

A Clarification of the Heritage Conservation Act regarding the Selling of BC Artifacts

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Archaeological resources consist of the physical remains of past human activity. The scientific study of these remains, through the methods and techniques employed in the discipline of archaeology, is essential to the understanding and appreciation of pre-contact and post-contact cultural development in British Columbia. These resources are often very susceptible to disturbance and are non-renewable and finite in number.

The *Heritage Conservation Act* (RSBC 1996 Chap 187; *HCA*) provides for the protection of British Columbia's archaeological resources. This legislation applies in part to archaeological sites pre-dating 1846 whether these are located on public or private land. Archaeological sites may not be destroyed, excavated or altered without a permit issued pursuant to section 12 or 14 of the *HCA*.

The Archaeology Branch administers the provisions of the *HCA* relating to the provincial archaeological site inventory and the archaeological permitting process. The *HCA* does not, however, contain enforcement provisions. In the absence of such provisions, enforcement of the *HCA* rests with municipal police or the RCMP. However, the branch takes alleged contraventions of the *HCA*, including the sale or attempted sale of artifacts, very seriously, and provides information and expert advice to facilitate police investigations and the preparation of reports to Crown Counsel recommending whether or not charges should be laid.

The *HCA* defines heritage objects (artifacts) as personal property that has heritage value to British Columbia, a community or an aboriginal people.

Except as authorized by an *HCA* permit, it is illegal to remove a heritage object from a site that is protected under the *HCA*, or to remove, or attempt to remove, from BC, a heritage object that has been removed from a protected site.

The *HCA* is silent on the ownership of heritage objects, and does not prohibit their subsequent possession or sale.

If a site was not protected at the time an object was removed, there is no offence under the legislation. Consequently, the Archaeology Branch can only request police action on a complaint that heritage objects are being offered for sale if evidence is presented that the object was removed from a protected site (e.g., a heritage object bearing an accession number associated with a recorded protected site and an applicable collection date, a witness' statement that the object was present in a protected site while it was protected, a witness' statement that the vendor had been observed excavating in or removing heritage objects from a protected site while it was protected, a confession, etc.).

If a contravention of the *HCA* is alleged, as outlined in

the preceding paragraph, the Branch will contact municipal police or the RCMP and request initiation of an investigation and preparation of a report to Crown Counsel. If heritage objects are being offered for sale, in connection with an alleged contravention, we will also contact the vendors and their agents or intermediaries (e.g., auctioneers, online auction sites, publishers of advertisements, etc.), inform them of the requested investigation and the provisions of the *HCA*, and advise them to desist from offering to sell those objects.

Otherwise, if the Branch receives complaints that heritage objects are being offered for sale, and those complaints are not allegations of contraventions of the *HCA*, we will:

- contact the vendors and their agents or intermediaries and advise them of the prohibitions of the *HCA*
- express our concern that by offering heritage objects for sale they are promoting contraventions of the *HCA* and destruction of irreplaceable heritage resources, as well as creating or encouraging the development of a market for these objects
- request that they desist from offering those objects for sale.

Archaeological site DeRu-044 was not protected by legislation at the time the Fulford Harbour seated human figure bowl was collected because the site was not designated as an archaeological site as required under the former Archaeological and Historic Sites Protection Act. Possession or sale of that object, or its removal or attempted removal from BC is, therefore, not prohibited. Accordingly, when the Branch received a complaint that West Coast Auctions Ltd. was offering the bowl at auction, we contacted them to explain our concern and to ask that they remove it from offer, but could not request initiation of an investigation and preparation of a report to Crown Counsel.

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