

SINCE THE BAD SPIRIT BECAME OUR MASTER

by

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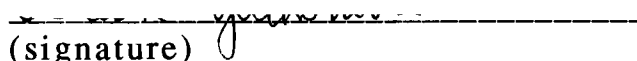
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SINCE THE BAD SPIRIT BECAME OUR MASTER

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Abstract

This research is focussed on heritage protection on Indian lands and stems mainly from the lack of any legislation extending protection to heritage sites or antiquities located there. Starting from an initial survey, which was to systematically examine Peigan lands to discover archaeological remains it became obvious that such sites were especially vulnerable precisely because there was no mechanism with which to ensure their long term protection. Consequently this thesis research began to expand and ultimately shifted focus to the issues of heritage management and First Nations stewardship.

In developing this thesis two opposing scenarios immediately become available and each has its strengths and weaknesses. The first is to encourage the federal government to initiate statutory conditions detailing policies for disposition, jurisdiction and investigation. The second is to disperse the responsibilities to the many local governments at the band level as a means of achieving the goal of heritage protection on Indian lands. Allowing for federal initiatives becomes unpalatable for the First Nations as it would appear to be only one more legislated burden upon band governments. Aspirations of autonomy for First Nations must be considered and the imposition of regulations from the central government would make the phrase 'self-government' sound somewhat hollow.

The placement of heritage responsibility as a concern of the Peigan is the starting point for thesis discussion. Supporting this examination is the

review of existing legislation as a means of implementing local control and the comparative situations of other aboriginal groups who have had to respond to governmental initiatives, or who are already exercising some level of control over heritage sites. These provide suitable models, or direction, for Peigan archaeology. Lastly, a by-law is proposed for Peigan consideration. It is an attempt to institute a comprehensive framework for addressing the issue in a format that is immediately recognizable within the legal community.

...at the dawn of day, we attacked the Tents, and with our sharp flat daggers and knives, cut through the tents and entered for the fight; but our war whoop instantly stopt, our eyes were appalled with terror; there was no one to fight with but the dead and the dying, each a mass of corruption...We thought the Bad Spirit had made himself master of the camp and destroyed them...The second day after this dreadful disease broke out in our camp, and spread from one tent to another as if the Bad Spirit carried it...and about one third of us died, but in some of the other camps there were tents in which every one died. When at length it left us, and we moved about to find our people, it was no longer with the song and the dance; but with tears, shrieks, and howlings of despair for those who would never return to us... we believed the Good Spirit had forsaken us, and allowed the Bad Spirit to become our Master...Our hearts were low and dejected and we shall never be again the same people.

Saukamappee to David Thompson, 1787

Any Indian who may be admitted to the degree of Doctor of Medicine, or to any other degree by any University of Learning, or who may be admitted in any Province of the Dominion to practice law either as an Advocate or as a Barrister or Councillor or Solicitor or Attorney or to be a Notary Public, or who may enter Holy Orders or who may be licensed by any denomination of Christians as a Minister of the Gospel, shall *ipso facto* become and be enfranchised under this Act.

The Indian Act (1876); S.C. 1876, c. 18, s. 86(1)

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Preface

The title of my thesis, Since the Bad Spirit Became Our Master, refers to the point at which history was introduced to the Peigan. The chronicler was David Thompson and as a guest of the Peigan during the winter of 1787 he had the opportunity to record the life experiences of his host, Saukamappee. The crisis for the Peigan was the arrival of smallpox into their community, an event which was so devastating that their only explanation for it was that they had been forsaken by the Good Spirit. The ensuing melee was attributed to the Bad Spirit, who had become the master of their lives and could do with them as it chose.

They would never be the same people they were before the plague, as Saukamappee astutely noted. The compact that existed between the Peigan and the spirit world was undermined when they realized that they could rely no longer on the familiar spirits. Thereafter it became their task to redefine their traditions and to discover the rules for living in the time of the Bad Spirit. This thesis contributes to that task by examining Peigan history and exploring the archaeological record to provide a basis for developing the means of relating to that charmed world in the time of the Good Spirit.

CHAPTER ONE:

INTRODUCTION

The Peigan Indian Reserve (Nos. 147 & 147B) in southwestern Alberta encompasses an area of over 45,000 hectares (Fig. 1). The main reserves rests between 113° 31' 30" W4M and 113° 46' 30" W4M in longitude, and between 49° 29' and 49° 41' 55" north latitude. The adjunct reserve (No. 147B) covers eleven sections on the extreme southern flank of the Porcupine Hills; its western border abuts on the fifth meridian west and runs five kilometers east from there. The coordinates for latitude range between 49° 41' 55" to 49° 45'.

The Peigan are members of a single nation whose traditional territory straddles the boundary area of Canada and the United States immediately east of the Rocky Mountains; those in Canada are called the North Peigan while south of the border they are Blackfeet. The Peigan, as a cultural unit, comprise one-third of the Blackfoot Confederacy, which also includes the Blood and Blackfoot as the other two members. Previously unencumbered by borders, their tracts of defined land, and also those of the Sarcee and Stony peoples, came into existence with the signing of Treaty No. 7 in 1877.

It was within the boundaries of Peigan that I determined to undertake field research as part of my academic programme in archaeology; Peigan is also my home. Pursuing this task entailed going to the Peigan Chief and Council for permission and then proceeding with a rather typical archaeological survey. Doing archaeology on Indian lands, I soon discovered, is an ambiguous endeavour fraught with concerns from the local community, government and the discipline itself regarding the ownership and disposition of material remains. These concerns served to refocus my attention on issues of heritage management and the objectives of this thesis formed around that theme.

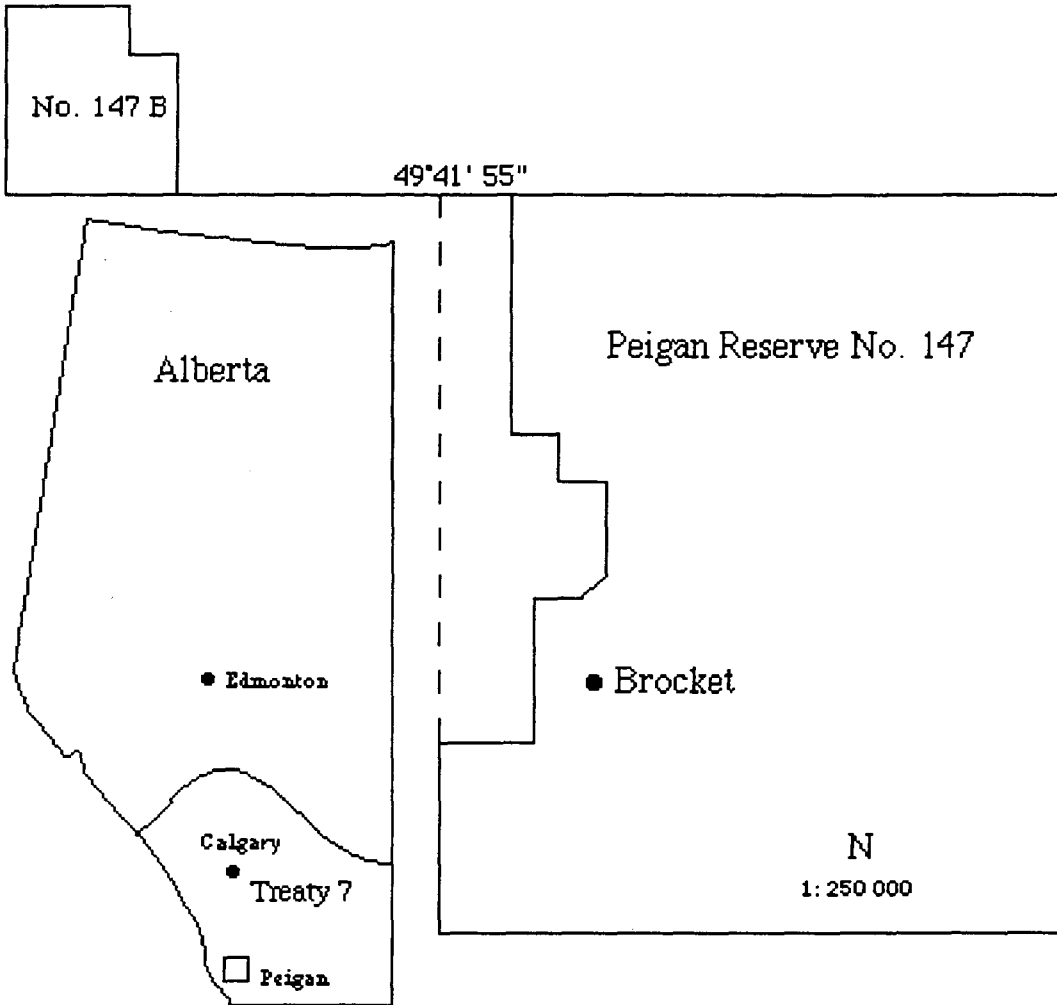


Fig. 1

Peigan Indian Reserve Nos. 147 & 147B

The Peigan Indian Reserves were established as a condition of Treaty #7 signed in 1877 between the Blackfoot Confederacy and British North America. The inset locates Peigan in relation to the province of Alberta. The portion of Alberta beneath the solid line was the focus of Treaty #7.

The reserve area indicated by the dotted line highlights the 1909 land surrender which is the subject of a specific land claim. The adjunct reserve is largely unpopulated and heavily forested.

THESIS OBJECTIVES

The underlying concern of this research is to document the move toward autonomy in native communities, with particular emphasis on Peigan. Therefore the primary objective of this thesis is to assess the implications of Peigan self-government on archaeology and the potential strategies they might institute for managing their cultural legacy. Against this background is the issue of Peigan land, which contains many archaeological sites. The focus of this research will be to examine the repercussions as the Peigan community moves to assume control of their lands. These issues are not restricted, nor exclusive, to the Peigan since they are only one of many native groups who are actively pursuing the goal of local government.

There are ancillary components that must be investigated so as to understand the many facets of this topic. It is necessary to scrutinize them within a context that is familiar to both the discipline of archaeology and the Peigan. For example, Peigan archaeology must be placed in the larger Plains region if for no other reason than to anticipate site types across the landscape. Likewise, archaeology must demonstrate itself to be a legitimate means of exploring Peigan history if it is to be accepted within the community.

Once discovered in surveys, or excavated, archaeological sites enter into the protective domain of heritage legislation. Cultural objects removed from their original provenience receive attention through institutional curation. The statutory landscape which provides the basis for this interaction is often adversarial to native autonomy. Ultimately there must be some prescription that is receptive both to preservation for archaeological sites and accepting of the aspirations expressed by the host community.

CHAPTER PROGRESSION

Each chapter addresses a particular objective, as stated in the previous section, and sequentially they compile a coherent treatment of the subject as it relates to Peigan lands. Chapter two begins by introducing the Peigan as historical entities and the physiographic and cultural histories of Peigan are examined. This is critical for it verifies the continuity of the Peigan and their lands with prehistory. Thus the cultural legacy manifested on the landscape is their own to be managed on their terms, rather than imposed by a foreign power. Historical documents, like the diaries and chronicles of surveyors, provide the basic description of the early years of contact between Europeans and natives. Thus they create a reliable source of information that augments the spoken traditions employed by the native people.

The physiographic history of southern Alberta was investigated in the historic period by Captain John Palliser (1857), but this was in the early years of geologic theory when world wide glaciation was a testily debated concept. It was not until this century that geologists (Stalker, 1963), with a refined sense of geomorphic process, systematically described the till sheets and bedrock that the landscape was more fully understood. Largely due to the pursuit of a fabled Ice-free Corridor (Reeves, 1973; Rutter, 1984) much of the geography has received some scrutiny such that a clearer picture has emerged regarding the after-effects of massive deglaciation. These enigmatic signatures remain to be investigated to either refute or support an image of the early Holocene that includes a human presence. In the Peigan mind they document a landscape of the creator, and one reflected by the quixotic events of their lyrical history.

Archaeological remains, once discovered, enter into the legal realm as various agencies test the limits of their jurisdiction over control of sites and artifacts. Chapter three explores the statutory vehicles by which Indian governments express their relationship with antiquities. The basis of Peigan claims stems from *Treaty No. 7* which is their arrangement with Canada and which defines, in general terms, their treaty rights. However the legislation that makes all work on Indian lands possible is the *Indian Act* (1985) as it is the only statute through which the federal government expresses its fiduciary role for Indians. Chapter three includes a detailed examination of this act and ferrets it with the intent of interpreting relevant sections that would effect attempts to install heritage protection measures. Those sections that deal specifically with land, possessing land, powers of the band council, trespassing on Indian lands and trading with Indians are scoured for any hint of their role in determining future directions for archaeology on Indian lands. In lieu of any comprehensive legislation respecting antiquities on federal lands, the *Indian Act* currently remains the only vehicle for instituting those intents. It is imperative therefore that archaeology be understood within its framework.

Chapter four continues this discussion by describing the strategies employed previously by the Peigan in their attempts at resolving the issue of control over cultural property. This extends to by-laws respecting burials, artifacts and the intangible elements of Indian culture such as myths and traditional knowledge. Since there is a larger area defined as traditional lands, those lands off reserve, this chapter explores the basis of local perception that Peigans retain an interest in unsurrendered sites and artifacts. Following in this vein is the results of a questionnaire distributed to residents of Peigan that queries them for opinion regarding archaeology on Peigan lands. Topics of interest revolve around the disposition of antiquities,

historic sites preservation, impact assessments and knowledge of archaeology. Community support for archaeological efforts is crucial for the implementation of local by-laws that protect historically important cultural features.

The Peigan situation parallels other aboriginal groups who are moving toward local control of their own cultural legacy. The Sechelt, for example, have a specific enactment in the federal parliament that allows them to create policy and by-laws effecting antiquities. Their experiment in legal autonomy provides the mechanics for one possible route to self government available to the Native people of Canada. Comparable situations exist with the Navajo and Maori, two indigenous peoples existing within larger polities that have instituted differing systems for defining their relationship. The task in this chapter is to examine the treatment of antiquities with those models that contain stated objectives for aboriginal governments.

The final chapter provides recommendations for a Peigan heritage management policy, one with a decidedly indigenous temperament. Any alternative, however, must incorporate traditional Peigan methods of reckoning time as well as accommodating modern concerns of land occupation and economic development. It also places the history of archaeology within a colonial framework to elucidate the point of decolonizing Indian history. The objective is to attempt to regain control over Indian patrimony without resorting to interpretations that are aimed at an academic audience with a restrictive methodology and governing paradigm. Should the discipline fail to reconcile this issue it will be forever alienated from its traditional source of data, the archaeological record of native peoples.

CHAPTER TWO: PEIGAN HISTORY AND PLAINS ARCHAEOLOGY

INTRODUCTION

Pursuing the broad objective of articulating Peigan history is the first objective of this thesis in order to demonstrate continuity with the past, the Peigan's past, and Peigan worldview regarding the past. The necessity stems from a need to provide a context for discussing the protection of the material culture inherited from former times. In so far as claiming an aboriginal association with the archaeological record requires temporal continuity this investigation reveals the Peigan to be living on the northern plains before direct European contact. The three facets of this history are integral to each other starting with the initial portrayal of Peigans in recorded history and their subsequent identity. Given that contact was through the auspices of commerce as traders ventured from the confines of their posts and visited their customers in their traditional territories, the diaries of these individuals relate details about the customs, appearances and dispositions of the people contacted.

This is followed by a description of the history of Peigan lands which encompasses much of the physiographic component. Its influence on the cultural facet is indicated by the numerous examples of native people incorporating geologic features in their ceremonial and ritual culture. Also notable are the opportunities to employ arroyos and escarpments to the advantage of a hunting culture as their traps. The chronological sequence promoted by research is emphasized to clarify the availability of this landscape for human occupation immediately following deglaciation.

Finally the chapter ends with a description of the archaeological record as it is understood at present in the archaeological literature. While there is a review of previous efforts, it is not the intent of this thesis to reiterate the results of every survey conducted on the northern plains. Without intimating that Peigan lands exist in isolation from the surrounding cultural sequence, the discussion is meant to expand upon the survey data presented in Appendix A.

THE PEIGAN AND HISTORY

In the strictest sense of the word the Peigan became historical entities in the European mind through Pierre Gaultier de Varennes, Sieur de la Verendrye's vicarious encounter with them during his survey of the northern plains beginning in 1738. These enigmatic people he called the "Pikaraminiouach". The name of this group has proven indecipherable to students of history, but the description of their customs leaves no doubt of the authenticity of a Cree account from which Peigan identity may be argued. If accurate, this chronicle places the Peigan on the northern plains decades before direct contact between them and any Europeans.

La Verendrye's Cree informants describe the condition of the land and people west of his proposed journey:

The upper part of the River of the West is inhabited by wandering savages like the Assiniboin, called Pikaraminiouach, very numerous, without fire-arms, but possessing axes, knives and cloth like ourselves, which they get from down the river where white men dwell who have walled towns and forts (Burpee, 1927; 248).

As the word "Pikaraminiouach" is derived from Cree and expressed by a francophone it is desirable to examine it from that perspective. Linklater (pers. comm., 1992), a native Cree speaker, indicates the word for 'people' as <ithin'ow> and the plural form is achieved by adding the suffix <wuk>.

Dion (pers. comm., 1992), also a native plains Cree speaker, notes that in the Swampy Cree dialect the 'th' sound is replaced typically by using 'n', the result being <inin'ow>. A proper name is applied as a prefix to denote a specific group, thus Peigans would be indicated by their own name <Piikani> attached to <inin'owuk> producing <Piikaniinin'owuk>, a word that phonetically resembles "Pikaraminiouach" in La Verendrye's writing. The resemblance may seem chaotic, but in David Thompson's account an anglophone hears <Piikaniikoan> and derives Peeagan (Glover, 1962)! A liberal interpretation of La Verendrye's spelling is consequently in order.

Subsequent surveys by Thompson in 1787, Fidler in 1792, Lewis and Clark in 1802 and Palliser in 1857 merely expand on the description of the Peigans and their homeland, eliminating any ambiguity as to cultural identity. At this point in Peigan history they were still engaged in a big-game hunting economy, based on bison, and gathering local plant resources for subsistence. Then, it is said, in the oral tradition:

the people would employ a cliff trap and construct long lines of cobble cairns leading to it. Tree branches were anchored by the cairns and people would hide behind these. A runner went out to the gathering basin where the buffalo were grazing and in the dim light of night would imitate a lost calf to lure the herd into the people's trap. When the herd was very near the precipice the people would surprise the animals causing them to stampede over the cliff (Joe Yellowhorn, 1993; pers. comm.).

It is no surprise to Peigans that archaeologists should find extensive bone beds at places like Head-Smashed-In Buffalo Jump near the Peigan Reserve precisely because the oral traditions mention these sites and relate a time when buffalo were numerous and the centre of Peigan lifeways.

The same oral traditions include detailed descriptions of the plant foods available for consumption, as well as a method for gathering them. One story tells of a woman who married the Morning Star and went to live in the sky with him, and conceived a son for him. While she was out gathering

roots with her digging stick she pried out a prairie turnip, *ma's*, that opens a window to the earth to which she longs to return. Another tells of Naapii repeatedly diving into a pool to retrieve some berries he sees underwater. Only after nearly drowning does he realize it was a reflection of berries in a tree above him. He takes his knife and peels back slivers of bark which become thorns and the only way of gathering these buffalo berries, *mi'ksinittsiim*, is to hold a branch and beat it so that the berries fall off onto a cloth spread on the ground. This lyrical history serves a dual purpose. First it is a cultural response to the problem of retaining needed information on edible plants and the time of year for collecting, in that timing is everything. Secondly it is a history binding the Peigan to their land.

Peigan seasonal rounds consisted of traversing the plains during the summer and retreating in winter to camp in a wooded, sheltered area. It was at just such a winter camp on the Bow River that David Thompson, as a guest of the "Peeagans" in 1787/88, had an opportunity to record many customs of their traditional lifestyle. At the same time he recorded the adventures of an individual, "Saukamappee", who is introduced as "an old man of at least 75 to 80 years of age..." (Glover, 1962; 240). In relating his personal life to Thompson, Sahkomaapii, originally a Swampy Cree (Brink, 1986), describes his early career as a mercenary hired by the Peigans in their wars against the Snakes. His initial involvement with these combatants was at age sixteen when neither guns, nor horses, were included in hostilities.

Sahkomaapii's next entanglement with Snake/Peigan animosity is significant in that the chronology of events described would suggest a time immediately prior to La Verendrye's foray onto the northern plains. The Snakes had recently ridden "the Big Dog" (Glover, 1962; 241) into battle and scored a decisive victory on the Peigans, who still did not have guns. At this

point the Cree, and Assiniboin, were considered Peigan allies, probably due to trade links. Sahkomaapii reluctantly chose to involve himself in the Peigans' war, but in accepting their invitation, he and his comrades introduced fire arm technology into plains warfare, radically changing the style of combat thereafter.

If an age of seventy-five is accepted for Sahkomapii and if he was twenty years old when he went to war, then he is quite likely describing events that occurred during the summer of 1732. However, if Thompsons' older age estimate is accepted then it would put the year as 1727, ten years before La Verendrye and his sons set out on their journey! This date of c. 1730 is probable, given the description of his age and the technology associated with warfare; he does recount iron-tipped spears and arrows. With the Cree well aware of the Peigan, and their geographic locale, they are a most likely candidate to be La Verendrye's "Pikaraminiouach". Peigans, therefore, were in their traditional lands prior to the earliest European surveyors.

While European history is compiled in archival records, Peigan history is depicted on hides with an accompanying oral account of the past expressed in lyrical terms. Although not a Peigan document Dempsey (1965) illustrates the chronological accuracy of such records in his interpretation of "A Blackfoot Winter Count." He describes the mnemonic glyphs depicted by Bad Head, "a minor chief of the Bloods and leader of the Buffalo Followers band," recalling winters past "covering the period 1810-1883" (Dempsey, 1965; 3). Winter counts were the principle means by which Peigans recounted their long history, each winter was designated by a particular event that was portrayed with a glyph and dialogue (Yellowhorn, 1990; 23)

Understanding the Blackfoot equivalent of prehistory, *isskoohtsik*, is to be found by searching the discourse between humans and spirits. The past, in

aboriginal ideology, is synonymous with the spirit world, and it is as much a place as it is a time. Given this concept of time being more state than process the contemporaneous existence of the past and present makes contact between them more than merely possible. The reciprocal influence of humans on spirits is indicated by David Thompson in describing the aftermath of a battle between the Peigan and the Snakes (Glover, 1962; 243). The victorious Peigan took scalps from fallen Snake warriors to make them slaves of their relatives in the spirit world.

Where the spirits live is divided into an intermediate and a remote past, the former being inhabited by deceased relatives and the latter by the spirits of natural forces, heros and gods. It is the remote past that is *isskoohtsik* while the intermediate past is a location, *omahksspatsiko* (the Sandhills). The present is for the living, but it is not considered exclusive of the past. The vehicle that facilitated the interaction between the two is the dreamtime, when a spirit can visit without harming a person. Meeting a spirit while awake and lucid was a dreaded possibility, but the active pursuit of the spirit world was the basis for the ritual practice of vision questing.

Peigan winter counts may have fallen into disuse and are therefore unattainable but the desire to know of the past is extant in the modern Peigan community. The mythical history that prescribes the traditional lifeways has been committed to a permanent, written format, but the preferred method of relating it still continues to be story-telling. It is also apparent to Peigans that archaeological methods exist for accessing history, thus following the lead set by Wormington and Forbis (1964) in exploring that tangible, unwritten history of Peigan lands. To continue on that vein a physical examination of those lands is in order.

CULTURAL HISTORY OF PEIGAN LANDS

David Thompson, in narrating his activities as a fur trader, alludes to a history prior to direct contact by way of recollections of his informant, Sahkomaapii. These historical insights hint at the dynamics of populations due to migration, epidemic disease and shifts in material culture. Another one hundred and fifty years would pass before anyone else would undertake an examination of that prior history. The researchers were Wormington and Forbis (1964) and theirs is the first systematic survey of archaeology in Alberta. It has since become the standard reference for aspiring archaeologists and veterans alike.

Mention of Wormington and Forbis' survey is noteworthy since it is the first to include Peigan lands, albeit as an adjunct to their larger mandate of exploring Alberta archaeology. Following a two-decade hiatus Reeves (1982) and others (Kennedy, 1987; Dau, 1988; Landals, 1989; Brumley & Dau, 1990) conducted an inventory of sites on Peigan traditional lands that would be affected by a proposed water impoundment. The specific purpose of this task restricted survey efforts to the Oldman River valley itself, and the adjacent prairie, locating and identifying sites as part of an impact assessment. One goal of the present research was to expand this inventory by investigating those areas that had not been surveyed previously. Related background data also were collected from the northern plains region.

