

A Rebuttal to the Archaeology Branch

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In the establishment of the *Act for the Protection of Archaeological and Historic Sites and Objects* [R.S.B.C. 1960, c. 15] in force from 1960 to 1972, British Columbia was the first province in Canada to establish legislative protection for archaeological sites. "Archaeological sites" and "archaeological objects" were defined in this early legislation as any archaeological site or object "designated" by the Minister (similar to s.9 designations under the current *Heritage Conservation Act*, [HCA]). Under this definition, as stated by the Archaeology Branch in this issue, the Fulford Harbour Inland Midden site, DeRu-044, was not protected by the Act as a designated archaeological site at the time of the discovery of the Fulford Harbour Bowl between 1960 to 1971.

However, under s.5(4), the 1960 *Act* stated a provision for the automatic protection of sites on Crown lands:

5 (4) No person shall knowingly destroy, deface, or otherwise alter, excavate, or dig in any Indian kitchen-midden, shell-heap, house-pit, cave or other habitation site, or any cairn, mound, fortification, or other structure, or any other archaeological remain on Crown lands, *whether designated as an archaeological site or not* [emphasis added], under the provisions of this Act, except to the extent that he is authorized to do so by a valid and subsisting permit issued under this *Act*.

Under this provision, the Fulford Harbour Inland Midden Site, located on one of the very few parcels of Crown Land on Salt Spring Island, could indeed arguably have been protected under contemporary legislation, in rebuttal to the Archaeology Branch's statement provided here (see page 12). The Department of Highway's non-permitted excavation of the DeRu-044 shell midden, as an "Indian kitchen-midden," located on Crown land could further be suggested to have been a violation of the *Act*. While a contemporary offence could have been punished by up to \$500 in fines and 6 months incarceration, the 1960 *Act* included an important provision for the confiscation of non-permitted collections of artifacts:

8 (1) Any archaeological or historic object that is taken by a person who is not a permit-holder or by a permit-holder in contravention of his permit may be seized by a person authorized to do so by the Minister and turned over to and deposited in such a public institution as he may designate.

On August 22, 2005, a week prior to the public auctioning of the Fulford Harbour Bowl, the Hul'qumi'num Treaty Group requested that Minister George Abbott at the Ministry of Sustainable Resource Management review whether or not this legislative protection may still be in effect; specifically,

whether the Ministry could intervene to prevent the sale of this artifact documented to have been removed by a provincial government employee from an archaeological site located on Crown Lands protected under provincial law (see *Gulf Island Driftwood* article in this issue).

In a letter dated August 28th, Justine Batten, Director of the Archaeology Branch, provided a detailed, much more careful explanation of the legal advice the Ministry had received, compared to the prepared statement of the Archaeology Branch here. Essentially, it is interpreted that s.8 (1) only applied to archaeological objects that had received Ministerial designation; the *Act* did not include automatic provisions for the confiscation of undesignated artifacts removed from Crown lands. Second, while the DeRu-044 site may have been protected against physical disturbance on Crown land under s.5(4), it is questionable whether the Department of Highways or any of its government employees "knowingly" excavated or altered the site and its remains — hence, whether the province could establish if an offence of the legislation had ever occurred. Lastly, the survival of an offence under repealed legislation hinged on the wording of the interpretation of the Act's clause in the past tense, which indicated that the penalty had to have been imposed at the time that the law was in force. As we all know, British Columbia has a record when it comes to enforcing its provincial heritage laws.

The Archaeology Branch did make unsuccessful efforts to have the collector and the auction house remove the object from sale. The Archaeology Branch also delivered a written notice to both these parties that under s. 13 (1) of the current *Heritage Conservation Act* that a permit was required to export this artifact from British Columbia. This written notice is inconsistent with the statement from the Archaeology Branch here.

