



# ARCHAEOLOGY NEWS

## The Heritage Conservation Act and Heritage Protection in British Columbia

Pete Dady

On December 12th, 2007, the Victoria Branch of the ASBC hosted a panel discussion entitled "The Crisis and Promise of Archaeological Heritage in British Columbia: A Public Discussion." The notice for the meeting said:

Heritage conservation in British Columbia is at a turning point. The protection of First Nations heritage sites has never had a higher-profile, yet these ancient and irreplaceable archaeological sites continue to be developed and destroyed. Government policy places the onus on developers, municipalities, and private property owners to finance archaeological work in the public interest while the provincial budget for heritage conservation remains stagnant. Meanwhile, First Nations are witnessing the ongoing destruction of their ancestral heritage in the face of inadequate funding, protection, and enforcement. This panel discussion brings together politicians, local First Nations and archaeologists to discuss the strengths and weaknesses of the existing system and to explore ways to improve provincial heritage conservation for our common public benefit.

The panellists were Maurine Karagianis, the MLA for Esquimalt-Metchosin; Ron Sam, Archaeological Officer of the Songhees First Nation; Eric McLay, then President of the ASBC; Morley Eldridge from Millennia Research Ltd. and a member of the B.C. Association of Professional Archaeologists [BCAPA]; and Dr. Quentin Mackie, Professor of Anthropology at the University of Victoria. Diane Bailey, chief of the Katzie First Nation was not able to attend, but a letter from her was read to the well-attended meeting by the moderator, Gerald Merner, Treasurer of the ASBC Victoria Branch. Summarized briefly, the following presentations were made.

Maurine Karagianis related how she had introduced a Private Member's Bill during the last sitting of the legislature which proposed changes to the Heritage Conservation Act (HCA). The bill was introduced, and then tabled immediately. She plans on introducing it again. Titled "BILL M 223—2007," it is available online at "[http://www.leg.bc.ca/38th3rd/1st\\_read/m223-1.htm](http://www.leg.bc.ca/38th3rd/1st_read/m223-1.htm)". Ms. Karagianis characterized her proposed changes as adding protection of sacred sites and sites "of cultural interest to First Nations" to the HCA. [To view the Heritage Conservation Act, visit "[http://www.qp.gov.bc.ca/statreg/stat/H/96187\\_01.htm](http://www.qp.gov.bc.ca/statreg/stat/H/96187_01.htm)".]

Ron Sam works as an archaeological field assistant within Songhees traditional territory in Greater Victoria. He doesn't think that the current status quo is protecting archaeological sites from destruction. As evidence he presented a slideshow of the recent destruction of sites due to development, as well as of archaeological investigations he has participated in.

Eric McLay stated that the destruction of our fragile archaeological heritage by development is at crisis levels in British Columbia. There are over 7,000 recorded archaeological sites on Vancouver Island, the Gulf Islands and the Fraser River. The majority of these ancient sites are located on private, urban lands. Despite strong provincial legislation—the HCA—there is a historical lack of enforcement and prosecution of offences under it. McLay argued that the province does not "manage" or care for archaeological sites; it instead regulates permits to manage impacts for developers.

While First Nations hold ancient traditions, values, and customary laws for their heritage, British Columbia has yet to largely recognize a meaningful role for First Nations in provincial heritage conservation.

While opinion polls indicate a strong public interest in archaeology, the public demonstrates a common ignorance, if not fear, of the presence of First Nations' history in their own backyards. Meanwhile, archaeologists, government, and First Nations keep the archaeological record and site information confidential for fear of vandalism, artifact collecting and site destruction by the public.

What can B.C. do? McLay stated that we can lobby the government to renew B.C.'s investment in provincial heritage conservation and to increase funding, staff and resources available to the Archaeology Branch in 2008-2009. Also, we can try to get local governments involved in provincial heritage conservation, so that they review building and development permits, rezoning and subdivisions applications for heritage concerns. "Owners And Contractors Protective" liability coverage policies and land-use by-laws should be developed. McLay continued by arguing that we can rebuild the mandate for provincial stewardship and management by creating funding for conservation, management and research; by strategic regional and site management planning; and by improving monitoring and enforcement. He acknowledged that there doesn't seem to be much political will for such changes or for renewed investment towards heritage conservation. For

instance, lots of fines are handed out in Forestry and Fisheries, and there are wardens provided for enforcement in those areas, but not for heritage.

McLay also stated that we need to address private property rights and interests. Place recorded sites on land titles; provide tax incentives to conserve sites; develop better information and tools for property owners to “care for” heritage sites; fund the purchase of heritage sites in conflict on private land. It is also important, he said, to get First Nations and their cultural values integrated into provincial heritage conservation as well as to develop greater public awareness of the HCA and appreciation of archaeological heritage as Canada’s national heritage.

