

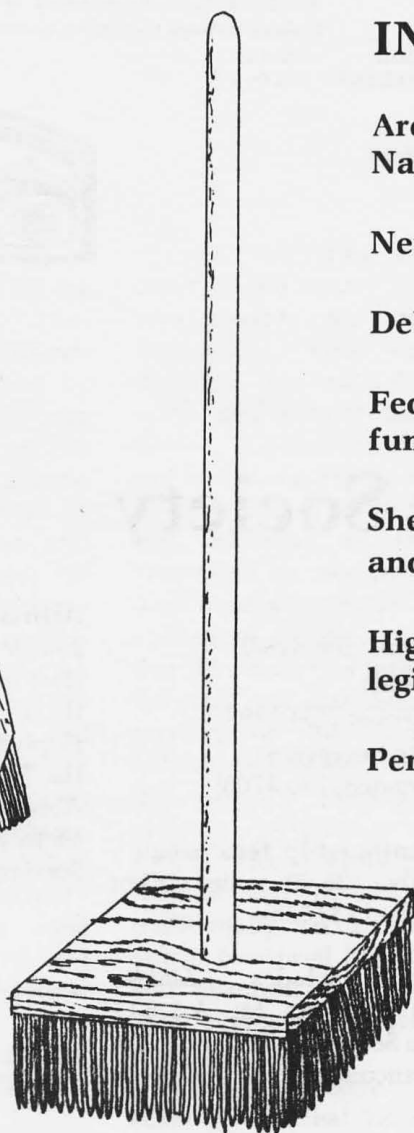
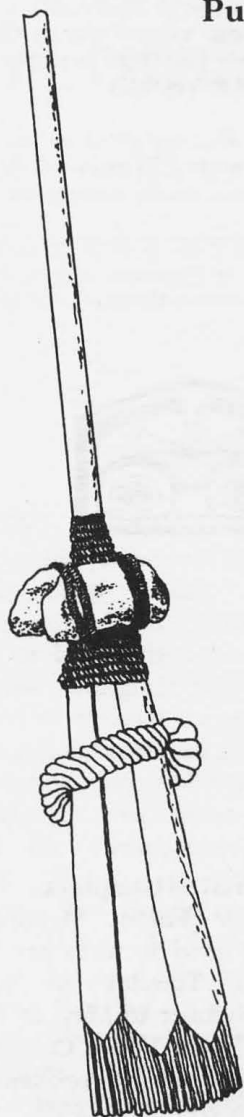
THE MIDDEN

Publication of the Archaeological Society of British Columbia

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The Midden

Publication of the Archaeological Society of British Columbia

Editor: Kathryn Bernick

Submissions and exchange publications should be directed to the Editor. Contributions on subjects germane to B.C. archaeology are welcomed: maximum length 1,500 words, no footnotes, and only a brief bibliography (if necessary at all). Guidelines available. Telephone inquiries: 873-5958.

The next issue of *The Midden* will appear mid-June 1991.

Contributors this issue: Andrew Barton, Kathryn Bernick, Ann Stevenson.

Production Assistants: Vicki Feddema, Phyllis Mason, Barbara Stopa.

THE COVER: *To find out what these implements were used for; see story on page 6.*

Subscriptions and Mailing: Helmi Braches

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The Society

The **Archaeological Society of British Columbia** is dedicated to the protection of archaeological resources and the spread of archaeological knowledge.

Meetings featuring illustrated lectures are held on the second Wednesday of each month (except July and August) at 8:00 p.m. in the Vancouver Museum Auditorium. Visitors and new members are welcome!

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Affiliated Chapters:

Fraser Valley. Meetings featuring illustrated lectures are held on the third Tuesday of each month (September to May) at 7:45 p.m. on the Fraser Valley College campus in Abbotsford. President: Thelma McIntyre (853-1495). Membership Secretary: Andy Purdy (823-4920).

NEXT MEETINGS (topics to be announced):

May 8

June 12

Social Science on Trial

in Gitksan-Wet'suwet'en ruling

by Ann Stevenson

THE RECENT Supreme Court of British Columbia judgement by the Honourable Chief Justice Allan McEachern dismissed Gitksan-Wet'suwet'en land title action by asserting that aboriginal title was extinguished in colonial times. His principal arguments centred around the jurisdiction or validity of various colonial enactments and laws, and the consequences of establishing British sovereignty over the area that is now British Columbia. Justice McEachern's discussion of this case goes further than asserting that the Crown had extinguished aboriginal title in colonial times; his judgement questions whether the Gitksan-Wet'suwet'en ever established aboriginal title to the territory under consideration. In the discussion, evidence based on oral history, linguistics, historical geography, anthropology, and archaeology was considered inadequate to verify Gitksan-Wet'suwet'en claims.

The Gitksan-Wet'suwet'en claim asserts that traditional land ownership resides specifically in 133 Houses and that this ownership relates to an equal number of

discrete territories that together cover 58,000 square kilometres (an area roughly the size of New Brunswick). This vast territory includes the watersheds of the north and central Skeena, Nass, Babine, and Bulkley rivers, as well as parts of the Fraser and Nechako river systems. This claim maintains that ancestors of the Gitksan-Wet'suwet'en occupied this land from time immemorial (a legal term equivalent to the year AD 1189), that they exercised jurisdiction over the land, and that they have never surrendered this territory. The Gitksan-Wet'suwet'en assert that the primary evidence for this ongoing jurisdiction resides in specific House histories known as *Adaawk* and *Kungax*, which are traditionally recited at feasts to affirm territorial boundaries, laws, and histories. Archaeological and other evidence was used to support these oral histories.