Since 1964 the two major universities in the province of Alberta, The University of Alberta and The University of Calgary, have supported archaeological investigations within the province by graduate students and faculty. As well the provincial government has established an office for managing archaeological resources and has instituted heritage protection legislation. Though originally independent, this office has been moved

recently to the Provincial Museum of Alberta. As a consequence of a growing archaeological industry, considerable insight is now available regarding human occupation of the plains during the past 11,000 years (Fig. 2).

Vickers (1986) has most recently updated and summarized the archaeological record for the Alberta plains, outlining significant finds and interpretations in the province since the beginning of research there. He has also provided a detailed sequence of diagnostic projectile points from the Palaeo-Indian period to the late prehistoric, discussing their possible relationships, stylistic evolution and the time frame for each type. Significantly, plains archaeological cultures do not bespeak of people, rather they are about projectile point styles that have become a reality in their own right. Indeed it is not uncommon for archaeologists in Alberta to speak of projectile points begetting other projectile points, as if they have the ability to procreate (eg. Helgason, 1989).

The Alberta plains was not a cultural vacuum, but part of a more extensive pattern of adaptation to environmental conditions across the interior of America. As has been noted by several investigators (Wormington & Forbis, 1965; Forbis, 1970; Vickers, 1986) this region contains the entire range of known projectile point types from the Palaeo-Indian period to the late prehistoric. As has been noted the prevalent treatment of northern plains prehistory has generally reflected technological variation in projectile point styles as the basis for designating archaeological cultures. Each projectile point is named and the name is synonymous with a time or phase, or complex.

Date in Years Before Present (BP)	Archaeological Phase/Complex		Archaeological Period
0	Blackfoot		Historic
1000	Old Women's		
2000	Besant	Avonlea	Late Prehistoric
3000	Sandy Creek	Pelican Lake	
4000		Hanna	
5000	Oxbow	Mackean	
6000			
7000	Early Mummy Cave		Middle Prehistoric
8000	Plains/Mountain		
9000	Alberta/Cody		
10,000	Hell Gap/Agate Basin		
11,000	Folsom		
12,000	Clovis		PalaeoIndian

Figure 2 General Cultural Chronology of Northern Plains Projectile Point Styles and Phases

The technological traditions between 12,000 and 2,000 BP represent *aapaooki* (spear points) and the technological change associated with the post-2000 BP period represent *ksisaiki'taan* (arrowheads).

Periods are broadly grouped into three temporal units - Early, Middle and Late - based on technological change in projectile systems. Thus, the Middle prehistoric is distinct from the Early period by the proposed introduction of the spear thrower to augment the range and effectiveness of hand held spears. The Late period is initiated by the introduction of the bow and arrow. Whether these archaeological cultures accurately reflect real cultures remains to be demonstrated, primarily because of the difficulty of equating ethnicity with technology (Wiessner, 1984; Larick, 1985; Childs, 1991). The projectile systems are generally recognized in the Blackfoot language as *samakinn*, for a hafted spear and a bow and arrow are *aksipinnakssin* and *apssi*, respectively. Direct reference to projectile points are *aapaooki* (spear points) and *ksisaiki'taan* (arrowheads).

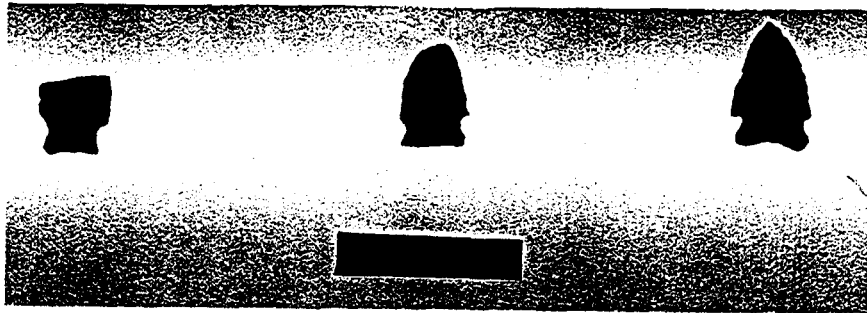
Lithic tools are the most distinctive artifacts to be recovered from the northwestern plains and, as stated earlier, southern Alberta has its share of them. However, the lithic resources of this region, which are mainly sedimentary, are of general poor quality resulting in a preference for imported materials. Through these materials it is possible to document extensive trade networks throughout the plains. Lithic materials discovered during the Peigan survey included Knife River Flint and Avon Chert, both of which can be traced to specific quarries in South Dakota and Montana respectively (Brink, pers. comm., 1990) as well as local quartzites.

Reference to archaeological cultures, as noted, typically stems from lithic artifacts, with the most diagnostic being projectile points. These vary stylistically through time, hence they can be used to define temporal limits of occupation for a particular area. Specific projectile point styles identified in the 1990 survey of Peigan lands include an Oxbow point made of chalcedony

dating to c. 5000 BP; this was the most ancient, identifiable artifact recovered. Two other archaeological cultures were identified also, the first being Besant (c. 2200 BP) and the other Late Plains Side-notched (c. 1500 BP). One stemmed point, made of Knife River Flint, was recovered and its basal size is comparable to Oxbow, but most of the blade had hinged and broken off. A basalt point from the Middle Prehistoric period was notable because, although it was unidentifiable, it had broken midway down the blade and was reworked to gain a cutting edge (Fig. 3).

Superficially the Peigan survey would suggest sporadic occupation in prehistory, research adjacent to the reserve illustrates the opposite, where a full temporal sequence back to the Palaeo-Indian period is readily identifiable. Most significant here is Head-Smashed-In Buffalo Jump, a site demonstrating continuous use for 5,000 years and a consistent reliance on bison as the specific subsistence strategy during all that time (Reeves, 1983). Other work, including the many excavations associated with the Three Rivers Dam, further emphasize the longevity and scale of human occupation on Peigan traditional lands (Balcom, 1991; Van Dyke, 1992). Hence, the Peigan survey is no doubt incomplete in documenting the full range of artifacts and sites present on reserve lands. Additionally, the traditional lands encompass much more land than the reserve itself.

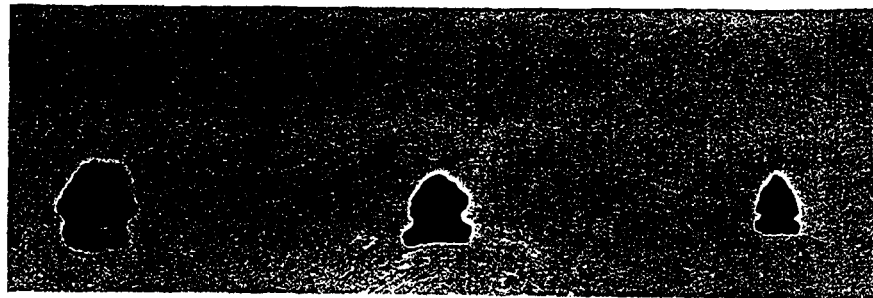
Lest it appear that projectile points are the only items available to the Alberta archaeologist, it should be noted that other forms of cultural materials do exist. Significant in this list is ceramic technology. Like the small, notched arrow points of the late prehistoric period, ceramics mark this temporal transition. Bone tools, although rare, need also be considered as cultural diagnostics.



A

B

C



D

E

F

Figure 3 Technology of the *Ksisaiki'taan* and *Aapaooki* knappers.

Ksisaiki'taan represents the larger lithic projectile points while *Aapaooki* is represented by the smallest point. A is an unidentified, Middle Prehistoric point with the blade broken, B is possibly a Besant style point. Oxbow (c. 5000 BP) is represented by C, Besant by D, the recycled point by E and Late Plains Side-notched by F.

SITE TYPES FROM PEIGAN HISTORY

The survey of Peigan lands was not restricted to collecting portable artifacts, but recorded a variety of features that provide tangible affirmation of human presence in the past. Many of these site types, like tipi rings, exist independent of temporal limits and would be difficult to assign specific dates for their origin. Without excavation for diagnostic artifacts or radiocarbon samples it is not possible to make definitive statements as to their date of production. They remain significant, nevertheless, for, to the Peigan, they represent visual evidence of their ancestral presence and they are a contemporary legacy. Among these features are stone circles, effigies and cairns.

Stone circles are common on the plains and have been assigned two functions, either as tipi anchors, or medicine wheels (Wormington & Frobis, 1965; Quigg & Adams, 1978; Finnigan, 1982; Burley, 1990). A case can be made for the majority of stone circles being tipi rings because they are usually found in clusters. In general such occurrences correspond to ethnographic accounts of indigenous habitation areas, and the Blackfoot word *mamma'pis* is a direct reference to a tipi ring made of rocks. Also, the diameters of most stone circles are well within the range of a fully assembled tipi, that being approximately 5 m.

Brink (1986) indicates that the size of tipis were smaller during the "dog days" because of the difficulty of transporting the lodge from one encampment to the next. Other considerations for limitations in size include the requirement for transporting the supporting frame and the number of hides required to construct a tipi (Ewers, 1968). With the adoption of the horse these limiting factors became moot. As well, metal tools probably

hastened the abandonment of stones for anchoring tipis, wooden pegs being favoured over the cumbersome weight of stones. Logically this would imply that later use of tipis would go undetected in the archaeological record.

The other function of stone circles as "medicine wheels" is more enigmatic, although they have been given astronomical interpretations. Also, there is evidence that they were used as monuments to individuals. The Many Spotted Horses Medicine Wheel on the Blood Reserve is said to be a memorial for a respected leader, the resemblance between this stone outline and a functional tipi is remarkable. The "medicine wheel" is best understood in a ceremonial context (Quigg, 1981; Brumley, 1985), although this type definitely describes the Blackfoot equivalent of *okiiniman*, or spirit lodge. There is even one clan of the Blood, the *Akaokiina*, whose name translates as "many spirit lodges". Except for the spokes and cairns outside the perimeter of the circle, at the cardinal directions, the interior placement of stones is consistent with a normal camp. It is certainly known that one form of burial was to place the deceased inside a tipi and to secure the door by sewing it shut. In fact Palliser in 1859 describes his own encounter with this tradition during his survey of Blackfoot territory. He writes:

We encamped in a most beautiful spot by the river, among large trees. When exploring the woods round our camp we came to a wigwam, carefully closed, and having logs up against it for security. Slashing a hole in it with my knife, I found that it contained a corpse, supported in a sitting position, just as if alive. The inside of the tent was in great order, and filled with offerings of buffalo robes, and other furs, tobacco, paint, dresses, and other Indian valuables. It was probably the remains of some great Blackfoot chief, as the Indian bags, moccasins, and other worked articles were those of that tribe (Spry, 1968; 431).

Certainly the articles he describes would all eventually disintegrate, along with the human remains, perhaps only leaving stone features. The radiating lines of cobbles represent the spirit being dispersed to the cardinal directions (Joe Yellowhorn, pers. comm., 1993).

Isolated finds of cairns on the prairie are a little more difficult to explain although they have been interpreted as monuments or boundary markers. This was certainly the romantic impression of Captain John Palliser when "[o]n a prominent point of the plain, above the river, we found a great pile of stones, which no doubt marks the site of some Indian battle, and forms a very conspicuous land-mark" (Spry, 1968; 426). Whatever the site it was the cairns associated with it that had a definite ceremonial function, therefore in Blackfoot it would be *a'kihtakssin*.

The many other cairns dispersed across the plains are simply *wa'kihtaki*, and the word describes the act of piling stones rather than the cairn itself. Ordering someone to pile stones is accomplished by stating "*a'kihtakit*". For example, during winter preparation it would have been preferable to have a ready supply rather than prying stones from the frozen ground. In another instance, preparation for sweat baths requires the heating of stone, which must be stockpiled.

However, *wa'kihtaki* does not describe the more common cairn type of the drive lane variety. This type is distinctive because they do not appear individually, rather they are strung out in predictable patterns leading to a cliff edge, or buffalo pound. Peter Fidler describes these drive lane cairns as "dead men" in his diary entry of December 18, 1792. Several days later, December 27, he describes a pound in operation and provides details on the activity associated with such drive lanes. Unfortunately his translation from Blackfoot is erroneous, confusing the words for 'die' and 'buffalo'. *I'ni* is the verb 'to die,' while *iinii* is the noun 'buffalo.' The cairns in a drive lane are referred to collectively in the plural form of buffaloes, that is *iiniiksi*. Though probably having a good enough grasp of Blackfoot to realize that a plural form was in use, Fidler missed the nuance of pronunciation and arrived at 'dead

men' rather than 'buffaloes'. Since their association is with the latter noun, rather than the former verb, it is likely that cairns at a *pisskan* would have more to do with buffalo than with dead men.

Other types of stone alignments include amorphous figures as well as graphic outlines of humans and animals. By and large, they are poorly understood, but, as with medicine wheels, the only possible route for interpretation would be through ethnographic analogy. In Blackfoot they are treated as individuals and are named accordingly. Therefore, if the effigy is a human form then it is called *Naapii*, the 'Old Man' of Blackfoot mythology. If it is a turtle it is called *sspoppii*, and so on.

Finally, there remains one more class of site that is more difficult to define, partly because of their cultural role and partly because of the definitions usually applied to archaeological sites. This is exemplified by the *pototsko*, the best known being the Old North Trail which traverses the length of Peigan and has its own mythology. As described to McClintock (1910: 435) by *Natoos Inniippiiwa* (Brings Down the Sun), "[n]o one knows how long it has been used by the Indians. My father told me it originated in the migration of a great tribe of Indians from the distant north to the south..." In relating its history he clearly demonstrates the presence of migration legends in Peigan oral traditions. Perhaps the Old North Trail brought the Athapaskans to *Aisskahsayiipoo* (the Always Summer Land).

For the Peigan, the concept of site must be expanded to include historic trails or spiritual places that have no easy category in archaeological literature. The spiritual places are still employed in a ritual manner and include rock alignments, medicine wheels and vision quest sites. The grave site of *Natoos Inniippiiwa*, atop a small knoll, hosts visitors who regularly pay tribute by leaving food offerings or prayer flags. Someone has built a cairn at the head

of the grave to weight down cloth offerings. This is an example of an archaeological site which is still an integral part of Peigan ritual culture. It cannot be handed over to an institution to curate, nor can it be advertised to the interested and curious.

The proposed treatment must be flexible enough to accommodate both the ancient and modern cultures, accepting that both utilize the land and that ritual behaviour will leave its signature. Operating ritual sites remain secret so as to preserve their spiritual integrity, but abandoned sites could be treated as archaeological sites with cultural significance. Artifacts would be divided into permanent and portable, like a *mamma'pi* and an *aapaooki*. Site designation would accept modern usage, even in a secular context like the Old North Trail.

ARCHAEOLOGY AND PEIGAN IDEOLOGY

Applying the scientific tradition to the history of Peigan lands begins with its geology, which is distinguishable between the bedrock and surficial components. The bedrock is composed of a grayish sandstone identified locally as the Porcupine Hills formation and deposited primarily during the Cenozoic era. The surficial deposits are of a more recent age and are dominated by the effects of glacial activity during the early Quaternary period (Stalker, 1963).

The bedrock component lies at the western edge of a gently, eastward-sloping, sedimentary basin where deposition began in late Cretaceous times, coinciding with the uplift of the Rocky Mountains to the west. Throughout the Tertiary period the sediments producing the continental sandstone of the Porcupine Hills formation accumulated to a thickness of >3500 feet. This overlies the earlier Willow Creek formation, an outcrop of which is

recognizable in a bedrock exposure at the river level near Brocket (Stalker, 1963).

The deposition of the sandstone bedrock culminated in the early Pliocene, followed by an erosional episode that dominated the epoch and is responsible for the modern, regional drainage pattern. The down cutting action of the Oldman and other rivers incised deep, broad valleys lowering the plain by as much as 1500 feet (Stalker, 1963). The Porcupine Hills and other local buttes represent the former level of this region and, as the highland divides between the various watersheds, they were less affected by the cycle of erosion. Instead, the watersheds became excellent sedimentary basins for the glacial deposits which, in some instances, built up hundreds of feet and buried the smaller buttes and streams.

Contrary to this interpretation is the Peigan perception of the land as a body which was brought into being and shaped by *Naapii* (the Old Man). The anthropomorphic qualities of the earth saturate the landscape of southern Alberta with anatomical place names like the Hand Hills, Knee Hills, Belly Buttes, Mokowan (Stomach) Butte and the Elbow River. The Rocky Mountains, *Mo'kakiikin*, were known collectively as the 'backbone of the world'. *I'taniisowoo*, was to go to the land below the horizon, or British Columbia. At the beginning of the world the creator gave each species its own duty and placed them on the earth. The earth was alive and their only duty in return for its sustenance was to live well with all other creations. This included humans. Artificial boundaries were anathema to this trekking acumen and land ownership by individuals could not happen for that would be like owning the landscape.

Fluid interaction with the land was the basis of Peigan worldview, and to the modern community it can be an acceptable model for their treatment of

the past. The dialogue with the spirit nation has not dissolved, the past is very much a part of the modern ethos. In fact, during the course of this research it was not uncommon to encounter ceremonial sites that had been constructed by contemporary spiritualists. The continuity of their relatedness to ancestral cultures is at the heart of Peigan traditions, just as maintaining Blackfoot as a ritual language serves to bring the spirits closer. Questions of ownership are irrelevant in this custom but stewardship is a mandate that the Peigan are obliged to accept because of their familiarity with the archaeological record. Thus by protecting antiquities the modern citizens of Peigan honor the existence of their ancestors and relax the spirits.

Fowler (1987) indicated that the past is a powerful symbolic tool and wherever necessary modern peoples attempt to associate themselves with it to imbue their circumstances with validity or to revel in their former glory. It is no less the case for the Peigan as the archaeological record forms tangible reminders of ancestral lifeways which the population embraces even though their community could not support itself in that lifestyle. Given that the Blackfoot language is an endangered one, that hostile polities attempt to negate their existence, that the imposed economy dooms them to poverty and systemic racism gnaws away at their self-esteem, it is no wonder nostalgia becomes a reliable haven. The recurring imagery of buffalo, eagles, equestrian warriors and open space belong to an extinct world but as iconographic portrayals they represent the modern mythos.

Archaeology must be involved in exploring Peigan history and in a manner that is immediately recognizable, rather than alien and conflicting. One avenue that merits further study is the synthesis between symbol and identity as it is manifested in Israeli archaeology. As Shay (1989; 769) relates "[t]he allocation of state funds to archaeological research goes with the

conviction that archaeology plays an important role in the formation of national identity. It furnishes a concrete link for Israelis to the past and to the land. Archaeological finds have served as models for nearly all Israeli national symbols, and have been incorporated in the State Seal and other institutional emblems." Their relative isolation from Western archaeology and preoccupation with biblical archaeology are not far removed from aboriginal parallels.

Trigger (1984a) proposed three archaeological ideologies, colonialist, nationalist and imperialist, and in many respects the future of Peigan archaeology will come to encompass the nationalist tenets. Sporadic events have already happened, as in the case of the Lone Fighter's protests against the Three Rivers Dam flooding sacred sites, and they are likely to happen again. Some of this is, of course, in reaction to the hegemonic nature of Canadian archaeology, but a greater amount springs from an internal need to restore order to the chaotic events of recent history. Although not every element from the traditional worldview has a basis in the modern world it should be recognized that it cannot be dismissed as quaint folk-lore or demeaned as mere superstition. Doing so would undermine the credibility of legitimate scientific explanations as little more than the latest attempt in a long denial of Indian histories.

CHAPTER SUMMARY

The Peigan, Peigan lands and history must be treated independent of each other, to differentiate the various histories juxtaposed on the landscape in order to elucidate their connections. Peigan lands has its own history that can be discussed in terms of geologic time, yet it can be integrated into the cultural history of the Peigan themselves when they explain their cultural

landscape. While no culture is stagnant for millennia, still the traits of a generic plains culture are visible and are a part of Peigan cultural traditions. The enigmatic presence of these artifacts enforces cultural perceptions of belonging to this land and influences Peigan relations to themselves.

The Peigan as historical entities, both in their own terms and in others, exist independent of the histories of the land they occupy and the cultural history as manifested in the archaeological literature. This fact will influence the management choices that they will exercise in interacting with the features and artifacts discovered on their lands. Foremost in this construct is the lack of any ownership as in the analogy of being a part of the land rather than owning the land. No one can own the past, but the Peigan have a right and an obligation to curate their history.

Peigan ideology must become an active part of interpreting archaeology on Peigan lands, keeping in mind that the audience will not be archaeological nor will it have the expertise of scientific interpreters. Much of the interpretation will reflect the traditional perspective, providing the tension and balance to scientific research. Nevertheless, the two players in this debate must find mutual objectives as the paramount issue will be one of protecting the cultural legacy of Peigan.

CHAPTER THREE:

THE LEGAL BASIS FOR HERITAGE PROTECTION ON INDIAN LANDS

INTRODUCTION

Managing the cultural legacy of Peigan requires a strategy that accommodates legislative constraints and the relationship between the Peigan and the history of their lands. Insofar as it is a Peigan dilemma the solution must be encompassed within the legal construct of *Treaty No. 7* (1877). It must also address options regarding archaeology not only on Peigan lands but also traditional lands surrendered by them. It is emphasized here that to the Peigans and other tribes culture was not surrendered with the signing of a treaty and an interest in the archaeological past is retained. The outstanding feature of *Treaty 7* as it relates to archaeology is not so much inclusion as exclusion, the negative evidence as it were, where the lack of explicit denial is the basis for interpretation.

Contrasting the Peigan's arrangement with Canada is Canada's arrangement with its Indian population, defined as it is under the auspices of the *Indian Act* (1985). This much-maligned legislation has never received adequate review with a particular focus on clauses that relate to issues of heritage protection on Indian lands. Specific parts of the Indian Act, apart from section 91 (which will be discussed in detail), do apply to considerations of archaeology in that they describe land rights, land surrenders, and regulations concerning trespass. Each will be discussed as to the nature of its influence on acceptance of measures respecting antiquities on Indian lands. Sections described in this chapter will be included as Appendix B, so that a full review of them is available.

Juxtaposing these two documents reveals the unbalanced acceptance of them within the Canadian legislative system. Whereas the *Indian Act* is generic in that it is an umbrella covering the disparate Indian Nations across Canada, *Treaty No. 7* is specific to one region of Canada. Ironically the *Indian Act* is the accepted document that uses specific wording and is regularly amended to incorporate precedents as they arise. The specific treaty, on the other hand, has been interpreted by Canada only for its utility in surrendering land. It has only one amendment, in which a supplementary treaty was included to give the Blood and Sarcee their own reserved lands.

TREATY NUMBER SEVEN

The treaty-making apparatus was inherited by Canada from Britain, following the policy of earlier colonial governments, and acknowledged in the *British North America Act* (1867). Prior to the settlement of the Northwest Territories the Canadian government, between 1871 and 1877, embarked upon a series of numbered treaties with the Indians living there. It was within this context that the treaty commissioners met with the leaders of the Blackfoot, Blood, Peigan, Sarcee and Stony in September, 1877 to present the terms of *Treaty No. 7*. An estimate included in the treaty text declares that the signatory tribes would be expected to cede approximately 35,000 square miles to the Crown in exchange for a more limited land-base and various annuities and gratuities.

The political erosion of treaty rights began even before the Canadian government entered negotiations with the Indians. As Taylor (1979; 40) points out:

There is no evidence that any preparation of the Indian people for making a treaty preceded the negotiations themselves. No one ever appears to have gone out from the government to explain the nature and purposes of the treaty beforehand. Once the decision was taken to make treaty with a particular group of people, it was

usually done as speedily as possible. The Indians concerned were often given very little advance notice that they were to gather at a certain time and place to meet with the commissioners. They were assembled and within a few days were expected to give assent to propositions which we now know would be momentous for their future.

The Indians in part believed the negotiations to be a peace treaty to stop intertribal warring rather than a land surrender. This is borne in the statement from the text of *Treaty 7* (1877) in which the commissioners are to "arrange with them [the Indians], so that there may be peace and good will between them and Her Majesty, and between them and Her Majesty's other subjects..." The Indians were cognizant of the fact that a partnership was being struck in their country, but as Taylor (1979; 43) argues:

Expected settlement was agricultural. Farmers used only the surface of the earth. The Indians had agreed not to molest settlers who came to farm. When non-Indians began to dig into the subsurface for minerals, oil and natural gas, it seemed to them a breach of the treaty agreement on what it was they had surrendered.

In regard to the surrender of culture and archaeological material to the Crown, there are absolutely no provisions contained in *Treaty 7*. Indeed culture is guaranteed in *Treaty 7* through the provision in which "Her Majesty the Queen hereby agrees with her said Indians, that they shall have the right to pursue their vocations of hunting throughout the Tract surrendered..." Although the Indians are expected to participate in an agricultural society they are still given the right to pursue their traditional lifeways and are even granted ammunition money to do so. By acknowledging the traditional lifeways of Indian peoples one can argue that there is an implicit recognition of the continuity between the Indians and the archaeological record.

