

UNEARTHING THE LAW

*Archaeological Legislation
on Lands in Canada*

Responsibility
jurisdiction



Investigation
p r e s e r v a t i o n

Heritage
p r o t e c t i o n

Property
s t a t u t e s

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on Lands in Canada*



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Abstract

Archaeology provides Canada with its glimpses of the first 20,000 years of the human occupation of this country.

The analysis of items left by previous generations, in the soil or underwater, is often the only way modern Canadians can understand how over 700 generations lived both before and after contact between Europeans and First Nations. Sometimes, items that would look insignificant to most people today actually contain clues which, to a trained archaeologist, are like an open book. In certain crucial respects, the soil of Canada is itself a kind of archive of our collective past.

That is why it is so important for archaeologists to be notified and involved whenever the land is about to be disturbed by a major project. It also explains why, when the soil gives up its secrets accidentally (revealing artifacts or, more dramatically, human remains), this represents a remarkable and precious opportunity to learn about the past. The context — like the position of artifacts in relation to one another — can also offer clues which are as essential to an archaeological investigation as a crime scene is to a police investigation. That is why it is the policy of Canada, and of all the provinces and territories, to take maximum advantage of such opportunities.

But safeguarding such opportunities is not just a matter of policy. *It is also the law.*

In the following report, the focus will be on laws affecting archaeology on land (as opposed to shipwrecks, which are handled by separate legislation). Those laws change from place to place — not only because they differ from one province or territory to another, but also because the rules for federal lands are different from those elsewhere. Provincial and territorial laws have wide application, since matters pertaining to “property” are primarily under provincial jurisdiction according to the Constitution. The government of each province and territory, without exception, has enacted rules specifically targeting the legal protection of archaeological resources. These provincial and territorial laws apply to most lands. Federal laws apply on lands under federal jurisdiction (national parks, lands belonging to federal departments such as National Defence or Agriculture and Agri-Food, land where a federally regulated development project is proposed, etc.). Although federal laws are not as precise as provincial and territorial ones, it is also the policy of the federal government to protect Canada’s archaeological heritage.

For that matter, these various laws usually say essentially the same thing. For example, they are reasonably consistent in how they define the subject matter.

- According to law, protected archaeological resources include *all evidence of human occupation that comes out of the ground (or underwater)*. (The only exception is in Nova Scotia, where buried treasure is not defined as “archaeology” but is subject to similar reporting requirements.)
- Everywhere but in Alberta, the law applies *not only to such items in the ground, but on the ground* (or even above the ground in Ontario and British Columbia, for old carvings in rock or trees).
- Under federal law, and in most provinces and territories (explicitly in Alberta, Saskatchewan, Manitoba, Nova Scotia, Newfoundland and Labrador, and Yukon; implicitly in British Columbia and Prince Edward Island), the *law also protects palaeontology* (the remains of prehistoric animals and plants); this includes everything from dinosaurs and mammoths to extinct ferns. (The legal status of palaeontology is less clear in Ontario, New Brunswick and the Northwest Territories; it is specifically excluded in Quebec’s law.)

These laws are also consistent in calling on Canadians to think ahead, and to be conscientious about what may turn up. Everywhere in Canada, there is a formal obligation for governments and various members of the private sector:

- to *plan* for archaeology and
- to *protect* archaeological resources (regardless of whether they are discovered as part of a conscious research effort or by accident).

Those obligations arise from:

- international treaties,
- federal policy and statutes, and
- provincial/territorial statutes.

The laws are only slightly less homogeneous when they describe the conditions necessary to allow individuals to do their own archaeological research.

- According to the law of the three westernmost provinces (Saskatchewan, Alberta and British Columbia), archaeological exploration requires a permit (from the competent provincial/territorial authority) *if it will disturb the soil*.
- Under the laws of the other provinces and territories, all archaeological exploration must be authorized, whether it “disturbs the soil” or not. That includes people scanning the land visually or with various kinds of equipment.
- On federal lands, there is no single statute specifically on this point. Some federal bodies, such as the Parks Canada Agency and the Department of National Defence, have specific rules governing research; others do not, and it is then up to individual federal managers to decide, based on general federal policy.

Not surprisingly, every provincial and territorial government has an established format for permit applications and the filing of reports for authorized archaeological research. These are obligatory. Authorization depends, in part, on the archaeologist showing credentials acceptable to that province or territory. Some federal bodies, such as the Parks Canada Agency and the Department of National Defence, have rules that are similarly precise regarding permits and reports.

A careful identification of affected groups (e.g., descendants or other culturally affiliated people) and consultation with them should precede any research. Results must be communicated to the licensing authorities. On federal lands, it is recommended (although it is not mandatory) that a summary be sent to the director of the Archaeological Services Branch of the Parks Canada Agency.

In many respects, the laws governing archaeology are very similar to the laws governing environmental impact assessment. That is no coincidence. Often, the rules pertaining to archaeology and to the environment generally have the same source. In fact, at the federal level, they are both rooted in the same statute. Legally, *a project that would prompt an environmental assessment (under the Canadian Environmental Assessment Act) also triggers a requirement to research archaeology and palaeontology*. Elsewhere, although the statutes are different, a similar approach typically applies under the legislation of provinces and territories.

The laws are clear about what to do in the event of accidental discoveries. This applies to the discovery of artifacts, and particularly to the discovery of human remains. (Rules for the latter are extremely important, because it may not be clear at the time whether this is the discovery of an archaeological site or of a crime scene.)

The provincial and territorial laws are unanimous in stating that a discovery (whether of human remains or not) as part of an archaeological research project, under permit, must be reported by the archaeologist to the relevant provincial or territorial authorities.

In the event of the accidental discovery of human remains, the law specifies that one must:

- halt activities,
- secure the area and
- call the police.

The police will determine whether the site is a possible crime scene, or whether it is “archaeological,” whereupon they will contact the relevant authorities accordingly.

It is recommended (although it is not mandatory) that if human remains or archaeological objects are discovered, the archaeologist should consult with nearby populations who are most likely to be descended from the people whose remains or property have been revealed.

The laws are less explicit in defining what to do in the event of a discovery of artifacts not involving human remains. Ideally,

- a) all work that could potentially threaten the site should be halted,
- b) the site should be secured and
- c) the responsible provincial/territorial archaeological official should be notified.

In principle, these measures are intended to protect not only the *artifacts*, but also the *site* since, as in the case of a crime scene, many of the most valuable clues are in the location of the various objects. However, the statutes are not as clear in this area as they are in the case of human remains.

- Concerning (a) and (b), all provinces and territories except Ontario insist that the site be protected automatically, and make it an offence to disturb the site of an archaeological find. (In Ontario, the provincial minister responsible for heritage must officially designate the site for protection first.)
- Concerning (c), half the provincial statutes include a similar requirement to report finds (in Newfoundland and Labrador, Quebec, Manitoba, Saskatchewan and Alberta), although the laws of the other provinces and of the territories are silent on that point.

And who owns the find?

- In all provinces and territories except Ontario and Quebec, discovered artifacts belong to the provincial/territorial Crown or its agents.
- The *Ontario Heritage Act* says that artifacts held without a licence are seizable, but not to whom they belong. The Common Law, however, says that they usually belong to the landowner.
- In Quebec, finds belong to the Crown on land that has been public land at any time since 1972; on land that has been private, finds are co-owned by the landowner and finder.

In practice, and despite occasional divergences in wording, the laws throughout Canada disclose a common legislative intent: archaeology is important to Canada, and Canadians should not abuse their archaeological heritage any more than they would tear pages out of their family history. Although the statutes governing archaeology continue to evolve, they are the essential framework for future efforts to protect and understand this important part of Canada’s heritage.

section 1

Introduction

The year was 1585. Seven boatloads of hardy English colonists founded a settlement on Roanoke Island off the Carolina coast; but by the time the next supply ship reached that location, the colonists had vanished without a trace. Since then, countless American books, articles and television programs have speculated on the fate of this “Lost Colony,” the first English settlement in North America. The story makes for a gripping mystery.

Unfortunately, the story is also wrong.

Perhaps, as the story unfolds, it will be discovered that the colonists joined the Native peoples who are presumed to have inhabited the North American mainland for 11,500 years — although *Time* magazine now speculates that a site outside Pittsburgh, dating back over 12,000 years, may be “the oldest archaeological site in North America.”¹

Wrong again.

It was in 1578, not 1585, that the English made their first attempt at a colony in North America — and not off North Carolina, but in Nunavut, near today’s Iqaluit. Although Martin Frobisher’s mining scheme there came to naught, the foundations of his own house are still clearly visible. Yet this 1578 house is not the oldest dwelling in Canada: far from it. Canada’s oldest known home is a cave in Yukon occupied not 12,000 years ago like the U.S. sites, but at least 20,000 years ago.²

How do we know? Because Canada has trained archaeologists who have pieced together at least some of the jigsaw puzzle that is North American history. Through painstaking effort, they are helping to roll back the effects of collective amnesia.

Archaeology is the study of material evidence, from the first arrival of people in what is now Canada to more recent historical times. Archaeologists also study locations *suspected* of having been occupied in the past and which are now undergoing change. Although objects used by humans are useful in understanding past ways of life, other more ephemeral items can also be revealing. Archaeologists take note of the natural environment, architectural vestiges and communication linkages. The assembly of this information gives archaeologists a clearer picture of the lives of the people involved.

For at least the first 20 millennia of human occupation in Canada, no written records were kept to describe lives and events. Even after the arrival of writing, records were usually sparse in describing how our ancestors lived. Sometimes, major events were commemorated in oral traditions; but memories often fade, particularly in details of how the vast majority of any given population lived day to day. Nonetheless, Canada still has powerful tools to illuminate its own roots. Archaeological resources are Canada’s archive of its ancient and historic past.

Archaeological resources can be as large as entire communities, or as small as a single object. They may be in the ground or underwater. This publication focusses on one part of the archaeological picture, namely *land* archaeology (as opposed to shipwrecks, which are handled by separate legislation).³

Policy

A cynic might ask: even assuming that archaeology is important to Canada, do governments really care? Canada has a panoply of federal, provincial and territorial governments with their own laws and their own priorities. Issues pertaining to “property” are normally assigned by the Constitution to provincial governments. So at best, the federal government’s own role would be confined primarily to:

- land that it owns (national historic sites and parks, lands belonging to federal departments like such as National Defence or Agriculture and Agri-Food) or
- lands where it exercises some control (land where there is a federally regulated undertaking such as a railway or airport, or where a federally regulated development project is proposed).

Given those constraints, what is the likelihood that archaeology plays a significant role in federal policy? In the words of one report:

Considering all the issues that face Canadians today, how important is it that the federal government improve protection and management of the archaeological heritage under its jurisdiction?⁴

The answer, offered by the federal government itself, is that archaeology is often our only clue to Canada’s past.⁵ Even apparently minor discoveries may fill an important gap in our understanding.⁶ The federal government has therefore sought to “provide coherent direction to all federal departments and agencies involved with archaeological heritage, whether as landholders or developers, as administrators of policies and programs which impinge on archaeological resources or as managers accountable for aspects of archaeological heritage.”⁷ In short, “from the federal perspective, the protection and management of archaeological heritage is important.”⁸

According to the *Government of Canada Archaeological Heritage Policy Framework*:

As our archaeological heritage is a source of inspiration and knowledge, it is the policy of the Government of Canada to protect and manage archaeological resources.... By protecting and managing this resource through policy, legislation and programs, the Government will achieve a general symmetry with international standards and provincial measures.⁹

Comparable policy statements are to be found among provincial and territorial governments as well. But the importance of archaeology rests not only with well-intentioned policies; it is also a matter of law.

Law

The legal framework for archaeology on land in Canada is the subject of this publication. In fact, the proper management and handling of archaeological resources is a matter of:

- international treaties and
- statutory law at the federal, provincial and territorial levels.