Although Justice McEachern acknowledges that there is evidence for human habitation at specific locations along the lower and middle Skeena for as long as 3,000 to 6,000 years ago, and evidence for early habitation in the Bulkley river

system, he believes there is no proof that this evidence can be tied to the ancestors of the Gitksan-Wet'suwet'en people. The archaeological evidence is primarily derived from the work of Kenneth Ames, George MacDonald, and Sylvia Albright. Although he acknowledges that much archaeological work remains to be done in the territory, he states that there is no evidence that links archaeological remains to specific groups. Justice McEachern seems to accept the conclusions cited from the works of Ames and MacDonald, however, he views the ethno-archaeological evidence with scepticism. He questions how far oral history can be extended into the past, and to this end quotes extensively from Bruce Trigger's *Time & Tradition, Essays in Archaeological Interpretation*. Trigger cautions that establishing archaeological ethnicity is an exacting task. Justice McEachern also feels that the lack of evidence at some sites works against the assertions of the oral histories.

Although it is not possible to assess these assertions based solely on the information provided within

the judgement, the general discussion of the entire body of social science data raises serious questions. Justice McEachern is very selective about what constitutes adequate evidence and has a particular perspective from which he views social science data. This view seems to be firmly rooted in 17th century thought. He quotes Thomas Hobbes in his characterization of pre-contact existence in the territory under consideration and states that life would have been "nasty, brutish and short." He believes that people without written language, horses, and wheeled vehicles would necessarily be primitive and lacking in social organization. The effect of Justice McEachern's negative view of aboriginal society is illustrated by his insistence that the historic prohibition of Indian land preemption had an insignificant effect because "their culture had not prepared them for the disciplined life of a tax paying agriculturalist."

In other words, his characterization of pre-contact British Columbia flies in the face of more than one hundred years of anthropological work and of the oral histories presented by the claimants. Even where Justice McEachern acknowledges that there is a direct link between oral history and physical evidence he denies that this link supports aboriginal claims. He acknowledges that geomorphological evidence confirms that a specific 3,500-year-old rock slide on Seely Lake relates directly to a traditional story, however, he asserts that the story of this event has remained in the area rather than the descendants of the original story tellers.

Whereas the evidence of geomorphologists and some archaeologists

is given a measure of credibility, the veracity of anthropologists is questioned. According to Justice McEachern, anthropologists who subscribe to the ethics standards of the American Anthropological Association and use participant observation as a primary technique for gathering information, should be considered advocates rather than witnesses and their evidence discounted. The linguistic evidence was characterized as based on a "mysterious process," but acknowledged as supporting Gitksan and Wet'suwet'en identities as distinct peoples for a considerable period of time.

Justice McEachern appears to accept documentary evidence as the equivalent of fact. Written accounts are accepted literally, at face value, without consideration of the source's perspective or personal agenda. For example, the descriptive account of an early trader is used to characterize aboriginal social life, whereas various aboriginal assertions and anthropological accounts are viewed with extreme scepticism.

The implications of Justice McEachern's ruling for social scientists working in British Columbia appears to be that evidence gathered under current ethical guidelines or under the sponsorship of native organizations may be considered suspect by the current legal establishment. The independence of archaeological data relating to ethnicity and/or to historical events, and which uses the evidence of native informants, appears to have suffered the same fate. □

ASBC member Ann Stevenson is the Ethnology Collections Manager at UBC's Museum of Anthropology.

New Publications

Haa Tuwunáagu Yís, for Healing Our Spirit: Tlingit Oratory, edited by Nora Marks Dauenhauer and Richard Dauenhauer. 1990. Univ. of Washington Press, Seattle. 569 pp., illus., bibl., glossary. \$US 17.50 (paper).

Tlingit texts and English translations of 32 Tlingit speeches, with annotations and a 150-page introductory essay by the editors.

A Theory of Northern Athapaskan Prehistory, by John W. Ives. 1990. Univ. of Calgary Press, Calgary, Alta. 403 pp., bibl., index. \$34.95 (paper), plus \$2.00 postage and handling (\$3.00 overseas).

This expanded version of the author's Ph.D. dissertation (Univ. of Michigan, 1985), argues for the utility of linguistic and ethnographic information on social organization to look at archaeological data from the Northern Athapaskan area.

Axe Makers of North America, by Allan Klenman. 1990. Whistle Punk Books, Victoria (Currie's Forestgraphics, 2035 Stanley Ave., Victoria, B.C. V8R 3X7). 111 pp., ills., bibl., indices. \$18.95 (paper).

Illustrated catalogue of axes made in Canada and USA since the late 1800s; also background information on the use and manufacture of axes.

Three archaeologists — three opinions

IT BEGAN quietly in June 1990. International Forest Products hired Ian Wilson to conduct an archaeological impact assessment along the proposed route of a logging road near Lillooet Lake. Wilson and his assistant inspected the indicated 4 km stretch, in company with members of the Mount Currie Band, and found one "cultural depression," which the archaeologists believed to be a cache pit and which band members claimed was a grave site. The road was redirected to avoid the feature.

The Mount Currie Band filed for an injunction against road construction pending the outcome of their claim to aboriginal title of the land. While considering the application, the court appointed a native observer to monitor possible

impact. This winter the observer duly stopped construction when it approached the area that Lillooet elders had identified as a burial ground. The logging company summoned its archaeological consultant who looked at the depressions in question and gave an opinion that none is of Native cultural origin.

The Mount Currie Band retained archaeologist Sylvia Albright who noted numerous unrecorded sites and features in the vicinity including some that may be remains of lodges or burial houses. In her opinion, a thorough archaeological study of the area should precede any construction, because without understanding the larger context it is not possible to

evaluate the significance of a particular location.