The supplement to *Treaty 7* was an addendum with the ostensible task of accommodating those bands of Indians who were not included in the first round of negotiations. Signatures were collected at Fort Macleod nearly four

months afterwards on December 4, 1877 and only James Macleod, Commissioner of the North-West Mounted Police, represented the Crown.

Erosion of the anticipated partnership between the Indians and government continued through the inundation of land with settlers and in the creation of the province of Alberta in 1905. These made traditional vocations impossible to pursue and failed to compensate the Indians for their losses. The surrender of reserve lands for settlement, ignoring treaty promises in amending the *British North America Act* in 1930 and allocating control of the public domain to Alberta, are all symptomatic of the diminution of aboriginal control. It can be argued that the federal government ignored its fiduciary role in the 1930 amendment when it included native heritage sites as a part of the public domain, transfer to Alberta, in spite of the fact that it was not surrendered under *Treaty 7*.

At the same time, amendments to the *Indian Act* between 1868 and 1951 increased the federal government's control over Indians, their lands and their affairs. Ignoring its fiduciary responsibility in those years dishonored the Crown since it was obligated to represent the interest of the Indians. Noticing the Crown's abrogation of its obligation, John Yellowhorn (1979; 141) bitterly denounced the action, saying:

The Queen has made the Indian people her children. I do not fully understand what it means when the Queen makes us her children. I have been asking around, and to this day I still do not know. If I take someone as my child, and I already have lots of children, should my own children get better treatment than the one I have adopted?

The outstanding grievances are detailed in the Special Committee on Indian Self-Government (1983a; 121), chaired by Keith Penner (the *Penner Report*). As McConnell (1977; 224) writes:

By a subtle process...instruments which formerly were considered to be virtually international treaties, and hence not unilaterally alterable by ordinary legislative process, have gradually been assimilated to mere contracts

alterable by statute. There can be little wonder that Indians entertain doubts about the good faith of North American governments.

The common law doctrine of aboriginal title does not prevail on the plains where treaty-making creates treaty rights. Bell (1992; 510) writes:

The predominant colonial practice in Canada was to enter into treaties with aboriginal peoples. Through this process, some rights were acquired, thereby replacing surrendered aboriginal rights with treaty rights. Others were recognized by the Crown and given legal protection through treaty. Those rights not addressed in the treaties were retained by the Aboriginal Group

Nowhere in the text of *Treaty 7* does it stipulate that the Indians are obliged to alienate, or extinguish, their relationship to the archaeological record, indicating that residual rights on non-reserve lands may still be applied by the *Treaty 7* tribes. It remains to be seen whether statutes like Alberta's *Historical Resources Act* (1980), an act in which archaeological materials are claimed by the Crown in right of Alberta, is a statutory expropriation of aboriginal rights. This is particularly so in the case of human remains, which are interred deliberately, thus cannot be regarded under any definition of "historical resource". Justice Dickson of the Supreme Court of Canada, in the case of *Nowegijick v. The Queen et al* states, "that treaties and statutes relating to Indians should be liberally construed and doubtful expressions resolved in favour of the Indian" (MacEachern, 1983; 94).

THE INDIAN ACT

To date the *Indian Act* (1985), a creation of the federal parliament, has received little attention for its potential impact on archaeology, although it remains the most influential legislation for work conducted on Indian lands. Spurling (1986), in a one-sentence treatment, mentions its trivial contribution to heritage protection and identifies only section 91 as having anything to do with the discipline. Superficially that observation holds true, however it remains the only vehicle by which heritage issues can be addressed on Indian

lands and this discussion examines the ramifications for implementing heritage protection via this act.

The *Indian Act* (1876), in its present format and name, was a Victorian enactment to consolidate and amend the various laws respecting Indians; prior to this time the statutes concerning Indians were dispersed and spotty. It is important to note that the social context which created this legislation adhered to the evolutionist musings of Henry Lewis Morgan (Bieder, 1986) and its ultimate goal of civilizing the Indians mired in the "savage" stage is apparent. The competing schools of thought provoked a debate between the polygenists and monogenists, proponents of each side using the same data to buttress their views. Morgan was a monogenist and,

wrote at a time when the restricted time frame that confined geological and biological thinking was breaking down and new theories in these fields were suggesting a longer history for man than had been before envisioned. Morgan welcomed such theories and utilized them to present his own theories on man and man's rise to civilization (Bieder, 1986; 195).

Although the genesis of the modern act can be traced to chapter 42 of *Statutes of Canada* (S.C.) 1868 (31 Victoria), most sections were added after the original act was passed. Subsequently there have been many amendments and major revisions to the act, with the most recent version being passed into law by the Governor in Council in 1951. A more recent edition was presented in 1985 and contains amendments included since 1951.

Trading with Indians

Echoing Spurling's (1986) assessment of section 91 most protected items are common features of traditional northwest coast cultures and are ethnographic rather than archaeological material. In the present act (R.S.,1985, c.I-5), protection stems from section 91 (3); it declares that no one shall "remove, take away, mutilate, disfigure, deface or destroy..." a) an Indian

grave house, b) a carved grave pole, c) a totem pole, d) a carved house post or e) a rock embellished with paintings or carvings as described in 91(1), except with the "written consent of the minister." There is also a stipulation in subsection (4) for punishment that includes a two hundred dollar fine, and a period of incarceration. It is also restrictive in scope in that it neither reflects the material culture of the various groups covered by the Indian Act, nor does it represent the various classes of artifacts encountered in the archaeological record. The only direct reference to archaeological material that does reflect most Indian groups covered by the act is the mention of rock art. One more limitation is that only those rock art sites on Indian lands would be covered by this arrangement.

The statutory lineage of section 91 (as it now reads) begins in the 1868 version where section 13 of the statute alludes to a prohibition on "pawns for intoxicants" and discusses the legal approach to recovery of things pawned. It is preserved in subsequent amendments, including the language, and in the 1906 revision it becomes section 104. At the next major revision, in 1927, this same clause is expanded to include three sections (107 - 109), with section 109 (2) containing the language that remains to the present. The section titled "Trading with Indians" does not appear until the 1927 amendment and was the first revision of the act following potlatch trials in 1922. The clarity of hindsight is apparent in the specific objects receiving attention. When the modern *Indian Act* was presented to parliament in 1951, all sections relating to pawns were omitted and the wording for the current section 91 came into being.

The matter of collectors disturbing burial houses and abandoned villages during the latter part of the nineteenth century along the coast of British Columbia is well documented by Cole (1985). During the early period

covered by the *Indian Act* it was a common practice among museums and academic institutions to send collectors on expeditions for ethnographic materials, including human remains. Jacobsen (1977; 75) reminisces of his own experience with this practice:

In the meantime Wachas had held his potlatch, and my five Koskimo were ready to depart. Before this happened William Hunt and I made a "fishing and hunting" trip that was not for that purpose; we went to the old cemetery near Koskimo, where we got three exquisite deformed skulls to rescue them for scientific purposes. In our haste I hurt my hand on the bone of a mummy and it bled profusely. We had scarcely stowed the skulls in the canoe when two Indians appeared who had followed us out of curiosity to see what we were doing. As soon as I saw them I shot at some sea gulls flying by, and this satisfied them. So we managed to get our booty on board unnoticed.

Typically many articles were recovered from abandoned villages and cemeteries; the informants with good knowledge of these locales would most likely be the local Indians. Jacobsen (1977; 78) describes being non-plussed as the "attempt I had made that afternoon with the help of a few Indians to find some skulls and burial goods in an old Indian cemetery was not very successful." Jacobsen (1977; 79) did not limit his trading strictly to Indians with souvenirs for sale. Apparently the patina of antiquity was more than he could resist for he writes:

In the vicinity I found an old Indian burial place I had noticed in passing. I engaged an old French resident to help me examine the graves. The good man charged me high pay, but on account of fear of the Indians, did nothing. The total results were several wooden masks that were nailed on some grave boxes.

Yet the *Indian Act* did not ban collecting, rather it limited trading with Indians because the minister has that exclusive right. Nor did it mean that all villages were given similar protection since not all abandoned villages would be located within the confines of described Indian lands.

The text of section 92 proceeds to define explicitly who cannot trade with Indians, and those listed are all agents of the Department of Indian Affairs. Specifically it mentions a) an officer or employee in the Department,

b) a missionary engaged in mission work among Indians, or c) a school teacher on a reserve. Clearly the pawns-for-intoxicants clause has evolved from a prohibition on trading alcohol to Indians into a conflict of interest guideline for civil servants. Hence, it cannot be readily regarded as forming a solid basis for heritage protection on Indian lands.

Powers of the Council

The concern over some form of band autonomy was recognized early on in Canadian decision making and the initial *Indian Act* responded by including a section that defined the powers to be exercised by local councils. These were confined primarily to matters pertaining to agriculture, public health and order, construction and public works; although the 1886 version added a section allowing band leaders to choose the religious denomination of missionaries sent to Peigan. The areas of local control were minor until a 1951 amendment expanded the role of band councils to regulate a greater range of activities.

Unlike section 91, which merely prohibits the collecting of specified articles, section 81 actually provides the basis for introducing comprehensive by-laws restricting the sale of antiquities and denying access to those who would purchase them. Entitled "Powers of the Council" this section allows the band council to enact by-laws "not inconsistent" with the Indian Act without requiring ministerial approval. However, the by-laws must be presented to the minister within four days following their creation at which point they are approved or disallowed. By-laws respecting heritage issues places the onus upon band governments to initiate protective measures and these can be made consistent with the Indian Act.

MacEachern (1991: 162) reports on the legal analysis of by-laws passed under the authority of band councils and states that they "cannot be read to include land outside of reserve boundaries." In **R. v. Nikal** section 81(1)(o) of the Indian Act is used by the defence to argue against charges of fishing without a license. In the judgement that followed, the section that allows council to make by-laws for the purpose of "the preservation, protection and management of fur-bearing animals, fish and other game on the reserve" was dismissed because of the last three words. But "on the reserve" they have the full weight of federal law. The defendant was eventually acquitted, though it was not because his band had passed a by-law concerning fishing stations.

While the *Indian Act* does not specifically address heritage issues, it does provide the mechanism whereby heritage protection may become a local issue. Through section 81 of this act the leadership defines its powers for regulating the activities of band members and others who enter the reserve for purposes other than social visits. The band council resolution (BCR) is the method of enacting by-laws for matters of interest to the band and is under the control of the leadership. It also affects the manner in which bands and their members relate to each other, thus heritage issues will be similarly affected.

Responding to local development that may require some sort of terrain altering activities can be a possible route to interpreting portions of this section as anticipating an impact assessment process. Specifically subsection (g) gives the leadership the power to zone Peigan lands and to regulate the types of construction activity, some of which might be detrimental to archaeological heritage. It is conceivable that this also may become the basis for establishing a permitting system allowing for archaeological surveys or

excavations prior to construction, since the leadership can limit the types of activity within any structured zone.

The built environment also might receive its share of protection as it is within the power of the leadership to regulate alteration to buildings that may be deemed as having cultural significance. Many of these would date to the early reservation period and represent the experiences of a specific generation of Peigans. These include such structures as churches, abandoned log houses, derelict community halls or old boarding schools. Subsection (h) refers to the repair and use of these structures, regardless of its owner, therefore historic buildings can be set aside for the community. It is a legally defined power that allows the council to limit modifications that may interfere with the historical integrity of these buildings.

The archaeological profession itself can be scrutinized, or its activities limited, by band governments when the work being conducted is on Indian lands. Although subsection (n) provides the basis for heritage by-laws, it begs the most liberal interpretation of the wording in that clause. Archaeologists must be content with their profession being included in the same category as hawkers and peddlers. Likewise the application of this clause for heritage purposes would place antiquities in a context inappropriate for their inherent value, because they are indistinguishable from wares and merchandise, implying they are available for buying and selling. This clause need not restrict archaeologists since the leadership has the power to regulate entry for anyone entering the reserve for a specific purpose. However, they could use it to deny entry to pot-hunters, amateur collectors or treasure seekers.

As a deterrent to people who would enter the reserve to collect grave goods, or other antiquities, section (p) allows for the penalizing of individuals who are discovered trespassing on Peigan lands for purposes not consistent

with band policies concerning heritage material. Again the specific activity is not explicitly stated, but it could be one of many prohibited activities declared by the band leadership. Indeed article 81 (2) indicates that legal action is a definite option for persons contravening any by-law established by the leadership. Penalties stated in a by-law are enforceable through the courts and may become the basis for convicting anyone entering the reserve to deal in antiquities.

Indian lands and the *Indian Act*

Central to the heritage issue is the Peigan's relationship to land; not in the traditional sense, rather in the legal sphere which encompasses all facets of Peigan life. As archaeological sites are inextricably associated with geographic connotations it is important to understand the land issue through the Indian Act. To say it is complex is to appreciate its nuances as there are twenty-eight sections dealing with land. While many are administrative procedures controlling land for estates, mentally incompetent Indians and trusts, it is the possessing, occupying, designating and surrendering of land that is the greater worry for Peigans. The spectre of expropriation is always present and it is certainly within the power of the band, or the administrator of the Indian Act, to use this approach.

Further exacerbating the issue is the dichotomy of Peigans being in two groups based on control of land; one group having the other not. Paradoxical circumstances allow for a limited form of property rights, but land cannot be owned outright although it can be inherited. The majority of Peigans do not possess occupation rights to land, and are unaffected and indifferent to alienating those rights if it is for the benefit of the community. While band members as a whole may not be averse to proceeding along those lines, the

landholders would be suspicious of the outcome should a significant site be discovered on land they occupy; it might even dissuade individuals from reporting any finds. Comparable incidents have been reported in Australia where private land owners have intentionally destroyed sites so that their land would not be designated under special consideration by the state (Flood, 1989). It becomes a point of contention between the two groups especially if heritage issues, or any other development, is used to expropriate land. Therefore the challenge arises of identifying sites while dispelling threats to occupation.

Whereas individuals may have qualms about identifying heritage sites on their personal tracts, the band also has its suspicions about the intent of heritage legislation and what it might imply for the external boundaries of Peigan. The application of these statutes can be instrumental in removing land from band control where the unanticipated discovery of a site would become the basis for such action. The powers of the federal government are such that it would only require unilateral action to remove land from the control of a band. Section 35 is included specifically for the purpose of alienating band interest in band lands, if there is deemed to be a greater public interest in that land. The arbitrary assignation of value to heritage sites could conceivably be the basis for defining an overriding use for the land. Band lands, under section 60, can be managed by the band council via government delegation but the reluctance here is based on the discretionary nature of the clause.

Possession of lands in Reserves

To truly understand the predicament of the Peigan requires a discussion of reserve lands and that path leads to sections 18 and 19 of the

Indian Act where reserves are defined for the purpose of the act. In practice it means a communal-like arrangement with no formal right to individual possession and feudal-like powers given to the Governor in Council. Interpreting the text of section 18 (2) demonstrates the extent of the minister's powers to direct possession and use of land. The limited rights of individual possession are described in section 20, which explicitly states the conditions that allow individuals to use or occupy land at Peigan. Special recognition is placed on lands awarded to individuals arising from nineteenth century policy that encouraged homesteads and which was subsequently discontinued in the 1951 amendment.

The recipe for communal and individual use of reserve lands comprises sections 20 to 27 and establishes a complicated landholding system that accommodates communal use by limiting rights of possession. The difficulty arises over the term allotted since Peigan land is not allotted to anyone, band members may only obtain the right to occupy land. The concept of private property is not applied in its usual manner and all lands are held in the common interest of all band members. Since individuals rights are limited to occupying Peigan lands there is a reluctance to wholeheartedly embrace any changes that might further limit those rights.

If the land is required for public purposes and is in the possession of an individual then that person is entitled to compensation. But if the band member has only occupation rights, then compensation is for permanent improvements. Such action is a stipulation of section 23, and there is no proviso for a land exchange that would see a landholder receive an acre for acre settlement. Instead, only buildings, fences, corrals and other structures are considered in evaluating the monetary value of compensation. There is

no obligation on the part of the band, or the minister, to compensate anyone for losses since it clearly states that it is at the discretion of the minister.

Section 28 shifts the focus from possession of land to agreements about lands and again the minister invokes exclusionary terms in permitting access to reserve land. It falls to the minister to authorize persons to enter a reserve and make agreements, where any other form of permission would be considered trespass. Since legal title to reserve lands is vested in the crown they are exempt from seizure in legal process as expressed in section 29. Implicit in this clause is the preserving of communal interests and maintaining the integrity of the land base.

While individual band members have their concerns, the band itself has its own difficulties with the same legislation and its powers to surrender reserve lands. Just as individuals may lose their rights to occupy land, section 35 declares that the band may lose their interest in band lands. Through this expropriation clause the Governor in Council, through an act of parliament, may transfer land to a municipality, province or corporation without the consent of the band. This power has been exercised resulting in the transfer of land to the province of Alberta for the construction of the Lethbridge Northern Irrigation District's headwork (1922), Highway #3 (1930) and to Canadian Pacific Railway for the construction of its mainline (1897/98). The fact that the Governor in Council can then dictate the terms of surrender and compensation, as expressed in subsection (4), ensures the interests of the band will always be subordinate to those of others.

The circumstance may arise where an archaeological site located on Peigan lands is deemed to be of such national, or international, importance that it must be surrendered from band control. In which case the Canadian government has given itself the power to move in that direction and the

Peigan band would be powerless to stop it. By definition the Peigan Reserve is only set aside for the use and benefit of the Peigan, legal title to the land being vested in the Crown. The process for surrendering or designating reserve lands begins by introducing the sale and surrender of lands in section 37, 38 identifies the beneficiary, 39 describes the procedure, 40 certifies the arrangement and 41 executes its terms. That the Crown is represented by the Government of Canada is hardly reassuring for Peigan interests and this tenuous situation causes some concern over any arrangement that could further erode control over reserve land.

The Indian Act provides for the possibility of the Peigan band to assume management of the land it occupies. The means to accomplish this fall between sections 53 and 60, which discuss the management of reserves, surrendered and designated lands. The fiduciary relationship between the two parties obliges the federal government to manage these lands so as to benefit the band. Administrative clauses (53-56) govern transactions, assignments and registry of surrendered or designated lands, followed by two sections of regulations regarding timber, mines and minerals and agricultural land. Section 59 merely allows the minister to adjust payments for sale or lease of land.

Incorporated within section 60 is a proviso whereby the band would request the Governor in Council to grant it the right to manage its lands and if it is considered desirable then that right is delegated. However the same Governor in Council has provided itself with a veto which it can invoke at any time it considers the arrangement to be undesirable. Control and management of lands, it is felt, is a step towards self government, hence the reluctance of the Peigan band to follow this route. The point at which they are seeking greater autonomy is not the time to be meted that right. The fact

that it can be withdrawn at the discretion of the government does not instill any confidence that this section can fulfill the aspirations of Peigans.

Legal Rights

Originally inserted in the 1951 amendments, section 88 exempts "Indians from provincial legislation which restricts or contravenes the terms of any treaty" (MacEachern, 1986; 175). "Subject to the terms of any treaty...all laws of general application...in force in any province are applicable to and in respect of Indians in that province..." has been interpreted by the courts as meaning that if no treaty exists then provincial laws apply. Deciding the outcome in a British Columbia hunting case of **Kruger and Manuel v. The Queen** the defendants were prosecuted for hunting out of season, but a Micmac defendant in Nova Scotia, under identical circumstances, was acquitted in **Simon v. R.** because he was covered by the Treaty of 1752 and the terms of the treaty prevail over provincial laws (MacEachern, 1986; 177). For the Peigan this would detail the relationship between Alberta statutes and *Treaty 7* promises on Crown lands which lie within the region covered by treaty.

Trespass on a Reserve

As a final consideration sections 30 and 31 are noteworthy in that they may constitute the most powerful, oblique statements protecting archaeological material. Originally included in the *Indian Act* (S.C. 1876, c.18) the umbrella topic of trespassing contains the statement about the removal of "any of the stone, soil, minerals, metals or other valuables of the said lands." Subsequent amendments to the act preserved the wording and intent, until the 1951 amendment changed the wording - but not the intent. There has always been a stipulation for a fine and incarceration, and it has always been

modest. Even in the current act it does not exceed fifty dollars and one month imprisonment.

MacEachern (1990) reports on two cases of trespass on Indian lands and notes that the Indian Act does not define trespass, hence the common law definition of entering upon another's land without justification is applied. In *R. v. Morin* an object is brought onto Indian land and later retrieved; the initial intrusion is a wrongful act, as is the trespass for retrieval. This section was successfully applied in acquitting the defendant from charges of obstructing a peace officer since the latter was obligated to have a permit to enter the reserve.

This could conceivably form the basis for a permitting system, bearing in mind that it is not the activity so much as it is the locale. A legal forum has already determined that anyone entering a reserve is trespassing, unless otherwise stated, and section 81(1)(p) allows council to make by-laws for their removal and punishment. It would control the accessibility of Peigan lands to non-members, but it falls short of protecting materials from local residents who cannot trespass on their own land.

CHAPTER SUMMARY

Comparing the symbiotic relationship of *Treaty 7* and the *Indian Act* reveals the imbalance between the two in defining the relationship between the players. While the Peigan interpret *Treaty 7* as affirming peace, Canada views it as merely the necessary paperwork needed to transfer ownership of land from the signatory tribes to the Crown. Real power lies with Canada, which uses its fiduciary mandate to dictate and limit powers of the Peigan Council. Relegating power is the monopoly of Canada, and by enacting legislation such as the *Indian Act* it legitimates its actions in law.

Inspecting the *Indian Act* reveals the possibility of extending protection to heritage sites, albeit indirectly. It appears the elements absent in establishing any such protection stems from the political will on the local and federal level. This is not necessarily to say that there has been negligence, merely that the awareness and political will required has never been focussed on heritage issues. In addition, the *Indian Act* has only been given cursory examination with the intention of instituting heritage statutes and the only existing section is extremely specific in the items that are afforded protection.

Surficially the most expedient measures would originate within each community affected by this act because their councils have the power needed to make by-laws respecting heritage sites. Further, local governments are more attuned to the concerns of citizens regarding land occupancy and can be more responsive to sites immediately threatened by natural or cultural modifications. The present sections are sufficient for the making of archaeological inventories with the local councils being involved in their protection. And finally, it is not inconsistent with any provision of the Indian Act since the federal government acknowledges a trust relationship.

CHAPTER FOUR: PEIGAN ATTITUDES AND HERITAGE PROTECTION

INTRODUCTION

This chapter examines two facets of local perceptions of heritage issues, the first provides an analysis of formal measures adopted as policy by the band government and the other queries residents about their opinions. In the absence of any federal legislation over heritage the Peigan leadership has initiated several by-laws that have attempted to provide some guidance in the matter of cultural issues. The interviews were conducted during the course of surveying Peigan lands to gauge local awareness of archaeology and to solicit ideas for management. They consisted of a questionnaire in which respondents were asked various questions regarding their knowledge of archaeology, the collecting and examining of material and the disposition of cultural materials. A review of completed forms displays the range of sentiments about topics of concern and acceptable methods to resolve conflicting goals between Peigans and archaeologists. By examining the results of these two avenues of action it is possible to gain some insight to the local perspective and the reception that future heritage endeavours will receive.

In the political arena, the band government has exercised its powers, as prescribed through section 81 of *The Indian Act*, to pass by-laws that define and protect heritage objects. Band council resolutions (BCR) are the official means of implementing policy for the management of all affairs under Peigan control. With this apparatus they have taken the first steps to controlling the impact of current activities on heritage sites. In doing so they

have accepted a dual role in promoting a greater appreciation of antiquities and curating the existing inventory of archaeological sites.

PEIGAN BY-LAWS CONCERNING ANTIQUITIES

Formal attempts to establish heritage by-laws on Peigan lands began in 1975 when the leadership grew concerned with the loss of cultural property. Using the provision described in section 81(n) of the *Indian Act* the leadership enacted BCR 75-644 (Fig. 4) as a means of restricting use of aspects of Peigan culture. Scrutiny of the wording of this resolution reveals expanded perceptions accepted by the leadership regarding ancestral cultures and the archaeological record. This early initiative did not provide a definition for cultural property, nor did it distinguish between material belonging to archaeological or extant traditions. There was also no distinction made between tangible and intangible elements, rather everything is considered under the auspices of "Peigan Treasures."

In establishing this by-law for heritage protection the Peigan leadership was careful to make it consistent with the *Indian Act*, as stated in section 81(1). Although there is a stipulation for prosecution of violators the by-law penalties cannot exceed those described in 81(1)r, which contains a ceiling for monetary penalty of one thousand dollars and imprisonment for thirty days. While the confinement clause in the by-law is the maximum allowed, the fine of one hundred dollars is only a tenth of the total allowable. This paltry sum may seem trivial when compared to the potential value of the antiquities, but the same argument could be applied to the levy recommended in the act. Indeed, it may not be possible to impose a monetary fine in the case of a priceless object. The same holds true for the underlying assumption of trespass, which is limited to a fine of fifty dollars.