Indeed, this analysis of rules relevant to archaeology was commissioned by the Government of Canada in the very year of the hundredth anniversary of the first major international treaty on the protection of heritage (Hague II).¹⁰ Archaeological resources are an important part of humanity's heritage, and this anniversary represented an ideal moment to take stock of Canada's legislation on the management of that heritage. Canada has a substantial body of legislation dealing with archaeology; some stems from obligations under international treaties and some is domestic. These laws and regulations, summarized in the following pages, address these basic questions:

- **What is an archaeological resource?**
[Definitions under international, federal and provincial legislation]
- **Why is archaeological management important?**
[Sources of law and policy]
- **Who should be notified of archaeological surveys/research?**
[Permission procedures for survey and planning work]
- **How should research and planning be conducted?**
[Qualifications for people doing the work]
[Obligatory content of reports]
- **How should development plans take archaeology into account?**
[Legislation governing different kinds of development on lands]
- **What should happen when something is discovered?**
[Different kinds of discovery]
[Reporting]
[What to do with the find]

Typical Objectives of Legislation

In light of the Government of Canada's longstanding interest in the subject, it is no surprise that federal reports¹¹ provide a preliminary checklist of the objectives of archaeological legislation. These offer an apt summary of topics and concerns:

- designation of all important archaeological resources,
- a comprehensive register/inventory of archaeological resources,
- a permit system to authorize archaeologists to conduct explorations,
- requirements for declarations by finders,
- a screening system for projects that could have an impact on archaeological resources,
- public sector ownership of archaeological resources,
- controls on removal, particularly outside the province or to another country,
- public access and programming, and
- an administrative body.

Kinds of Legislation

For most kinds of archaeological questions, the legislative backdrop is relatively limited. There are only a few statutes (on heritage and environmental assessment) which answer virtually all the legal questions that could arise. The one dramatic exception is that of human remains. Any activity, at a location where human remains are found or even suspected, is both legally complex and politically controversial.

This analysis will identify the applicable rules. It has been pointed out¹² that “in some cases, for example with respect to burial disposition, some legal regulations appear to be in conflict with one another.... Inconsistent procedures for reporting, identifying, removing, preserving, and disposing of archaeological burial remains have often resulted.” Various provincial authorities responsible for archaeology have therefore been developing protocols to assure consistency in operation between police, archaeologists, coroners, public health officials, etc. — but this is not always the case. In short, there are variations from one part of Canada to another.

Federal lands tend to be in a distinct category, which will be described. Special rules may also apply if the archaeological activity or discovery is offshore (or in navigable waters),¹³ or if it is on land subject to a land claims agreement; although those are outside the terms of reference of this analysis, decision makers should be aware of this possibility.

MAJOR FEDERAL STATUTES APPLICABLE TO ARCHAEOLOGY

Canadian Environmental Assessment Act
Cultural Property Export and Import Act

MAJOR PROVINCIAL/TERRITORIAL ARCHAEOLOGICAL STATUTES

Newfoundland and Labrador / **Historic Resources Act**
Prince Edward Island / **Archaeological Sites Protection Act**
Nova Scotia / **Special Places Protection Act**
New Brunswick / **Historic Sites Protection Act**
Quebec / **Cultural Property Act**
Ontario / **Ontario Heritage Act**
Manitoba / **Heritage Resources Act**
Saskatchewan / **Heritage Property Act**
Alberta / **Historical Resources Act**
British Columbia / **Heritage Conservation Act**
Northwest Territories / **Archaeological Sites Regulations**
Yukon / **Historic Resources Act**
Nunavut (Temporarily the same as the Northwest Territories, subject to section 33.5.1 of the Nunavut Land Claims Agreement calling for new legislation.¹⁴)

All provincial/territorial statutory references are to the above, unless otherwise specified.

What is an Archaeological Resource?

Basic Principle

Federal, provincial and territorial laws adopt various definitions of what constitutes “archaeological interest.” In general, it is safe to assume that archaeology includes:

- all evidence of human occupation that (according to federal legislation) is over 75 years old (the provinces are less specific about age), and that comes out of the ground (or underwater). (The only exception is in Nova Scotia where, for provincial purposes, buried treasure is not defined as “archaeology” but is subject to similar legal rules.)
- Everywhere but in Alberta, the law applies not only to such items *in* the ground, but *on* the ground (or even above the ground in Ontario and British Columbia, for old carvings in rock or trees).
- Under federal law, and in most provinces and territories (explicitly in Alberta, Saskatchewan, Manitoba, Nova Scotia, Newfoundland and Labrador, and Yukon; implicitly in British Columbia and Prince Edward Island), the law also protects palaeontology (the remains of prehistoric animals and plants). (The legal status of palaeontology is less clear in Ontario, New Brunswick and the Northwest Territories; it is excluded in Quebec’s law.)

Where there is any doubt as to whether a find qualifies, it is best to obtain expert advice immediately.

Background

One expert report for the federal government complained that the statutory definitions for the word “archaeology” in Canada were vague.¹⁵ International treaties¹⁶ and federal statutes are unhelpful in defining what archaeology is,¹⁷ and provincial statutes are inconsistent.

The Parks Canada Agency, however, provides a fairly specific definition.

Archaeology deals with the recovery and analysis of physical evidence from on or below the surface of the ground and underwater.... An archaeological site is a surface vestige or the subsurface or submerged remains of human activity at which an understanding of these activities and of the management of these resources can be achieved through the employment of archaeological techniques...an archaeological artifact [is] an object, a component of an object, a fragment or shard of an object that was made or used by humans, a soil, botanical or other sample of archaeological interest.¹⁸

In practice, the consensus discernible throughout the various statutes is that archaeology deals with items that combine three features. Archaeological items usually:

- are found on or under the *ground*,
- pertain to *human* occupation and
- are *old*.

However, each of these features has distinctive connotations and exceptions in each province/territory. The following is a summary of how these definitions apply.

Objects Found On or Under the Ground (or Underwater)

On land, many have to be excavated to be retrieved.¹⁹ But, the laws of every government except one indicate that an archaeological object can be *under* or *on* the land.²⁰

Exceptions

- Alberta disqualifies items *on or above* the ground from being considered “archaeological resources” (although they can be protected under a separate ministerial order), but is the *only* government to do so.²¹
- In two provinces, some items found *above* ground are also considered “archaeological”: Ontario and British Columbia recognize rock carvings (petroglyphs)²² — although it could be argued that these, like rock paintings, are otherwise covered by every province’s legislation because they have become “part of” the rock face and hence part of the ground. British Columbia also recognizes carvings in trees (“culturally-modified trees”).²³
- Another unique exception is in Nova Scotia law, where “archaeology” does *not* apply to finished metals and gems buried in the ground, because such items are in a separate legal category²⁴ called a “treasure trove.” However, the treatment of research and discoveries, pertaining to treasure troves, is legally very similar: it must be preceded by a licence, finds must be reported, etc.

The Objects Are Old

One international treaty suggests that these items can be considered “antiquities” if they are 100 years old²⁵; a federal report suggested 75 years as the threshold.²⁶ Another federal regulation, the *Canadian Cultural Property Export Control List*, specifies²⁷ that although the threshold for most items of cultural property covered by the list is 50 years, the threshold for “an archaeological object” is 75 years.²⁸

With one exception, the provincial and territorial laws *do not specify a threshold* for how old an item must be before it can be considered “archaeological.” Almost every law protects human remains (regardless of age), but is not precise about how old other artifacts must be.²⁹ They merely say that the object should have “archaeological,” “prehistoric,” “historic” or “heritage” interest — without defining what that means.³⁰

The exception is B.C.’s law, which has a three-pronged approach. Section 1 offers generalized (and somewhat vague) protection to all items of “heritage value,” whereas section 13(2)(d) offers absolute protection to human artifacts predating 1846, and artifacts from other eras defined by regulation. Where it is *uncertain* whether the item so qualifies, it is protected under section 13(2)(g).

The Objects Relate to Humans, but...

Archaeology is usually defined as including items which are made by or used by humans — or even human remains. Does this exclude remains of prehistoric animals or plants (e.g., fossils, dinosaur bones, etc.)? What are the duties toward *palaeontology* (i.e., artifacts of prehistoric animals or plants)?

In legal practice, the distinction between archaeology and palaeontology is usually more apparent than real. Even if most statutes do not treat the words “archaeology” and “palaeontology” as synonymous, they nevertheless give them the same protection.

That is the case explicitly under the federal laws.³¹ It is also explicit in the laws of Nova Scotia, Manitoba, Saskatchewan, Alberta and Yukon.³² It also appears to be the case implicitly in British Columbia and Prince Edward Island.³³ Newfoundland and Labrador’s law also covers palaeontology, though somewhat differently.³⁴

That leaves Ontario, New Brunswick and the Northwest Territories where the subject is simply not mentioned,³⁵ and Quebec where palaeontology is specifically excluded from the law's treatment of archaeology.³⁶ From the standpoint of good practice, however, it appears that if a palaeontological discovery were made even in a province whose law was unclear on the subject, it would be prudent to treat it in much the same way as an archaeological discovery.

Specific Examples

The regulations under the federal *Cultural Property Export and Import Act* offer a far more specific list itemizing the kinds of objects foreseen (see sidebar page 12).

How “Significant” Must a Discovery Be?

The laws cited above refer frequently to archaeological items being of “archaeological,” “prehistoric” or “historic,” “significance” or “importance” (or words to that effect). How important must an archaeological find be, in order to trigger this legislation?

The answer is that *any* archaeological discovery is considered significant for purposes of the law. The rationale is explained by the Canadian Environmental Assessment Agency, which supervises administration of the *Canadian Environmental Assessment Act*.

[A] cultural heritage resource is a human work or a place that gives evidence of human activity or has spiritual or cultural meaning, and that has historic value.... This interpretation of cultural resources can be applied to a wide range of resources, including... archaeological sites, structures, engineering works, artifacts and associated records.... Not all valued cultural heritage resources have official designation status and therefore may not always be identified in government heritage registries. They may not even be formally recognized or documented.³⁷

Another federal report explained it this way.

It does not follow...that archaeological resources which are not of national importance have nothing to contribute to Canada's archaeological heritage. In fact, much of what we know about Canada's archaeological past results from an accretion of knowledge of individual sites and artifacts that collectively acquire an importance unheralded by the apparent insignificance of any particular one.³⁸

That “lack of recognition” is even truer in the field. The problem is that when one discovers an item in the ground, it is not always obvious how old it is, or what it was used for. The path of caution therefore appears to be:

- Plan ahead: learn as much as possible about potential archaeological resources *before* they are uncovered, by doing professional survey work.
- When in doubt about what has been found, call on archaeological expertise.

EXTRACTS (NON-EXHAUSTIVE) FROM THE *CANADIAN CULTURAL PROPERTY EXPORT CONTROL LIST*, A REGULATION UNDER THE *CULTURAL PROPERTY EXPORT AND IMPORT ACT*

In this Order, "object" means an object that

- (a) is not less than 50 years old; and
- (b) was made by a...person who is no longer living (Section 2).

GROUP I: OBJECTS RECOVERED FROM THE SOIL OR WATERS OF CANADA

In this Group, "artifact" means an object made or reworked by a person or persons and associated with historic or prehistoric cultures (Subsection 1).

Palaeontological specimens recovered from the soil of Canada, the territorial sea of Canada or the inland or other internal waters of Canada, as follows:

- (a) a type of fossil specimen of any value;
 - (b) fossil amber of any value....
- (1) An archaeological object of any value recovered from the soil of Canada, the territorial sea of Canada or the inland or other internal waters of Canada not less than 75 years after its burial, concealment or abandonment if the object is an artifact or organic remains, including human remains, associated with or representative of historic cultures.
- (2) Without restricting the generality of subitem (1), archaeological objects described in that subitem include
- (a) artifacts that relate to the Aboriginal peoples of Canada, namely,
 - (i) arrow heads, harpoon heads and such other projectile points used as hunting implements,
 - (ii) adzes, axes, awls, celts, chisels and such other tools and agricultural implements,
 - (iii) clubs, tomahawks and such other weapons,
 - (iv) harpoon heads, fish hooks, sinkers, and such other fishing implements,
 - (v) pipes, vessels, potsherds and such other pottery,
 - (vi) effigies, rock drawings, wampum and such other ceremonial and religious articles, and
 - (vii) beads, articles of adornment and such other objects used as trading goods;
 - (b) artifacts that relate to the progressive exploration, occupation, defence and development of the territory that is now Canada by non-aboriginal peoples, namely,
 - (i) arms, accoutrements, fragments of uniforms, buckles, badges, buttons, and such other objects related to military activity,
 - (ii) beads, articles of adornment and such other objects used as trading goods associated with the fur trade,
 - (iii) hunting, fishing and trapping implements,
 - (iv) ordnance, ship's gear, anchors and such other objects related to naval activity,
 - (v) religious paraphernalia and such other objects related to missionary activity,
 - (vi) coins, cargo from shipwrecks or sunken ships and such other objects related to transportation, supply and commerce,
 - (vii) utensils, implements, tools, weapons, household articles and such other objects related to early settlement and pioneer life, and
 - (viii) machinery and such other objects related to manufacture and industry; and
 - (c) organic remains associated with or representative of historic or prehistoric cultures (Subsection 4).

section 3

Getting Ready

Principle

Most people who are responsible for real estate, or for projects on real estate, will agree that it is desirable to be well prepared for any and all eventualities. In the case of archaeology, that is not only good practice but, especially for large projects on land, it is the law. There is a formal obligation:

- on federal (and most provincial) project managers to *plan* for archaeology, and
- on all of the population to *protect* archaeological resources (regardless of whether they are discovered as part of a conscious research effort or by accident).