The suit against the logging company extended to the Province of BC, which had given permission for construction. The Crown lawyers retained archaeologist Arnoud Stryd. He "tested" many of the disputed depressions with a soil probe and concluded that there are no burials on the right of way, but noted that cultural features nearby warrant investigation.

The legal case centered on the issue of aboriginal title, not archaeology. The court waited for the Gitksan Wet'suwet'en judgement and with that as a precedent, dismissed the Mount Currie Band's application.

Whether this is the end of the affair, remains to be seen □

Cowichan dig: interim results

SALVAGE excavations were recently completed at *DeRw 17*, one of two inland middens on the Cowichan Indian Reserve threatened by pipeline construction.

The site, which is on the north side of the Cowichan River, yielded a large assemblage of primary cobble reduction debitage and two contracting-stem chipped stone points. There were no faunal remains, no shell, and no samples for radiocarbon dating.

At press time, work directly across the river at *DeRw 16* is in progress.

The archaeological excavations at Cowichan are being conducted by I.R. Wilson Consultants. □

West Coast beckons

THIS SUMMER, Alan McMillan and Denis St. Claire begin a three-year archaeological project in western Barkley Sound near Ucluelet. They will be working with the Toquaht Band.

The first field season, scheduled for July and August 1991, will include intensive field survey and interviews with Native informants. In addition, test excavations at two sites (the traditional Toquaht summer and winter villages respectively), will explore the time depth of the 19th-century seasonal round.

In 1992, excavations will focus on the main traditional Toquaht

village, which is represented by a large shell midden and associated midden deposits on a high rocky bluff that served as a fortress in the 19th century. One major research question concerns the antiquity of the fortress and whether its presence determined the location of the village.

The third and final season, 1993, is reserved for analysis and report preparation.

The Toquaht Archaeological Project is funded by the B.C. Heritage Trust through a grant to Douglas College. Simon Fraser University's Archaeology Department will assist with equipment and logistical support. □

Debitage

Anyone who needs to access the **Royal BC Museum's** collections during 1991 and 1992 may be out of luck. All material in the collections building will be packed up and moved (somewhere) to accommodate asbestos removal, but if you contact **Grant Hughes**, Assistant Director, Collection Program (387-5706), he'll try to get it for you . . . The next **BC Studies** conference will be held November 12-14, 1992 in Victoria and there's still time (until Nov. 15, 1991) to propose sessions. Contact Dr. Eric W. Sager, History Dept., Univ. of Victoria, PO Box 3045, Victoria, BC V8W 3P4 . . . Exhibits to watch for at the **UBC Museum of Anthropology**

include, in order of appearance: *Trapline — Lifeline*, which is coming from the Prince of Wales Northern Heritage Centre in Yellowknife in September 1991; *Ancient Cloth*, *Ancient Code*, an MOA exhibit of Peruvian archaeological textiles, scheduled for January 1992; and *The Grease Trail*, about Northwest Coast eulachon fishing, which the MOA plans to mount in February 1992 . . . While we're on the topic of UBC, be forewarned that all the university's telephone numbers have and will change to the prefix 822 (think "UBC"). Until September, both the old and new exchanges will be in effect . . . Well-laid plans notwithstanding,

Lower Mainland colleges will not offer a field course this summer. The Gulf of Georgia Cannery site is not available and it's too late to arrange another project — but **Stan Copp** and **Doug Hudson** are already scouting for a suitable site where they can hold a joint (Capilano, Douglas, Fraser Valley, Langara) field program for several seasons beginning in 1992 . . . Next time you wander down to **Locarno Beach**, have a look for the handsome bronze plaque commemorating **Dr. C.E. Borden**, the father of BC archaeology. It's the ASBC's replacement for the badly weathered multi-coloured version installed by the Vancouver Centennial Committee in 1986. □

Money for archaeology

THE FEDERAL government recently announced a new source of funding for archaeology in Canada. The Access to Archaeology Program, which has an annual budget of \$700,000, will support five types of projects: public awareness, collections placement, aboriginal training, research studies, and feasibility studies.

Eligible applicants include museums, cultural / educational centres, aboriginal councils and organizations, and non-profit societies.

The maximum grant is \$35,000. Cost-shared projects are encouraged, though total funding will also be considered.

The application deadline for the 1991-92 funding year is May 1, 1991. Thereafter, application deadlines are December 1 or May 1 (depending on the type of project), for funding in the following fiscal year.

Proposals will be judged on their potential to fulfil the objectives of the new federal archaeological heritage policy, as well as on the amount requested and on the applicant's ability to complete the project.

Under the public awareness component, grants will be awarded for publications, conferences, workshops, participation programs, etc. Manuscript preparation will be funded only if it is part of a broad project. Three-year funding, in diminishing amounts, is available for establishing national annual conferences, etc.

Research studies that will be funded must focus on enhancing public access to archaeological resources, or on resource management concerns. Innovative methods are encouraged.

"Collections placement" grants will be awarded to appropriate repositories for accessioning and initial presentation of material recovered since the creation of the federal archaeological heritage policy.

Feasibility studies are for site interpretation projects. The sites need not be on federal lands, but appropriate provincial authorities must support the proposal.

Application forms and further details of the terms and conditions of the Access to Archaeology Program are available from the regional Museum Consultant offices of the Dept. of Communications. In the Pacific Region (BC and Yukon) the address is: Museum Consultant, Communications and Culture, Communications Canada, 1700 — 800 Burrard St., Vancouver, BC. V6Z 2J7. Tel: 666-5424. Fax: 660-5471. □

Dates prove awkward

RECENTLY received radiocarbon age estimates for two sites near Monte Creek, east of Kamloops, leave archaeologists from I.R. Wilson Consultants with more questions than answers.