The Peigan Band Council, at a duly called meeting on September 3, 1975, a quorum being present, pursuant to Section 81, Subsection (1)(n), of the Indian Act, R.C.S. 1970 C.1-6, hereby enacts the following by-law:

- (1) No person shall engage in the sale and/or removal of Peigan Treasures consisting of the material aspects of Indian culture including all artifacts twenty-five (25) years in age or more; or enter or leave the Peigan Indian Reserve for the purposes of distributing, soliciting, recording, or gathering information with regard to the non-material aspects of the Indian culture including myths, legends, folklore, or anything otherwise ethnological, and pertaining to the evolution of and the continued permission of the Peigan Band Council.
- (2) Section (1) shall not apply to arts and crafts less than twenty-five years in age and manufactured by Indians for sale.
- (3) For the purposes of the by-law, all the material and non-material aspects of the Indian culture within the exterior boundaries of the Peigan Indian Reserve shall be considered to be part of the Peigan culture.
- (4) Upon conviction for violation of this by-law, a fine not exceeding one hundred (100) dollars or imprisonment for a term not exceeding thirty (30) days, or both, shall be imposed, and further, the Peigan Band Council shall be entitled to the return of all items, information sold or removed from the Peigan Indian Reserve in violation of this by-law (Peigan Band Council Resolution, 1975).

Figure 4

BAND COUNCIL RESOLUTION 75-644

In creating this by-law the leadership also implied a definition for heritage objects by incorporating a temporal consideration so the by-law remained consistent with the definition of chattel in section 91(2). Therefore the by-law specifies the meaning of chattel as an art or craft manufacture for sale within the last twenty-five years. An artifact is considered to be of sufficient antiquity for a heritage object if it exceeds a minimum age and there is no maximum limit. Hence the by-law enacted in 1975 defined artifacts as predating 1950 and by 1992 that date would be moved to 1967, if it was not intended for sale! This is consistent with the approach adopted by other Indian groups. The Navajo Nation for example has accepted fifty years as the minimum age for extending heritage protection to cultural material (Klessert & Downer, 1990). It does not mean that every pile of litter beside the road is given heritage protection because it has been there for fifty years. Rather, specific types of activities that are demonstrative of traditional lifeways, or which leave identifiable signatures in the archaeological record, are protected.

Section 3 of this by-law expresses a statement of continuity between the archaeological record and traditional culture by inclusion of an all-encompassing reference to "Indian culture." For the Peigan leadership the chronologies generally accepted in the archaeological literature have little meaning, instead their experience with aboriginal times must start with present circumstances. The fact that practices and rituals of modern Peigans originated in an ancestral culture makes it difficult to relegate one facet of the extant culture to the past when modern analogues exist. This impression of continuity is not merely a precise statement for legal text, instead it represents an ideology that exists in Peigan culture in the modern era. The inclusion of the reversionary clause, where the council is entitled to reclaim all objects, as

part of the penalty indicates the leadership is accepting a fiduciary role in relation to heritage material.

This by-law was designed as a response to the appropriation of oral traditions by non-Indians, who then published them and obtained the copyright (Hungry Wolf, 1972) and whatever royalties might accrue from book sales. The impetus for designating "Peigan Treasures" developed in an atmosphere of tension brought on by the emergence of reactionaries within the community in the early 1970's. The radical American Indian Movement (AIM) had gained much sympathy among the Treaty 7 tribes and was instrumental in forcing issues on several fronts, one being the revival of traditional culture. Thus the leadership was obligated to articulate a position that would curtail the availability of Indian culture to non-Indians. In doing this the Peigan necessarily had to review their cultural inventory and determine what was and was not for public exploitation.

By the end of the decade the radical wing had lost momentum and the suicide of Nelson Small Legs, Jr., the AIM leader in southern Alberta, left a void in its leadership that was never refilled. The abatement of crisis did not marginalize cultural issues, rather it was a trigger for increased involvement in traditional practices. Resurgent interest in rituals continues without interruption and now occupies a secure niche within the community. Forging a relationship with the ancestral culture is seen as one avenue of maintaining an aboriginal identity, but so are the celebrations and expressions unique to this generation. Continuity between past and present is the origin of Peigan resolve in their desire to retain control of heritage issues.

Following this controversy a period of relative calm prevailed that did not require any ordinance on the part of the band leadership. When subsequent by-laws were initiated in 1982 the band was in the position of

considering the construction of a dam to be located on Peigan land. In anticipation of this project a series of impact assessments were commissioned by Alberta Environment to examine all areas of social and environmental concern. The results were compiled and submitted in the Weasel Valley Water Use Study and included a volume on the historical resources (Reeves, 1982). Although the proposed impoundment was eventually rejected by the residents, the leadership became aware of the plethora of sites discovered by this investigation. Hence came the need to make a by-law proposing heritage protection for sites and artifacts and in this climate they articulated their response in BCR 2017/88-89 (Fig. 5). The concerns for heritage sites on customary, non-reserve lands also came to the fore.

Whereas the previous resolutions placed the emphasis on cultural property within the modern community, BCR 2017/88-89 established the position of the council on archaeology and the context for recovering archaeological material. It can be viewed as outlining the relationship between the band and the archaeological community, particularly where the work being conducted is on Peigan customary lands. In this instance the excavations conducted were salvage operations recovering material that would be submerged in the Oldman River reservoir immediately upstream from Peigan. The work on the actual structure was begun in late 1987 and the first year of archaeological recovery was in the summer of 1988.

Thus, the timing of this by-law responded to the already completed excavations and coincided with other efforts to suspend construction. The Oldman River Dam continues to be a controversial issue, both for the Peigan and advocate interest groups opposing its construction. Initially the latter attended public hearings to voice their concerns. Later more coordinated

efforts included legal action, notably those of the Friends of the Oldman River Society seeking injunctions from the Supreme Court of Canada.

Peigan Band Council Resolution (2017/88-89) February 2, 1989

WHEREAS: the tribes who signed Treaty No. 7 were the aboriginal occupants of the land which were part of their territory within the boundaries of what today is the province of Alberta,

WHEREAS: the lands surrounded by the tribes under Treaty No. 7 contain traditional and archaeological sites belonging to these and other tribes,

WHEREAS: those sites and the artifacts and other materials they contain are part of the Traditional Cultural Heritage and Trust of the tribes signatory to Treaty No. 7,

WHEREAS: these sites and artifacts were not surrendered under Treaty No. 7,

WHEREAS: these sites and artifacts are being destroyed as a result of economic and related development and/or excavations by Archaeologists and other Scientists.

BE IT FURTHER RESOLVED THAT:

- (1) Archaeologists and other Scientists who wish to excavate these sites, and remove artifacts from them, as well as Private or Public development agencies/agents must obtain the written permission of the Chief and Council of the nearest tribes signatory to Treaty No. 7;
- (2) Archaeologists and other Scientists who wish to excavate these sites for the purpose of the removal of human burials and grave goods, must also obtain the approval of the Traditional Spiritual Leaders of the nearest tribes and return the human remains and objects to the tribe for reburial (Peigan Band Council Resolution, 1989).

Figure 5

BAND COUNCIL RESOLUTION 2017/88-89

The ongoing controversy with the damming of the Oldman River was the impetus for challenging the legality of impounding water, particularly since several issues remained outstanding with regard to the status of aboriginal water rights. The archaeological community became enmeshed in this dispute because of the discovery of many traditional sites that Peigans felt should not be disturbed. Exploring the limits of their jurisdiction over archaeological material on traditional lands, Peigan authorities noted that these are excluded from the provisions of Treaty No. 7, hence there is a legitimate basis for their assertion of control over archaeological material outside the boundaries of the present reservation.

It has been stated that culture was never a part of treaty negotiations thus the sites and artifacts within the area surrendered remain a Peigan mandate. For that reason the Peigan leadership was able to contend that archaeologists have an obligation to consult with the signatory tribes. Although the legal process restricts the jurisdiction of the band council resolutions to Indian lands, the Peigan leadership believes there to be an overriding moral issue not articulated in law. Their concern stems from the fact that archaeological sites are being destroyed as a result of various types of development and they note that archaeologists play a role in that destruction through their investigations, particularly excavating.

Within the archaeological community the subject of first peoples involvement, particularly the traditional spiritualists, in research concerns is open to question. Spurling (1986; 73) opined that the discipline seemed "to display almost a moral amnesia towards the peoples whose heritage it recovers, studies, interprets and constructs." Since lack of communication was deemed a source of friction the adoption of this by-law is an elucidation

of Peigan expectations where unavoidable circumstance necessitate relations between the Treaty No. 7 tribes and archaeologists. The point being that there is now a willingness to discuss issues of mutual concern and that this forum is direct rather than delegated through government agency.

Reiterated in the text of this by-law is the implicit perception of affinity between the aboriginal inhabitants and the existing Blackfoot confederacy. The first clause relates the historical fact of occupation, while the third incorporates archaeological artifacts in a Blackfoot context. There is certainly no denying the shared accoutrements between the generic plains cultures and the tribes identified in history. The absence of any contradicting evidence and the acknowledged monopoly of the Blackfoot confederacy during treaty-making, has convinced the Peigan leadership that there is a real basis for this position. The fact that archaeological interpretations of Plains culture history is accomplished largely through a Blackfoot analogy provides further support for such claims.

The Peigan leadership have again placed themselves in a position of trust and expanded their responsibility by explicitly identifying a "Traditional Cultural Heritage and Trust" which they represent. With this by-law they have defined their role with regard to archaeological material. Whereas its effectiveness is ambiguous outside the boundaries of Peigan, it is a binding document when considering the local scene. If any artifacts, features or human remains are discovered, then there is an obligation on their part to determine the treatment.

The most recent band council resolution addressing heritage material is expressed in BCR 2662-92/93 (Fig. 6) and builds upon the precedents discussed. As has been common this by-law was in reaction to a discovery of historic burials on land zoned for economic development. For the first time

there is mention of a systematic approach to historic sites, that they can be routinely protected through formal means, and that modification of terrain must consider its potential effect on them.

Peigan Band Council Resolution (2662/92-93) August 25, 1992

At a duly called meeting of the Peigan Nation chief and council: recognize and acknowledge the various traditional and archaeologists (sic) sites such as:
Burial Sites
Ceremonial Sites
Etc.

that are located within the Peigan Reserve No. 147;

Whereas: that the above mentioned sites not be destroyed as a result of economic and related development and/or excavation;

Further: that the land description: S.W.1/4, Section 9, Township 8, Range 27, W4M - has been declared as a Peigan Traditional Historical Site and cannot be destroyed or defaced in anyway;

Be it resolved: that any development on the above land description must not be within a 100 foot radius of the actual site.

Figure 6

BAND COUNCIL RESOLUTION 2662/92-93

The point that comes clear from the above discussion is the reactionary nature of the approach accepted by the band leadership. It also displays a willingness on the part of the band leadership to initiate protective measures rather than waiting for a directive from the federal government. Although initiatives in the direction of heritage preservation exist the lack of a comprehensive treatment highlights its shortcomings. The requirements include a by-law that addresses the various site types and which accounts for factors like occupation rights and economic development. In **R. v Sacobie and Polchies** (MacEachern, 1987) the court opined that when band by-laws are in conflict with provincial statutes the by-laws prevail because once they are signed by the Minister they have the full weight of federal law.

RECKONING THE PAST FROM PEIGAN

In Treaty 7 there is a provision that each member of a band is entitled to an annual payment of five dollars, although the chief and council get fifteen. When the monetary payment was more valued, treaty day was an event and much merriment was planned to coincide with it. As the value of the payment subsided with time, fewer people planned festivities beyond a bake sale. However Treaty Day is still a band holiday and at the community hall the government representatives continue to arrive with newly minted five dollar bills to be distributed to the 2500 Peigans. The Royal Canadian Mounted Police officer dons the red serge dress uniform and the inspired band members queue up for their cash.

Sufficient numbers attend this perennial delivery that the Health Centre sets up a stall to inoculate new members, the Administration sponsors an information booth, and various other agencies seize this opportunity to hawk their interests. It was in this milieu that a questionnaire on

archaeological issues was distributed to approximately one hundred individuals, twenty-seven of whom responded. This modest sample may not correspond to an ideal statistical sample, but the results of this survey can be regarded as a rugged guide to local knowledge of heritage issues. Their opinion is important since they are the people who will have to live with any directives imposed by the federal and band governments.

The biases contained in this survey stem from the sections of The Indian Act that place the voting age at twenty-one. In addition non-residents seldom make the effort to travel to Peigan to collect their payment or cast ballots. Therefore the target population is reduced to voting residents attending the community hall on Treaty Day. Although it must be stated that, while they do represent a good cross-section of Peigans they were not randomly selected to participate in this survey, since that would entail contacting names selected from the band list.

The topic is that of heritage material discovered and which is portable such that the finder is in a position to remove it from its locale. There are two ways in which this can occur, the first is accidental and involves unplanned recovery. The second is intentional, where professional archaeologists purposefully search for undiscovered sites especially for excavation. In either situation there will arise the question of ownership, or control, over recovered material. In the case of the archaeologist the situation is more clearly defined since the intent is specified in a contract. There is no dispute as it entails procedural methods typically associated with contractual agreements.

Assessing Opinion

When considering the nature of work conducted on Peigan lands, the areas of concern are disposition of heritage material, human remains and impact assessment. These questions have been addressed by the band leaders, but the extent to which it represents the opinion of the membership can only be speculative since dissent is often associated with political decisions. With this in mind it was determined that a survey of opinion would provide some measure of assessing community support for these by-laws and so a questionnaire was developed (Fig. 7).

By way of introduction it is worthwhile examining the character of the target population, in this case comprised of Peigan membership. The code defining the guidelines for inclusion was adopted by the Peigan in 1987, after much debate. The Membership Office of Peigan Administration records all matters relating to births, deaths and marriage in order to maintain an accurate list. The present population includes 2,319 individuals with the proportion of those over 21 years old being 1327 in number, or approximately 57 percent.

Other considerations included gender so that the total number of respondents could be correlated to their respective ratio of the entire population. In terms of total numbers the women outnumber the men by 93 individuals, there are 717 (54%) women and 610 (46%) men over 21 years. Comparison of age groups and gender show some degree of skew. The most extreme range is in the 41-50 year group where there is a difference of forty souls, while the least difference is in the 81-90 group with four individuals in each group.

THIS QUESTIONNAIRE CONCERNS THE HERITAGE RESOURCES OF
PEIGAN

Several archaeological surveys of Peigan lands have discovered examples of ancient lifeways. These include tipi rings, tools, animal butchering sites and burials. Your help is requested to determine 'the future of the past'. In earlier years, when the number of Peigan residents was less than at present these sites remained undisturbed.

However as time has passed the population has grown and the impact on archaeological sites has increased. Therefore, work has begun on defining our relationship with our heritage, your cooperation is considered important in this process. In other words, what should we do with archaeology and Peigan lands?

PLEASE COMPLETE THE FOLLOWING QUESTIONS

Age:

Male Female

Education: Highest grade completed
 Training outside grade school

Do you, or your family, hold occupation rights to any land?

THE FOLLOWING QUESTIONS CONCERN ARCHAEOLOGY IN GENERAL

Archaeology is defined as the study of the past, therefore would you consider it as a science or as history?

When you think of archaeologists and their work, what is your impression?

What do archaeologists find?

What does archaeology, as a discipline, contribute to society?

Is it worthwhile preserving reminders of the past?

THE FOLLOWING QUESTIONS CONCERN ARCHAEOLOGY AND PEIGAN LANDS

Should archaeology be conducted on Peigan lands?

Who should control Peigan heritage?

Should private collectors be allowed to keep artifacts?

One issue that arises periodically is the question of human remains discovered during the course of archaeological, or other, work. If human bones were found should they be reburied?

If you favor reburial, what type of burial should the human remains be given?

Should scientific examination of human remains be allowed?

Any work conducted that would alter land has the potential to disturb archaeological sites. Should construction work be stopped if archaeological sites are found?

Should construction work be relocated if it would disturb sites?

Would you be in favour of heritage site preservation?

What types of sites would you consider significant or important?

Figure 7

QUESTIONNAIRE DISTRIBUTED TO PEIGAN RESIDENTS

This opinion poll was composed to coincide with the archaeological survey conducted on Peigan lands to determine the disposition of artifacts and sites located.

As discussed in another chapter the issue of land underlies any discussion of by-laws that either restrict or redefine conditions for rights of occupancy. A separate question was included to determine if opinion might be swayed by the subject's position in this regard. The basic assumption in the phrase reflects the nature of maintaining land through families rather than individuals, although this does not preclude individuals from having access to a land base. Further, the number of families having occupation rights are the minority and it is possible that they would form the largest bloc of opposition (Fig. 8).

One final variable included in the design of this survey is the level of education the participants have achieved. It is assumed that the more schooling a subject receives will affect directly their responses, but it is also acknowledged that the population as a whole is not especially well educated. For a variety of reasons their active involvement in any education system is limited beyond a certain age. This makes for comparative analysis when considering which gender is more likely to have actively pursued formal training and if that would influence their answers (Fig. 9).

Although it is possible to analyze the traits of the subject population and make statements about it, to draw accurate conclusions about their attitudes involves actually soliciting responses. The degree of accuracy comes from the number of individuals who participate in the survey and the larger the sample the greater the degree of confidence. The only option then is to sample attitudes and extrapolate the conclusions for the entire group. Under ideal conditions a level of confidence is assured if the sample size is derived from the total and the participants are selected at random, thus reducing the possibility of bias.

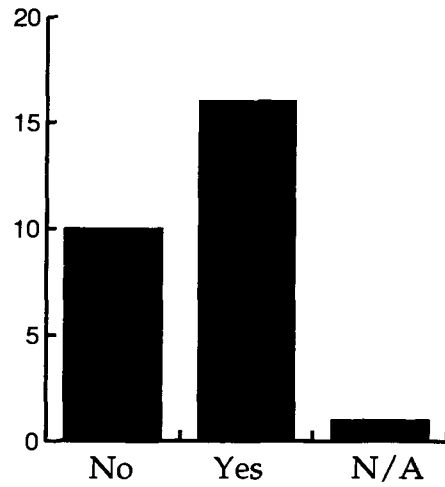


Fig. 8 Responses to the Question:
Do You, or your family, hold occupation rights to any land?

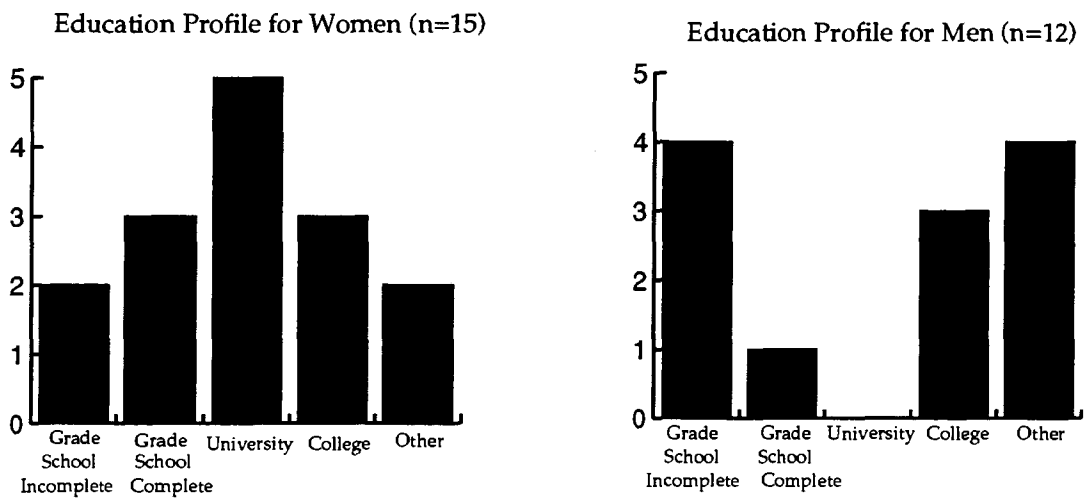


Fig. 9 Education profile of sample

The results presented here are drawn from a sample of 27, and cannot be considered statistically sound. That being said, there was sufficient response to make some initial statements concerning this group. Gender balance was almost achieved in that 12 respondents were men and 15 were women. The distribution across the age groups differed in that the males were equally represented in each age group, while the women mirrored the distribution of the total population (Fig. 10).

It is a truism in the Peigan administration office that the larger portion of white collar workers are women. They occupy every level available in the bureaucratic hierarchy managing Peigan affairs. Therefore it was hardly surprising when comparing gender and level of education. The majority had completed grade school, with only six from this sample having disregarded school as an option. Education, it seems, has been dominated by women, except for the two who dropped out of high school; but even they dropped out at a higher grade than their four male counterparts. More people have gone on to some form of training after grade school, five respondents, all women, entered university. Six chose college and of that group three men attended trade school, but the women preferred clerical or administrative careers. Another half dozen referred to life skills instructors, computer schools and apprenticeships.

Early on it became apparent that land would be an issue because of the dispersed nature of heritage sites across the landscape. Access to land is a controversial topic, as described previously. Therefore the question on land rights was included to determine if opposition would be present based on the occupying of land. While the larger group indicated a positive answer, it did not seem to dissuade anyone from viewing heritage management in a

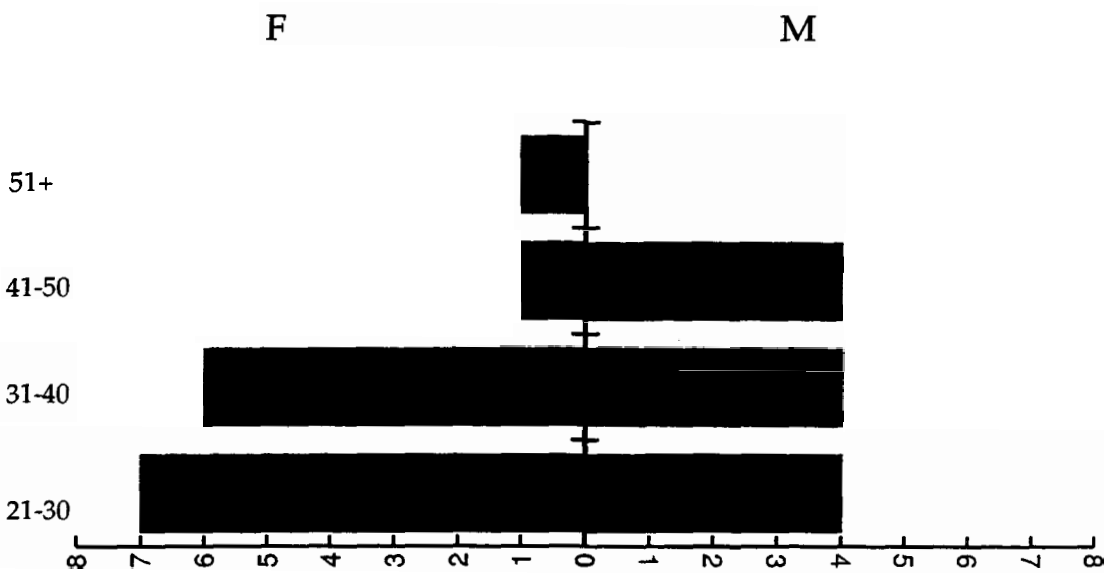
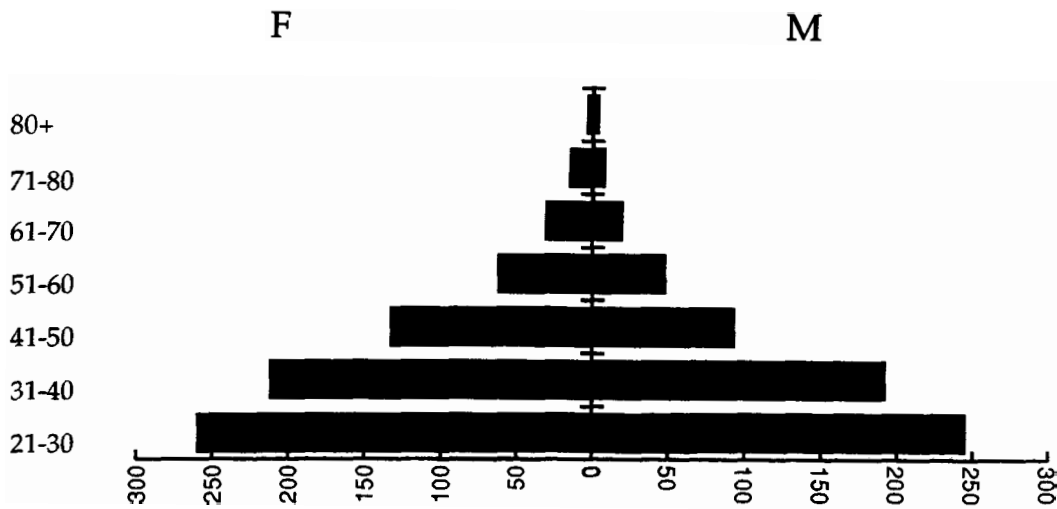


Figure 10

PEIGAN DEMOGRAPHICS AND SAMPLE (N=27)

The top chart illustrates the general demographic pattern of the Peigan community and the bottom chart is the profile of the sample.

favourable light. Indeed, there was considerable support in this small sample, even when queried on whether archaeological work should be conducted on Peigan lands.