Background: Treaty Obligations

The rationale for systems of archaeological management is rooted in law at various levels, beginning with international law. There are two primary treaties which Canada has signed, and which impose a duty on the governments of Canada, its provinces and territories, to take action for archaeological management.³⁹

The first is the *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*. That Convention was promoted by the United Nations Educational, Scientific and Cultural Organization (UNESCO) in 1970, and Canada formally acceded to it in 1978. The Convention underlines the importance of the subject by declaring, at article 4, that “cultural property acquired by archaeological, ethnological or natural science missions” is recognized as belonging to “the cultural heritage of each State.”

For that purpose, countries are then obliged, under article 5, to:

- contribute to the formation of draft laws and regulations designed to secure the protection of their cultural heritage...
- establish and keep up to date, on the basis of a national inventory of protected property, a list of important public and private cultural property, [and]...
- organize the supervision of archaeological excavations, ensuring the preservation ‘*in situ*’ of certain cultural property, and protecting certain areas reserved for future archaeological research.

The second convention does not refer as specifically to archaeology, but refers more to countries’ legal obligations to their heritage generally. Under the *Convention Concerning the Protection of the World Cultural and Natural Heritage* (World Heritage Convention) which Canada adhered to in 1976, article 5 obliges each country:

- to adopt a general policy which aims to give the cultural and natural heritage a function in the life of the community and to integrate the protection of that heritage into comprehensive planning programs...
- to develop scientific and technical studies and research, to work out such operating methods as will make the state capable of counteracting the dangers that threaten its cultural or natural heritage, [and]

- to take the appropriate legal, scientific, technical, administrative and financial measures necessary for the identification, protection, conservation, presentation and rehabilitation of this heritage.

Although Canada has no unifying statute that codifies its national legislation on archaeology, there are relevant federal statutes (referred to later), plus a variety of provincial and territorial statutes. In short, Canada is one of many countries that have indeed adopted legislation along these lines. In every case, the relevant government has assigned the implementation of those laws to a specific agency. (See sidebar pages 15-16.)

Each province and territory has a single governmental body to deal with archaeology. At the federal level, the organizational arrangements are more complicated, as the following pages will reveal. Unlike the provinces and territories, there is no federal legislation governing archaeological research and planning per se; the federal statutes only cover archaeological exports, and archaeological studies *within the confines of an environmental impact assessment*. In other words, unless there is a prospect that artifacts will be exported — or that a government department is about to undertake an environmental impact assessment for some reason — then there is no federal statute directing how a given department is supposed to treat archaeological issues on its lands.

In the absence of such a statute, federal land managers (who might be faced with an archaeological issue) are expected to rely on two other kinds of documentation:

- federal *policies* generally applicable to all departments and
- the specific directives of their *own* department.

Those “policy” statements are mentioned at various points in this report. However, several federal departments have taken the further step of enacting specific directives. One example is the Department of Canadian Heritage, which works in close co-operation with the Parks Canada Agency.

The Archaeological Services Branch of the Parks Canada Agency not only has responsibilities pertaining to archaeology on Parks Canada lands, but also responds to requests for advice from other government departments. In the meantime, questions pertaining to archaeological policy and legislation are handled not by the Parks Canada Agency, but by the Heritage Branch of the Department of Canadian Heritage. That Department, together with Parks Canada, has developed an extensive body of directives governing archaeology on lands under the control of either Parks Canada or the Department.⁴⁰

Another example of a federal department which has specific rules to protect archaeological heritage is the Department of National Defence.⁴¹ In the case of many other federal bodies, however, decisions concerning archaeological research are (in practice) essentially left to the discretion of individual land managers.

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section 4

Where to Apply

Principle

On most lands in Canada (i.e., lands other than federal lands), notice of proposed archaeological research must be brought to the attention of the competent provincial or territorial archaeological authority (sidebar above). These authorities will usually stipulate conditions, often including consultation with, for example, affected First Nations.

Archaeological research on federal lands requires the approval of the relevant federal officials.

- In the case of national parks or national historic sites, that means the Parks Canada Agency.
- In the case of the Department of National Defence, it usually means the base commander, who is governed by that Department's archaeological rules.
- On other federally regulated lands or projects, research *within the confines of an environmental impact assessment* must meet the standards of the Canadian Environmental Assessment Agency.
- In all other federal cases, the approval is essentially up to the relevant department's land manager.

Background

There are three key stakeholder groups which have an interest in archaeological research:

- officials,
- archaeological professionals and
- descendants and other culturally affiliated people.

Officials

Provincial/territorial officials would be notified as a matter of course, in the case of normal archaeological survey work.

(List of provincial officials in sidebar.)

Ideally, a summary of the same report is also sent to the Director of Archaeological Services Branch of the Parks Canada Agency (address in sidebar), although not a legal requirement.

Archaeological Professionals

Although these experts and the "officials" are often the same people, there are some instances where licensing authorities may, in their discretion, call on researchers to notify the department of anthropology of the nearest university, as part of the terms authorizing the permit.

The task of notifying the various designated parties is usually assigned to the archaeologist undertaking the research.

Descendants, etc.

Unfortunately, there have been many instances of excavations of the property and the remains of the ancestors of nearby populations — to the dismay of the latter. In some cases, there have even been excavations of people still fondly remembered. That practice is not acceptable.⁴²

The archaeological community has long argued⁴³ that there should be “consultation with affected native groups regarding the approval process for excavations.” The Parks Canada Agency similarly maintains the importance of “culturally affiliated people.” The Canadian Environmental Assessment Agency has taken (1996) a comparable position, and (following the lead of the Parks Canada Agency) not only in relation to Aboriginal peoples. According to its publication, *The Canadian Environmental Assessment Act Reference Guide on Physical and Cultural Heritage Resources*:

*[T]he concerns of...all those affected by the project should be considered, including concerns of Aboriginal, ethnic or cultural groups whose heritage is involved. All are an important source of local or traditional knowledge. The Canadian Environmental Assessment Act reinforces the benefits of consulting with the public and other stakeholders at the onset of a project.*⁴⁴

*There are sites where archaeological evidence is known to be present but is not visible on the surface or not well recorded or protected.*⁴⁵

A good professional may even have views on how to make an archaeological survey a positive public experience, by eliciting input from neighbouring communities. Although that subject can be both difficult and delicate, it is considered important to quality work.

What Research Work is Covered?

Principle

Most people think of archaeological investigation as being synonymous with digging. Although that is often the case, it is not invariably so.

- Some investigations do not touch the soil, because they focus exclusively on a *visual* investigation of what is on or above the soil, or protruding from it.
- Still other investigations are conducted with equipment which produces information without touching the soil (e.g., metal detectors).

Are Investigations That Dig into the Soil the Only Ones That Require a Permit?

The answer depends on the location.

- In the three westernmost provinces (Saskatchewan, Alberta and British Columbia), archaeological exploration requires a permit *if* it will disturb the soil.
- Under the laws of the other provinces and territories, *all* archaeological exploration must be authorized, whether it disturbs the soil or not.

In addition, every provincial and territorial government has an established format for applications and the filing of reports for authorized archaeological research. These are obligatory. That authorization will depend, in part, on the archaeologist showing credentials which would be acceptable to that province or territory.

On federal lands, the Parks Canada Agency and the Department of National Defence have procedures similar to those of the provincial and territorial governments. For other federal departments, however, the decision will be up to the discretion of the relevant land manager of that department.

Background

Just as environmental reports are assembled under a framework generically called “environmental assessment,” so is archaeological research conducted within a particular framework. The framework for these studies is sometimes called an “archaeological resource assessment” (ARA) process⁴⁶ or an “archaeological resource impact assessment” (ARIA) process.⁴⁷ According to one expert report,⁴⁸ the professional way to characterize work is as follows.

Four basic types of archaeological resource impact assessment and management studies are recognized: overview, impact assessment, mitigation, and surveillance/monitoring. Any one study may be required for a project; in the case of large or long-lived projects, all four studies may be undertaken sequentially.

An overview study should identify and assess archaeological resource potential within a study area, provide a comprehensive description of known archaeological resources in the area, and provide recommendations concerning the need for and types of further detailed studies.

An impact assessment study should identify and evaluate archaeological resources within a specified project area, identify and assess all impacts on archaeological resources imposed by the project and recommend viable options and programs for managing unavoidable adverse impacts.

A mitigation study involves the implementation of approved measures for reducing or avoiding adverse impacts before they occur. Analysis and interpretation are required whenever archaeological data are salvaged.

Surveillance or monitoring studies are conducted during project implementation to identify and control adverse impacts which could not reasonably have been predicted earlier.

All archaeological impact assessment and management studies must be carried out under a subsisting permit or ministerial order.... A formal application for a permit or ministerial order must be submitted to the administering agency...in advance of undertaking a heritage study; 2 to 6 weeks is normally required for review and permit issuance.

Each province has established reporting format and content requirements for various types and phases of heritage resource impact studies.

The Permit Process

Every provincial and territorial government foresees a process to obtain permission to do archaeological research.

There are distinctions as alluded to earlier.

- In three provinces (British Columbia, Alberta and Saskatchewan),⁴⁹ this permission is required only if the applicant intends to dig or “disturb” the site; if the soil is *not* going to be disturbed, no such permission is strictly necessary as long as no archaeological object is moved or altered.
- In all other provinces and territories, any archaeological searching requires permission from provincial authorities, whether the soil is disturbed or not.⁵⁰
- This authorization is invariably called a “permit” in every jurisdiction — except in both Ontario and New Brunswick where it may be either a “permit” or a “licence.”⁵¹

The task of obtaining this documentation is usually up to the archaeologist, who should be able to produce it on demand, and certainly before work begins.

At the federal level:

- The Parks Canada Agency has its own archaeological service that handles archaeological matters under the Agency’s jurisdiction, namely in national parks and the national historic sites administered by the Agency. It also has an advisory role, on request, to other federal land managers.
- The Department of National Defence has its own procedures, which generally dovetail with provincial and territorial procedures.
- Otherwise, archaeological research on federally owned or regulated land is handled by the land managers of the relevant federal department, in an essentially discretionary way.

Methodology of Work

In its publication *The Canadian Environmental Assessment Act Reference Guide on Physical and Cultural Heritage Resources*, the Canadian Environmental Assessment Agency provides a step-by-step list of the procedures to be followed, in the chapter entitled “A Framework for Evaluating the Potential Environmental Effects of a Project on Cultural Heritage Resources.” There are also detailed steps foreseen by each province, which must be observed in the case of provincially regulated projects. Compliance with these procedures is usually the responsibility of the archaeologist.

The Parks Canada Agency has offered the following supplemental advice.

Documentary research, traditional knowledge, visual inspection, remote sensing, predictive modelling and test-pitting used in surveys by archaeologists must be seen as normally producing only a first-order approximation of the types, quantity and geographical distribution of archaeological sites. This provides resource managers with an overview of the cultural history, the density of sites and the types of locations in which more sites might be found.⁵²

Again, compliance with these procedures is usually the responsibility of the archaeologist.