One problem concerns the substance that was submitted for dating — samples of fresh water mussel shell, which require a correction factor, but no one knows how much. Previous research at another site in the area suggests that radiocarbon assays on fresh water mussel shell provide dates that are 1,500 years too old.

The uncorrected estimates for EdQx 42 are 6290 ± 100 BP for the

bottom component and 5940 ± 100 BP for the top component.

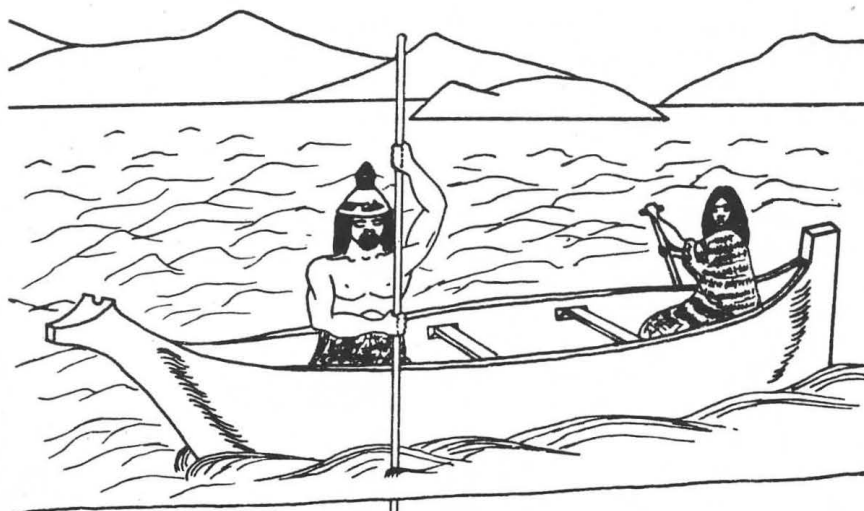
At EdQx 41, the uppermost component provided an older date (5500 ± 100 BP than the bottom component (5100 ± 100 BP), in reverse stratigraphic order. And that is the second problem. □

Valley hosts dig

The 1991 UBC field school will excavate at the Hatzic site (DhRn 23) near Mission, which features the oldest pithouse known in BC. Radiocarbon dates of 4490 ± 70 BP and 4420 ± 180 BP (uncalibrated) were recently obtained on charcoal samples from the floor of the pit and from a posthole, respectively. Dr. David Pokotylo plans to hold the field portion of the course May 27 to June 21. Visitors will be welcome. Phone Joyce Johnson (228-2567) for directions and visiting hours.

Marpole gains time

The city of Vancouver will not set a public hearing on the application to rezone the site of the Fraser Arms Hotel, which sits on top of the Marpole midden, until an archaeological impact assessment has been conducted. This decision follows recommendations by the city's planning department and the provincial Archaeology Branch, as well as requests from the ASBC and others, against the developer's preference for the reverse order.



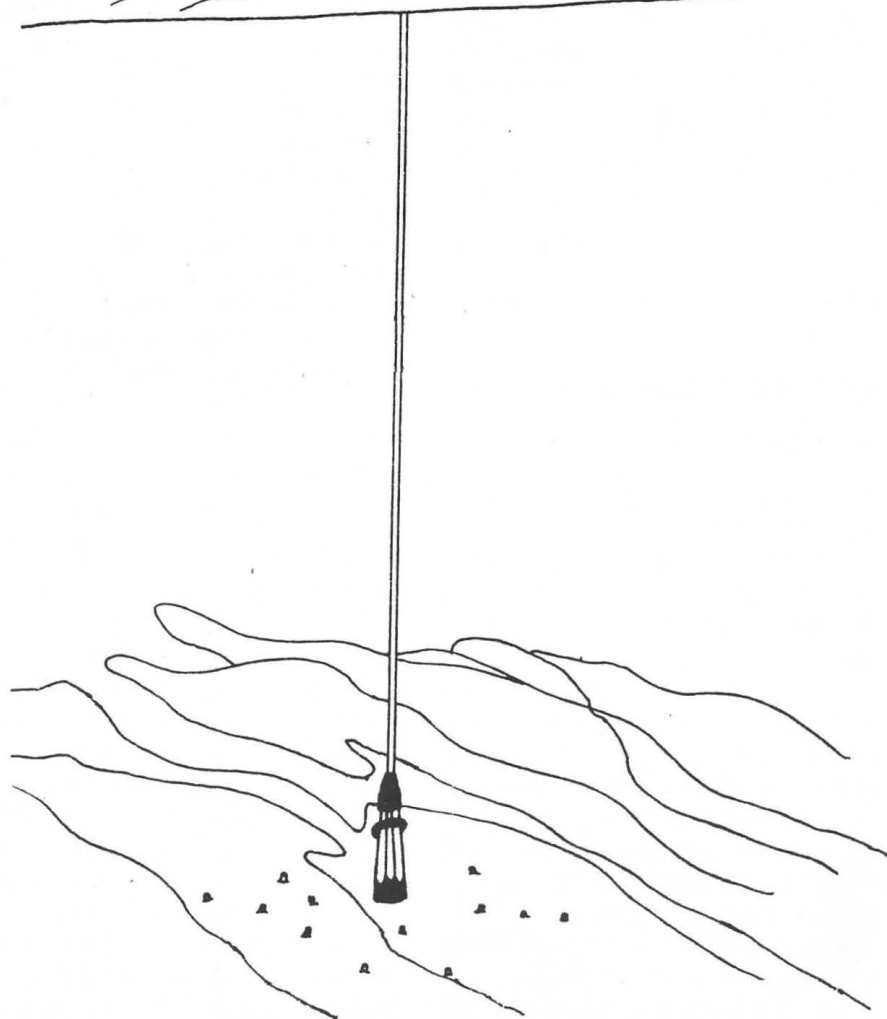
Fishing for Ivory

A Review of Dentalium

by Andrew Barton

At this time of year [June] they used to go up in August. They used to fish for ivory worms

- A Yakutat Tlingit elder, discussing the locations where



IN TWO RECENT *Midden* articles (Vol. 22:4:1-3 and Vol. 22:5:6-9), Robert Galois and Richard Mackie discuss the trade in dentalium shells by Euro-Americans during the early maritime and land-based fur trade periods on the west coast of North America. This article discusses the procurement methods used by native Americans to obtain the *Dentalium* shell, which they valued as an item of decoration, an indicator of wealth and status, and as a trading commodity.