This is illustrated by the often controversial question of human remains where a majority would give consent for excavation, if necessary provided immediate reburial is included. There was only minor support for reburial after study. Not one respondent indicated above ground storage as an option since reburial was a matter of reverence. The manner of burial was ambiguous, many felt that a memorial service should be held but were uncertain as to who would perform it. Whether the residents of Peigan are aware of the band council resolutions or not is unclear, but on this topic it would appear the council speaks for its constituents (Fig. 11).

Based on the general trends it appears that the band leadership has much support for their initiatives, even if they are reacting to events outside their control. Near unanimous agreement over control of Peigan heritage favoured local jurisdiction. Consistent with the affinal sentiments the citizens feel for their ancestral cultures and considering the aboriginal origin of most sites it is hardly surprising that opinion would exist. This has implications for sites located in traditional lands which are presently divided between the dominant political bodies of Canada and Alberta (Fig. 12).

When the topic of discussion was archaeology itself, the responses became more varied. People generally had some awareness of archaeological pursuits, naming fossils, dinosaurs, bones, digging up bones, jewelry and graves as the interesting parts of the profession. Faced with the question "What do archaeologists find?" one woman retorted, "What ever they are looking for!" Ancient people, the history of the land, and proof of the past are

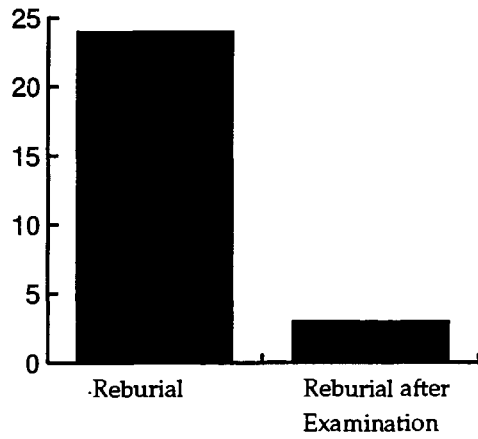


Fig. 11 Responses to the Question:
If human bones were found should they be reburied?

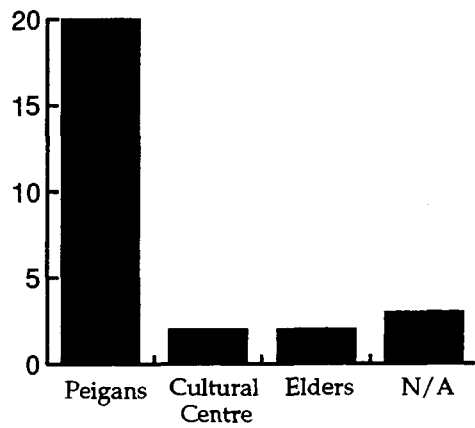


Fig. 12 Responses to the Question:
Who should control Peigan heritage?

the common impressions associated with archaeologists. Evidently the entertainment medium's portrayal of the past has not gone unnoticed.

When the leadership assumed the role of heritage trustee it was a political move but the membership did not express any opposition. In fact this survey has found that position to be generally acceptable to band members and it was felt that ultimate control should remain a Peigan responsibility. This parallels the opinion that it is worthwhile preserving reminders of the past for the community as a whole, which would explain the strong condemnation of private collecting (Fig. 13).

The final subject revolved around terrain altering projects and their impact on heritage sites. When construction commences impact assessment is typically ignored if it is a small project, although there is certainly precedents for bigger ones, as in the Weasel Valley Report. However, much of the construction involves housing, road building and farming, which often do not appear to significantly modify perceptions. The role of agriculture in supporting the local economy exempts it from criticism and the need for houses and roads overrides heritage concerns. Nevertheless the greater portion of respondents indicated acceptance of curtailing construction work to the point of relocating it, if archaeological sites would be destroyed (Fig. 14).

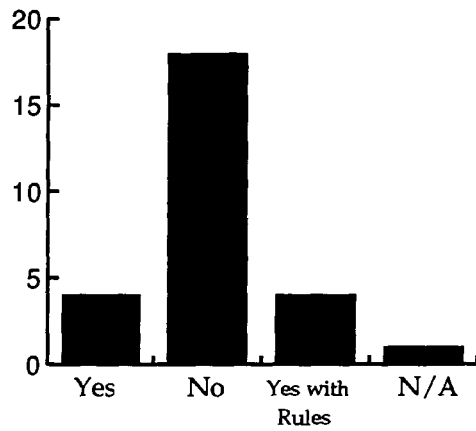


Fig. 13 Responses to the Question:
Should private collectors be allowed to keep artifacts?

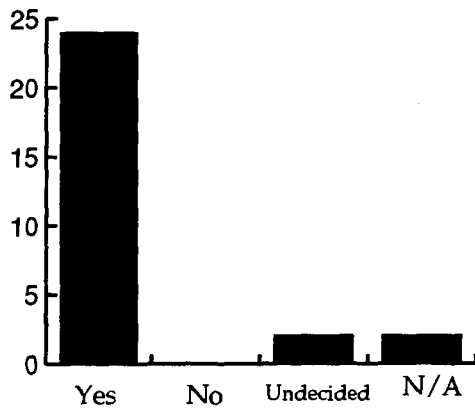


Fig. 14 Responses to the Question:
Should construction work be stopped if archaeological sites are found?

CHAPTER SUMMARY

The above discussion examines the role of local politics in pursuing matters of heritage protection and management. The band council resolutions (BCR) are the vehicles employed in implementing by-laws on Peigan lands and are defined in the *Indian Act* as powers available to the councillors. In recent history these by-laws have typically been enacted in response to some activity occurring outside Peigan in which the leaders had limited capacity to affect. Although the BCR's can only be construed to have any validity on Peigan lands they nevertheless provide the basis for any forum relating to archaeological or historic sites. These initiatives indicate the council's willingness to assume responsibility for matters involving heritage issues.

Assessing the extent to which these political decisions reflect the will of their constituents required distributing a questionnaire to adult members of Peigan. The results, although preliminary, indicate the level of support to be high in favour of proceeding under the assumption that the leaders are the trustees, in right of Peigan, of heritage matters. The expected conflict between site inventory and land rights did not surface when the respondents were presented with that question. There is also considerable support for the work conducted by archaeologists even though local knowledge of the discipline is rudimentary.

CHAPTER FIVE: LEGISLATION CONCERNING ABORIGINAL LANDS

INTRODUCTION

Heritage legislation at the federal level is immediately recognizable due to its absence, especially in that it directly would affect Indian lands. The most recent initiative, a proposed federal antiquities law, is the first point of discussion with a critique of its inability to respond to the aspirations of aboriginal peoples in Canada. Remedial measures on a federal level are not suggested as that is beyond the scope of this thesis. Since examining principles of self-government on heritage matters is the primary goal here, the analysis will revolve around the intent of government action.

It is also worthwhile examining comparative polities and consider if their experiences may serve as precedents for the Peigan. To this end it is necessary to analyze working models where aboriginal groups have already established institutions with the mandate of controlling heritage matters. There is a possibility they may provide an understanding of the limits and constraints the Peigan could expect in implementing the ground rules for managing heritage. Each model has a unique relationship with its larger polity; the extent to which they control heritage issues depends largely on the arrangement each aboriginal group has with its own federation.

By way of comparison the first group to be considered is the Sechelt Nation of southwestern British Columbia as their situation is so similar to the Peigan's. The resemblance rises mainly from the existence of reserve lands which are surrounded by provincial lands, yet both groups relate directly to the federal government. Legal distinction arises from the relationship each has with the federation. By legislative action the Sechelt are

able to exert control over reserve lands and have attained a certain measure of self-government. The purpose here is not so much to review the non-existent Sechelt archaeological programme, rather it is to review the enactment for its applicability to heritage issues.

The Sechelt contrast to the second situation where the Navajo Nation, with several decades of experience with self government, have assumed varying levels of control over archaeological sites and material. Although their powers are explicitly defined and direct control is limited to the area within the reservation, they retain some control over archaeological material in their traditional lands. By participating in the existing legal structure, indirect control is available to them through federal statutes that manage activities on public lands. The Navajo are also in the novel position of curating the heritage of other Indian groups like the Hopi and Southern Utes. Finally, the Maori maintain an interest in their heritage, but express it through their membership in the *Pakeha* (national) legislature. Coupled with the gains made through social activism, they have been successful in forcing their concerns onto national statutes that protect their sacred places. The statutory vehicles that make each case possible will be presented in the following statements.

PROPOSED FEDERAL HERITAGE LEGISLATION

In May, 1990, the minister responsible for communications, The Honourable Marcel Masse (M.P., P.C, Frontenac), in an address to the annual meeting of the Canadian Archaeological Association (CAA) outlined the federal government's Archaeological Heritage Policy. In it he affirmed the importance of archaeological heritage and in addition recognized the federal responsibility for its enhancement. The proposed *Archaeological Heritage*

Protection Act was presented to the federal parliament as a discussion paper in 1991 and was to be the legislation that would extend statutory protection to cultural material.

Immediate contradiction become visible as in the preamble which acknowledges the cultural affinity between aboriginal and archaeological cultures, yet ownership is vested in the Crown; as stated "Her Majesty in right of Canada owns all artifacts and specimens" (Section 5), including, it would seem, human remains, since these are listed as a class of artifacts (Section 4). This is as clear an indication as possible that archaeological material recovered from Indian lands would not be controlled by the First Nations.

It is unclear as to the manner in which this legislation would protect archaeological objects discovered on Indian lands, particularly since some classes of artifacts cannot be removed from their original context. It would be a ludicrous task to collect all tipi rings discovered on Indian lands because of Crown ownership. Considering how common these sites are it would be also impossible to place each and every one in its own historic site, at which point enforcing protective measures, no matter how well-intentioned, would be equally impossible.

In regards to the issue of human remains and their treatment, section 8 of the proposed act does not define any temporal limits to differentiate between an archaeological burial and recent interments, saying only that the Minister "shall ensure that the burial is treated with dignity and respect" (Section 8(2)(b)). It excludes band governments as a possible "representative of the deceased" or having any input into the final disposition of discovered human remains. The position of the government does not clearly address the concerns of the First Nations, particularly, it seems, since the onus of proof of cultural affinity would fall on their shoulders. Again, the anonymity

of the past is the basis for denial of cultural continuity, since the argument can always be made that *in situ* materials beyond a certain age cannot be traced to modern cultures. This is especially so with Native groups that did not develop more than oral traditions to recount their histories. There is hardly any reason to wonder that the "issue which generated [the] greatest amount of emotion and indignation was easily that of burial sites and the treatment of human remains" (Dunn, 1991a; 7).

Impact assessment directives, surveys and permits, outlined between sections 7 to 11, all seem to emanate from the Minister. Indeed one is hard pressed to find mention of band governments yet their land is declared explicitly in that "[n]o person shall undertake a project or an activity on Indian lands...until the impact on the artifact, burial, wreck, specimen or site has been assessed"(Section 7). Indeed, local governments could not initiate an impact assessment since that would put them in conflict with the minister who could nullify their authority. That section detailing the issuing of permits refers only to the Minister of Indian Affairs where "a land manager of lands may, on application made in the prescribed form, issue a permit...to perform an archaeological impact assessment..."(Section 9(1)). When the land manager is defined it is "in the case of Indian lands...the Minister of the Crown in right of Canada who administers the lands" (Section 2(2)(a)).

Given the fact that most First Nations are only now in the process of establishing the necessary expertise to investigate their heritage through formal archaeological means, sections 10(2)(a&b) ensure that to investigate their own heritage they must first request that permission from the Minister. Compounding that indignity their work must have "technical or scientific merit" thereby removing spiritual or cultural motives for pursuing the archaeological past. Furthermore, section 11 excludes band governments

from directing efforts to preserve heritage sites on their lands because there is no mention of them. Instead, a person contracted to conduct archaeological impact assessments may ignore them completely and may refer only to the Minister for directives. The arrogance portrayed in these statements is hardly reassuring that the principle of self-government will be promoted.

Allying the sacred tenets of the culture with secrecy is incompatible with the stipulation of confidentiality (Section 15), since ritual sites, by their very nature, could not be identified. In order for a ceremonial site to be included on the registry it must be identified first and then it would be given confidential treatment. It also implies that archaeological sites are no longer used in a ritual context, again implying discontinuity between extant and archaeological cultures.

The administration of this act by designating inspectors who would be able to enter Indian lands to inspect sites highlights the dictatorial powers that would be available to the Minister responsible (Section 16). There would be no need to respect the authority of First Nations governments since, by Ministerial order, an inspector would not need their consent to enter their lands. It would undermine any initiative on the part of First Nations governments to establish historic sites or to develop collections for local display in that the inspectors would have the power to remove artifacts, including human remains. The beneficiaries of this section would be the scientific community, which has the necessary expertise to examine any object removed, and pays little attention to the concerns of Native groups.

Ministerial discretion is all too evident in the wording of Section 18 which purports to be a protective measure, yet Indian lands tend to be limited and intensely utilized. Every development activity has the capacity to have an impact on archaeological sites and this section could be ignored to expedite

a project. Burley (n.d.) provides details of the conflicts that arose at Canada Olympic Park, in Calgary, Alberta, just prior to the 1988 Olympics where the government was both the manager and developer of a project. The same holds true with projects like the Three Rivers Dams and many other instances like roads and airports. There is no sanction against governmental action when their activities conflict with heritage values. This would be the case on Indian lands where federal funds are applied to practically every project and a band government could be denied their definition of significance.

Regulatory powers are extended to the government for prescribing any criteria for assessing impacts, procedures for conducting activities and prosecuting offences (Section 19). It completely ignores any role for band governments in regulating the activities of people who enter Indian lands to enforce sections of this act and negates their by-law making powers expressed in Section 81 of the *Indian Act*. It would appear to be the case that the First Nations are expected to be passive spectators as the federal government installs and enforces regulations concerned with Indian heritage on Indian lands.

The failure of the proposed antiquities legislation to win any support among the consulted aboriginal groups can be attributed to the ambiguities involved in proposing legislation that does not adequately consider the affinal ties of Native groups to archaeological cultures (Dunn, 1991a; 1991b). Ownership is vested in the Crown which had no part in the cultures making those archaeological sites. Yet the peoples whose direct ancestors are recognizable in the archaeological record, and whose concept of ownership has always been different than the legal definition, will be given absolutely no chance for consideration as owners. As discussed earlier, through inclusion

of culture in the public domain, in the *British North America Act* amendment in 1930, Alberta, in right of the Crown, came to possess vast collections of Indian patrimony. It hardly seems like a fair deal for the First Nations, now that the Crown in right of Canada wants to possess the remainder. Fortunately this act remains forestalled and is unlikely to receive royal ascent (Burley, n.d.)

There is no discussion anywhere to indicate that the government would be willing to support issues of significant spiritual or cultural areas located off reserve. *Omahkspaatiskoo* (the Sandhills), where the Blackfoot spirits live, is presently located outside any Indian lands. There is no assurance that Blackfoot objections would be heard if provincial resource development meant that their spirit world would be altered. Similarly, where the import and export of cultural property is expressed (Section 28), nothing is present to ensure native governments can voice their concerns. Stepney and Goa (1990) report in detail the efforts of the Provincial Museum of Alberta to acquire the Scriver Blackfoot Collection from a Montana collector. Although it was an act to repatriate Canada's heritage, it did not adequately determine the effect this would have on the Blackfeet in Montana, who might be opposed to this cultural export.

First Nations governments are correct in their opposition to this proposed legislation simply because it gives far too much discretion to the Minister, at their expense. It seems inconsistent with the principles of self-government that more power is being concentrated at the federal level at the same time that band councils are seeking greater autonomy. Federal acts need not always conflict with the aspirations of native people, indeed they can sometimes even facilitate them. Such is the case with the Sechelt Indian Band in their desire to exercise more control over their lives and land.

THE SEHEL T INDIAN BAND

The *Sechelt Indian Band Self-Government Act* (1986) is the legislation created to transfer land title of Sechelt lands to the Sechelt Indian Band and removed them from the constraints of the *Indian Act*. They have become the first autonomous band able to act in their own interest and to influence decisions directly on their own lands and indirectly on traditional lands. The status of their lands is based on fee simple ownership, not by individual band members, but by the band which holds the land in trust for its members. As directed in the self-government act the band developed a constitution, which was ratified by the members, and brought into effect. Matters pertaining to the use, occupation and leasing of Sechelt lands are detailed in that document and the band may exercise its rights through the band council. Although the band has the power to dispose of land it must be with the consent of at least 75 percent of eligible voters, as stipulated in their constitution.

The legislation states that the Sechelt Band "is a legal entity and has, subject to this act, the capacity, rights, powers and privileges of a natural person..." (Section 6). In addition it allows the band council to "do such other things as are conducive to the exercise of its rights, powers and privileges." A recent controversy surrounding the approved sinking of a former naval vessel, HMCS Chaudiere, in Sechelt Inlet to provide an artificial reef for recreational divers. A faction within the Sechelt community protested and attempted to foil the proposal by seeking a court injunction. Although the ship did end up on the ocean floor, the newspaper articles written about the controversy indicate Sechelt misgivings are not falling on deaf ears (Lamb, 1992). Therefore their concerns may effect activities on traditional lands not under their jurisdiction and this can be expected to include work conducted

by archaeologists. Although a number of sites have been recorded on Sechelt lands, and these are a matter of public record, the Sechelt have yet to become involved in heritage management. Their embryonic efforts have established a modest museum which acts as a repository for antiquities collected by residents.

The extent to which archaeological material is embraced by this act is conditional upon the interpretation of Section 14, which defines the legislative powers of the council. Of particular interest are subsections 14(1)(f) & (j) which state:

14(1) The Council has, to the extent that it is authorized by the constitution of the Band to do so, the power to make laws in relation to matters coming within any of the following classes of matters:

- (f) the administration and management of property belonging to the Band;
- (j) the preservation and management of natural resources on Sechelt lands;

Placement of archaeological material in the property clause would be the strongest statement over control. In the *Sechelt Indian Band Constitution* (1989; 48), in Section 6, dealing with laws, is the expression that the leadership "shall have the right to make fair and reasonable laws with respect to the control and management of property belonging to the Band." Although 'property' is not defined, it is liberal enough to include cultural material and as the Sechelt assume responsibility for property, which is their right, the council becomes the trustee. It also has implications for influencing patterns of management for archaeological material in their traditional lands, for which they have a stated land claim.

The alternative inclusion of archaeology as a natural resource is consistent with the definition adopted by the British Columbia government, such that archaeological material would fall within the aegis of Section 109 of

the *British North America Act* (1867) which acknowledged provincial title to "Lands, Mines, Minerals and Royalties". As Spurling (1975; 90) relates:

archaeological properties were equivalent to timber, fisheries and other provincial resources...Archaeological sites and objects no longer were strictly viewed as objects of purely scientific or antiquarian interest. Rather they began to be considered as common property resources...Obviously this view was owed to the B.C. legislation which treated archaeological sites more or less the same as other natural provincial assets

Where the Sechelt claim land to the watershed of Jervis Inlet they acknowledge provincial interests, but they are also aware of their own rights to a share and a voice in matters relating to the disposition of the region's resources. Therefore, it is certainly within their power to determine their policy toward the survey and excavation of archaeological sites and curating archaeological material, including human remains. They must also implement such a policy with haste so as to avoid the lesson from the prairie provinces where even "after control over natural resources was transferred to Alberta, Saskatchewan and Manitoba in 1930 there was no rush to enact laws to protect archaeological and historic sites" (Spurling, 1975; 83).

As a means of enhancing the powers of the council Section 14 (2) allows for incarceration and monetary penalty on anyone deliberately contravening the laws established by the council to a maximum fine of two thousand dollars and six months imprisonment. Contingent upon the council's powers, as defined in their constitution, the leadership may adopt any laws of British Columbia as their own as declared in Section 14 (3). The creation of a permitting systems to gain immunity from prosecution as a trespasser is within the mandate of the council, as expressed in Section 14 (4), if they make a law that requires holding a permit.

Since archaeological sites are inevitably embroiled in issues of land it is advisable to review pertinent sections of the *Sechelt Indian Band Self-*

Government Act. Sechelt land is vested in the band through Section 25 of the act and Section 26 extends powers of disposition, provided it follows the procedure described in the band constitution. Where land, held by the band for use by its members, is the issue for the Sechelt band, its council has the power to dispose of rights and interest of any Sechelt land. If the situation arises where the band deems it necessary to sell, mortgage or transfer title to band land it must first proceed via a referendum in which 75 percent of eligible voters will have accepted that option. Failing to receive a clear mandate to proceed, a second referendum would be held, at which point a smaller majority is required. As such, taking land for public purposes is not a unilateral decision on the part of the council and the referendum operates as a safeguard against such action. Alternatively the council, without the consent of the electors, may grant interests in land up to a limit of ninety-nine years.

Section 36 provides the Governor in Council with the power to revoke the order that exempts the Sechelt from the *Indian Act* and it is, in essence, a declaration of the veto power which is expressed in Section 60 of the *Indian Act*. Application of the *Indian Act* explicitly states the meaning of Section 35 (1) which states "Subject to section 36, the *Indian Act* applies..." Section 37 stipulates that the statutes of Canada are applicable to the band, its members and their lands, and Section 38 reiterates the fact that provincial statutes apply unless they are inconsistent with the terms of any treaty. There is a provision in Section 3 which clarifies the position of the band in regard to treaty and aboriginal rights, that is the *Sechelt Indian Band Self-Government Act* will not negate any such rights obtained under Section 35 of the *Constitution Act* (1982).

Regardless of the definitions and interpretations that can be identified in this act it should be noted that it cannot be any more than speculation when applied to heritage matters. The current regime has not attempted any archaeological inventory, however a considerable number of sites have been recorded on traditional Sechelt lands by the provincial heritage branch. The nature of the terrain, being heavily forested and mountainous, has restricted accessibility to much of the interior. Sechelt Chief Thomas Paul (pers. comm., 1992) indicates that prehistoric Indian trails facilitating trade between Jarvis Inlet and the Whistler/Squamish region are still familiar locally. Other sites are known and the extent to which archaeological data become an issue may eventually depend on the course of the Sechelt land claim.

The Sechelt Band proceeded to autonomy by directing the Governor in Council to expand their interest through section 60 of the *Indian Act*. This delegation of power is the very same clause which the Peigan rejected as a means of asserting control over Peigan lands, as discussed previously. This does not negate the value of scrutinizing this model, since it is the nature of the arrangement that was rejected. The exercise of power by a responsible government at Sechelt, deciding policy and declaring specific measures for heritage protection, is still a viable option as a by-law making apparatus. The absence of extant by-laws does not indicate an absence of concern, but like any new government, their policies come from exercising their power and will evolve through experience and precedents.

THE CASE FROM NAVAJO

Although archaeological interest in Navajo lands, of the southwestern United States, originates with the *Antiquities Act* (1906), the legislative history of antiquities on Indian lands begins with the move to autonomy in

1935 (Cohen, 1982). However, it was not until 1988 that the *Navajo Nation Cultural Resources Protection Act* was formally adopted. Their ability to create this legislation stems from the legal doctrine that recognizes original tribal sovereignty, but places it subordinate to the overriding republican sovereign. Therefore, tribal governments are given the rights and responsibilities to create policies and statutes to govern their own lands and people.

John Marshall, C.J., of the U.S. Supreme Court in *Worcester v. Georgia* defined the legal basis for relations between the United States and the Indians in 1832, which recognized the internal sovereignty of Indian nations. They are given abstract recognition, but that has never translated into real recognition. This case is the archetypical example, a legal precedent was set yet the result in real terms precipitated the event known as "The Trail of Tears" (Satz, 1975). Tribal sovereignty was the issue when a white missionary was jailed by Georgia State officials for being on Cherokee lands. Although the Supreme Court rendered its decision in favor of the Cherokees they were nevertheless deported to the Western Territory, later to be called Oklahoma.

The Marshall decision had the effect of obligating the federal government to treat with the Indians and define boundaries for their sovereignty. Shortly after losing the greater share of his country the Mexican President Porfiro Diaz lamented, "Poor Mexico! So far from God and so close to the United States." For the Navajo this meant dealing with a different sovereign whose legislature would require that they surrender a portion of their sovereignty. Thus under a hot June sun the two parties entered into treaty negotiations with the republic prescribing the conditions of their relationship. *The Treaty of Fort Sumner* (1868), with its thirteen articles, then bears the burden of bringing the Navajo Nation into the American

federation. This sovereign, and sometimes stormy, relationship was lessened by the court in the **Cherokee Tobacco Case** in 1870 and upheld in the decision in the freedom of religion case **Native American Church v. the Navajo Nation** (1959) in which their internal sovereignty was affirmed.