Morley Eldridge noted that, despite the problems, many heritage managers from all over North America still look at B.C.’s HCA as the most powerful and wide-reaching protection of archaeological sites in existence. In spite of popular notions to the contrary, Traditional Use and sacred sites can in fact be protected under Section 4 of the HCA, though this requires signed agreement between the government and First Nations, and can be difficult when aboriginal title could be going to court.

From the point of view of many professional archaeologists, he pointed out weaker parts of the HCA and its implementation, such as an overly complex and time-consuming permitting system and the arbitrary date of A.D. 1846 for automatic protection. The system works well for large projects with a year or two lead time, but can be catastrophic for family trying to build a residence. Also, the HCA does not give the Archaeology Branch a mandate or a budget to enforce the Act itself. RCMP and local police, who by default should be enforcing the HCA may know nothing of it or lack cross-cultural sensitivities, and may not do proper, timely, or adequate investigations. Furthermore, the Archaeology Branch is not provided with a staff or budget to conduct field reviews or audits of the work of developers or consultants. Moreover, he argued that there is piecemeal and uneven review of professional standards. He noted that the BCAPA does have conduct and other guidelines—including audit standards, reviews for grievances—but this is not an organization with full-time staff.

With the current system, Eldridge pointed out that land-owners have no incentive to “Do the Right Thing.” When time delays can cost as much or more as doing archaeological work (or even archaeological work plus a paltry \$50,000 fine), their financial incentive is to destroy sites or to bury evidence. Many would say that’s a no-brainer—for those with no scruples.

Eldridge argued that the idea that government and archaeologists are privileged stewards of archaeological resources is an outdated concept. The majority of professional archaeologists foresee that First Nations will increasingly be managers of pre-contact/aboriginal archaeological sites and heritage, and want to work with First Nations and other interested groups like the ASBC to create legislation, or a system, that works for all parties.

In her letter, read to those present, Chief Bailey wrote “The Archaeology Branch has no resources with which to investigate alleged infractions of the Act [HCA]. Resources (personnel and financial) need to be dedicated to creating an arm of the Branch or a separate entity altogether for investigation and enforcement.” Also that First Nations are often at “the front lines” in reporting

infractions of the HCA. They are forced to report such infractions to the RCMP—yet RCMP officers, in her experience, have a limited understanding of the Act. This leads to inconsistencies in approach to evidence gathering, which can negatively affect subsequent efforts to prosecute. “There is little public awareness [of the HCA] and the pace of development in Katzie territory (as in many others) often outstrips our ability to ensure that proper archaeological procedure takes place.”

The last speaker, Quentin Mackie, framed his presentation as a series of open messages to the Archaeology Branch, First Nations, consulting archaeologists, academic archaeologists, and developers. A rough summation of what he said has been reconstructed from his speaking notes (kindly lent me) and my own notes and recollections, and is provided below.

In summation, most of the speakers and many members of audience, which included many consulting archaeologists, argued that the HCA is a good act. As written, it has far reaching ability to protect sites and objects of value to First Nations and archaeologists and the public. Sacred sites and sites “of cultural interest to First Nations” can already be protected under the HCA. The consensus seemed to be that it is not changes to the HCA that are needed, but changes in how it is implemented and funded by the provincial government.

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**Pete Dady is a consulting archaeologist and past president of the Victoria Branch of the ASBC.**

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### ***Messages on archaeology in BC from Quentin Mackie, presented by Pete Dady***

*The following presentation was made by Dr. Quentin Mackie when he was a panellist at a special meeting of the Victoria Branch of the ASBC, on December 12th, 2007. The discussion was entitled “The Crisis and Promise of Archaeological Heritage in British Columbia: A Public Discussion.” What follows has been reconstructed from his notes and my own (an audience member), and are therefore somewhat lacking in his characteristic flare and humour. They appear here with his kind permission. - Pete Dady*

[The Archaeology Branch is not represented at this meeting. Why? Because they get dumped on a lot at these events. They are the ones in the middle with pressures coming from all sides, and the most clearly defined set of responsibilities. The people who work there got into archaeology for good reasons, the same reasons as all of us, and at the core they hold positive values. If we treat them poorly there will be no dialogue.]

The Archaeology Branch needs to implement and encourage HCA Section 4 (“Agreements With First Nations”, under which “a schedule of heritage sites and heritage objects that are of particular spiritual, ceremonial or other cultural value” can be protected) and Section 9 (“Heritage Designation”) site protections. Supposedly the reason they don’t is because they have received legal advice that these are non-viable. But—lawyers are paid to give opinions, and judges are paid to make decisions. So, get some new lawyers,

instruct them on what is in the public interest, and ask them to find a way to make that viable. Don't be looking for ways not to protect heritage resources.