Archaeologists have frequently used ethnographic and historical accounts of *Dentalium* procurement to help interpret the archaeological occurrence of dentalium shells. In many cases, these sources have not been examined critically, with the result that incorrect accounts are perpetuated in the archaeological

dry Worms

um Procurement Methods

up to Copper River, then come back
ms [dentalia] at Copper River.

where the Tlingit obtained dentalium shells.



literature. A basic understanding of the biology, geographical distribution, and habitat of *Dentalium* is essential for critical assessment of the claims made by ethnographers and other observers on the techniques used by native North Americans to procure *Dentalium*.

Dentalium Biology

Dentalium is grouped with other shell-bearing animals such as clams, snails, and chitons under the Phylum Mollusca and placed alone in the Class Scaphopoda. There are approximately 18 species of *Dentalium* found along the west coast of North America, and each species has a specific geographical range. The *Dentalium* lives primarily in deep water, but, depending on ecological conditions, it occurs anywhere from the

intertidal zone to depths in excess of 2,000 metres.

The ideal habitat for *Dentalium* occurs where ocean-floor sediments consist of loose mud, silt, or fine gravels that contain organic detritus and unicellular animals on which the animal feeds. The *Dentalium* burrows into the sediments using its muscular foot and orients itself with the apical or small end of the shell just above the surface, and with the aperture or large end of the shell buried in the sediments.

It locates food particles by probing the sediments with tentacle-like structures called captacula that are also used to capture and direct the food particles toward the oral cavity. The food particles are ingested and macerated by a set of calcified structures called radula that are located in the animal's gut.

Dentalium Procurement Methods

Ethnographic and historical sources describe three methods used by native people to procure dentalia. The shells were 1) collected off the beach, 2) fished for by using bait, or 3) caught by using a fishing implement specially designed for the purpose.

The simplest, most reliable method for obtaining the shells was to collect them off the beach. Where dentalium beds occur close to shore, turbulence and wave activity during storms scour the dentalium beds and deposit shells on shore. After a period of rough weather, native people would simply search the beach near known dentalium beds and collect whatever shells had washed ashore. This method has been recorded for

the Nuu-chah-nulth, Makah, Kwakiutl, Haida, and some groups in northern California.

The capture of *Dentalia* by fishing with bait was first described by John Jewitt in the journal he kept while a captive of the Mowachaht people in Nootka Sound from 1803 to 1805. Several descriptions of this method are also found in later historical and ethnographic accounts, and, in some cases, they probably derive from Jewitt's account.

The bait has been variously described as seal meat, whale meat or blubber, deer flesh, fish, the body of a dog, or the body of a slave. The bait was attached to a rope and lowered to the ocean floor where it purportedly attracted the *Dentalium* that would cling to the bait and could be drawn up and collected. In other descriptions, the bait, specifically whale meat or blubber, was attached to a long pole that was then lowered to the ocean floor and pressed over the dentalium bed. Supposedly, the shells became embedded in the bait.

Neither of these descriptions makes biological sense. First, the *Dentalium* is not carnivorous, in the sense that it does not feed on animal flesh, and indeed it does not have any morphological features that would allow it to feed on meat. Second, the *Dentalium* dwells in soft sediments. If a substance like whale blubber were pressed upon it, the *Dentalium* would simply be pushed into the sediments, not into the bait.

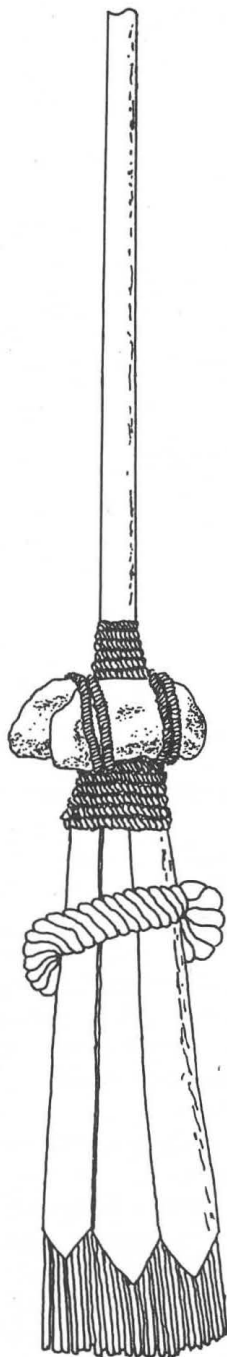
The narratives that describe the use of bait for fishing *Dentalium* may represent an allegorical description of the procedure, rather than a feasible method of obtaining

the shell. A number of cultural groups along the west coast of North America have origin myths for the dentalium shell. These myths commonly locate the source of dentalium shells in a country or region inhabited by supernatural beings who fish for dentalia by using human bodies or human flesh as bait.