Professional Qualifications

It is up to the archaeological licensing officials to ensure that the researchers, who expect to conduct archaeological research, show that they have credentials meeting the standards of the province or territory in which the work is located. In the view of one federal report:

All archaeological impact assessment and management studies must be performed or supervised by professionally qualified personnel.... Generally, consultants must have achieved a post-graduate degree, demonstrate sufficient experience and competence in the type of study being proposed, and have access to all necessary facilities and specialist services such as ethno-history, geology, palaeontology or statistics.⁵³

How Should Development Plans Take Archaeology Into Account?

Principle

Any activity that would prompt an environmental assessment (under the *Canadian Environmental Assessment Act*) also triggers a requirement to research archaeology and palaeontology.

The obligatory components of that assessment have been outlined by the Canadian Environmental Assessment Agency (see sidebar page 24).

The provinces and territories generally take a similar approach.

Background

Decision makers are already largely familiar with the environmental assessment process and the developments that trigger it. Those factors also affect archaeology: in response to studies conducted over the course of several years,⁵⁴ the federal government spelled out the rules governing archaeology and development in the *Canadian Environmental Assessment Act* (CEAA) and related documentation.

First, the Act is declared to cover both archaeology and palaeontology: section 2 (1) of the CEAA specifies that the law covers “any change that the project may cause in the environment, including any effects of such change...on physical and cultural heritage...or on any site or thing that is of historical, archaeological, palaeontological or architectural significance.” Section 11 (1) of the CEAA states that the environmental assessment should be conducted as early as possible, preferably in the planning stages.⁵⁵

The CEAA is supplemented by regulations. There is an inclusion list of work that requires an environmental assessment (EA),⁵⁶ an exclusion list of work exempted from an EA,⁵⁷ a list of applicable regulations⁵⁸ and, for greater certainty, a further list of kinds of work affected.⁵⁹

Once such a study is undertaken, the rules to be followed under the CEAA are those as explained by the Canadian Environmental Assessment Agency, mentioned earlier. These are more specific than was the case under the earlier *Federal Policy on Land Use* and related documentation.⁶⁰ For example, archaeology is cited repeatedly in the *Guide to the Preparation of a Comprehensive Study for Proponents and Responsible Authorities* (see sidebar page 24).

Although a detailed review of provincial environmental assessment legislation would be beyond the scope of this publication, the general pattern is analogous to that described above.

Appendix C: Suggested Content for a Comprehensive Study Report

7: Description of the Existing Environment

The description of the environment is not only to describe the existing environmental condition but also provides the foundation upon which environmental effects will be predicted and evaluated.... Examples of broad environmental characteristics include... archaeology and heritage resources...and local land uses (particularly the traditional use of the area by Aboriginal people).

8: Predicted Environmental Effects of the Proposed Project

This section should contain information on any change that the project will cause to the environment, more specifically to the valued ecosystem components identified in the previous section, and the effects of these changes on human health, socioeconomic conditions, physical and cultural heritage and on current use of lands and resources for traditional purposes by Aboriginal people....

The self-directed environmental assessment must consider the environmental effects on physical and cultural heritage and to anything that is of historical, archaeological, palaeontological significance that would result from environmental changes.

In assessing effects on heritage, the environmental assessment should:

- ensure the preservation and protection of sites and objects formally recognized at the international, national, provincial and municipal levels;
- ensure that the consideration of heritage resources in the environmental assessment is consistent with existing laws and policies on heritage relevant within the project area;
- recognize that a heritage site may have a cultural value greater than the apparent value of the site's physical components; and
- take into account the unique cultural interests and values of Aboriginal peoples.

In addition, the assessment must consider:

- cumulative environmental effects on physical and cultural heritage resources;
- the significance of effects on these resources; and
- technically and economically feasible measures that would mitigate any significant adverse effects on these resources.

10: Determination of Significance

The determination of significance and likelihood of residual environmental effects are at the core of the decision about the project. It will dictate whether a responsible authority can take a course of action with respect to the project, or whether additional consideration of the project is needed through public review.... factors used in determining whether or not environmental effects are adverse:

[list including]...negative effects on historical, archaeological, palaeontological or architectural resources.

What to Do When Something is Discovered

Principle

Discovery (whether of human remains or otherwise), as part of an archaeological research project under permit, should be reported by the archaeologist to the authorities who authorized the research.

Matters are more sensitive when a discovery is made by accident. A typical example is during excavation for a construction project. The law generally distinguishes between discoveries of human remains and other artifacts but, in both cases, there are several common features.

In the event of *accidental discovery of human remains*, the law throughout Canada is strict. One must:

- halt activities,
- secure the area and
- call the police.

The rationale is simple: the police must determine whether the site is a possible crime scene and gather evidence. If the police later determine instead that the site is “archaeological,” they will contact the relevant authorities accordingly.

But what if the items discovered are not human remains, but artifacts? Under the laws of some (but not all) provinces and territories:

- Discovery of archaeological objects (other than human remains) requires the *same* measures (i.e., protecting the site and notifying authorities). All provinces and territories except Ontario insist that the site be *protected* automatically, and make it an offence to disturb the site of an archaeological find. (In Ontario, the minister must officially designate the site for protection first.)
- Notification procedures are different. Half the provincial statutes include a similar requirement to *report* finds (in Newfoundland and Labrador, Quebec, Manitoba, Saskatchewan and Alberta), but the laws of the other provinces and of the territories are silent on that point. Where notification is required, it is not sent to the police, but rather to the provincial/territorial archaeological authority.

Finally, if human remains or archaeological objects are discovered, it is good practice (although not legally obligatory) for the archaeologist to consult with nearby populations who are most likely to be descended from the people whose remains or property have been discovered.

In every province except Quebec and Ontario, archaeological discoveries are the property of the provincial Crown.

Background

The legal effects of an archaeological discovery can depend on a number of different circumstances.

First, many discoveries occur within the context of pre-planned archaeological research, conducted by professionals under the auspices of the requisite provincial/territorial authorization. Such research is conducted with the consent of the landowner. The normal procedure, on making a discovery, would be to notify the landowner to ensure that any threatening work in the vicinity is halted and that the site is secure. That is usually uncontroversial, since the landowner would not have had the archaeologist on the property unless there was some expectation this might occur. If the discovery was of human remains that were not very old, the archaeologist would also ensure that the police were contacted immediately. Otherwise, the archaeologist would also notify the provincial/territorial archaeological authorities and (as described later) consult with likely descendants of the people whose property or remains had been discovered.

Accidental or fortuitous discoveries are a different matter. There are fundamental legal differences in the treatment of discoveries of:

- human remains and
- anything else.

Each of these will be discussed in turn.

Human Remains

The accidental discovery of human remains triggers a complex series of legal requirements under both federal and provincial laws. Of the two, the federal laws are more straightforward since they focus on the one issue of potential criminal involvement. Provincial laws, on the other hand, cover a wider range of subjects and hence can appear more complicated. However, after an overview of the relevant kinds of legislation, it is possible to arrive at workable principles.

Any discovery of human remains should be reported immediately to the police.

Federal Legislation and Rules

Improper interference with human remains is an indictable offence under section 182 of the *Criminal Code*.⁶¹

In the case of an accidental discovery of human remains, it is up to the police to determine whether the site is:

- a crime scene or
- something else (e.g., an unrecorded but non-criminal burial site or an archaeological site).

In the latter case, police manuals call on police officers to contact the provincial/territorial archaeological service. When, and only when, it is determined by the police that the site is archaeological in nature, forces such as the RCMP have specific procedures for handling these discoveries.

For example, the *RCMP Operational Manual* directs that “if a skeleton is of ancient origin, cooperate with authorized anthropologists or archaeologists in protecting the site.”⁶² (See sidebar page 28.) The rules of the Ontario Provincial Police,⁶³ the Sureté du Québec⁶⁴ and the Royal Newfoundland Constabulary⁶⁵ are similar.

Sometimes, police go beyond contacting archaeological officials as required by the manuals listed above.

- For example, the manual of the Ontario Provincial Police specifies that the police will also contact the nearest First Nation.⁶⁶
- In the most detailed example of written *supplementary* instructions (Saskatchewan), the RCMP's F Division specifies that "when investigating reported bones, the assistance of a forensic anthropologist is to be requested by contacting (the relevant departments of Saskatchewan's universities)."⁶⁷ Parenthetically, the Saskatchewan instructions also illustrate what the investigators would do next.
 - Do not handle, mark or move any bones, surrounding soil or foreign objects at the site.
 - Photograph, sketch and measure the site.
 - If there are indications that bones are recent and death may not have been natural, proceed with a criminal investigation.
 - If bones are historical, assist anthropologist to secure the site from the general public to prevent collectors from vandalizing it. The anthropologist will take possession of the bones and artifacts. He will also comply with provincial acts which require the recording of the site and proper handling of the remains.

Provincial Legislation

Provincial legislation is more wide ranging. The following is a sampling of the kinds of legislation that can exist, under one name or another.

- Coroners legislation usually applies to skeletal remains, when antiquity is not immediately apparent. The typical coroners act specifies the need for investigation of the identity of the deceased, time and circumstances of death, etc. These laws usually specify that discoveries are to be reported to the local coroner and/or police. "Coroner involvement may be necessary where burial age is not immediately determinable."⁶⁸
- Public health statutes or "human tissues" laws usually have clauses on the interment, disinterment and transportation of the dead. Normally, a ministerial permit is required for the exhumation and reburial or other disposition of a body. On the other hand: "Health officials have advised that for the majority of archaeological burials, disinterment permits under the *Public Health Act* would not be required."⁶⁹
- Such ministerial permits may also be required under cemeteries legislation.
- Then, there are the heritage/archaeology statutes. In Saskatchewan, for example, skeletal materials predating A.D. 1700 are to be forwarded to the provincial ministry responsible for heritage, for reburial after scientific examination. Skeletal material postdating A.D. 1700 is to be made available to the Indian band nearest the discovery site, or to the ministry if it is of non-Indian origin.

At first glance, the interplay of the above federal and provincial laws would appear to create an almost infinite number of possible combinations. In practice, every jurisdiction has established a single workable scenario for management of discoveries and liaison among interested authorities. Provinces seldom outline this scenario in memoranda of understanding, protocols or other like documents (under various names and with varying levels of specificity), but they all follow the same basic pattern. The example reproduced here (see sidebar page 29) offers one methodical written illustration of that standard approach.

In short, the police will treat the site as the scene of either a crime investigation, or of an archaeological investigation. In the case of the latter, arrangements should be made via the provincial or territorial ministry for professionals to conduct the necessary work.

EXTRACTS FROM RCMP OPERATIONAL MANUAL, Chapter II.10

C. POLICY

- C. 1. All human deaths occurring within RCMP jurisdiction are to be thoroughly investigated in a cooperative effort between the RCMP, medical examiner, coroner, pathologist, and other law-enforcement agencies.
- C. 2. A member (of the RCMP) will notify the provincial or territorial medical examiner or coroner of all human deaths occurring within RCMP jurisdiction in accordance with provincial or territorial requirements.

K. IDENTIFICATION OF DECOMPOSED BODIES AND SKELETONS

- K. 2. If a skeleton is of ancient origin, cooperate with authorized anthropologists or archaeologists in protecting the site. Refer to division directives.

EXTRACTS FROM RCMP DIVISIONAL OPERATIONAL MANUAL (F DIVISION, SASKATCHEWAN), CHAPTER II.10

H. INVESTIGATION

- H. 1. Human Remains
 - H. 1. b. Anthropology
 1. When bones and/or decomposing flesh are located, an anthropologist can assist investigators to determine:
 1. if the remains are human or non-human;
 2. if human, the approximate time since death;
 3. identifying traits such as sex, age, stature and racial origin; and
 4. the source of before and after death disturbance to the remains.
 2. Investigator
 1. When investigating found bones, request the assistance of a forensic anthropologist by contacting [designated RCMP officers in North Battleford or Regina].
 2. Do not handle, mark or move any bones, surrounding soil or foreign objects at the site.
 3. If there are indications that bones are recent and death may not have been natural, proceed with a criminal investigation.
 4. If bones are historical, the anthropologists will take possession of bones and artifacts and comply with all Provincial Acts which require the recording of the site and proper handling of the remains.
 - H. 1. b 2. 5. Historic sites are protected by the Provincial Heritage Property Act. If a site is suspected to be historic, request the assistance of a provincial archeologist by contacting:
 - Heritage Branch
 - Archaeological Resource Management

Example: The New Brunswick Government's *Protocol for Accidental Discovery of Human Remains*.