Nearly a century after the Marshall decision created that tripartite division of government, the 'New Deal' of the Roosevelt administration would include a new deal for Indians and the concept of domestic dependent nations was put into effect (Cohen, 1982). Historical documentation indicates that in 1933 the President-elect's "selection of Harold L. Ickes for his cabinet post marked the beginning of the Indian New Deal" (Philp, 1977; 115). Self-government then became the basis for the renewed relationship between the federal government and its Indian wards. At this point the Navajo Nation assumed control of its lands and the right to form governments and pass laws, subject to federal statutes. Included in this package was the freedom to choose the form of government they would adopt, hence they organized themselves into a Tribal Council with a Chairman, Vice-Chairman and a Council based on agency representation (Navajo Nation, 1991). Their capital is Window Rock and at this administrative centre the council meets to propose, debate and, often, to enact laws about and for the nation.

Hence in March of 1986 the Navajo Tribal Council stirred its own policy into the legislative cauldron by adopting the procedural structure concerning the *Protection of Cemeteries, Gravesites, and Human Remains*. Two years later they asserted tribal prerogative by enacting the *Navajo Nation Cultural Resources Act* (1988), which installed the mechanics of conducting archaeology on the reservation, recognized a tribal Archaeology Department, expanded the mandate of the Navajo Tribal Museum and established a historic sites registry. This act also defined the parameters within which

individuals and institutions were permitted to conduct research on tribal lands or for individuals to visit cultural landmarks. It acknowledges the special status that the Navajo people extend to their heritage, in their historical and traditional lands, and introduces a trust relationship, with the tribal council as the trustee.

In many respects this legislation was reactionary since federal legislation affects Indian lands directly and any statutes that mention them impinge on their autonomy. The passing of the *National Historic Preservation Act* (1966), and particularly its amendment in 1980, which directed attention to archaeology on Indian lands, was viewed as an intrusion into their right to govern themselves (Downer, 1990). Tribal governments are especially aware of the implications of federal statutes on domestic dependent nations, particularly since the United States Congress stipulated in 1871 that no Indian tribe should be recognized as 'independent' (McConnell, 1977). Navajo relations with the larger polity is subject to considerations that affect the many disparate groups inhabiting Indian country. Federal initiatives necessarily address this heterogeneity by making laws that are broad enough to fit each unique situation. But the reverse is not true, the tribes cannot pass laws to affect cultural landmarks outside their boundaries, even if they are in their traditional lands. For that they must rely on federal statutes such as the *American Indian Religious Freedoms Act* (1978) and similar legislations.

The Navajo fully acknowledge that their act, with its intentional obscurations in phraseology and wording, is a document to be read by cultural resource managers and other professionals. They must also follow the doctrine of separating state and church, at which point "sacred places" might not be eligible for protection under current federal legislation. They must

apply matte euphemisms, like traditional cultural property, for sacred places to obscure their sacred qualities. For greater legal clarity, and perhaps to recount their statutory lineage, they even adopt declarations from federal legislation as in Section 1(b)(1) which states that:

the spirit and direction of the Navajo Nation are founded upon and reflected in its cultural heritage

This exhibits more than a cursory resemblance to Section 1(a)(1) of the *National Historic Preservation Act* which declares:

the spirit and direction of the Nation are founded upon and reflected in its historic heritage

Bearing in mind that they are still a sovereign nation with a distinct history and a continuing association with the archaeological record they look to it for a context to their present circumstance. Hence, where section 1(b)(2) of the Navajo statute declares:

the cultural heritage of the Navajo Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the Navajo People.

It is an affirmation of their continued relations with the cultural history, although it reiterates Section 1(a)(2) of the *National Historic Preservation Act* which states:

the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people.

With the 1988 initiative the tribal government expanded its heritage preservation activities as a means of maintaining control over its cultural heritage. Remedial action created their present legislation and the tribal archaeologist who oversees the bureaucracy necessary to operate the regulations. Hence, immediate vacancies, which could not be filled by the Navajo labour pool, were, instead, extended to professionals who were already active in the national archaeological network. Not only is their policy

to affirm continuity with archaeological cultures, but also to work within the parameters of current cultural resource management, as it is manifested in federal and state governments (Navajo Nation, 1991).

Enacting the *Navajo Nation Cultural Resources Act* gave the council wide-ranging powers to identify and define "Navajo Landmarks." They do not define 'cultural heritage' but they express an 'interest' in it. They do not define culture, but cultural property is "any cultural resource deemed to be important enough to warrant listing in the Navajo Register." This may seem trivial, but in light of the fact of pre-Navajo cultures, like Utes, Paiutes, and the puebloan cultures like Anasazi and Hopi, their definitions must be suitably ambiguous to include those archaeological sites. Thus they do not declare archaeology as a providing direction for the Navajo Nation, but they apply its nomenclature, thus a site is "the location of the physical remains of human activity."

Their definition of cultural resource, being "any product of human activity, or any object or place (sic) given significance by human action or belief," is liberal and construes many activities and any cultural resource is cultural property. For greater clarity they register their cultural properties in a Historic Preservation Department, which they create in Section 20 of their act. The same section also establishes a position of Preservation Officer who directs activities within the department. This person advises the tribal council and acts as intermediary between federal and state governments and various other corporate entities. Their department also conducts activities of an archaeological nature on Navajo lands and identifies cultural properties and landmarks.

Enforcing this legislation meant creating the Navajo Nation Archaeology Department, an agency that also expedites cultural resource

services for tribal clients. On any given day this might mean the tribal archaeologist organizes those services, implements research activities, or responds to discoveries. But mostly it means interacting with state and federal bureaucrats administering heritage matters and academic authorities applying to conduct research on Navajo lands (Klesert and Downer, 1990). A serviceable repository must house any recovered material, so a Tribal Museum was created specifically for that purpose. It functions as would any museum with collections storage and rotating and permanent exhibits, as well as programmes for visitors and citizens. As well, the measures adopted by the Navajo Tribal Council must respond to the multi-cultural nature of the archaeological record of the Navajo Nation.

Federal monies must be directed specifically to the programmes that the tribes wish to operate themselves. Therefore, when the Navajo Nation desired direct control of funds for an archaeology programme, it was through a contract between their Historic Preservation Department and the Bureau of Indian Affairs. These options are available to them pursuant to the *Indian Self-Determination Act* (1976) wherein tribal programmes are funded directly rather than being sponsored through the BIA (Navajo Nation, 1991). The tribal/federal liaison is similar to that existing in Canada where the Department of Indian and Inuit Affairs is responsible for supporting programmes on Indian reserves. However, directives typically are initiated at the federal level and implemented by its departmental bureaucrats, rather than being requested by band governments.

The mechanics of enacting tribal laws relies upon the Tribal Council Resolution (TCR), which has its Canadian equivalent in the Band Council Resolution (BCR). The Navajo Tribal Council can invoke various classes of resolutions each addressing specific levels of law-making. For example a class

'C' resolution, like the *Protection of Cemeteries, Gravesites, and Human Remains*, would require no Bureau of Indian Affairs (BIA) action because it is an in-house document that an advisory committee of the tribal council would engage. Class 'A' resolutions, like the *Navajo Nation Cultural Resources Protection Act*, would require federal action because they would in effect become tribal law and must not be inconsistent with federal law (Cohen, 1982). This can serve as a possible route for implementing heritage protection that rises from the Peigan community, since it is already the case that Band Council Resolutions must be approved by the minister before they are accepted as by-laws.

The *Treaty of Fort Sumner* brought the Navajo into the American federation in the same manner that *Treaty 7* brought the Peigan into the Canadian federation. Parallels continue in that both contemporary tribal councils are elected democratically therefore the relationship between the electorate and their government operate within recognizable institutions. The relationship between the Canadian government and Indian bands could benefit by a closer examination of the American situation. By the same token, the Indian governments may benefit also by acknowledging the lessons of their Navajo counterparts. The scheme they have applied in establishing a cultural resource management model could serve as a basic template for the tribes of *Treaty 7*, instead of having to reinvent heritage management.

While the Navajos are one of many indigenous nations, it is in stark contrast with the situation in New Zealand, where the government must deal with the homogeneous Maori minority. Navajo heritage laws must encompass the remnants of dissimilar cultures that have occupied their lands through time, but the Maori can legitimately state that every cultural object present in Aotearoa, the Maori name for their homeland, was made by an

ancestor. Whereas the United States is a melange of cultures New Zealand is primarily bicultural. Differences are amplified when contrasting the political heritage of Native Americans and Maori, the reservation system applied in North America is conspicuously absent in the southern hemisphere.

THE MAORI AND AOTEORO A

The formerly autarkic Maori and their experience with colonialism is the determining factor for archaeology in their traditional lands, which is the entire country of New Zealand. Interestingly enough, scarcely fifty years after contact with Europeans the Maori had already adopted a literary tradition, using English script, that the British felt compelled to apply it in their treaty making. The statutory creature that bears the burden of Maori aspirations, as the indigenous population of *Aotearoa* (New Zealand), is *Te Tiriti o Waitangi* (1840), subsequently translated as the *Treaty of Waitangi*. Differences of opinion exist as to the intent of this document since, like Treaty 7 in Canada, the signatory tribes had their own interpretation of the proceedings. The heart of this dialogue is the twin concept of *kawanatanga* (the cession of sovereignty) and *rangatiratanga* (a guarantee of self-rule); together they form the delicate ambiguities of the treaty (Ross, 1972).

Throughout the history of Maori and *Pakeha* (white) relations, the treaty has been consistently referred to as the "Magna Carta" of Maori rights, or *mana* (Ross, 1972). Perhaps the more interesting corollary of their treaty with the Crown was its Maori text; although the English version is an accepted one, only the Maori treaty has any signatures (Orange, 1980). It is the nuances of translation that have become the focal point in this issue, so much so that when the *Treaty of Waitangi Act* (1975) created the Waitangi Tribunal its specified goal directed that it have "an exclusive authority, for the

purposes of the Act, to determine the meaning and effect of the Treaty as embodied in the two texts, and to decide issues raised by the differences between them" (Sorrenson, 1990; 135). One major amendment in 1985 "extend[ed] the jurisdiction of the Waitangi Tribunal to hear claims arising from actions by the Crown since 1840" (Ward, 1990; 150) precisely because the Crown had accepted a fiduciary position. Having abrogated that role by ignoring its responsibility, the Crown is liable for compensating the Maori for their losses.

Like so many documents of this time, a literal application of the *Treaty of Waitangi* is unacceptable, therefore the interpretations must be very liberal when assessing the promises made to the Maori. Regarding their cultural heritage, it would appear that the only place that archaeological material, heritage sites and cultural objects could be placed is in article two of the treaty. However, "the Treaty of Waitangi mentions only *whenua* (land), *kainga* (homes), and *taonga katoa* (all [other?] possessions). It is thus a matter of interpretation whether or not the *taonga katoa* of the Treaty of Waitangi could include" (Ross, 1972; 141) archaeological material. For the record McGhee (1989; 15) intimates the *de facto* influence Maoris wield in that their opposition has curtailed the archaeology in their homeland. Clearly this was not an issue for either party at the treaty signing, but the intervening years have seen other novel circumstances arise that were not anticipated at that time. Yet the manner of resolving conflicting interpretations has always relied on making Maori words "bear new burdens" (Sorrenson, 1990; 136).

The *Treaty of Waitangi Act* (1975) was passed in response to Maori activism, arguing, as they were, that their rights under the treaty were being ignored in courts and government, even though they participated by having

members in the national government. One creation of this enactment is the Waitangi Tribunal which is described by Durie (1986; 235) as having:

the accoutrements of the law - and yet it is not a court of final determination. It does not make final judgements, or orders. It does not award costs and it has no facility to enforce its determination...for although the Tribunal is not in the main stream of the law, neither are many Maori claims.

It is a quasi-judicial panel and McHugh (1986; 57) declares that with the acceptance of this act "the common law doctrine of aboriginal title has returned to New Zealand shores...after a century of neglect." Commenting upon its role in the judicial system, Kenderdine (1985; 300) writes:

Under the Act the Maaori people "prejudicially affected" have the right to petition the Waitangi Tribunal concerning any past or proposed Government policies, legislation or practices which are seen to be inconsistent with the principles of the Treaty...The Crown is bound by the Act although at the end of the day the Tribunal can only recommend to the Crown in non-specific terms that compensation be made to the Maaoris affected or that the prejudice complained of "be removed."

The Maori, being dispersed and integrated with the *Pakeha* population, as well as being concentrated in enclaves, organize themselves into regional councils that translate specific rights into legal action. Judgement in a recent High Court decision accepted the aboriginal title argument to acquit a Maori fisherman from prosecution under the *Fisheries Act* (1983). The judge's decision also accepted an important "distinction between "territorial" and "non-territorial" aboriginal title [which] might arise over Crown-owned land subjacent to tidal and navigable water" (Downey, 1987; 39).

Another principle that has emerged from the tribunal's hearing is articulated in a judgement in the case of the Te Atiawa Tribe of Taranaki. The claim revolved around the discharge of sewage and industrial waste in what the Te Atiawa believed to be their traditional fishing grounds. The tribunal found the tribe to be "prejudicially affected" and that the treaty "obliged the Queen to give priority to Maaori interests..."(Kenderdine, 1985;

301). This is strikingly similar to the Canadian equivalent where if there exists ambiguities in language then the interpretation must favour the Indians (Bell, 1992). Its impact in national politics was profound and culminated in later statutes receiving consideration for their affects on Maori values.

When attention is directed toward archaeology in particular it is the claim submitted by the Ngati Pikiao, a member of the Confederation of Te Arawa Tribes, in 1978. Again the discharge of sewage into a river by a district council was the origin of this action, the discharge was allowed despite appeals under the *Water and Soil Conservation Act* (1967). Appeals to the tribunal resulted in recommendations that included amending the act to address concern for Maori spiritual and cultural values. Praising the Forest Service's attempts to preserve burial grounds and archaeological sites, the tribunal opined that it would be an acceptable model for other government departments to follow. Criticism is not unfounded however and the government is accused of operating under a double standard, ostensibly giving lesser significance to Maori sites. Indeed Kenderdine (1985; 302) bluntly states the "law in respect of Maori cultural and spiritual interests is perceived to be 'as empty as oystershells'..."

Developing these oystershell heritage statutes in New Zealand began with the *Historic Places Act* (1954) which created the New Zealand Historic Places Trust, in Section 4, with a mandate outlined in Section 8 to promote "public interest in places and things...of national or local historic interest." This legislation did not contain any specific reference to archaeology until the 1980 amendments expanded its scope to include Maori traditional sites in Section 50; a traditional site being defined as a "place or site that is important to Maori people because of its spiritual or emotional reasons." They do not

place any chronological barriers, like that applied to the definition of an archaeological site.

Subsection (1) stipulates that an "application may be made to the Trust to have a place or site declared to be a traditional sites" to extend protection to it. The immediate contradiction stems from the sacred/secret nature of tribal ritual and "Maori (sic) tribes do not want public notification of sacred places, fearing desecration..."(Kenderdine, 1985; 305). Obviously the need exists to find some route that is outside the bureaucratic, procedural channels, since the very act of registry for protection compromises the spiritual integrity of ritual sites. Subsection (5) provides some indirect concession in that it obligates territorial authorities to take into account traditional sites when planning in their districts. The extent to which this will include heritage sites is arguably vague since statutes like the *Historic Places Act* (1980) only protects sites that are registered with the Historic Places Trust.

Maori concerns are actively sought so as to minimize the conflicting goals of scientific investigation into the archaeological record, and the *Historic Places Act* defines:

"Archaeological site" means any place in New Zealand -

- a) Which at any material time was associated with human activity which occurred more than 100 years before that time; or
 - b) Which is the site of the wreck of any vessel where at any material time that wreck occurred more than 100 years before that time, -
- and which is or may be able through investigation by archaeological techniques to provide scientific, cultural, or historical evidence as to the exploration, occupation, settlement, or development of New Zealand.

Aside from the temporal barrier of a century implying discontinuity with extant ceremonialism, this act requires Maori concurrence for any form of excavation. This arises from a Section 44(3) which stipulates that the "Maori Association or Maori Land Advisory Committee or Maori Tribal authority, or appropriate Maori authority" must be consulted. Legitimately it

can be argued, by the Maori, that any researcher whose goals do not coincide with Maori aspiration does them a disservice. Hence their reluctance to concur wholeheartedly with scientific research.

Rehabilitation of the doctrine of aboriginal title is a recent development in New Zealand jurisprudence, hence in the national society, and it is being defined with each case that is placed before the courts. The purpose of this discussion being to determine whether the New Zealand model may have any parallels with the experience of the *Treaty 7* tribes, it does appear to offer some guidelines for the Canadian situation. This is particularly so in the area of customary lands, delineated in *Treaty 7*, which extend beyond the borders of the present reservation. Here non-territorial aboriginal rights would include rights to one's heritage. Also, the *Treaty 7* tribes must initiate a dialogue with the province of Alberta with the ultimate aim of amending the *Historical Resources Act* to include consultation where the excavation and retrieval of archaeological material takes place in their traditional lands. The lesson to be learned here is to avoid reliance on legal interpretation and court challenges, which are often confrontational and inevitably require a winner and a loser. The heritage of the *Treaty 7* tribes is too important to be left to the vagaries of court decisions.

CHAPTER SUMMARY

Any suggestion that archaeology, politics and native issues have no coinciding facets should now be dispelled. The review of treaties, statutes and amendments amply demonstrates that there are some legitimate bases for indigenous people asserting control over culturally significant sites in their traditional lands. Recurring themes exist in each case. Cultural institutions were not surrendered in any of the negotiations, rather the terms were

interpreted to align with the views harboured by the colonial powers. While the archaeological community assuredly is protected by its alliance with the *status quo* it must be aware that challenges from native groups will include the discipline. The various royal commissions reviewing government policy towards natives and native court challenges reveal the possible future of relations between Indians and archaeologists.

Nothing seems to change when the whole topic is viewed in an international context, the same debates are reiterated whether the indigenous groups are Navajo, Maori or Sechelt. The protracted legal battles in the United States over the reburial of human remains demonstrates the passions that can erupt, and it is more than likely that similar situations will eventually occur in Canada. The Waitangi Tribunal is the New Zealand equivalent of the land claims commission in British Columbia, the only difference is the native people. The Treaty of Waitangi has its parallel with Treaty Seven, albeit 37 years earlier, but the consequences are the same.

The image of scientists desecrating Indian heritage for their own research, whether true or not, is alienating within the larger community and may lead to confrontations with Indians. Academic or salvage programmes designed to retrieve archaeological material could become secondary issues, trivialized by the distractive attention of the judiciary. Plainly stated, archaeology is inching towards the fringe of social thought if it cannot reconcile its objectives with the aspirations of the people it studies. Of course, this does not exonerate the lack of attention that archaeology receives from the signatory tribes of *Treaty 7*. If it means anything, it means that the Peigan, as with the other *Treaty 7* tribes, must move toward implementing heritage management with haste.

CHAPTER SIX: MANAGING PEIGAN CULTURAL HISTORY

INTRODUCTION

This concluding chapter addresses the interaction between archaeology as a discipline and Indian communities. There is role in future relations for each group and the two can benefit equally from their continued dialogue. Cultural Resource Management and museology remains the standard procedure for government departments interacting with the past, hence it is necessary to examine its place within native communities that have no formal archaeological programmes. Standard CRM wisdom assumes that development will occur, that archaeological sites will be disturbed and that the advantageous option is to salvage whatever identifiable material exists. Typically this type of archaeology takes place in advance of development as populations, corporations and governments extend their interest into undisturbed land. CRM is financed by government or developer and is responsible for sponsoring the discipline's inclusion with the wage economy.

Yet in aboriginal communities the economies are stagnant, the land base is finite and intensely utilized and the economic health required to support a cultural heritage bureaucracy simply does not exist. As these communities have an aboriginal association with the archaeological record it obliges them to attend closely to activities that may be detrimental to heritage sites. It also begs a pragmatic and theoretical basis that reflects their cultural traditions rather than those of the archaeological community. The Peigans, in this case, must look toward their traditional interpretation of the past as the starting point for their relationship with it, and then borrow the appropriate methodology and techniques available. Therefore the focus of

this discussion is to contrast the objectives of CRM to Peigan ideology and to prescribe an avenue for future archaeology that does not isolate the discipline from Peigan aspirations, or traditions. The mechanics of implementing heritage policy must acknowledge the realities of these communities and integrate its objectives within the broader, communal ones.

Cultural Resource Management (CRM) owes its origin to the various enactments, like Alberta's *Historical Resources Act* (1980) and recently amended in 1987, passed in legislative bodies that detail their government's policy. The labour pool that harvests this resource emerges from an academic environment that provides the guidelines for exploiting historical resources. For centuries now the engines of Canada's economy have relied heavily on exploiting resources and so the inclusion of culture within this resource-based paradigm has gone unchallenged. Indeed, Canada is still very much embroiled in a fur trade economy that has exerted its influence on the reactionary archaeology that is practiced on this non-renewable resource, where salvage is the accepted option and conservation is scarcely considered. Rarely would a development project be halted to preserve a heritage site.

CHALLENGES FOR PEIGAN ARCHAEOLOGY

The following discussion will focus attention on the challenges facing Peigan archaeology. It is, if you will, a recipe for researching Peigan history. There is no need to reinvent heritage management in that precedents exist where viable programmes have been developed that can serve as guidelines. The lessons for the Peigan come from implementing self-government and control of their lands which the Sechelt have attained. The Navajo provide a model for designing a system for managing archaeological sites and directing research from their tribal archaeology department. Lastly, the influence that

Maori exert over government policy in their traditional lands can be goal of the Peigan in their traditional land.

Clearly the initiatives must be dispatches from the local community. If there is to be any support from the membership they must be made to feel a part of the decision-making apparatus. Guidelines can be implemented only if there is a continuous dialogue with the citizens to avoid the appearance of dictatorial laws. There must be an awareness of heritage management as an on-going responsibility, thus the need for an impact assessment process. And a tribal heritage trust must be created to direct the mandate of the Peigan government's policy on antiquities. These are some of the elements that will inevitably influence the reclamation of tribal patrimony.

Managing the cultural legacy of Peigan lands lies with the leadership who must apply unambiguous language in a comprehensive by-law with the assigned task of protecting antiquities (See Fig. 15). In doing so, they will be defining the relationship that Peigans will have with their heritage and those by-laws must reflect their cultural tenets. Starting from that point, a by-law proposal has been submitted. This prescribes a specific route of notification, documentation and registration once antiquities are discovered. Insofar as the Peigan have yet to attain self-government, this by-law is framed within the legal context of the *Indian Act*. It has been demonstrated that Section 81 of the act can be construed so as to anticipate impact assessments and protection for historic sites and buildings. Therefore, it is well within the powers of the council to make such by-laws, which would have the full weight of federal law once approved and any prescribed penalties would be enforceable. It would also reduce the burden of federal regulations, like the proposed antiquities law, by making them redundant.

Sole responsibility for curation has already been declared in an existing by-law that placed the Peigan Chief and Council in a position of trust for managing antiquities on behalf of the Peigan membership. Reiterating that statement in explicit terms to remove any potential conflicts is one means of maintaining local control and at the same time encouraging membership compliance with regulations. This would place the onus on the leadership to designate antiquities, to institute a repository for curating collected objects and to ensure that immovable sites are properly managed. Creating a registry with the intention of maintaining records of site location and updating it at regular intervals would serve functions of administration and protection. It would be a public register that would be a reference for casual visitors or for managers who are involved with terrain altering activities.

Lessons from the Navajo experience are directly applicable, since creating a tribal heritage trust has already proven its value for the community. Similarly, and in response to Maori concerns, the New Zealand government created a heritage trust to ensure protection of Maori sites in their traditional lands. Registering heritage sites and protecting them from damage does not actually prevent vandalism, the preferable case being that people would not want to damage them. Curtailing destruction would at least be the objective of a clause denouncing that behaviour, but if penalties are to be imposed they must be enforceable. Exempting professionals, whose sole intent is to discover locations of sites and artifacts, would be explicitly stated since they likely would be agents of the band. Educating members on the merits of preserving antiquities need not be an excruciating process, for example, it could be incorporated into the school curriculum.

MANAGING THE CULTURAL LEGACY OF PEIGAN

PREAMBLE

WHEREAS the Cultural Legacy provides the fundamental documentation of Peigan association with the land, and;

WHEREAS the Cultural Legacy contributes to the spirit of the Peigan community, and;

WHEREAS the Cultural Legacy provides the inspiration for the Peigan community,

THEREFORE it will be the policy of the Peigan leadership to promote the conservation of antiquities and to preserve the integrity of the Cultural Legacy of Peigan.