The third method of procuring dentalium shells involved the use of a specially designed implement. Two types have been described in ethnographic accounts, one that resembles a broom and another that resembles a rake. Each type had a working end that contained rods, splints, or teeth, between which the dentalium shells would be trapped. The dentalium fisher probed the ocean-floor sediments with the implement, trapping a few dentalia, then hauled it up and removed the shells.

The broom-type dentalium-fishing spear was recorded in detail by Philip Drucker in *The Northern and Central Nootkan Tribes*, and by Edward Curtis, for the Kwakiutl on the northern tip of Vancouver Island, in his series on the North American Indian. The dentalium-fishing implement or spear is described as a long pole, or a series of connected poles, with a bundle of rods or splints bound to one end. Around these rods were a series of flat, broad slats that contained and compressed the rods.

In Drucker's account, a board with a hole in the centre and stone weights suspended from each end was slipped over the wooden slats at the end of the "broom". When the implement was pulled up, this board was drawn down over the end, compressing the wooden rods to prevent the shells from falling out.



Broom-type dentalium fishing implement, based on description by Curtis.

In Curtis's description, the board is replaced by a cedar withe that was drawn down close to the end of the wooden slats. As the spear prodded the bottom, shells and sediment would be successively forced between the rods, forcing the cedar withe up until the implement was full. Stone weights, lashed to the shoulder where the rods were attached, helped to counter-balance the implement and give it some weight when it was thrust into the ocean-floor sediments.

The Royal British Columbia Museum has two examples of this type of dentalium spear in its collections. Both were collected on the west coast of Vancouver Island by C.F. Newcombe (in 1911 and 1914). My illustration of this type of dentalium-fishing spear is based on Curtis's account, but includes features from both RBCM specimens.

The other type of implement, described as resembling a rake, consisted of a board or plank between 12" and 15" square, into which a series of closely spaced bone or wooden pegs, or spikes, were driven. A long pole was attached to the upper side of the board. The end with the wooden pegs was tamped into ocean-floor sediments that contained dentalium shells. According to one account, the implement had a short pole at the upper end to which a lanyard was attached. Stone weights were lashed to the base of the pole, above the board, and the implement was lowered to the ocean floor then raised and let drop several times, not unlike jig fishing. In both cases, the operation of the implement would result in the dentalium shells becoming wedged between the wooden spikes so they could be hauled up and retrieved. There do

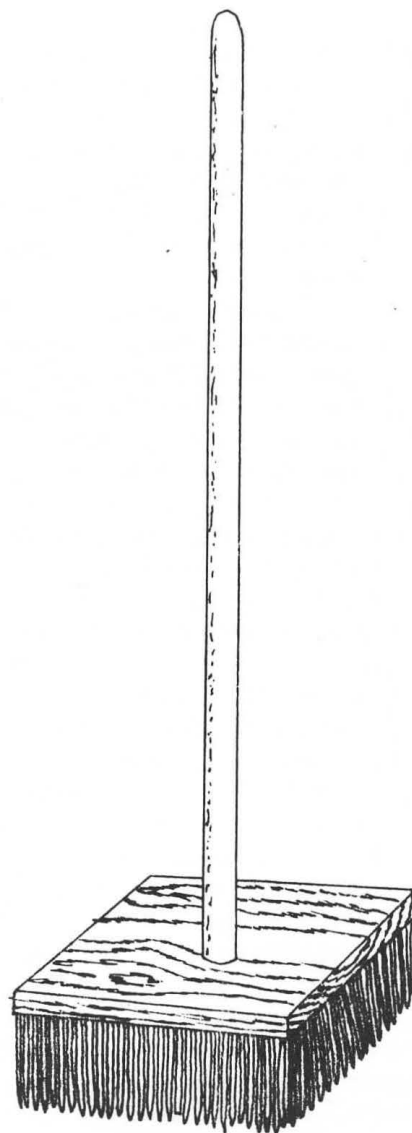
not appear to be any examples of this type of spear in collections, although it is possible that specimens exist and are not recognized as dentalium-fishing spears.

One aspect of dentalium fishing that puzzled Drucker was how this technique could have been developed. Drucker, and others, assumed that dentalium shells could only be found at great depths and would not, therefore, be visible to the native inventor. Recent biological studies demonstrate that *Dentalium* is found in shallow waters at a number of locations along the coast. It is likely that the dentalium fishing technique was developed in shallow waters where the shells were visible in bottom sediments. Then, when the method was perfected, it was employed in obtaining dentalium shells in much deeper waters.

Conclusion

The ethnographic and historical accounts provide a rich resource for archaeological interpretation. However, this resource is rarely used to its full potential. For example, archaeologists consistently refer to Drucker's account of dentalium fishing among the Nuu-chah-nulth to interpret archaeological material, whereas Curtis's equally detailed account has, to my knowledge, never been used. □

ASBC member Andrew Barton is an M.A. candidate at Simon Fraser University where he also works as a laboratory technician in the Dept. of Archaeology. His thesis deals with the occurrence and distribution of dentalium shells in archaeological sites.



Rake-type dentalium fishing implement, based on description by Jewitt.

Review of federal and provincial bills

by Kathryn Bernick

THE GOVERNMENTS of Canada and of British Columbia each recently released a white paper on heritage legislation. Both draft bills are still subject to amendment, before, as well as after, formal introduction in the respective legislatures.

The federal minister of communications, Marcel Masse, presented the "Proposed Act respecting the protection of the archaeological heritage of Canada" late last year to the House of Commons for consultation. He is also soliciting comments from the archaeological community and other sectors of the public.

The act would apply to public lands under federal jurisdiction, Indian reserves, and the Yukon and Northwest territories, but not to national parks. The Canadian Parks Service of the Dept. of Environment administers its own archaeological protection program and will continue to operate independently of the new legislation.