This protocol divides discoveries of human remains into three categories:

- archaeological remains,
- 20th century cemeteries and family plots (“these include human remains buried in neglected and overgrown early twentieth century cemeteries and family plots”) and
- “legal evidence” (“all other human remains that are discovered should be treated as potential legal evidence associated with a criminal act and treated as such.”)

The protocol then stipulates that “the RCMP would be the lead agency. The RCMP would decide what course of action to initiate.” In due course, the other parties involved could be the Coroner’s Office, Archaeological Services, or the Chief Medical Officer’s Office, but that would be up to the RCMP to decide.

The sequence of events specified in the protocol, in the event of discovery of human remains, is the following.

- **Halt all activities.** “Until determined otherwise, the remains should be treated as evidence in a criminal investigation. If the remains are found in the bucket of heavy equipment, the bucket should not be emptied as physical evidence may be destroyed.”
- **Secure the area.** “The area should immediately be designated as Out of Bounds to all personnel and the public. Depending on the weather and other conditions, the human remains discovered should be provided with non-intrusive protection, such as covering with a cloth or canvas tarp (non-plastic preferred).”
- **Inform the RCMP.** “The nearest detachment of the RCMP must be informed immediately.... The RCMP will make a decision as to whether the Coroner and/or Archaeological Services should be involved....”

Once those first-phase actions are taken care of, the subsequent phase is expected to proceed as follows.

- If (the site) is concluded to be related to a crime, RCMP specialists will inform the Coroner, collect data, and remove the remains.
- If the RCMP determine the situation not to be associated with a criminal matter, then Archaeological Services will be consulted to determine the proper course of action.
- If Archaeological Services determine that the human remains are not associated with an archaeological feature but still have to be removed, certificates of removal are required from both the Coroner's Office and the Chief Medical Officer....
- Some investigation may be undertaken to determine if living relatives exist, and an appropriate burial location will have to be identified and arrangements for re-interment be made.
- Work can only re-started in the vicinity of the discovery once clearance has been received from the authorities and agencies concerned.

Other Recommended Practices

The report entitled *Federal Archaeological Heritage: Protection and Management* concluded that “when disinterment of human physical remains is negotiated with native or other interest groups on the merits of the individual case, resistance has tended to be infrequent.”⁷⁰

That is not to say that any group’s feelings or opinion should be considered a foregone conclusion. In the words of one expert report:

- North American Aboriginal peoples have differing views concerning burial excavation, study and disposition, or do not share common views with the same intensity.
- Some groups favour excavation by trained personnel (including non-tribal members) and museum curation (i.e., storage).
 - Others condone excavation only where burials are unavoidably threatened.
 - Still others oppose any disturbance of human remains including excavation, analysis and storage.
 - Finally, some groups opposed to long term curation and who question the societal value of studying human remains want burials reburied immediately upon discovery, thereby precluding any opportunity for scientific analysis....

On the other hand, most professional archaeological and physical anthropological associations across North America endorse burial excavation and analysis. They also question universal re-burial of skeletal remains except where direct descentance is established, as do various medical, paleological, museums and other associations. From the scientific community’s perspective, it is generally argued that the benefits to society derived from the scientific study of ancient human remains outweigh the interests of a few contemporary groups. Disagreement over the use and disposition of archaeologically recovered ancestral remains has increased in recent years. This has increased misunderstanding between interest groups.⁷¹

The risk of misunderstanding cannot be eliminated altogether; but it can at least be reduced by proper consultation. That is an area where the archaeological profession has taken an increasing role in recent years. It is therefore becoming commonplace for archaeologists to be assigned to conduct such consultations, as part of their overall archaeological project, whether it is a research/survey initiative or a response to a fortuitous discovery.

Other Archaeological Discoveries (Excluding Human Remains)

In theory, there are two general obligations that arise when archaeological resources are accidentally discovered:

- to *prevent disruption* of the site and
- to *report* the discovery to archaeological officials.

It would follow that on discovery of a site:

- all work that could potentially threaten the site should be halted,
- the site should be secured and
- the competent provincial/territorial official should be notified.

In principle, these measures are intended to protect not only the *artifacts*, but also the *site* since, as in the case of a crime scene, many of the most valuable clues are in the relative location of the various objects.

Although such an unequivocal arrangement would mirror how the law deals with human remains, the statutes are not that clear in the case of archaeological discoveries where there are no human remains.

- Half the provincial statutes include a similar requirement to *report* finds and to do so *immediately* (in Newfoundland and Labrador, Quebec, Manitoba, Saskatchewan and Alberta).⁷²
- The laws of the other provinces and of the territories are silent on that point.

However:

- All provinces except Ontario make it an *offence to disturb the site* of an archaeological find.⁷³
- In the Northwest Territories, one must also protect a 30-metre buffer zone around the discovery site.⁷⁴
- In Quebec, the protection is not automatic: the finder of an archaeological site is legally obliged to notify the provincial ministry “without delay,”⁷⁵ whereupon the ministry races to impose an order protecting the property.
- In Ontario, the protection is not automatic either: as in Quebec, the minister responsible for heritage can intervene by subsequently ordering the site protected by designating it under the *Ontario Heritage Act* if he/she finds out about it; but unlike Quebec, there is no obligation for the finder to report the discovery. However, all archaeological objects taken without the authority of a licence are subject to seizure.⁷⁶

On federal lands, the rules at the Parks Canada Agency and at the Department of National Defence require that finds be reported and protected immediately. Other federal departments, however, do not have the same binding rules.

Finders Keepers?

Who should have ownership of archaeological finds? Is the rule the same as the normal rule in the Civil Law of Quebec and the Common Law of the other provinces and territories, namely that the ownership of items found *in* the soil goes to the landowner?⁷⁷ Does it go to the finder, as in the case of Common Law finders *on* (but not beneath) land?

The answer is generally no. Most provincial statutes treat archaeological discoveries as being of such significance that they deserve to belong in the public domain: they declare that archaeological finds will not belong to the landowner or the finder, but rather to the provincial Crown.⁷⁸ The effect is essentially the same in the territories. However, there are two important exceptions: Ontario⁷⁹ and Quebec.

Although the *Ontario Heritage Act* specifies that all archaeological objects taken without the authority of a licence are subject to seizure,⁸⁰ it does not specify to whom the finds belong. Generally, at Common Law a find on or in land belongs to the landowner,⁸¹ except when the find is in a “public place” (e.g., on a road), whereupon it belongs to the finder. When the original (“true”) owner of the found item (or his/her heirs) are ascertainable, it belongs to them.

Quebec's legislation is more complicated still.

- If the lands (on which the find was made) were public lands as of 1972 or later, then the find belongs to the provincial Crown.
- However, if these have been private lands since at least 1972, then ownership of the find is governed by the Quebec Civil Code, in the case of anything which is a "buried or hidden thing of which no one can prove himself owner, and which is discovered by chance."⁸²
- Such discoveries, assuming that they have any value,⁸³ are covered by the "treasure" provisions of the Code (article 938), that is, the find belongs to the landowner if it is the landowner who discovered it; if the finder is not the landowner, the find (or its value) is split half and half between them.

Conclusion

The laws pertaining to archaeology in Canada reflect certain basic realities.

- Items left by previous generations, in the soil or underwater, are often the best clues that Canadians will ever have to help us understand how countless generations lived.
- In certain crucial respects, the soil of Canada is itself an archive — often the *only* archive — of our collective past.
- This is a factor which the land planning process must take into account.
- Furthermore, when the soil gives up its secrets accidentally (revealing artifacts or, more dramatically, human remains), this represents a remarkable and precious opportunity to learn about the past. It is the policy of Canada, and of all the provinces and territories, to take maximum advantage of such opportunities.

This is what the laws in Canada do. Despite occasional divergences in wording, they disclose a common legislative intent: that archaeology is important to Canada, and that Canadians should not abuse their archaeological heritage any more than they would tear pages out of their family history. Although the statutes governing archaeology continue to evolve, they are the essential framework for future efforts to protect and understand this important part of Canada's heritage.

Endnotes

1. James Adovasio, quoted in M.D. Lemonick, "Coming to America," *Time*, May 3, 1993, p. 55.
2. Jacques Cinq-Mars, "Bluefish Cave 1," *Canadian Journal of Archaeology*, No. 3, 1979, p. 1.
3. Notably the *Canada Shipping Act*.
4. *Federal Archaeological Heritage: Protection and Management*, a report published by the Department of Communications in collaboration with the Department of the Environment, the Department of Indian Affairs and the Department of Transport, 1988, p. 10.
5. "We possess written records for only the most recent 400 years of the 12,000 year history of Canada's peoples.... The principal means we have to trace the settling of our country and to chronicle the lives of 600 generations is through the study and interpretation of their archaeological remains." *Federal Archaeological Heritage*, *op. cit.*, p. 24.
6. See *The Canadian Environmental Assessment Act Reference Guide of Physical and Cultural Heritage Resources*, Canadian Environmental Assessment Agency, April 1996, p. 2.
7. *Federal Archaeological Heritage*, *op. cit.*, p. 67.
8. *Federal Archaeological Heritage*, *op. cit.*, p. 27.
9. *Government of Canada Archaeological Heritage Policy Framework*, Supply and Services Canada, 1990, P.1.
10. The *Convention on Laws and Customs of War on Land* (Hague II), 1899, with its appended "Regulations Respecting the Laws and Customs of War on Land" (Hague II Regulations) at article 56. It banned "destruction...to historical monuments (and) works of art or science." In 1907, in a follow-up convention (Hague IV), that ban was extended to "wilful damage" (again at article 56). Offences against these conventions were part of the indictment (section 8) read against Nazi official Alfred Rosenberg at the Nuremberg Trials, for which he was ultimately hanged.
11. For example, *Federal Archaeological Heritage: Protection and Management* was a report published by the Department of Communications in collaboration with the Department of the Environment, the Department of Indian Affairs and the Department of Transport, 1988. It proposed a "framework for archaeological resource management," comprising the goals cited in the text.
12. *Management of Archaeological Burials in Saskatchewan*, Heritage Branch, Government of Saskatchewan, 1990. p. 12.
13. The *Canada Shipping Act* applies to shipwrecks offshore or in navigable waters.
14. Section 33.5.1 of the *Agreement of the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in right of Canada* states: "The legislation and policy ... shall establish a permit system with respect to the protection, excavation and restoration, recording and reporting of archaeological sites. Appropriate sanctions against unauthorized disturbance of archaeological sites and specimens and unauthorized dealing in archaeological specimens shall be contained in appropriate legislation."
15. *An Archaeology Protected Resources List*, January 21, 1991, p. 2. This report for the Department of Communications was prepared by the Bastion Group Heritage Consultants, Victoria.

16. For “definitions” that cast no light on what is being defined, the consummate example is probably the one offered by the United Nations Educational, Scientific and Cultural Organization (UNESCO) which, in 1956 “defined” archaeological excavations as “research aimed at the discovery of objects of archaeological character.” (*Recommendations on International Principles Applicable to Archaeological Excavations*, New Delhi, section 1).
17. The *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* refers, at article 1, to “objects of palaeontological interest, property relating to history...products of archaeological excavations...antiquities more than 100 years old...objects of ethnological interest.” However, that definition is not very informative as to what these items are. Nor does the *Cultural Property Export and Import Act* cast much light on the definition, when it refers to items of interest under that legislation as “objects of any value that are of archaeological, prehistorical, historical, artistic or scientific interest and that have been recovered from the soil of Canada,” section 4(2)(a).

In fairness to those responsible for drafting such definitions, two points should be mentioned. First, international definitions are particularly difficult to draft, because of occasional differences of perspective between different countries. For example, in some countries archaeology is highly politicized, and this is reflected in controversies that extend into the very definition of the subject. Second, even in those areas which are uncontroversial, some countries make their definitions deliberately vague, on the supposition that since many of the most important discoveries were unanticipated, it is preferable not to categorize “important” discoveries in advance.