Act in good faith: inculcate a sense of stewardship in the owners of properties, not one of sites being a burden. Get the existence of sites or even possible sites onto land titles. Send out blanket letters to all coastal property owners informing them that they are likely to have a site on their property and what their responsibilities are. Don't let the lawyers say you can't do it; instruct the lawyers to find the right language to make it clear that owners have legal responsibilities and under what circumstances they need to be extra careful respecting the HCA.

Don't offload the problem on municipalities. I understand the Archaeology Branch is working on informing municipalities about how to work around archaeology and prevent problems. It is important to inform municipalities that their policies should not encourage conflict with the HCA. Work together with them to get archaeology onto land titles and onto municipality registries, etc.

Take archaeology seriously in Provincial Parks, similar to what Parks Canada does in national parks—proactive management in the context of conservation.

There should be provincial funding for important archaeology as a cost of civilization. Also, alternate funding models should be considered—a flat 0.5% tax on certain kinds of development, for example, or some kind of pragmatic approach—where, for instance the Oil and Gas Commission could write off 10% of all impact assessments in the Northeast in return for the money to go into a pool to do actual research-based archaeology. The key point here is this: millions are spent on archaeology every year in this province, and yet we learn so little because the wrong sites are being investigated in the wrong way to actually learn anything. Most archaeological work in B.C. is carried out as impact assessment and mitigative data recovery—of sites about to be impacted or destroyed—in direct response to development. As such, the work is carried out where and how development dictates, rather than where or how a scientific research plan would best have it. Creative funding to develop regional archaeological knowledge bases would allow better, smarter, and perhaps even cheaper Cultural Resource Management practices in the long run, as accurate estimates of cultural and scientific significance could be made.

Somehow, get the Archaeology Branch personnel out of the office and into the field more. They should be out monitoring the practice of archaeology in the same way that forestry or fisheries wardens are out monitoring fishing guides, loggers, and poachers.

#### **A Message to First Nations**

Work with Section 4 and Section 9 of the HCA, proactively. Get on the Government's case about this. Heritage sites are not defined by physical remains in the HCA [Section 1—"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." In other words, a sacred site or Traditional Use site is a heritage site and can be protected under the HCA.]

Within the bounds of reason, get lawyers to agree on language that allows for site protection under the HCA without compromising land claims or treaty rights or acknowledging the sovereignty

of the crown, or whatever the various issues are. This is what lawyers are paid to do, and if the government and First Nations can meet in good faith on the specific issue of heritage, then progress can be made in protecting significant sites. Reconsider the 1992 and 2003 statements by the Union of B.C. Indian Chiefs about B.C.'s "illegal ownership" as a righteous fight that is having negative consequences.

How can this be reconciled—the needs of the past in collision with the needs of the present? You need to contemplate trade-offs and prioritizations—because sites are being destroyed under the current system. At the very least, be strategic about which battles you choose to fight. Don't go to the wall for a single culturally-modified tree and then allow a rock shelter to be blown up.

Reach out to the inner good in archaeologists, most of whom are motivated to steward the archaeological record, even if business may have made them cynical. Most got into archaeology and anthropology for the good reasons of cross-cultural respect, appreciation of heritage, and respect for social justice. There is common ground there; they are on your side more often than you may realize.

Consider conducting pro-active inventories of your traditional territories. Some First Nations are already doing this. Establish comprehensive archaeological databases. Access money for this in the context of land claims or from the federal government—money that cannot be accessed otherwise or for other purposes. This proactive inventory process would raise the profile of archaeology, allow for better Cultural Resource Management decisions, strengthen the legal and moral case for treaty settlements, and could be an avenue for meaningful archaeological training of First Nations people, as well as other educational opportunities.

Share positive stories. The public is only hearing the bad news in the press. Work together with archaeologists to publicize good news in archaeology, to help overcome the perspective that archaeology is an obstacle. This could slowly change to a perception that archaeology is part of the collective heritage and is valuable to all British Columbians, and that it is our privilege to have ancient history in our midst.

#### **A Message to Consulting Archaeologists**

Work with First Nations to publicize positive stories about archaeology, and encourage the implementation of existing HCA provisions such as Sections 4 and 9.

There is an over-riding responsibility to the archaeological record that transcends your responsibility to a client. Be very aware of any conflicts of interest, real or perceived. Consultants are in the most conflicted position, with their various responsibilities to their clients, to First Nations, to the HCA and their legal/permit obligations, and to the discipline as whole. This requires that un-conflicted archaeology both be done and be seen to be done.