The BC "Draft Heritage Conservation Act," released last month by minister of municipal affairs, recreation and culture Lyall Hanson, would replace the current provincial act. The need for a new law, rather than merely amendment of the old one, was emphasized by the "Project Pride" public review, along with numerous policy recommendations some of which have already been implemented.

The provincial draft bill has cabinet support. It has also had good response from the opposition

(NDP), and Heritage Conservation Branch staff expect it will pass, with only minor changes, regardless of the outcome of an election.

General Characteristics

•**BC** The bill as a whole seems wordy and somewhat repetitious. Its length reflects, in part, the broad "heritage" scope and the inclusion of consequential amendments to other laws, especially the Municipal Act. Repetitions may seem unnecessary, but I suspect they will help enforcement by emphasizing the intent of the law and removing legal loopholes that plague the current version.

The bill provides considerable flexibility for decision making at the management level backed up by solid protection for pre-colonial resources. A provision for advisory and administrative bodies would enable significant native participation. Working archaeologists should not be greatly affected, since the requirements for conducting fieldwork are already in operation.

•**Canada** The proposed federal law appears to suffer from brevity and oversights that could seriously jeopardize its efficacy. It establishes the Ministry of Communications (Office of Archaeology) as a coordinator of protection measures that will be administered by land managers (the various ministers and directors of Crown corporations who administer particular federal lands). Costs would be dispersed, which might be a good political

strategy, but it could backfire without commitments (of will and money) from other ministries. Archaeologists could be facing mountains of paperwork and a bureaucratic nightmare. Nevertheless, the bill could be extremely effective at protecting archaeological remains in some jurisdictions.

Protected Resources

•**BC** The provincial bill provides automatic protection of archaeological sites and materials that pre-date November 19, 1858. Council may extend the automatic protection to additional classes of sites. Designation of sites and objects would provide maximum protection.

•**Canada** A list of protected artifacts, burials, wrecks, specimens, and sites and of protected classes of these resources will be established by Council. "Artifacts" are defined as objects made or used by human beings and discarded, lost, or abandoned 50 years ago or more.

Comment The automatic protection in the provincial bill stops a loophole in the current law. It does not extend to post-contact archaeological resources, though these could be added to the list. By comparison, the federal law has no guarantee of what will be listed, but gives equal consideration to prehistoric and historic resources. The relative date (50 years old) means that, in some cases, protection status will shift

Heritage Legislation

requiring constant reevaluation — good for the resources, but high in administrative costs.

Burials

•**BC** Ownership of "burials" and "grave goods" (neither term is defined) will be imprescriptibly and inalienably vested in the native people of BC. Protection of these resources would presumably be included in the automatically protected list, though that is not specified.

•**Canada** Discovery of a burial will require one to notify the land manager and the Minister of Communications, to treat it with dignity and respect, and to refrain from disturbance until the land manager and a representative of the deceased (direct descendants, Indian band, etc.) agree on final disposition.

Comment Unless federal permits for archaeological excavation include an advance agreement for burial disposition, unexpected discoveries could severely impede the work, or stop it altogether. Agreements of this nature can rarely be achieved with a quick phone call. The federal solution to the current controversy over burials sounds good, but may be impracticable. The provincial plan is easier to administer, but ignores the issue of burial excavation.

Accidental Discovery

•**BC** Upon finding evidence that land might be legally protected, one will have to immediately stop digging and notify the minister who

in turn must decide how to proceed within 72 hours. The minister could issue a stop-work order prohibiting further alteration for up to 120 days.

•**Canada** Upon finding a protected resource, one will have to inform the land manager and the Minister of Communications as soon as possible and try to prevent further disturbance. The minister could issue a stop-work order valid for 14 days and this could be extended (indefinitely?) by Council.

Comment The provincial directive (stop, notify, wait for instruction) is far more effective than the federal one (notify two different offices, try not to aggravate the situation). The 120-day stop-work order allows time for salvage (depending on the season and area of the province), but it can only be issued once per property (surely another, different construction project at the same site should be subject to separate consideration). The federal stop-work order requires immediate attention, which is unrealistic.

Permits

•**BC** The minister may issue a permit or an order to conduct a "heritage inspection" or a "heritage investigation" of protected resources that may be altered so as to derogate from their "heritage value." The work must be performed expeditiously and a developer could be ordered to pay for it. Permits are required for archaeological research, searching for artifacts, and removing artifacts from a site.

•**Canada** A permit is required prior to undertaking any activity that might affect a protected resource. Permits (for impact assessment and for exploration or investigation) are issued by the land manager and endorsed by the Minister of Communications. The land manager requires that a repository (for collections and documentation) be named, specifies report requirements, and specifies any details relating to alteration of the land. The minister considers the applicant's qualifications, the scientific and technical merits of the proposed work, and the suitability of the repository.

Comment The two-level federal permit system will generate lots of paper, but it has the advantage of quality control separate from the actual management decision. The law doesn't specify, however, which agency will review the completed work. Provincially, some archaeologists are facing credibility problems that could be alleviated if quality were evaluated by someone removed from the management decisions.

Another plus for the federal plan concerns the stipulation of an approved repository for all documentation. In BC, archaeologists must turn over documentation pertaining to an excavation project together with the collection; field documentation for impact assessments and other non-excavations is normally retained by the archaeologist who is under no obligation to divulge the information or even to keep it.

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Artifact Ownership

•**BC** The provincial bill addresses ownership of archaeological resources at length. Basically, artifacts found on protected lands and considered by the minister to pre-date 1858 will be owned by the Crown, including those removed illegally either before or after enactment of the law. Ownership of burials and grave goods (undefined) is vested inalienably in the native people of BC. Any native organization may apply to the minister for assignment of possession of artifacts that once belonged to their ancestors.