WHEREAS economic and other concerns require the alteration of the Cultural Legacy:

- 1 The Peigan leadership accepts the mandate to:
 - (a) designate and protect heritage sites,
 - (b) undertake programmes of research into and documentation of matters relating to the heritage of Peigan,
 - (c) carry out surveys, investigations, documentation or excavation of any site,
 - (d) report on the investigation with persons to carry out surveys, excavations and prepare reports on them.

* * * *

2 DISCOVERY OF ANTIQUITIES

A person who discovers any heritage material in the course of making an excavation for the purpose other than for the purpose of seeking or collecting heritage material shall immediately notify the Peigan leadership of the discovery. There after work shall be suspended until such time as adequate investigations have been completed.

* * * *

3 PERMITS

The Peigan leadership may permit the excavation of antiquities by persons who apply in consideration that:

- (a) no one shall be allowed to excavate on Peigan Lands for the purpose of seeking or collecting antiquities unless they are a valid permit holder issued by the Peigan leadership as the trustee of Peigan antiquities,
- (b) the Peigan leadership may issue permits authorizing the person named in the permit to make excavations for the purpose of seeking or collecting antiquities on Peigan lands described in the permit,
- (c) a research permit may be subject to the following conditions:
 - i. the permit holder shall provide a progress report to the Peigan leadership during the course of research;
 - ii. the permit holder shall restore the site to its normal condition, or as close to its original condition as is possible, after excavations are complete;
 - iii. the permit holder shall deliver possession of all portable antiquities recovered while excavating to the Peigan leadership, or to the institution specified by the Peigan leadership;
 - iv. any other conditions that the Peigan leadership may consider necessary.

* * * *

4 PRIVATE COLLECTORS

Whereas the Peigan leadership, as heritage trustee, is recognized as the legal curator of antiquities it will require of private collectors to adhere to the following guidelines. The collector must:

- (a) make known their intentions to collect and receive a permit from the band,
- (b) report all discoveries to a common registry,
- (c) continually update their collections record if new material is found,
- (d) not engage in gift-giving, if the gift is to be an artifact,
- (e) not engage in trafficking in antiquities,
- (f) not engage in trading antiquities, or
- (g) treat antiquities as heirlooms.

* * * *

5 DAMAGE

Whereas antiquities are the fundamental inspiration to the Peigan culture, the Peigan leadership declares:

(a) that no person shall alter, mark, or damage any heritage object, or otherwise vandalize antiquities,

(b) subsection (a) does not apply to legal permit holders, however a permit does not entitle the holder to purposefully damage sites.

* * * *

6 INSPECTION

The Peigan leadership may authorize any person to enter at any reasonable hour and after notice to the owner or occupant:

(a) any land for the purpose of conducting a survey, or inspecting antiquities that the Peigan leadership has reason to believe may qualify as a heritage object, or,

(b) any Peigan heritage site for the purpose of examining, surveying, or recording the site or carrying out excavations and work required for the preservation or development of the site as a heritage site.

* * * *

7 SALVAGE

When the Peigan leadership is of the opinion that any operation or activity which may be undertaken by any persons will, or is likely to, result in the alteration, damage or destruction of antiquities, the Peigan leadership may order that person:

(a) to proceed with assessment to determine the impact of the proposed operation or activity on antiquities in the area where the operation or activity is carried out,

(b) to prepare and submit to the Peigan leadership a report containing the assessment of the impact of the proposed operation or activity referred to in clause (a), and

(c) to undertake all salvage, preservation or protective measures or to take any other action which the Peigan leadership considers necessary.

* * * *

8 REBURIAL

Whereas the Peigan leadership is acknowledged to be the heritage trustee, it shall also be considered the representative for all deceased persons of unknown origin buried on Peigan lands. It will be the policy of the Peigan leadership:

- (a) to actively pursue the practice of reburying, at the earliest time possible, any individual whose remains may periodically be discovered due to excavation made other than for the purpose of recovering antiquities,
- (b) and where excavations are made specifically for the purpose of recovering antiquities, in particular human remains, the reburial shall be carried out at the earliest time possible,
- (c) and to make permits to allow for the scientific examinations of human remains if applications are made by an authorized person in which case the reburial shall be made sixty days after permission for examination has been granted, however extensions to that time limit may be considered at the discretion of the Peigan leadership,
- (d) and in consideration of subsection (c) a report, indicating the results of examination, must accompany the return of any human remains released for scientific examination.

* * * *

Figure 15

PROPOSED BY-LAW SUBMITTED TO PEIGAN CHIEF AND COUNCIL

The potential land use conflict can be avoided by including a proviso that would guarantee against diminishing occupation rights, that the intent would be only for sharing. Agriculture remains the only consistent source of cash for some residents therefore caution is a necessary part of this formula. Assurances also must be made that would allow for access to sites located on occupied land since the community cannot be excluded from interacting with its heritage sites. Since they represent the two sides of the same coin, it would entail some reciprocal arrangement advocating multiple users. Suitable examples exist in that Peigan landholders, with council approval, regularly arrange leasing agreements for agricultural land. The land base required to afford an adequate return from dry land farming is so great that the leasing of agricultural land to non-members is the only way to make farming feasible. Also, activities around fossil fuel exploitation take place on occupied land, albeit with the occupant's approval. Likewise tourists, researchers or spiritualists would have access to a particular site even if it is located on occupied land, in which case the consent of the occupant is crucial.

One means of controlling access would be the installation of a permitting system that would allow the band to regulate individuals passing over occupied land. The band administration already presides over a permit system that requires anyone who is not a member to obtain one to enter onto Peigan lands, so as not to be in conflict with the trespass clause of the *Indian Act*. Permission to conduct archaeological work would extend the application of this clause while remaining consistent with the legislation. Attending to the issuance of permits and receiving reports of completed business could become the focus of a related, existing department, like the Oldman River Cultural Centre, that already has an explicitly defined mandate.

Reference to the Navajo case has shown how a tiered permitting system that allows for temporary, casual visits to long-term research by archaeologists has been quite successful. 'Class A' permits visitation and personal research, where documentation only is authorized. 'Class B' is limited to inventory, and does not allow for collecting. 'Class C' sanctions the excavation and collecting of antiquities. The latter requires a Bureau of Indian Affairs permit, except on tribal fee lands. Tribal trust lands and Allotment lands are managed by BIA, whereas Tribal fee lands are privately owned by the Navajo Nation. Tribal permits are required in all instances and there is a fee attached to each, except the 'Class A' visitation permit (Navajo Nation, 1991).

It is an inevitability that fortuitous discoveries will be made, or that people will deliberately seek out antiquities and so the heirloom effect is a real consequence that must be addressed. Since non-members of the band would be handled in the trespass category, if they did not have an entry permit, the language of any by-law is to be directed toward the band membership. Band members must become aware that in all likelihood occasional finds will occur, and they have a responsibility to report such objects. A compromise agreement could see individual members curating personal collections which would not become a part of their natural estate. That is, the band must be the ultimate beneficiary of all cultural artifacts amassed by a member during their collecting careers.

Damage need not be willful as accidental discoveries are commonly made in the course of other terrain altering activities. Anticipating this scenario would become a matter of detailing a specified chain of events that would follow from the initial discovery. Halting the activity until the site is inspected is the logical first step, thereafter impact assessment, salvage and

preservation would proceed, depending on circumstances. If the site is of a nature that is immovable then proposed alternatives would be considered, including compensation or relocating development. Agents of the band would determine the options so that there is some control, rather than several conflicting opinions fomenting animosity.

Finally, the band must consider itself to be the representative of all anonymous, deceased persons buried on Peigan lands and their traditional lands. Excluding forensic situations, the band must avoid disinterment, but if it is unavoidable then they must pursue a policy of reburial. If the excavation is in traditional lands, then human remains must be brought to Peigan for reburial. As discussed in an earlier section, this procedure stems from their particular concept of spiritual affairs and local support for reburial is a function of their reverence for the deceased. Applications will be entertained that propose to subject human remains to scientific examination, although it must be demonstrated that the research will be non-destructive and the results be made available to the community. The duration of dislocation should be limited and the individual returned to the archaeological record at the earliest time possible.

DECOLONIZING INDIAN HISTORY

The final consideration in this long discussion relates to the interaction between the archaeological community and the Indian's heritage. It is not intended to malign the efforts of archaeologists; rather it is to shed some light on the uneasy history of relations between the two groups involved in this discourse. Burley (n.d.) chronicles the history of archaeology in Canada and the role of the discipline in creating colonial outposts on the frontier of history. Spurling (1986; 89), in describing the proceedings of the Western

Canadian Archaeological Council meeting hosted by the Glenbow Foundation in Calgary in 1960, states that a "significant outcome of this meeting was the explicit acknowledgement of archaeological sites and objects as resources." It became the first phase in the process of incorporating culture into a resource dependent economy.

The guiding principles of archaeology originated in western Europe, where the typical view was to make it an extension of history. When the discipline was exported to America its practice became enmeshed with anthropology, since its subject matter was foreign cultures. The anthropological approach which had been applied to human cultures on a spatial basis was extended to include a temporal scale. Hence archaeological cultures came to be identified by their material remains and any connections with extant aboriginal groups were incidental to the actual study of the past. The only acknowledgement of relatedness came in the vague form of ethnographic analogy, accompanied by a cautious avoidance of uniformitarian principles (Trigger, 1989; 19).

The context within which Canadian archaeology operates is fundamentally colonial in that the practitioners have "no historical ties with the peoples whose past they [are] studying" (Trigger, 1984a; 360). In fact the accepted language of the discipline continues to reflect that colonial mentality even in the midst of rapid social change focussing on pluralism. Archaeological cultures of the northern plains tell more of the researcher than the data in that the habit of labelling cultures by place names helps to give them a Canadian identity. This supports an implicit, unchallenged argument that the archaeological community is the only legitimate interpreter of the aboriginal past. Just as the colonial enterprise in North

America marginalized the Indians in their own country, the colonization of the past has served to marginalize them in their own history.

The gradual erosion of autonomy witnessed by the First Nations in their recent history was inversely proportional to the rise of the Canadian federation. This loss of political power then became the rift that effectively realigned the manner in which both groups would relate to the past. Legitimizing this imbalance is the ethics statement issued by the Society for American Archaeology (1961) which was the format employed by an entire generation of archaeologists. Conspicuously absent in this statement is any mention of the discipline's responsibility to support Native American aspirations, or any aboriginal groups for that matter, or even sharing recovered information. Indeed, Native involvement in archaeology has not been solicited beyond their utility as subjects in ethnographic analogy (Anderson, 1969), middle-range experimentation (Binford, 1977) or ethnoarchaeology (Binford, 1978; Gould, 1980). Therefore the extent to which archaeology is accepted by native communities depends largely on the willingness of archaeologists to begin decolonizing Indian history and integrating Indian aspirations into their research objectives.

Canada, like other colonial nations, actively sought to extend its colonial domain to include the past, sometimes through denial, more often by prescribing official history. This trend is especially well illustrated, if unintended, in a treatment by Helgason (1987) entitled The First Albertans. In this book every person from Clovis point makers to historic tribes has been made a citizen of the province of Alberta retroactively, disregarding the fact that Alberta only came into existence in 1905. This may be the meaning of Fowler's (1987; 229) statement that "nation-state rulers and bureaucrats have manipulated the past for nationalistic purposes...and to legitimize their

authority." The challenge of decolonization is not so much the Indian's to define as it is the discipline's obligation to assess its role in the whole colonizing endeavour.

Ancillary issues, although not trivial ones, revolve around ownership and jurisdiction of antiquities. McGhee (1989) brought up this point by asking "Who owns prehistory?" A century ago Indian cultures were thought to be static and Indians incapable of change. Now it is accepted generally that Indian cultures are so dynamic that they cannot be related directly to any archaeological culture. The common feature of these two views is their denial of relatedness between archaeological cultures and Indian cultures. The anonymity that cloaks the past is the major advantage for the archaeologists. So long as there is no demonstrable link between archaeological and modern cultures researchers may investigate unimpeded. It also places the burden of proof on the Indians to demonstrate cultural affinity, while archaeologists take their interpretations for granted. Legal onus is supported by the judicial system as illustrated in recent judgements of McEachern (1991; 61). As he stated, "archaeological evidence establishes early human habitation at some of these sites, but not necessarily occupation by Gitskan or Wet'suwet'en ancestors of the plaintiffs."

Using tribal experience as a precedent for answering the question of ownership, the only response is to first ask if the answer will cause Peigan loss of control over heritage. The parallel between this and another question in another century is too close to be ignored. In aboriginal times the ownership of land was anathema to their traditions and is expressed in the:

view of the earth as a feminine figure. The Mother provides for the sustenance and well-being of her children: it is from her that all subsistence is drawn...All things in creation had an essence, a reason for being...Man was to function as a caretaker of the environment (Cornell, 1990; 4).

It was precisely the point at which the traditional territory became property that it slowly passed out of Peigan control. This trend culminated with the massive land surrender under Treaty No. 7 and was followed by gradual surrenders of reserved lands. Even with court victories in land claims Peigan still does not have its original boundaries restored.

In the political analogy decolonization begins with recognizing the indigenous governing systems as responsible entities capable of assuming independence (MacDonald, 1990). Autonomy then proceeds with the local population establishing the format of government along with a social code that provides the basic order. Internal affairs then become the responsibility of the regime, hopefully with the support of its constituents. When applied to cultural heritage the dilemma is one of continuity from aboriginal times, which is argued by the Peigan, versus discontinuity with surrender of land meaning *de facto* alienation of interest in archaeological material. Jurisdiction is defined along strict guidelines of legislation and in Alberta the *Historical Resources Act* makes no acknowledgement of any Indian persons having any connection to "cultural resources." Indeed the wording of Section 28 of that Act makes it clear that jurisdiction over all archaeological resources are vested in the Crown in right of Alberta, and any residual interest in cultural material on the part of Peigans in their traditional lands has been abandoned in making treaty.

According to Peigan arguments Treaty No. 7 was a peace treaty and any surrender of the land and public domain occurred in violation of that document. The unilateral mechanics of altering solemn promises has not favoured the Peigan's position to the point that they no longer influence any decisions or policy regarding the disposition of their cultural birthright. This situation stands in opposition to that favoured by the Peigan, which is that

they be consulted whenever their heritage will be affected by development, as in the The Oldman Dam, or other threats. Not only must this include input on the most expedient method of recovery in a salvage context, but also the ultimate disposition of recovered material, determining the merits of recovery (especially human remains) and contributing to research objectives.

CHAPTER SUMMARY

The theme of this chapter was examining the options in establishing a framework on which to build a heritage policy that would accommodate Peigan interests while applying Canadian-style heritage management. Issues of interest included Cultural Resource Management, challenges for Peigan archaeology and the actual topics addressed in heritage by-laws. Each subject, in its own way, will direct future efforts in archaeology on Peigan lands and may become issues in other native communities. The model of management supplied by conventional archaeology is not one that the Peigan are compelled to emulate. The economic structure that supports it has been instrumental in marginalizing their community and its philosophy is in conflict with Peigan tradition.

Recognizing that its intentions are for the best, a CRM philosophy based on the inevitability of salvage must be rejected. Instead archaeological sites must be treated as a legacy and Peigan archaeology as more than a resource to be managed. The basis for that relationship is available by examining the ideology of the culture and transplanting tenets that resemble the manipulation of sacred bundles and ceremonial objects. Pragmatism must underlie any ideological motivation in that certain events, like construction, occur on a daily basis that may have an impact on antiquities and there must be some standard format providing direction as to the

appropriate action. As such, it behooves the band leadership to articulate its position regarding the disposition of antiquities located on Peigan lands and to provide some guidance for archaeology in their traditional lands. The alternative is the addition of burdensome laws imposed by the federal governments that would not necessarily respond to the concerns of band members.

APPENDIX A

Peigan Archaeological Survey

1990

THE PEIGAN ARCHAEOLOGICAL SURVEY

Conducting this archaeological survey involved searching a large tract of land as a means of determining the content and extent of cultural material in this particular region. The Peigan Reserves (Nos. 147 & 147B) encompass an area of over 200 square kilometers and the stated objective of this survey was to traverse as many of those hectares as possible. The archaeological survey of the Peigan Reserve was proposed in response to the active pressures of the modern populations on a limited land base. One effect of these pressures will be the destruction of cultural material if they are not recognized as such, and the possible disturbance of known material by knowledgeable persons. Another reason for conducting this investigation is simply to locate and document material in a coherent, organized fashion. Certainly this will aid in developing a collection which would benefit all Peigans as these are surely their common heritage.

Applying a systematic approach was the only option considering the constraints of time and manpower. This involved designing a research strategy that was flexible and would divide the landscape into physiographic units, which would serve to correlate site types to specific features. A variety of sampling methods were employed to discover/recover artifacts. They included the use of test pit sampling, intensive surface collecting and remote sensing procedures. One other reason for adopting the differing methods is to accommodate the largely non-stratified nature of southern Alberta plains archaeology since they have been primarily an ablation zone for the better portion of human occupation. If deposition occurs on the plains it will be aeolian and lacustrine, but fluvial deposits are restricted to the river valleys and ephemeral waterways.

Defining the Archaeological Site

Redman and Watson (1970; 280) state that archaeologists "assume, consciously or unconsciously, that there is some relationship between what can be found on the surface of a site and what lies below". Echoing their sentiment Ammerman (1981; 63), in lauding the merits of survey work, writes:

...surveys have acquired a more secure position. In some cases they may even have begun - in the scope of their contribution - to outpace excavation, the heavyweight that if anything only seems to grow more sluggish as field technique is refined.

The survey technique, in this case, is acknowledged to have the edge in terms of research at the regional level, for discovery of clusters of cultural remains, and for determining any patterning of those concentrations. Whereas excavation is spatially confining because of its function in examining the vertical record, survey emphasizes horizontal relationships and spatial distribution.

One result of increasing sophistication of spatial surveys has been the re-examination of the concept of 'site', a concept dear to the hearts of archaeologists. For Hole and Heizer (1973) assigning site status was a matter of finding cultural debris, the site being the spatial extent of tools, or other artifacts, recorded. The criticisms directed at their definition tend to stress the association between 'site' and 'excavation location'. In the archaeological literature 'site' has become synonymous with a specific geographical location containing cultural debris. By implication the site is immovable, even if the artifact is portable. Hence, in regards to survey work, the site is the prisoner of artifacts and each would necessarily be treated as a distinct unit, separate and isolated from all other artifacts/sites within the region.

Certainly during the course of this survey a number of sites were discovered that only contained one projectile point artifact which was then collected. The question arises over if the site continues to exist if its only artifact is removed. Therefore, it became necessary to either redefine the site concept to accommodate survey work or to install a new term that more accurately reflects its goals. One such trend has been the introduction of the term 'non-site' (Thomas, 1975) and its definition dovetails easier with the goals of this research. Correctly noting that nomadic cultures may leave little or no trace of their presence, he suggests discarding the concept of site for some types of research. The benefits of this lie in determining spatially dispersed activities, reminding us that highly mobile peoples would not confine their behaviors to one locale for the benefit of future archaeologists. The data collected in his own survey of the Great Basin led him to seek alternative methods for interpreting data obtained from areal investigation.

Plog, et al (1981; 389) accepted both ideas of site and non-site and related a definition that was elastic, derived from survey data, and unbound by geography. Hence, their site becomes "a discrete and potentially interpretable locus of cultural materials" and the non-site "is a potentially interpretable but not spatially discrete locus of cultural materials". Regardless of how it is defined the fact remains that the archaeological site is an arbitrary construct, and its dimensions are established for the convenience of the researcher. For the purposes of this investigations it was beneficial to retain both categories since many site types, like tipi rings, only exist because of their provenience while other site types contribute artifacts that are removeable from their original provenience. Therefore sites become avoidable in economic activity like farming while non-sites cannot be detrimentally affected by development activities like house building.

Surveying the Peigan Reserve

The survey of the Peigan Reserve yielded much information of prior occupation(s), as expected, and the task of this research became assessing the patterns in the distribution of artifacts across the landscape. The types of sites located were consistent with those described in Chapter Two and they reiterated some aspects of lifeways generally associated with mobile, pedestrian high plains cultures. To determine such things as settlement patterns or seasonal occupations it is necessary to approach the archaeological record in a coherent, systematic manner. As such, it is desirable to define the parameters of the field investigation regarding the treatment of spatial limits of the site. In employing the non-site approach in this study the boundaries of the Peigan Reserve were used to define its limits, while the specific sites could easily be identified by geographic terms. This may seem a contradiction in terms, but the current borders do provide convenient areal limits for a regional survey.

The natural physiographic breaks, that is uplands, plains and valleys, were used as the guides by which to separate the survey region into discreet zones. Therefore, the Uplands were treated as a distinct unit and a similar treatment was reserved for the plains and the river valleys. In this context, the uses of landscape through time will be interpreted by their content. The following discussion will outline the objectives for each zone and the survey methods employed for each. The artifact types and site types associated with each zone will be detailed for their frequency of occurrence assuming that some activities, like burials, would require specific geographic traits.

The Uplands

As stated in Chapter Two the uplands are sandstone bedrock with a veneer of glacial till. The specific properties of this cliff-forming bedrock and geomorphic processes have combined to produce spectacular outcrops and hoodoo formations. Other highland areas are hummocky moraines deposited during deglaciation. The reason for surveying these units is to find cultural utilization of these landscape features. Because the buttes contrast physically with the surrounding plains it is possible that their utility to a human group would reflect that distinction. The logic being that specialized activities must leave unique traces. Their areal extent is limited as is the mineral soil. Therefore the research conducted on them focussed on a comprehensive, surficial survey.

Artifact visibility was an essential factor and those collected and recorded were specialized tools and therefore diagnostic. There were a total of six projectile points recovered and four of those were at the top of buttes. These included three identifiable points, an Oxbow point (c. 3000-5000 BP), a Besant point (c. 1500 BP) and a Late Plains Side-notched point (c. 1000 BP). The fourth was a rhyolite spear point that had been recycled and a new cutting edge added. These particular instances qualify under the definition of non-site since they were not associated with any permanent fixture that would ally them to a specific locale.

The site types, consisting of immovable material, were likely to be cairns, ceremonial sites or graves. The ubiquitous tipi rings, while rare, were observed atop some buttes. Cairns, of varying sizes, were the most common site type followed closely by burials. Indeed, the burial of *Natoos Inniipiiwa*, atop a knoll, actually had been the locus of recent ceremonies with offerings

of tobacco and prayer flags present. One other feature was a small pile of rocks at the head of the grave that had been deliberately built up by recent visitors. The practice of surface interment coincident with cairns may contain some evidence as to the nature of isolated cairns, that they in effect become the grave markers when all organic evidence disappears.

The Plains

The prairie by and large is the biggest tract of land surveyed and it is also the physiographic zone that receives the greatest impact since farming, road making and house building are typical activities related to it. Current agricultural practices have placed 45% of Peigan land under cultivation and an additional 40% is pasture land. The remaining percentage is utilized in direct occupation and its related infrastructure, the largest cluster being the town of Brocket and the highways, roads and pipelines that criss-cross the landscape.

The sampling strategy consisted of test pit sampling and intensive surface reconnaissance in disturbed and undisturbed prairie conditions. The test pit sampling was conducted in both environments to compare directly the two populations of test pits. The almost homogeneous conditions that prevail on the plains allow this technique to be applied and compared to other sampling methods (eg. intensive surface collecting). The dimensions of the test pits were small and shallow (25x25x10 cm) and were excavated with a shovel and a trowel every fifty (50) paces. The results were inconclusive. Although several transects were delineated and sampled, lithic debitage was discovered, it was as likely to be from the surface as below it. Many site types, like stone circles, would be too large to be discovered in a test pit and any disturbance would obliterate all traces of them. As well, in the cultivated lands artifacts can be buried easily in preparing the land for crop seeding.

The decision to include intensive surface reconnaissance as an alternate strategy was based on two reasons. Firstly, in a geologic context the time of human occupation coincides with an ablation cycle, hence surface visibility of these remains is often excellent. Secondly, other investigators (Alexander, 1983; Nance and Ball, 1986) have indicated that test pit sampling should be considered cautiously as a means of discovering sites, or, as in this case, artifacts. Determining candidate locations for survey often consisted of employing remote sensing methods, especially air photographs, followed by ground truthing. This was the most successful procedure and many of the sites were anticipated based on qualities like proximity to water ways, or prominent geologic landforms and erosional surfaces.

Two extensive campsites, several minor clusters and individual stone circles, cairns, artifacts (unidentifiable tools and projectile points), debitage and many contemporary ritual sites were discovered by this method. It was the most suitable means for site and non-site discovery, in fact site visibility often obscures their antiquity. This is especially so with some cairns where the only distinguishing trait to determine age is the presence and extent of lichen cover, since these only grow on undisturbed surfaces. Likewise the lithic artifacts can only be given approximate ages, based on point style since their discovery in blowouts was not associated with any other indicators.

