also require a large outlay of human and financial resources that provincial coffers are presently unwillingly to accommodate. A more realistic approach would involve co-operative management on a micro-scale. A solid commitment on the part of both the First Nation and government would still be required but much of the pressure associated with larger, more permanent arrangements would be significantly lessened. A pilot project implies the creation of a new situation where changes are made on a trial basis and arrangements are flexible and open.

There are many potential benefits associated with the implementation of co-operative arrangements on a limited basis. From a provincial perspective this type of trial arrangement may be particularly attractive. Additional funding and staffing would be limited. Involvement would entail minimal disruption to standard management operations which could continue as per usual outside of the trial project area. Such an initiative shows that government is making an effort to integrate First Nations' concerns and is willing to change. This willingness would contribute to the establishment of interactions based on good faith and helps alleviate much of the tension which currently underlies the management of archaeology in B.C.

From a First Nation's perspective participation in a pilot project may be the first time aboriginal interests in archaeological resource management are acknowledged on a government level. A co-operative arrangement could effectively empower First Nations to affect management decisions and create an environment amenable to the integration of traditional protocols into all aspects of managing and preserving cultural resources. Working together to co-operatively manage archaeological resources helps create a 'level playing field' where engrained 'us versus them' relationships can be transformed through trust and mutual respect.

A pilot project would serve as a model upon which to build and cater to the specific needs of First Nations. Indeed the degree of involvement will vary for each First Nation. Some may choose to have limited involvement with special ownership rights while others may insist on a primary role in archaeological resource management within aboriginal governance structures. The foundation of any kind of co-operative arrangement will need to be flexible to accommodate this diversity. These arrangements would be significant for they would imply involvement on the basis of choice not as previously prescribed through government policies.

A pilot project would also provide an opportunity to experiment with the integration of various archaeology stakeholders into some form of local co-management board or committee. In addition to First Nations' representation as a primary stakeholder, such a board or committee

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could effectively incorporate involvement from the broader general public thereby encouraging and promoting greater public understanding and appreciation of B.C. archaeology and its importance to aboriginal people. This component of a local co-operative management structure for archaeology would help provide a foundation for a more effective and inclusive public archaeology program currently lacking within the present management regime.

The Sto:lo Nation would be a strong candidate for such a pilot project. Their considerable interest and experience in managing archaeology in Sto:lo traditional territory provide solid ground upon which to build informed and meaningful negotiations. Much of the infrastructure necessary for full involvement in archaeological resource management decisions is already in place. Current Sto:lo Nation staff includes an archaeologist, historian, cultural advisor, archivist, genealogical specialists, and a large community of elders and traditional knowledge experts who collectively can address a wide range of Sto:lo heritage issues. Well established heritage policies and permits have led to increased familiarity and interaction between the Sto:lo Nation and government managers as well as the wider archaeological community. There is a history of collaboration between the Sto:lo nation, the provincial government and various academic institutions. While other First Nations bands and organizations may be suitable participants, the Sto:lo Nation provides a unique opportunity to capitalize on a well established community-based heritage management system.

7.3 Conditions to Facilitate the Development of Co-operative Management Arrangements

It is difficult to know what the particular details of a co-operative arrangement for archaeological resource management will be. The conditions for co-operative management and the methods of implementation will undoubtedly vary depending upon the specific concerns of First Nations and the nature of archaeological resources within different regions throughout the province. A number of conditions which would help facilitate the development of co-operative management of archaeological resources in B.C. have been identified throughout the course of this study. These are presented below.

Formal Recognition of Aboriginal Rights to the Resource

The success of any co-operative arrangement for the management of archaeology will likely depend upon the degree of recognition of the special rights of First Nations to these resources. First Nations are often dismayed at the restrictive values placed on definitions of cultural resources by government. Frustration arises over provincial heritage laws which protect only a small portion of First Nations' cultural history. The formal recognition of aboriginal rights to archaeological resources in provincial law would legally bind the government to ensure the protection of aboriginal rights to the resource. As noted previously with territorial land claim agreements and recent heritage legislation in the U.S., this recognition succeeds in shifting the balance of power between both parties placing the relationship between aboriginal communities and government on a more equal footing.

Increased Political Support for Archaeological Resource Management

The support for archaeology within the Ministry of Small Business, Tourism and Culture is increasingly strained. It has been suggested that archaeological resource management by the Province would benefit from movement to a ministry, such as the Ministry of Environment,

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Lands and Parks, which performs similar regulatory functions. This movement would help maintain an association between archaeology and broader land and resource management activities and contribute to the legitimization of archaeology within provincial planning and management processes. In an environment where archaeology is considered valuable and worthwhile issues of co-operative management can be more effectively addressed.