•**Canada** The Crown would own all protected artifacts and specimens that are on public lands. The bill prohibits acquisition of archaeological artifacts that a person knows were obtained illegally.

Comment The federal law does not address ownership of protected resources that are on Indian lands or those in national parks. Moreover, a plea of ignorance could safeguard one from the prohibition against illegal acquisition. Provincially, the minister would decide whether particular artifacts were created or used by the ancestors of an applicant native band, but retains the option of referring the decision to the Supreme Court. Recent court decisions do not bode well for native claims in such matters.

Traffic in Antiquities

•**BC** The new law will prohibit possession of an illegally recovered artifact. It will also be illegal to sell, trade, or offer for sale archaeological objects protected by another province, the government of Canada, or a foreign country. Sales of artifacts will be permitted in BC only if the vendor can prove legal

ownership and legal acquisition. Donations and sales to designated repositories are allowed. A BC archaeological artifact will not be allowed to leave the province without written authorization from the minister.

•**Canada** Inter-provincial transport of archaeological artifacts will be legal only if it is legal in the province of origin and the transporter has provincial authorization. Proposed amendments to the Cultural Properties Export and Import Act disallow permanent export of all archaeological artifacts.

Comment The combination of federal and provincial laws would effectively stop the traffic in BC archaeological artifacts (though it might persist underground).

Enforcement

•**BC** Offences would be punishable by up to \$50,000 and/or 2 years imprisonment. Corporate offences could bring a \$1,000,000 fine. There are provisions for property expropriation (with compensation) and for confiscation of illegally held artifacts.

•**Canada** Offences would bring fines up to \$2,000 and/or 6 months imprisonment; indictable offences, up to \$1,000,000 and/or 5 years. Each illegal artifact and each day of contravention could be cited as a separate offence. The proceedings would be initiated by ticketing.

Comment The provincial government places corporations in a position of greater responsibility than individuals, whereas the federal bill treats them on par. The ticketing procedure seems practical in that it ensures the process begin promptly (if left for 6 months the charge would be dropped).

Conclusion

The draft bills suggest that effective archaeological protection may become a reality in British Columbia. However, in addition to legislation, we must have political will and adequate budget allocations to support and carry out the necessary programs and policies. Moreover, smooth articulation between the provincial and federal archaeology offices is critical to the practical aspects of preserving the archaeological resource. Otherwise we could face the prospect of needing half a dozen permits, some with endorsements, and several reports (written to different standards) for a single project, collections split between repositories, and ownership of collections from a single site divided up into federal and provincial portions.

The white papers discuss additional matters besides those that I selected for comment here. Lawyers, resource managers, native Indians, private collectors, museum curators, land owners, and developers will undoubtedly highlight other topics. I urge everyone interested in heritage protection issues to study the documents first-hand.

For copies of the federal bill and information on its progress contact Elizabeth Snow, Director, Archaeology Policy, Dept. of Communications, Ottawa. Tel: (613) 990-4835.

The provincial paper is available from the Heritage Conservation Branch, Ministry of Municipal Affairs, Recreation and Culture, Victoria, BC. V8V 1X4. Tel: 356-1434. Comments on the provincial bill should be directed to Dr. Colin Campbell, Director, Heritage Conservation Branch or to Brian Apland, Director, Archaeology Branch (same address). □

Permits issued by the B.C. Archaeology Branch January through March 1991:

- 1991-1 Lindsay Oliver: recovery of human skeletal material and associated artifacts.
- 1991-2 Ian Wilson: impact assessment, Queen Charlotte District.
- 1991-3 Jean Bussey: impact assessment, Esso Resources Canada, northeastern B.C.
- 1991-4 Jean Bussey: overview and impact assessment, Canadian Hunter Exploration, northeastern B.C.
- 1991-5 Ian Wilson: impact assessment, Roderick Island facing Griffin Passage.
- 1991-6 Ian Wilson: impact assessment, Church Bay farm (*DeRt 77*), Saturna Island.
- 1991-7 Ian Wilson: impact assessment, Lower Nicola (*EaRf 6*), near Merritt.
- 1991-8 Ian Wilson: impact assessment, sections of Westcoast Energy pipeline between Parsnip River and Chilliwack.
- 1991-9 Brian Hayden: excavation, Keatley Creek (*EeRl 7*), near Lillooet.
- 1991-10 Ian Wilson: inventory of Government Creek, Skidegate Channel.
- 1991-11 Richard Brolly: monitoring, Celgar Pulp Mill expansion project at Castlegar.
- 1991-12 Malcolm James: inventory, Upper Nicola area.
- 1991-13 Ian Wilson: inventory of cutblocks on Pitt Island, Ogden Channel.
- 1991-14 Morley Eldridge: impact assessment, data recovery and impact management, Willows Beach (*DcRt 10*), Oak Bay.
- 1991-15 Ian Wilson: impact assessment, property development, Courtenay.
- 1991-16 Ian Wilson: inventory (Lot 19, Bl 29), Comox District.
- 1991-17 Grant Keddle: impact assessment, Tillicum Road bridge (*DcRu 5*), Esquimalt.
- 1991-18 Debbie Ferguson, Rolf Ludvigsen, and Mike Trask: palaeontological excavation, Puntledge River.
- 1991-19 Robert Muir: impact assessment and inventory, Woolford Point, Adams Lake.

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Heritage Conference

The Heritage Society of British Columbia will hold its 13th annual conference in Revelstoke, May 23-26, 1991. This year's theme is Small Town Heritage. For further information contact the Heritage Society of BC, 2nd floor, 411 Dunsmuir St., Vancouver, BC V6B 1X4. Tel: 688-9590.

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