Licensing of archaeologists is not the answer. Self-policing is not realistic because of the small number of professionals in B.C. The nursing or engineering professions are not a good analogy here because they have many more members and it is possible for them to find arms-length peers to enforce professional standards. There may be room for some improvements in

the archaeological permitting system but oversight must be done and seen to be done.

#### **A Message to Developers:**

Development is OK and making a profit is good. Also, we know we cannot save every material remain from the past and tradeoffs are necessary and inevitable. Having said that—behave yourself! Do your homework. Do not wait to be spoon-fed by the municipalities. Put archaeology on your radar as the ultimate example of an ounce of prevention being worth a pound of cure.

Expect the unexpected. Assume that there will be sites wherever you move earth. Archaeological remains are more likely to become an obstacle to your development if you try to sweep them under the rug. Be pro-active, and treat professional-quality impact assessments and inspections as a form of insurance against time-sucking delays caused by the fallout from finding or destroying unexpected or un-sought sites. This is basic due diligence and is a cost of doing business.

Ignorance of the law is no excuse. Inform yourself. Everyone knows of the recent conflicts over archaeological remains. These conflicts could happen almost anywhere, at any time. Being proactive and having pre-existing relations with First Nations and with archaeologists, acting in good faith with pre-established protocols, can go a long way to ensuring that ethical development happens in a timely manner.

Properly approached, archaeology need not be an obstacle. There is huge latent public interest in archaeology, and the goodwill in all sectors of the population generated by a generous attitude towards heritage could pay many dividends down the road.

Above all: be respectful. First Nations have been here for 10,000 years. This is their history and they may have very different world views that are nonetheless deeply held about the proper treatment of the remains of the past. Do not leap to the conclusion that their concerns are brought forward for political reasons. They may well be deeply-held beliefs, violation of which can produce real grief and heartbreak in the present. Respect that.

#### **A Message to Academic Archaeologists (Including Myself):**

Do a better job of public education. Make public archaeology more of a priority. Contemplate creating useful regional syntheses and regional culture histories. Promote archaeology in the K-to-12 system, perhaps as a prominent part of Social Studies 11.

This is doubly apt regarding First Nations groups. Promote community-based archaeology. Graduate students may be able to work on the regional projects or serve as a cadre of archaeological good-news bearers. Academic archaeologists may be able to serve a role as honest brokers between the various interest groups.

Stick up for the archaeological record, no matter what or whom is threatening it. This may involve inserting yourself into public disputes or issues arising from structural discrepancies in the practice of archaeology, such as ethical issues. Use your academic freedom. Write letters and get mad.

#### **Overall:**

There is a lot of money being spent on what amounts to a managed destruction of the archaeological record [the government's main concern being the issuing of permits to dig in or destroy archaeological sites], and so little knowledge is gained from it. The wrong sites are dug and there is little synthesis of the bits and pieces that are learned; what little synthesis there is carried out is poorly presented. Why is this?

A major reason is that the majority culture does not think of aboriginal heritage as "their own." Some may not value it at all, while others may value it but not feel comfortable "appropriating" it. Since the majority does not consider it as "their own" then money does not follow, interpretation and publication lags, and a vicious circle of devaluation of the archaeological record sets in.

#### **MEDIA RELEASE**

May 12, 2008

#### **ESQUIMALT-METCHOSIN MLA TABLES BILL TO PROTECT FIRST NATIONS HERITAGE OBJECTS AND SACRED SITES**

VICTORIA – Esquimalt-Metchosin MLA Maurine Karagianis today introduced a Private Members' Bill aimed at better protecting First Nations heritage objects and sacred sites. The First Nations Heritage Protection and Conservation Act, 2008, amends the heritage protection act to include a process by which First Nations can trigger protection orders when heritage sites, objects or remains are discovered.

This is the second time that Karagianis has stepped forward to stand up for First Nations heritage protection. Last October, she introduced Bill M 223, the First Nations Heritage Protection and Conservation Act, 2007. The BC Liberal government allowed it to die on the Order Paper without debate. "The threats to First Nations heritage objects and sacred sites continue, and I am dedicated to pushing government to act," Karagianis says. "This Bill would provide a better set of guidelines and tools that First Nations, local government and the province need. Those tools would help to implement protection, stewardship, and conservation of First Nations heritage and culturally significant areas, their artifacts and their sacred history."

The Esquimalt-Metchosin MLA says the Bill also provides for the creation of a program to accomplish that goal. "I have asked that all MLAs review this Bill and support it."

A copy of the Bill, M 207, is available online at this link: [http://www.leg.bc.ca/38th4th/1st\\_read/index.htm](http://www.leg.bc.ca/38th4th/1st_read/index.htm)

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