Increased Financial Support for Archaeological Resource Management

Directly related to the need for increased political recognition of the value of archaeology is the need for increased financial support for archaeological resource management. Without adequate funding the Province will fall short of its responsibilities as outlined in the *Heritage Conservation Act*. As it stands the *Agreements with First Nations* presented in Section 4 of the *Act* remains an idle promise due to Province's lack of financial commitment to both archaeology as well as to First Nations. Operationalization of this part of the legislation would succeed in 'opening the door' to cooperation in the management of archaeology.

Commitment, Compromise and Flexibility

The co-operative management of archaeological resources can only be made possible through sincere commitment on the part of both First Nations and government. To be successful this commitment must transcend long-standing entrenched misgivings and distrust. With any new approach to management there must be a willingness to change and make compromises. These compromises are possible only when the mutual goal is one of better and fairer archaeological resource management. Flexibility remains an integral part of a co-operative arrangement which seeks to combine what seem at the outset to be irreconcilable differences.

Balance of Values

A co-operative approach to management must effectively incorporate a broad range of First Nations heritage values and concerns and balance these with those of government. This balance involves the integration of very different worldviews which can only be achieved through mutual trust, respect, and understanding. The resulting combination of conventional scientific approaches to management with traditional perspectives holds the promise of creating new, more relevant interpretations of the past and the eventual joint stewardship of archaeological resources.

Shift in the Balance of Power

A truly co-operative approach to archaeological resource management would involve a shift in the balance of power from token participation in decision-making to a situation where First Nations assume equal partnership in the management of archaeology with the authority to influence management decisions. No longer would First Nations heritage policies and permits remain unrecognized by government. These protocols and the values expressed within them would become guiding principles for the creation of an inclusive and co-operative archaeological resource management system.

Decentralization of Management Authority

The decentralization of management authority holds much potential in addressing local issues in archaeological resource management. Currently all decisions are made in provincial offices in Victoria with little personal contact with affected individuals on a more local level. This separation contributes to the image of the Archaeology Branch as a faceless bureaucracy, effectively widening the gap between themselves and the public. This distance, both real and imagined, weakens the government's ability to fully understand and maintain awareness of archaeological issues within local communities.

The creation of regional management offices would help strengthen communication between local communities and government. For many First Nations this decentralization would be a necessary first step in developing a system where aboriginal issues could be effectively recognized. A regional management structure would enable the creation of locally adapted management systems catering to the specific needs of the general public, First Nations, and the resource. This structure would also facilitate the integration of archaeological concerns within local and regional planning and development processes contributing to a more comprehensive management program. Localized management provides an opportunity to raise public awareness and appreciation of archaeology, both necessary components to ensure the long-term protection of these resources. The creation of local or regional co-management boards or committees in this decentralized system would allow for the representation of affected First Nations as well as provincial and local governments and could possibly lead to the creation of interim measures agreements for archaeological resource management on a regional basis.

7.4 Conclusion

This thesis has taken an in-depth look at the development of archaeology and its effects on First Nations peoples. In particular, the thesis has examined the development of archaeological resource management and the level of First Nations involvement in the decision-making process. The case-study has explored how current aboriginal and provincial approaches to archaeological resource management can differ and helped to outline opportunities and constraints to the development of a more inclusive management regime.

The case study has shown that comprehensive First Nations heritage management systems based on traditional values do exist and can be effective. This effectiveness, however, could be heightened through the integration of government support and a balance between traditional and conventional management approaches. It is clear that numerous obstacles stand in the way of achieving this balance. The political situation in British Columbia is complicated destined only to change and become increasingly complex. Jurisdictional conflicts in archaeological resource management are necessarily rooted in a much larger struggle for First Nations control of land and resources. These conflicts will not be quickly resolved. In light of these enormous obstacles the conditions outlined for the development of a more co-operative approach to archaeological resource management may be considered naive. While these conditions may verge on an oversimplification of the struggle for co-operative management they are nonetheless critical stepping stones on which to build the future for a more appropriate and responsible management of the past.

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process. I am particularly interested in the Stó:lō Nation's Heritage Management System as an alternative approach to the current legislative system which regulates First Nations' participation in archaeological resource management in B.C. Developments such as the Stó:lō Heritage Permit and Heritage Policy are especially important in establishing protocol for any archaeological work conducted within Stó:lō territory. They help to initiate a dialogue between archaeologists and the Stó:lō, promote ongoing communication, and build relationships based on respect for and recognition of Stó:lō rights and concerns regarding archaeological resources. I intend to collect information through a literature review of relevant materials and interviews with individuals involved in Stó:lō heritage management, as well as with members of the archaeological community and the provincial government. Analysis of the Stó:lō Heritage Management System as an alternative approach to the current legislative system is intended to illustrate the benefits and effectiveness of archaeological resource management by First Nations communitie and the need for greater First Nations input and control in the decision-making process.