Overall, the basic strategy taken by the Hul'qumi'num Treaty Group in reaction to the public auction of the Fulford Harbour Bowl was to create enough public, media and government pressure to persuade the private collector and auction house to withdraw the sale and donate the seated human figure bowl to a public institution held in trust for First Nations. The request for provincial Ministry and municipal police intervention under contemporary law was to give notice to the collector and the auction house that they could not claim this sale as an innocent case of "Ancient Losses" as advertised, nor could they uphold their statement that, "consignor warrants good title to the purchaser". Rather, I argue that it was the questionable sale of an illegally collected artifact from a provincially-protected archaeological site on Crown land.

It is uncertain what may have occurred if the Semiahmoo First Nation and Sencoten Alliance had not been successful in its bid to purchase the Fulford Harbour Bowl (for the reduced

rate of \$10,000; a fact which, in my opinion, is due in no small part to opposition of the sale and the feared consequences of not returning to First Nations). If the bowl had been purchased by an American or out-of-province buyer, the issuance of a permit under the provincial HCA or federal Cultural Properties Export and Import Act may have been legally challenged by First Nations and the archaeological community. Importantly, there may have been an opportunity for Coast Salish First Nations to cooperatively discuss jointly asserting title to this artifact removed from Crown land as a Constitutionally-protected s.35 aboriginal right in court. While an onerous and more expensive option in the short-term, the decision of such a court case may truly have changed the law for the benefit of both First Nations and the protection of their archaeological heritage in Canada.

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Locations of Seated Human Figure Bowls

At least 64 other seated human figure bowls are known to have been discovered in the Gulf of Georgia region (Duff 1965; Hannah 1996). The majority of known seated human figure bowls lack any archaeological context. As Hannah (1996:36) explains, "almost all known seated human figure bowls have been found without benefit of proper archaeological procedures, dug up by accident in farmers fields, in private gardens and, in one case, unearthed by a mischievous pig." Duff (1956) describes that the majority of these known bowls derive from the Upper Fraser Valley. Only fifteen seated human figure bowls have been reportedly collected on southeastern Vancouver Island from Victoria to Courtenay; five bowls have been removed from the southern Gulf Islands (including the Fulford Harbour Bowl); and

two bowls from the San Juan Islands.

The function and meaning of these human seated figure bowls can only be theorized, although current archaeological evidence indicates these objects derive from the Marpole Phase (2500 to 1500/1000 B.P.) and were involved at an interregional level of elite, ceremonial exchange (Keddie 2003). Today, approximately half one-third of these seated human figure bowls (n=19) are held outside of public institutions, either in the possession of private collectors or their whereabouts are unknown (Table 1).

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Table 1. Location of Known Seated Figure Bowls (Hannah 1996: Appendix 1).

Permanent Location	Human Seated Figure Bowls	
	n	%
Public Institution - Canada		
Royal B.C. Museum	15	
Vancouver Museum	9	
Canadian Museum of Civilization	2	
UBC Laboratory of Archaeology	2	
Museum of Anthropology, UBC	5	
Simon Fraser University	2	
	35	55%
Public Institution - U.S.		
Washington State Museum	3	
Western Washington College	1	
Bellingham Museum	1	
Chicago Natural History Museum	1	
Free Museum, University of Pennsylvania	1	
Museum of American Indian, Washington	2	
	9	14%
Public Institution - International		
British Museum, London	1	
Berlin Museum, Berlin	1	
	2	3%
Private Collection	10	16%
Unknown	8	13%
TOTAL	64	100%

References

- Duff, Wilson
1956 *Prehistoric Stone Sculpture of the Fraser River and Gulf of Georgia*. Anthropology in British Columbia, No. 5. British Columbia Provincial Museum: Victoria.
- Hannah, John
1996 *Seated Human Figure Bowls: An Investigation of a Prehistoric Stone Carving Tradition from the Northwest Coast*. Unpublished MA thesis, Department of Archaeology, Simon Fraser University: Burnaby.
- Keddie, Grant
2003 *A New Look at Northwest Coast Stone Bowls. Archaeology of Coastal British Columbia, Essays in Honour of Professor Philip M. Hobler*, R. L. Carlson, ed.. Archaeology Press, Burnaby.