18. *Guidelines for the Management of Archaeological Resources in the Canadian Parks Service*, 1993. p. 2.
19. In Alberta, in order for an object to be considered an “archaeological resource,” it *must* have been “buried or partially buried in land...or submerged” at one time or another (section 1). By that definition, the province’s magnificent “medicine wheels” (large geometric formations of stones laid out for prehistoric ceremonies) would be *excluded* from the definition of “archaeological resources” (although medicine wheels might be designated for protection by the minister under another section of the Act).
20. The federal legislation is inconclusive on whether archaeological objects must be *in* the ground to qualify. The *Canadian Environmental Assessment Act* does not define archaeology, and the Regulation under the *Cultural Property Export and Import Act* refers to objects “recovered from the soil” without specifying whether the object was *on* the soil or *in* it.
- On this point, provincial and territorial laws fall into four different categories:
- (i) In the case of one province [Alberta section, 1(a)], the definition of an archaeological resource specifies that the item must have been in the ground or underwater.
 - (ii) The laws of five governments specify that it can be either in or “on” the ground: Newfoundland and Labrador section 2(a), Prince Edward Island section 1(c), Nova Scotia section 8(1), Manitoba section 43(1) and Yukon section 60(1)(c).
 - (iii) The laws of four governments do not specify whether archaeology must be “in” or “on” land, but which (by inference) treat the two indistinguishably: New Brunswick sections 1,7.1 (it refers to anywhere “in the Province”), Quebec article 35, Saskatchewan section 67, Northwest Territories section 3.
 - (iv) Two provinces have laws that appear to extend not only to what is *in or on* the ground, but also to items higher up such as rock paintings or rock carvings. See British Columbia section 13(c). Ontario’s law appears to lean in the same direction when it defines “property” (at section 47) as including rock carvings, although the wording is less clear.
21. See endnote 17 above.

22. Ibid.
23. This is the practice in British Columbia. Although it is not named as such in the legislation, the identification and protection of culturally modified trees is required under several land claims agreements.
24. Nova Scotia is the only province to have a treasure trove act; but even the holder of a licence under the N.S. *Treasure Trove Act* must obtain various forms of permission, report finds, etc.
25. The *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, article 1(e).
26. *Federal Archaeological Heritage: Protection and Management* tended to focus on items recording human activity over 75 years old.
27. At section 2 (see sidebar).
28. Section 2 of the *Canadian Cultural Property Export Control List*, a regulation under the *Cultural Property Export and Import Act*, (C.R.C. 448) refers to thresholds of 75 years or 50 years in the same document. One expert report to the federal government suggested a simpler definition: an archaeological artifact would be “an object (or part of an object) that was made or used by humans and discarded, lost or abandoned for 50 years or more;” while an archaeological site was “land that contains an artifact, a burial...or any trace of human use...that is 50 years or older.” *An Archaeology Protected Resources List*, by The Bastion Group. Department of Communications, 1991, p. 2.
29. Newfoundland and Labrador section 2(b), Prince Edward Island section 1(c), Nova Scotia section 3(aa), New Brunswick section 1, Quebec article 1(f), Ontario section 1, Manitoba section 43(1), Saskatchewan section 2(d), Alberta section 1(a), Northwest Territories section 2, Yukon section 60(1)(b).
30. See endnote 26 above.
31. The *Canadian Environmental Assessment Act* refers specifically to palaeontology at section 2(a). The Regulation under the *Cultural Property Export and Import Act* describes palaeontological specimens, at section 3, as being “recovered from the soil of Canada, the territorial sea of Canada or the inland or other internal waters of Canada, as follows:
 - (a) a type fossil specimen of any value;
 - (b) fossil amber of any value;
 - (c) a vertebrate fossil specimen of a fair market value in Canada of more than \$500;
 - (d) an invertebrate fossil specimen of a fair market value in Canada of more than \$500;
 - (e) specimens in bulk weighing 11.25 kg (25 pounds) or more of vertebrate fossils or vertebrate trace fossils of any value; and
 - (f) specimens in bulk weighing 22.5 kg (50 pounds) or more, recovered from a specific outcrop, quarry or locality, that include one or more specimens of any value of the following, namely,
 - (i) invertebrate fossils,
 - (ii) plant fossils, or
 - (iii) fossiliferous rock containing plant fossils or invertebrate fossils.”
32. Some provincial laws refer *specifically* to palaeontological items (e.g., fossils, dinosaur bones, etc.) in the same legislation as archaeological legislation, and with the same legal consequences: Nova Scotia section 3(aa), Manitoba section 43(1), Saskatchewan sections 2(d), 2(i) and 67, Alberta sections 1(i), 29 and 30, Yukon section 60.

33. In the laws of two provinces, the definitions are so loose that palaeontology could be considered to be covered by inference: British Columbia refers at section 1 merely to items of “heritage” interest, and Prince Edward Island refers at section 1(c) to items of “prehistorical significance.”
34. In the case of one province, Newfoundland and Labrador, at section 2(b), the law refers to palaeontology, but does not say that such discoveries or research are governed by the same kind of rules as archaeology. Instead, sites with palaeontological remains can be protected only under a *separate* kind of special ministerial order.
35. These laws are totally silent about palaeontology: New Brunswick (no inference can be drawn from definitions at section 1), Ontario (likewise at section 1) and Northwest Territories (likewise at section 2).
36. The Quebec *Cultural Property Act* definition is confined to items associated with humans: article 1(f).
37. *The Canadian Environmental Assessment Act Reference Guide of Physical and Cultural Heritage Resources*, Canadian Environmental Assessment Agency, April 1996, p. 2.
38. *Federal Archaeological Heritage*, *op. cit.*, p. 11.
39. The conventions cited here are above and beyond the treaties for the safeguarding of cultural property in time of armed conflict, such as those cited at footnote 1, and the *Convention for the Protection of Cultural Property in the Event of Armed Conflict* (ratified December 1998). They are also more specific to Canada’s domestic situation than the general obligations in, say, the *Geneva Conventions*.
40. For example, there are precise rules governing treatment of human remains (*Management Directive 2.3.1*), archaeological research permits (*Management Directive 2.3.2*), collection management (*Management Directive 2.1.23*), etc.
41. Departmental Administrative Order and Directive (DAOD) #5037-1 specifies the procedures to be used by personnel of the Department of National Defence for the protection of archaeological resources. It essentially mirrors most of the provincial and territorial legislation, pertaining to archaeology, of the areas in which military lands are located.
42. *Management Directive 2.3.1* of the Parks Canada Agency, for example, foresees “protocols” with affected communities to avoid such prospects.
43. For example, during the Ontario Heritage Policy Review. See *Summary of Public Submissions: Heritage Giving Our Past a Future* (1988), p. 124.
44. The text references section 4(d) of the CEAA.
45. *The Canadian Environmental Assessment Act Reference Guide of Physical and Cultural Heritage Resources*, *op. cit.*, p. 10.
46. *Draft Archaeological Resources Impact Assessment and Management Guidelines for Western Canada* (by a task group representing the archaeology services of the four western provinces), undated.
47. “Archaeological Resource Impact Assessment in Western Canada,” by Germann and Spurling. *Impact Assessment Bulletin*, Vol. 4, No. 1-2, p.75-97.
48. *Ibid.*
49. British Columbia (section 13), Alberta (section 26), Saskatchewan (section 67).
50. Newfoundland and Labrador (sections 2, 8), Prince Edward Island (sections 1, 4), New Brunswick (section 7.1), Nova Scotia (section 8), Quebec (article 35), Ontario (section 48), Manitoba (section 53), Northwest Territories (section 3), Yukon (section 61).

51. Ontario calls this permission a “licence” (section 48) unless it is to do excavations on lands specially designated by the minister responsible for culture, whereupon permission is called a “permit” (section 56). In New Brunswick, the terminology is the exact opposite: permission to work on specially designated lands is called a “permit” (section 3) while other exploration is called a “licence” (section 7.1).
52. *Guidelines for the Management of Archaeological Resources in the Canadian Parks Service*, p. 5.
53. *Ibid.*
54. The report *Federal Archaeological Heritage: Protection and Management* (1988) called for reorganization of the environmental assessment and review process to make it “fully compatible with the need for information management quality control” in archaeology. It called on the creation of a process to “make the proponent accountable for ensuring that there are no adverse impacts” (pp 14 - 46). The report also called for the drafting of guidelines on how to handle impact assessments (p. 14).
55. Furthermore, section 16 (1) states: “Every screening or comprehensive study of a project and every mediation or assessment by a review panel shall include a consideration of...measures that are technically and economically feasible and that would mitigate any significant adverse environmental effects of the project.”
56. *Inclusion List Regulations, Statutory Orders & Regulations* (Canada) # 94-637 (SOR/94- 637), October 7, 1994. The CEAA applies generally to “construction, operation, modification, decommissioning, abandonment or other undertaking in relation to a physical work,” sections 2, 5(1).
57. *Exclusion List Regulations*, SOR/94-639.
58. *Law List Regulations*, SOR/94-636.
59. *Comprehensive Study List Regulations*, SOR/94-638.
60. During the 1980s, the most relevant federal document of general application to federal lands was the *Federal Policy on Land Use* and its associated guidelines. According to *Federal Archaeological Heritage*, this was intended “to identify and, as appropriate, protect through designation or acquisition, lands of particular value because of their heritage resources.” There were also “associated guidelines” to the Treasury Board *Administrative Policy Manual*, dealing with archaeological values among the list of social factors to be taken into account. However, at the time, federal environmental assessment and review process guidelines “did not require that archaeological resources be considered when assessing the potential impact of federal projects.” “Although the *Federal Policy on Land Use* and the *Federal Land Management Principle* recognized the importance of heritage resources, the guidelines are quite vague as to how these policies will be achieved” (p. 50).
61. Section 182(b): “Every one who...improperly...interferes with...a dead human body or human remains, whether buried or not, is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.”
62. Chapter II. 10, section K
63. The OPP’s operating manual, at section 260 of Part 10, calls for police notification of the Cemeteries Branch and of the archaeological services at the Ontario Ministry of Citizenship, Culture and Recreation.
64. The Sureté du Québec receives its instructions on this subject in the form of directives from the Office of the Chief Coroner. At the time of writing, that Office was preparing a new draft operational manual which would specify the requirement to contact the archaeological services of the Ministère de la Culture once human remains had been identified as being archaeological in nature.

65. *RNC Policy and Procedure Manual*, Part 3, chapter E.
66. Section 260.4 of Part 10.
67. Chapter II.10 section H.1.b.2.
68. *Management of Archaeological Burials in Saskatchewan* (1990), p. 9.
69. *Op. cit.* p. 10.
70. *Op. cit.* p. 15.
71. *Op. cit.*, p. 5.
72. In Newfoundland and Labrador, one must report “immediately” (section 10), in Quebec “without delay” (articles 40, 41), within 15 days in Saskatchewan (section 71) and “forthwith” in Manitoba (section 46) and Alberta (section 27).
73. Newfoundland and Labrador (section 10), Prince Edward Island (section 4), Nova Scotia (section 12), Manitoba (sections 46, 51) Saskatchewan (section 67), Alberta (sections 29, 30), British Columbia (section 13), and Yukon (section 63). In the Northwest Territories, the relevant provision banning damage is (exceptionally) not in the *Archaeological Sites Regulations*, but rather at section 16 of the *Territorial Land Use Regulations*. In Quebec (article 41), the minister can issue an order suspending work when an archaeological find occurs. In Ontario, the minister can do likewise, but unlike Quebec, the statute imposes no obligation to report to the minister so that he/she can take action.

The *Ontario Heritage Act* declares, at section 66(2), that all archaeological objects taken without the authority of a licence are seizable. Otherwise, that Act is silent about damage to sites. There are provisions concerning environmental assessments under the *Ontario Environmental Assessment Act* or for the possible withholding of draft plan approval under *Policy 2.5.2* under the Planning Act, but these are effective only when the government *already* knows the site has “archaeological potential.” In short, in the case of purely fortuitous discovery, Ontario’s legislation compels neither reporting nor protection until the government (a) learns about it (somehow) and (b) designates it officially as a heritage site under Part VI of the *Ontario Heritage Act*.
74. *Territorial Land Use Regulations*, section 10(a).
75. Quebec *Cultural Property Act*, sections 40-41.
76. *Ontario Heritage Act*, section 66(2).
77. This is a longstanding Common Law rule going back to the case of *Elwes v. Brigg Gas Co.* (1886).
78. Newfoundland and Labrador (section 11), Prince Edward Island (section 7), Manitoba (sections 44, 45), Saskatchewan (section 65, 66), Alberta (section 28), Yukon (section 65). Nova Scotia (section 11), and New Brunswick (section 6) turn finds over to their provincial museums. In British Columbia, a range of options exists.
79. The N.W.T. *Archaeological Sites Regulations*, like the statutes of Quebec and Ontario, are silent on this point, but the NWT contains relatively little “private” land.
80. *Ontario Heritage Act*, section 66(2).
81. *Elwes v. Brigg Gas Co.* (1886).
82. This definition, drawn from article 586 of the old Civil Code, is not reproduced in the new Civil Code, but is nonetheless still applicable according to the jurisprudence: *Boivin c. Québec*, [1997] *Recueils de jurisprudence du Québec* p. 1936.
83. If the item is “of slight value or in a very deteriorated condition,” it is deemed to have been abandoned, under article 934.

Annex

Law and Terminology in Archaeological Resource Management

A number of terms are currently used in Archaeological Resource Management. Many of these terms are defined in legislation while others are featured in sections of the law.

Please note the following:

- We have selected the more significant definitions that appear in the texts.
- The information is given in both official languages only when the original text was available in a bilingual format.
- The section is quoted in full when it was brief.
- Otherwise only the reference is given.

Alberta

Historical Resources Act

Definitions

- «historic site» means any site which includes or is comprised of an historical resource of an immovable nature or which cannot be disassociated from its context without destroying some or all of its values as an historical resource and includes a prehistoric, historic or natural site or structure.
- "archaeological resource" means a work of man that
 - (i) is primarily of value for its prehistoric, historic, cultural or scientific significance, and
 - (ii) is or was buried or partially buried in land in Alberta or submerged beneath the surface of any watercourse or permanent body of water in Alberta, and includes those works of man or classes of works of man designated by the regulations as archaeological resources.
- "historic object" means any historic resource of a movable nature including any specimen, artifact, document or work of art.
- "historic resource" means any work of nature or of man that is primarily of value for its Palaeontological, archaeological, prehistoric, historic, cultural, natural, scientific or aesthetic interest including, but not limited to, a palaeontological, archaeological, prehistoric, historic or natural site, structure or object.
- "palaeontological resource" means a work of nature consisting of or containing evidence of extinct multicellular beings and includes those works of nature or classes of works of nature designated by the regulations as palaeontological resources.

Designation process

Sections **15, 16, 22, 23.**

Excavation Permit

Section **26**

Title to archaeological property

- 28(1)** Subject to subsections (2) and (3), the property in all archaeological resources and palaeontological resources within Alberta is vested in the Crown in right of Alberta.
- 28(2)** No sale or other disposition of land belonging to the Crown in right of Alberta shall operate as a conveyance of an archaeological resource or palaeontological resource situated on or under the land unless the sale or other disposition expressly states that it does so operate.
- 28(3)** The Minister may, in accordance with the regulations, sell, lease, exchange or otherwise dispose of any archaeological or palaeontological resource on any terms he considers appropriate.

British Columbia

Heritage Conservation Act [RSBC 1996], Chapter 187

Definitions

- «heritage site» means, whether designated or not, land, including land covered by water, that has heritage value to British Columbia, a community or an aboriginal people.
- «heritage object» means, whether designated or not, personal property that has heritage value to British Columbia, a community or an aboriginal people.
- «heritage wreck» means the remains of a wrecked vessel or aircraft if
 - (a) 2 or more years have passed from the date that the vessel or aircraft sank, was washed ashore or crashed, or
 - (b) the vessel or aircraft has been abandoned by its owner and the government has agreed to accept the abandonment for the purposes of this Act.

«designation process»

Sections 9, 10, 11

«ownership»

Section 19

«permit»

Sections 12, 13(1)(2)14

37 (2) (i) specifies that the Minister has the power to make regulations regarding permit.

Manitoba

The Heritage Resources Act Chapter H39.1

Loi sur les richesses du Patrimoine

Definitions

- «heritage resource» includes
 - (i) a heritage site,
 - (ii) a heritage object, and
 - (iii) any work or assembly of works of nature or of human endeavour that is of value for its archaeological, palaeontological, pre-historic, historic, cultural, natural, scientific or aesthetic features, and may be in the form of sites or objects or a combination thereof.
- «Richesse du patrimoine» S'entend
 - (i) des sites du patrimoine;
 - (ii) des objets du patrimoine;
 - (iii) des travaux et assemblages de travaux dûs à l'activité humaine qui présente une valeur archéologique, paléontologique, préhistorique, historique, culturelle, naturelle, scientifique ou esthétique, qu'il s'agisse de sites, d'objets ou d'une combinaison des uns et des autres.

Sites of heritage significance

Section 2

Sites du patrimoine

Article 2

43(1) In this Part, «archaeological object» means an object

- (i) that is the product of human art, workmanship or use, including plant and animal remains that have been modified by or deposited due to human activities,
- (ii) that is of value for its historic or archaeological significance, and
- (iii) that is or has been discovered on or beneath land in Manitoba, or submerged or partially submerged beneath the surface of any watercourse or permanent body of water in Manitoba;

«heritage object» includes

- (i) an archaeological object,
- (ii) a palaeontological object,
- (iii) a natural heritage object, and
- (iv) an object designated as a heritage object by the Lieutenant Governor in Council under subsection (2)

43(1) «objet archéologique» Objet :

- (i) qui est le produit de l'art, du travail ou l'activité humains (sic), y compris les restes végétaux et animaux modifiés ou laissés là par l'activité humaine;
- (ii) don't la valeur réside dans son intérêt historique ou archéologique;
- (iii) qui a été découvert au Manitoba à la surface ou dans le sol, ou qui a été totalement ou partiellement submergé par un cours d'eau ou une étendue d'eau permanente au Manitoba.

«objet du patrimoine» S'entend :

- (i) des objets archéologiques;
- (ii) des objets paléontologiques;
- (iii) des objets du patrimoine naturel;
- (iv) des objets qualifiés d'objet du patrimoine par le lieutenant-gouverneur en conseil, aux termes du paragraphe (2)

Agreements for investigation

Section 50

Ententes relatives aux fouilles et expertises

Article 50

Heritage permit for searching or excavating

Section 53

Permis de fouilles

Article 53

Issue of heritage permits

Section 54

Délivrance de permis

Article 54

New Brunswick

Historic sites Protection Act, consolidated to September 30, 1997

Loi sur la protection des lieux historiques, refondue au 30 septembre 1997

Definitions

- «anthropological site» means any site, parcel of land, building, or structure of anthropological significance that has been designated as such by the Minister;
- «historic site» means any site, parcel of land, building, or structure of historical significance that has been designated as such by the Minister;
- «protected site» means any historic or anthropological site that has been designated as such by the Minister;
- «anthropological object» means an object of anthropological significance found at an anthropological site;
- «historic object» means an object of historical significance found at a historic site;
- «lieu d'intérêt anthropologique» désigne tout lieu, parcelle de terrain, bâtiment ou construction ayant une importance anthropologique et déclaré tel par le Ministre;
- «lieu d'intérêt historique» désigne tout lieu, parcelle de terrain, bâtiment ou construction ayant une importance historique et déclaré tel par le Ministre;
- «lieu protégé» désigne tout lieu d'intérêt historique ou anthropologique déclaré tel par le Ministre;
- «objet d'intérêt anthropologique» désigne un objet ayant une importance anthropologique, trouvé dans un lieu d'intérêt anthropologique;
- «objet d'intérêt historique» désigne un objet ayant une importance historique, trouvé dans un lieu d'intérêt historique;

Designation process

- 2(1)** The Minister may designate any site, parcel of land, building, or structure of any kind to be an historic or anthropological site within the meaning of this Act.
- 2(2)** The Minister may designate any historic or anthropological site to be a protected site within the meaning of this Act.
- 2(2.1)** A designation under subsection (2) shall be effective from the time of the registration in the registry office for the county in which the historic or anthropological site is situated, of a document setting out the description of the site or parcel of land to be designated as the protected site or where a building or structure is to be designated as a protected site, by setting out the description of the land upon which the building or structure lies and a description of the building or structure sufficient to identify it.
- 2(3)** The Minister may designate a group or collection of buildings and their environs, in urban or rural areas, that are considered by him to be of historic or architectural significance as an historic district.

Procesus de désignation

- 2(1)** Le Ministre peut déclarer tout lieu, parcelle de terrain, bâtiment ou construction de toute sorte lieu d'intérêt historique ou anthropologique au sens de la présente loi.
- 2(2)** Le Ministre peut déclarer tout lieu d'intérêt historique ou anthropologique lieu protégé au sens de la présente loi.
- 2(2.1)** Une déclaration faite en vertu du paragraphe (2) prend effet dès l'enregistrement au bureau de l'enregistrement du comté où est situé le lieu d'intérêt historique ou anthropologique, d'un acte décrivant le lieu ou la parcelle de terrain déclarés lieu protégé, ou, s'il s'agit de bâtiment ou de construction, décrivant ces derniers suffisamment pour les identifier ainsi que le terrain sur lequel ils s'élèvent.
- 2(3)** Le Ministre peut déclarer secteur historique tout groupe ou ensemble de bâtiments et leurs environs, en milieu urbain ou rural, qui, à son avis, présentent un intérêt historique ou architectural.

«permit» means a valid and subsisting permit issued under this Act; sections 3, 4(1), 4(2), 4(3), 5(1), 7.

«permis» désigne un permis valable et toujours en vigueur délivré en application de la présente loi; art. 3, 4(1), 4(2), 4(3), 5(1), 7.

- 7 (1)** This section specifies that the Minister has the power to make regulations regarding permit.
- 7 (1)** Cette section indique que le Ministre décide des règlements régissant les permis.

Newfoundland

Historic Resources Act 1990, Chapter H-4, Amended 1990 cR-8 s44, 1993 cD-19.1 s21

Definitions

- «archaeological object» means an object showing evidence of manufacture, alteration or use by humans that is found in or on land within the province and is of value for the information that it may give on prehistoric or historic human activity in the province and includes human remains.
- «Historic resource» means a work of nature or of humans that is primarily of value for its archaeological, prehistoric, historic, cultural, natural, scientific or aesthetic interest, including an archaeological, prehistoric, historic or natural site, structure or object.
- «permit» means a valid permit issued under sections **8, 9**.
- «provincial historic site» means a site, area, parcel of land, building, monument or other structure that is the subject of a declaration under section **16**.
- «Registered historic site» means a site, area, parcel of land, building, monument or other structure that is the subject of a declaration under section **17**.

«designation process»

Sections **16** and **17**

«title to objects»

Section **11**

33 (e) This section specifies that the Minister has the power to make regulations respecting the issuing of permits to conduct archaeological investigations.

Archaeological Investigation Permit Regulations 963/96, under the Historic Resources Act (O.C. 96-212)

«archaeological resource» means a work of man that is primarily of value for its prehistoric, historic, cultural or scientific significance and is or was buried or partially buried in the land in the province.

«site» means any place where archaeological resources are located which cannot be excavated without a valid permit issued under this Act.

Northwest Territories

**Northwest Territories/Act Northwest Archaeological Sites Regulations,
C.R.C 1978, c.1237**

**Règlement sur les lieux archéologiques des territoires du Nord-Ouest,
C.R.C 1978, c.1237**

Definitions

- «permit» means a permit issued under these Regulations;
- «permis» signifie un permis délivré en vertu du présent règlement;
- «archaeological site» means a site or work of archaeological, ethnological or historical importance, interest or significance or a place where an archaeological specimen is found, and includes explorers' cairns;
- «lieu archéologique» signifie un lieu ou un ouvrage d'importance, intérêt archéologique, ethnologique ou historique, ou bien un endroit où a été trouvé un spécimen archéologique, et comprend des cairns d'explorateurs;
- «archaeological specimen» means an object or specimen of archaeological, ethnological or historical importance, interest or significance and includes explorers' documents.
- «specimen archéologique» signifie un objet ou un spécimen d'importance, intérêt ou portée archéologique, ethnologique ou historique, et comprend des documents d'explorateurs.

**Historical Resources Act and section 1 of the Historical Sites Declaration,
R.S.N.W.T. 1988, C.H-3.**

**Loi sur les ressources historiques et Section 1 de la Déclaration des lieux
historiques, R.S.N.W.T. 1988, C.H-3.**

«historical sites declaration»

Sections 2(2) et 7(b)

«déclaration de lieux historiques»

Articles 2(2) et 7(b)

Nova Scotia

Special Places Protection Act, Chapter 438 of the Revises Statutes, 1989, Amended 1990, c.45;1994-95, c.17

Definition

- «heritage object» means an archaeological, historical or palaeontological object or remain but does not include such an object to which the Treasure Trove Act applies.

Designation of protected site

Section 7

Heritage Research Permit

8 This section specifies that the Minister has the power to make regulations regarding permit. «ownership»

8 (3)(d) the permit holder must deliver possession of all heritage objects recovered, while excavating pursuant to the heritage research permit, to the Museum or to any other public institution which the Minister may designate, which objects become the property of the Province.

Heritage Research Permit Guidelines. Category A. Definitions R.S., C438, S.3.

Definitions

- «site» means land, including land covered by water, that contains an artifact, a structure, a burial, a wreck, a specimen, or a combination of thereof associated with past cultural activities.
- «archaeological resources» means a work of past human activity, or zoological, botanical, geological or other natural materials found in association such activity that:
 - (i) is primarily of value for its prehistoric, historic, cultural or scientific significance; and
 - (ii) lay on, or was buried or partially buried in land in the province, including land covered by water.
- «artifact» means an object, or any part of an object, that was made or used by human beings and that has been deposited, discarded, lost or abandoned in or on the land, including land covered with water.
- «specimen» means a sample of organic or inorganic matter, whether modified or not by cultural activity, collected for scientific analysis in conjunction with archaeological research.

Nunavut

Nunavut Act Chapter N28.6 (1993, c.28)

Nunavut, Loi sur le Chapitre N-28.6 (1993, ch. 28)

Cultural Sites and Property

Regulations

51. (1)The Governor in Council may make regulations for the protection, care and preservation of sites, works, objects and specimens in Nunavut of palaeontological, archaeological, ethnological or historical importance, interest or significance and of explorers' cairns and explorers' documents in Nunavut.

Biens culturels

Règlements

51. (1)Le gouverneur en conseil peut prendre des règlements pour la protection, l'entretien et la conservation, au Nunavut, des cairns et documents d'explorateurs, ainsi que des lieux, ouvrages, objets et spécimens d'intérêt paléontologique, ethnologique ou historique.

Ontario

Ontario Heritage Act. Revised Statutes of Ontario, 1990, Chapter 0.18

Loi sur le Patrimoine de l'Ontario. Lois refondues de l'Ontario de 1990 Chapitre 0.18

«designated property» section 47 means property that is designated under this Part.

«bien désigné» art. 47 bien que le ministre désigne aux termes de la présente partie.

«licence» means a licence issued under this Act; sections 48, 49, 50, 51.

«licence» licence délivrée en vertu de la présente loi; art. 48, 49, 50, 51.

«permit» permit issued under this Act; sections 56, 57, 58, 59, 60, 61.

«permis» permis délivré en vertu de la présente loi; art. 56, 57, 58, 59, 60, 61.

Prince Edward Island

Archaeological Sites Protection Act, Assented to May 14th, 1987

Definitions

«permit» means a permit issued under section 4; 4, 6.

- «archaeological site» means land prehistorical or historical significance designated under section 2.
- «artifact» means an object of prehistorical or historical significance.

«ownership»

- 7.(1) All artifacts recovered from an archaeological site are hereby declared to be the property of the Crown in right of the province.
- (2) The Minister may direct that any artifact recovered from an archaeological site be deposited with the Provincial Museum or other public institution to be held on trust for the people of Prince Edward Island.

Heritage Places Protection Act, Proclaimed: June 1, 1995.

- «historic resource» means any work of nature or of a man that is primarily for its palaeontological, archaeological, prehistoric, historic, cultural, scientific or aesthetic interest.

«designation process»

Section 4

Québec

La Loi sur les biens culturels, dernière modification : 1^{er} avril 1998 L.R.Q., C B-4

Definitions

- «bien archéologique» : tout meuble ou immeuble témoignant de l'occupation humaine préhistorique ou historique.
- «bien culturel» : une oeuvre d'art, un bien historique, un monument ou un site historique, un bien ou un site archéologique, une oeuvre cinématographique, audio-visuelle, photographique, radiophonique ou télévisuelle.
- «bien historique» : tout manuscrit, imprimé, document audio visuel ou objet façonné dont la conservation présente un intérêt historique, à l'exclusion d'un immeuble.

Reconnaissance et classement des biens culturels

8. Tout bien culturel peut être reconnu ou classé en tout ou en partie par le ministre conformément à la présente section.
15. Le ministre peut, sur avis de la Commission, reconnaître tout bien culturel dont la conservation présente un intérêt public.

- 16.** La reconnaissance d'un bien culturel est faite au moyen d'une inscription sur le registre visé dans l'article 11. Avis de cette inscription doit être adressé à celui qui a la garde du bien culturel s'il s'agit d'un meuble et, s'il s'agit d'un immeuble, à la personne indiquée comme propriétaire dans le registre du bureau d'enregistrement de la division où il est situé ainsi qu'au greffier ou secrétaire-trésorier de la municipalité locale sur le territoire de laquelle il est situé. La reconnaissance prend effet à compter de la date de l'inscription sur le registre visé dans l'article 11 s'il s'agit d'un meuble et, s'il s'agit d'un immeuble, à compter de l'enregistrement par dépôt de l'avis d'inscription au bureau d'enregistrement de la division où il est situé.

Permis

Le permis de recherche archéologique autorise son détenteur à effectuer des fouilles ou des relevés aux endroits qui y sont spécifiés conformément aux conditions déterminées par règlement du gouvernement; art. **35, 36, 37, 38, 39, 39.1**,

Site archéologique

Articles **40, 41** et **42**.

53 Cette article indique que le Ministre décide des règlements régissant les permis.

Saskatchewan

Heritage Property Act being Chapter H-2.2 of the Statutes of Saskatchewan, 1979 80, as amended by chapters 76 and 83 of the Statutes of Saskatchewan, 1980-81, chapter 77 of the Statutes of Saskatchewan, 1983, chapters 39 and 49 of the Statutes of Saskatchewan, 1983-84, chapter 55 of the Statutes of Saskatchewan, 1988-89, chapters 15 and 54 of the Statutes of Saskatchewan, 1989-90 and chapter 26 of the Statutes of Saskatchewan, 1993

Definitions

- «site» includes any parcel of land or remains of any building or structure.
- «archaeological object» means any object showing evidence of manufacture, alteration or use by humans that is found in or taken from land in Saskatchewan and that is of value for the information that it may give on prehistoric or early historic human activity in Saskatchewan.
- «palaeontological object» means a fossil of a vertebrate animal or a macroscopic fossil of an invertebrate animal or plant that lived in the geological past, but does not include:
 - a) a fossil fuel and fossiliferous rock intended for industrial use; or
 - b) any form in addition to those mentioned in subclause (a), of a preserved remain or trace of a multicellular organism that may be prescribed in the regulations;

«designation process»

Sections **11, 39**

«ownership»

66.1(1) Every archaeological object or vertebrate palaeontological object found in or taken from land in Saskatchewan on or after November 28, 1980 is deemed to be the property of the Crown.

(2) Every palaeontological object, other than a vertebrate palaeontological object, found in or taken from land in Saskatchewan after the coming into force of this section is deemed to be the property of the Crown.

«permit» means a valid research permit issued under section 67; sections 67, 68, 69.

70(1) (b) This section specifies that the Minister has the power to make regulations regarding the permit.

Yukon Territory

Consolidation of the Historic Resources Act and Amendments to it, consolidated as of July, 1996

Refonte de la Loi sur le patrimoine historique et ses modifications au 1^{er} juillet 1996

Definitions

- «site» means, as the case may require,
- an area or a place
- a parcel of land, or
- a building or structure, or
- an exterior or interior portion or segment of a building or a structure,
- whether it is privately owned or owned by a municipality or owned by the Crown or an agency of the municipality or Crown.

- «lieu» selon le cas :
- une aire ou un endroit;
- une parcelle de terrain;
- un bâtiment ou une construction;
- une partie de la surface intérieure ou
- qui appartient à un particulier, à une municipalité, à la Couronne ou à son mandataire, ou au mandataire d'une municipalité
- peut être d'intérêt historique.

«Designation of historic sites»

Sections 14 and 36

«déclaration d'un lieu historique»

Articles 14 et 36

Part 6

60 (1) «archaeological object» means an object that

- a) is the product of human art, workmanship, or use, and it includes plant and animal remains that have been modified by or deposited in consequence of human activities,
- b) is of value for its archaeological significance, and
- c) is or has been discovered on or beneath land in the Yukon, or is or has been submerged or partially submerged beneath the surface of any watercourse or permanent body of water in the Yukon.

Partie 6

60 (1) «bien d'intérêt archéologique» désigne un bien qui réunit les conditions suivantes :

- a) est l'oeuvre, le fabrication, la création de l'être humain, notamment les restes végétaux et animaux modifiés ou déposés par suite de l'intervention de l'être humain;
- b) a quelque valeur en raison de son intérêt archéologique (Modifié par LY 1996, ch.10, art.13(1).)
- c) est ou a été découvert sur ou sous la terre à l'intérieur du territoire du Yukon, ou qui était submergé en tout ou en partie dans un cours d'eau une étendue d'eau fixe du Yukon.

«permit» permit from Yukon heritage.

Sections **61, 62, 63**

«permis» permis du patrimoine historique du Yukon.

Articles **61, 62, 63.a**

64 This section specifies that the Minister has the power to make regulations regarding permit.

64 Cet article indique que le Ministre décide des règlements régissant les permis.

«ownership and right to possession»

Sections **65 and 66.**

«titre de propriété et droit de possession»

Articles **65 et 66.**

Yukon Archaeological Sites Regulations, 1956.

«archaeological site» means a site or work of archaeological , ethnological or historical importance, interest or significance or where an archaeological specimen is found, and includes explorer's cairns;

«Archaeological specimen» means an object, /thing or specimen or archaeological, ethnological or historical importance, interest or significance/ and includes explorer's documents.

«permit» means a valid and subsisting permit issued under these regulations.

Federal Laws

National Parks Act, Chapter N-14

Loi sur les parcs nationaux

Section 7 gives to Governor in Council the power to make regulations.

L'article 7 donne le pouvoir au gouverneur en conseil de faire des règlements.

Historic Sites and Monuments Act, Chapter H-4

Loi sur les lieux et monuments historiques

Definitions

- «historic place» means a site, building or other place of national historic interest or significance, and includes buildings or structures that are of national interest by reason of age or architectural design.
- «lieu historique» emplacement, bâtiment ou autre endroit d'intérêt ou d'importance historique nationale, y compris les bâtiments ou ouvrages qui sont d'intérêt national en raison de leur âge ou de leur architecture.

Section 9 gives to Governor in Council the power to make regulations.

L'article 9 donne le pouvoir au gouverneur en conseil de faire des règlements.

Canadian Parks Agency , C-29

Loi sur l'Agence canadienne des parcs

Definitions

- «other protected area» includes:
 - a) historic canals and national marine conservation areas that are within the jurisdiction of the Minister under the *Department of Canadian Heritage Act*;
 - b) historic museums that may be established by the Minister under the *Historic Sites and Monuments Act*; and
 - c) any other areas within the jurisdiction of the Minister that relate to areas of Canadian natural or historical significance that the Minister may, with the approval of the Governor in Council, specify for the purpose of this definition.
- « autres lieux patrimoniaux protégés » Sont compris parmi les autres lieux patrimoniaux protégés :
 - a) les canaux historiques et les aires marines de conservation nationales qui relèvent de la compétence du ministre en vertu de la *Loi sur le ministère du Patrimoine canadien*;
 - b) les musées historiques qui peuvent être créés par le ministre en vertu de la *Loi sur les lieux et monuments historiques*;
 - c) les autres lieux naturels ou historiques d'importance pour la nation qui relèvent de la compétence du ministre et que celui-ci, avec l'agrément du gouverneur en conseil, peut préciser pour l'application de la présente définition.
- «national historic site» means a place designated under subsection (2).
- «lieu historique national» lieu désigné dans le cadre du paragraphe (2).