The River Valleys

The immediate vicinity of the Oldman River is characterized by a steep-walled valley with several terrace systems deposited during increased alluviation in early Holocene times (Shetson, 1981). The modern river supports an extensive riparian forest dominated by cottonwoods (*Populus deltoides*), and occasional stands of aspen (*P. tremuloides*) and white spruce (*Picea glauca*). Draining into the Oldman River are several major, albeit

ephemeral, streams and even far from the main valley they support luxurious stands of cottonwoods, aspens and willow trees (*Salix* spp.). Crowlodge Creek, Beaver Creek and Ghost Creek are the major tributaries and these in turn contain smaller side creeks.

The river valley is indeed an oasis in this arid land and it supports a tangle of fruit-bearing shrubs and edible tubers. It was hardly surprising to find an abundance of cultural remains since the northern plains settlement pattern tended to favour near- or in-valley encampments. Many sites were documented during the course of the Weasel Valley Water Use Study (Reeves, 1982) contracted by the Peigan Nation to assess the impact of a water impoundment. Contributing to extant documentation being one objective this research concentrated on the tributary streams and pursued a non-intrusive, vertical survey. The cyclical flooding and drying episodes create particular fluvial patterns that meander across and down the valley. The resulting beach and cutbank pattern makes it ideal for finding deeply buried sites, like the bison kills discovered in Scott's Coulee.

The remainder of this appendix contains the records of the sites discovered during the course of this thesis research and of the artifacts collected when applying the non-site approach. This list should not be considered exhaustive since that would be beyond the scope of even the most ambitious research design. Peigan archaeology should be considered an ongoing investigation.

PEIGAN ARCHAEOLOGICAL SURVEY PROJECT

Date: May 16, 1990

Borden No. DjPj-14

Site Type: Historic Burial

Legal Description: 49° 32' N; 113° 40' W4M

Elevation: 3800 ' asl

Local Environment: Prairie Upland

Vegetation dominated by mixed grasses, but the depressions of each grave have luxurious growth of tall grasses.

Local Physiography: Prominent butte east of Brocket

Knoll rises about 150 feet above surrounding prairie. Exposed ledges of bedrock along edges and the top is covered by thin veneer of glacial till.

Site Description: Exposed to prevailing winds (W-SW).

Burials are on the western extremity of butte and are aligned facing northwest. They run parallel to each other and are closely spaced.

Material Recovered/Observed:

Slats of heavily weathered lumber (1x6) cover the graves. Head board also of milled lumber. Grave goods present include historic ceramic lid used as a bowl. One red glass bead inside bowl.

Comments:

First burial has five long boards (210 cm) run the length of the grave.

Second burial slightly smaller and only two boards along its length.

Third burial is smallest and measures 110 cm in length. The shallow depression is overgrown with thick grass.

PEIGAN ARCHAEOLOGICAL SURVEY PROJECT

Date: May 16, 1990

Borden No. DjPj-14

Site Type: Cairn

Legal Description: 49° 32' N; 113° 39' 30" W4M

Elevation: 3800' asl

Local Environment: Prairie Upland

Vegetation dominated by mixed grasses, but the occasional flower is found among the grasses.

Local Physiography: Prominent butte east of Brocket

Knoll rises about 150 feet above surrounding prairie. Exposed ledges of bedrock along edges and the top is covered by thin veneer of glacial till.

Site Description: Exposed to prevailing winds (W-SW).

Vegetation is sparse and mineral soil is clearly visible. Soil is dark brown and has a high clay content, there are many thumb sized pebbles in soil.

Material Recovered/Observed: Cluster of 30 cobbles in a pile.

Lichen growth is not uniform, some rocks are covered with them and others not. Minor lichen growth on exposed sides.

Comments:

Cairn is located on the eastern edge of the butte. The view directly south is Chief Mountain and directly north is the prominent peak at the eastern edge of the Porcupine Hills. Two test pits (25x25 cm) were excavated, nothing recovered. First Pit was 100 cm south of cairn, the other was 100 cm east of cairn.

PEIGAN ARCHAEOLOGICAL SURVEY PROJECT

Date: May 22, 1990

Borden No. DkPk-15

Site Type: Cultural Artifact

Legal Description: 49° 40' N; 113° 45' W4M

Elevation: 4300 ' asl

Local Environment: Prairie Upland

Vegetation dominated by mixed Graminae spp.
Limber pine (*Pinus flexilis*) on outcrops of bedrock.

Local Physiography: Prominent butte on NW corner of Peigan

Cliff forming bedrock outcrops along south and eastern edges.
Gently rolling topography on top.
Thin veneer of glacial till caps this butte.

Site Description: Interface of cliff-forming sandstone and till.

Well rounded, water transported pebbles strewn along edge.
Sandstone disintegrating and several slabs have come loose.

Material Recovered/Observed: Projectile Point

Milky quartz crystal
Besant style point (c. 1500BP)

Comments:

Rough grained lithic used for construction. Tip is missing.

PEIGAN ARCHAEOLOGICAL SURVEY PROJECT

Date: June 15, 1990

Borden No. DjPj-10

Site Type: Bison Kill Site (Scott's Coulee)

Legal Description: 49° 33' 40"; 113° 38' W4M

Elevation: 3500 ' asl

Local Environment: Prairie Coulee

Local channel incised deeply into prairie, above tree line.
Vegetation dominated by dense, low-growing shrubs.
Isolated stands of *Salix* sp., *Prunus virginiana*

Local Physiography: Ephemeral stream

Moderate slope towards SE.
High land divides Waterton River from Oldman.
Drainage is into Crowlodge Creek.

Site Description: Natural trap ambush

Two well-developed terrace levels evident in coulee.
Dry channels allow easy access to inspect cut banks.
Meandering stream channel cuts deeply into matrix.

Material Recovered/Observed: Lithic scatter/animal remains

Debitage from lithic reduction.
Flakes consist of smokey-grey chalcedony
Faunal assemblage consists of Bison.

Comments:

Recovered some lithic material, however it was the bone that was present in abundance. Nothing was collected but two layers of bone are clearly evident. First layer is at 60-70 cm and second at 135 cm below surface. Also, many bone fragments in actual stream bed.

PEIGAN ARCHAEOLOGICAL SURVEY PROJECT

Date: June 22, 1990

Borden No. DjPj-11

Site Type: Cairn

Legal Description: 49° 35' 30" N; 113° 32' 30" W4M

Elevation: 3600 ' asl

Local Environment: Undisturbed prairie

Prairie vegetation dominates, variety of forbs present.
Slightly grazed by livestock.

Local Physiography: Rolling terrain

Hummocky moraine consisting of gently rolling knolls.
Ponding common throughout stranded drainage.

Site Description: Knoll top

Good view of surrounding terrain not afforded to dales.
Open ridge

Material Recovered/Observed: Cluster of stones

Cluster of a dozen stones, deeply buried.
Cobbles measure 15 -30 cm and are covered in lichen.

Comments:

This was the highest knoll in the area and it had a good view
of Chief Mountain.

PEIGAN ARCHAEOLOGICAL SURVEY PROJECT

Date: June 26, 1990

Borden No. DjPj-12

Site Type: Cairns

Legal Description: 49° 37' N; 113° 37' W4M

Elevation: 3350 ' asl

Local Environment: Prairie Upland

Vegetation dominated by Graminae spp.
Moderately grazed by livestock

Local Physiography: Rolling topography

Local drainage consists of area between two coulees.
Several steep coulees drain E-W and one large ravine drains
toward the NE.

Site Description: Ridge top

Good view to west, land rises to the south.
Oldman River Valley in proximity to north.
Exposed to prevailing winds.

Material Recovered/Observed: Lithic

One tool, heavy lichen growth on it. White chert.
Large purple quartz core with flake scars.
Several piles of stone.

Comments:

The largest cairn had 28 stones, heavily lichenated, ranging in size from 10-28 cm. Smaller cairns had large stone cobbles and slabs, fewer than six stones. All partially buried. Could be markers for the Old North Trail.

PEIGAN ARCHAEOLOGICAL SURVEY PROJECT

Date: July 4, 1990

Borden No. DjPj-13

Site Type: Historic Burial

Legal Description: 49° 38' N; 113° 36' W4M

Elevation: 3650 ' asl

Local Environment: Open Prairie

Dominant vegetation is Graminae spp., with many low shrubs present.

Local Physiography: Ground moraine

Rolling topography results from till deposits.
Site located on southern edge of Old Man River valley.

Site Description: Grave located at summit of knoll

Large circular pit (3 m) in diameter and 50 cm deep.
Several slabs of weathered wood are strewn about
Exposed to prevailing winds, good view all around.

Material Recovered/Observed:

Left intact, nothing removed.
Evidence of ceremonialism is indicated by prayer flags.
Offerings of food and tobacco also present.

Comments:

This burial turned out to be the grave of Natoos Inniipiiwa (Brings Down the Sun) and is considered a powerful spot as many people arrive to leave offerings and to say prayers. This particularly powerful medicine man is still regarded as a beneficial spirit.

PEIGAN ARCHAEOLOGICAL SURVEY PROJECT

Date: July 5, 1990

Borden No. DjPk-82

Site Type: Campsite

Legal Description: 49° 40' N; 113° 41' W4M

Elevation: 3500 ' asl

Local Environment: Open Prairie

Vegetation is sparse and exposed to prevailing winds.
Vegetation dominated by Graminae spp.
Well-drained soils, heavily grazed by livestock.

Local Physiography: Extremely level

Olsen Creek valley flows south from the Porcupine Hills into the Old Man River.
Many of the side coulees are truncated as the stream cuts into the till.

Site Description: Multiple Elements

Site runs parallel to Olsen Creek along its eastern edge.

Material Recovered/Observed:

Encountered 5 cairns, each at the top of a coulee.
Also counted 6 stone circles (tipi rings).
Also counted 2 stone alignments.

Comments:

The stone circles vary in diameter between 5 - 8 m. The stones are deeply buried and heavily lichenated on exposed surfaces.

PEIGAN ARCHAEOLOGICAL SURVEY PROJECT

Date: July 9, 1990

Borden No. DjPk-83

Site Type: Cairns

Legal Description: 49° 31' 30" N; 113° 47' W4M

Elevation: 3900 ' asl

Local Environment: Prairie Upland

Native vegetation is dominated by Graminae spp.
Moderate grazing by livestock, well-drained soils.

Local Physiography: Large butte

Along the SW edge of reserve is a butte oriented E - W.
At eastern edge butte drops away abruptly to town of Brocket.
Rolling topography is present at the top of butte.

Site Description: The site is located at eastern edge of butte.

There is a panoramic view of the prairie to the east.
Chief Mountain clearly visible to the south.

Material Recovered/Observed: Cairns

Three cairns observed, all piled high with stones.
one tipi ring (stone circle) measured 5 m in diameter.

Comments:

The cairn at the highest point has the largest accumulation of cobbles and is the most complex. Two smaller cairns also have more than 30 cobbles.

PEIGAN ARCHAEOLOGICAL SURVEY PROJECT

Date: July 11, 1990

Borden No. DkPI-5

Site Type: Cultural Artifacts

Legal Description: 49° 43' N; 113° 59' W4M

Elevation: 5500 ' asl

Local Environment: Forested Upland

Elevation is high enough to support forest.
Heavily forested, dominated by evergreens.
Disturbed areas have heavy shrub growth.

Local Physiography: Porcupine Hills

Steep walled valleys lead to top of the hills.
The valleys open toward the south.
Soils comprised of decayed sandstone bedrock.

Site Description: Surface collection

The forest is broken in places by roads and trails.
Steep climb, but relatively flat on top.
Vegetation is relatively sparse in this region.

Material Recovered/Observed: Lithic artifacts

Recovered two projectile points and numerous flakes.
Point #1: Unidentified base, resharpened tip; rhyolite.
Point #2: Oxbow style (c. 3000-5000 BP); chalcedony.

Comments:

This was my first foray into the Porcupine Hills and the area I surveyed was on the southern extremity.

PEIGAN ARCHAEOLOGICAL SURVEY PROJECT

Date: July 29, 1990

Borden No. DkPk-16

Site Type: Cairn

Legal Description: 49° 40' 10" N; 113° 45' 30" W4M.

Elevation: 4550 ' asl

Local Environment: Prairie Upland

Vegetation dominated by Graminae spp.
Moderately grazed by livestock.
Well-drained soils, very dry conditions.

Local Physiography: Broad elevated

Slightly undulating topography atop butte.
Butte is on southern extreme of Porcupine Hills and drops sharply to the prairie.

Site Description: At crest of butte.

Good view of Chief Mountain to the south.
Prominent butte affords panoramic view in all directions.

Material Recovered/Observed: Lithic artifact, cairn

Cairn has 15 cobbles, deeply buried and heavily lichenated.
Recovered 1 point, a Late Plains side-notched arrow tip.

Comments:

The arrow tip and point are not associated, it was coincidental that they were found in the same area. The point was a few meters west of the cairn.

PEIGAN ARCHAEOLOGICAL SURVEY PROJECT

Date: July 30, 1990

Borden No. DkPj-39

Site Type: Campsite

Legal Description: 49° 41' 50" N; 113° 30' W4M

Elevation: 3200 ' asl

Local Environment: Alluvial terrace

Vegetation dominated by Graminae spp. Also many cactus plants surround the site.
Heavily grazed by cattle.

Local Physiography: Extremely level.

Matrix is composed of large gravels deposited in early Holocene alluviation episodes. This terraces drops sharply south and down to the river and rises slightly to the north.

Site Description: Open grassland

Extremely sparse vegetation is immediately adjacent to a Luxuriant growth of riparian vegetation.
Region exposed to prevailing winds.

Material Recovered/Observed: Cairn, tipi rings.

Identified 12 distinct stone circles ranging from 4.2 - 5.5 m.
Two small circles about 2 m in diameter.
One cairns with 15 stones.

Comments:

This site is very near Head-Smashed-In Buffalo Jump and is within easy walking distance. Its proximity to the river which has many berry producing trees makes it a good collecting spot.

PEIGAN ARCHAEOLOGICAL SURVEY PROJECT

Date: July 30, 1990

Site Type: Lithic Artifact

Legal Description: 49° 41' 54" N; 113° 32' W4M

Elevation: 3300 ' asl

Local Environment: Open Prairie

Vegetation dominated by Graminae spp. Also many cactus plants surround the site.
Heavily grazed by cattle.

Local Physiography: Rolling prairie

A thin veneer of glacial till overlies sandstone bedrock.
Deep ravine drains south to Oldman River.

Site Description: Grassland

Exposed to prevailing winds.
Some evidence of cattle grazing.

Material Recovered/Observed: Projectile Point

Unidentified side-notched point, possible Besant (c. 1500 BP).
Lithic material identified as Avon Chert
Size indicates use on spear thrower.

Comments: Isolated find.

Point was found immediately south and west of Head-Smashed-In. Several large flakes and debitage indicates use as lithic work station.

PEIGAN ARCHAEOLOGICAL SURVEY PROJECT

Date: August 5, 1990

Site Type: Lithic artifact

Legal Description: 49° 32' 50" N; 113° 36' W4M

Elevation: 3500 ' asl

Local Environment: Disturbed Prairie

Prairie grasses dominate with minor variety of forbs.
Water table is high and fills this artificial water hole.
Heavily grazed by domestic animals

Local Physiography: Open Prairie

Extremely level ground in southeast community pasture.
In close proximity to Spring Ridge in southern extreme
of Scott's Coulee.

Site Description: Prairie Dugout

Artifact recovered from back dirt piled on the side of
the dugout.

Material Recovered/Observed:

Unidentified projectile point.
Lithic material identified as chalcedony.

Comments: The point was badly broken and only a portion of the stem
and point were recovered. It was stemmed, possibly side-notched

PEIGAN ARCHAEOLOGICAL SURVEY PROJECT

Date: August 8, 1990

Site Type: Isolated Lithic Artifact

Legal Description: 49° 38' N; 113° 36' 15" W4M

Elevation: 3500 ' asl

Local Environment: Valley edge

Dominant vegetation is Graminae spp.
Site located on southern edge of Oldman River valley,
at the prairie level.

Local Physiography: Ground Moraine

Coulees heavily etched into prairie, aligned east/west.
Site located at prairie level between two swales.

Site Description: Blowout

Natural prairie has been disturbed by wind erosion.
Area heavily grazed by livestock.

Material Recovered/Observed: Projectile Point

Unidentified point. Only stem and section of blade is present.
Lithic material identified as Knife River Flint.
Stem is common in palaeoIndian period.

Comments:

APPENDIX B

INDIAN ACT, R.S.C., 1985, c.I-5

Reserves

18. (1) Subject to this Act, reserves are held by her Majesty for the use and benefit of the respective bands for which they were set apart, and subject to this Act and to the terms of any treaty or surrender, the Governor in Council may determine whether any purpose for which lands in a reserve are used or are to be used is for the use and benefit of the band.

(2) The Minister may authorize the use of lands in a reserve for the purpose of Indian schools, the administration of Indian affairs, Indian burial grounds, Indian health projects or, with the consent of the council of the band, for any other purpose for the general welfare of the band, and may take any lands in a reserve required for their purposes, but where an individual Indian, immediately prior to the taking, was entitled to the possession of those lands, compensation for that use shall be paid to the Indian, in such amount as may be agreed between the Indian and the Minister, or, failing agreement, as may be determined in such manner as the Minister may direct. R.S., c. I-6, s. 18.

18.1 A member of a band who resides on the reserve of the band may reside there with his dependent children or any children of whom the member has custody. R.S., 1985, c. 32 (1st Supp.), s. 8.

19. The Minister may

(a) authorize surveys of reserves and the preparation of plans and reports with respect thereto;

(b) divide the whole or any portion of a reserve into lots or other subdivisions; and

(c) determine the location and direct the construction of roads in a reserve. R.S., c. I-6, s.19.

Possession of Lands in Reserves

20. (1) No Indian is lawfully in possession of land in a reserve unless, with the approval of the Minister, possession of the land has been allotted to him by the council of the band.

(2) The Minister may issue to an Indian who is lawfully in possession of land in a reserve a certificate, to be called a Certificate of Possession, as evidence of his right to possession of the land described therein.

(3) For the purposes of this Act, any person who, on September 4, 1951, held a valid and subsisting Location Ticket issued under *The Indian Act, 1880*, or any statute relating to the same subject-matter, shall be deemed to be lawfully in

possession of the land to which the location ticket relates and to hold a Certificate of Possession with respect thereto.

(4) Where possession of land in a reserve has been allotted to an Indian by the council of the band, the Minister may, in his discretion, withhold his approval and may authorize the Indian to occupy the land temporarily and may prescribe the conditions as to use and settlement that are to be fulfilled by the Indian before the Minister approves of the allotment.

(5) Where the Minister withholds approval pursuant to subsection (4), he shall issue a Certificate of Occupation to the Indian, and the Certificate entitles the Indian, or those claiming possession by devise or descent, to occupy the land in respect of which it is issued for a period of two years from the date thereof.

(6) The Minister may extend the term of a Certificate of Occupation for a further period not exceeding two years, and may, at the expiration of any period during which a Certificate of Occupation is in force

(a) approve the allotment by the council of the band and issue a Certificate of Possession if in his opinion the conditions as to use and settlement have been fulfilled; or

(b) refuse approval of the allotment by the council of the band and declare the land in respect of which the Certificate of Occupation was issued to be available for re-allotment by the council of the band. R.S., c. I-6, s. 20

Register

21. There shall be kept in the Department a register, to be known as the Reserve Land Register, in which shall be entered particulars relating to Certificates of Possession and Certificates of Occupation and other transactions respecting lands in a reserve. R.S., c. I-6, s. 21.

Improvements on Lands

22. Where an Indian who is in possession of lands at the time they are included in a reserve made permanent improvements thereon before that time, he shall be deemed to be in lawful possession of those lands at the time they are included. R.S., c. I-6, s. 22.

Compensation for Improvements

23. An Indian who is lawfully removed from lands in a reserve on which he has made permanent improvements may, if the Minister so directs, be paid compensation in respect thereof in an amount to be determined by the Minister, either from the person who goes into possession of the lands or from the funds of the band, at the discretion of the Minister. R.S., c. I-6, s. 23.

Transfer of Possession

24. An Indian who is lawfully in possession of lands in a reserve may transfer to the band or another member of the band the right to possession of the land, but

no transfer or agreement for the transfer of the right to possession of lands in a reserve is effective until it is approved by the Minister. R.S., c. I-6, s. 24.

Indian Ceasing to Reside on Reserve

25. (1) An Indian who ceases to be entitled to reside on a reserve may, within six months or such further period as the Minister may direct, transfer to the band or another member of the band the right to possession of any lands in the reserve of which he was lawfully in possession.

(2) Where an Indian does not dispose of his right of possession in accordance with subsection (1), the right to possession of the land reverts to the band, subject to the payment to the Indian who was lawfully in possession of the land, from the funds of the band, of such compensation for permanent improvements as the Minister may determine. R.S., c. I-6, s. 25.

Correction of Certificate or Location Tickets

26. Whenever a Certificate of Possession or Occupation or a Location Ticket issued under *The Indian Act, 1880*, or any statute relating to the same subject-matter was, in the opinion of the Minister, issued to or in the name of the wrong person, through mistake, or contains any clerical error or misnomer or wrong description of any material fact therein, the Minister may cancel the Certificate of Location Ticket and issue a corrected Certificate in lieu thereof. R.S., c. I-6, s. 26.

Cancellation of Certificates or Location Tickets

27. The Minister may, with the consent of the holder thereof, cancel any Certificate of Possession or Occupation or Location Ticket referred to in section 26, and may cancel any Certificate of Possession or Occupation or Location Ticket that in his opinion was issued through fraud or in error. R.S., c. I-6, s. 27.

Grants, etc., of Reserve Lands Void

28. (1) Subject to subsection (2), any deed, lease, contract, instrument, document or agreement of any kind, whether written or oral, by which a band or a member of a band purports to permit a person other than a member of that band to occupy or use a reserve or to reside or otherwise exercise any rights on a reserve is void.

(2) The Minister may by permit in writing authorize any person for a period not exceeding one year, or with the consent of the council of the band for any longer period, to occupy or use a reserve or to reside or otherwise exercise rights on a reserve. R.S., c. I-6, s. 28.

Exemption from Seizure

29. Reserve lands are not subject to seizure under legal process. R.S., c. I-6, s. 29

Trespass on Reserves

30. A person who trespasses on a reserve is guilty of an offence and liable on summary conviction to a fine not exceeding fifty dollars or to imprisonment for a term not exceeding one month or both. R.S., c. I-6, s. 30.

31. (1) Without prejudice to section 30, where an Indian or a band alleges that persons other than Indians are or have been

(a) unlawfully in occupation or possession of,

(b) claiming adversely the right to occupation or possession of, or

(c) trespassing on

a reserve or part of a reserve, the Attorney General of Canada may exhibit an information in the Federal Court claiming, on behalf of the Indian or band, the relief or remedy sought.

Lands Taken for Public Purposes

35. (1) Where by an Act of Parliament or a provincial legislature Her Majesty in right of a province, a municipal or local authority or a corporation is empowered to take or to use lands or any interest therein without the consent of the Governor in Council and subject to any terms that may be prescribed in relation to lands in a reserve or any interest therein.

(2) Unless the Governor in Council otherwise directs, all matters relating to compulsory taking or using of lands in a reserve under subsection (1) are governed by the statute by which the powers are conferred.

(3) Whenever the Governor in Council has consented to the exercise by a province, a municipal or local authority or a corporation of the powers referred to in subsection (1), the Governor in Council may, in lieu of the province, authority or corporation taking or using the lands without the consent of the owner, authorize a transfer or grant of the lands to the province, authority or corporation, subject to any terms that may be prescribed by the Governor in Council.

(4) Any amount that is agreed on or awarded in respect of the compulsory taking or using of land under this section or that is paid for a transfer or grant of land pursuant to this section shall be paid to the Receiver General for the use and benefit of the band or for the use and benefit of any Indian who is entitled to compensation or payment as a result of the exercise of the powers referred to in subsection (1). R.S., c. I-6, s. 35.

Special Reserves

36. Where lands have been set apart for the use and benefit of a band and legal title thereto is not vested in Her Majesty, this Act applies as though the lands were a reserve within the meaning of this Act. R.S., c. I-6, s. 36.

Surrender and Designations

37. (1) Lands in a reserve shall not be sold nor title to them conveyed until they have been absolutely surrendered to Her Majesty pursuant to subsection 38 (1) by the band for whose use and benefit in common the reserve was set apart.

(2) Except where this Act otherwise provides, lands in a reserve shall not be leased nor an interest in them granted until they have been surrendered to Her Majesty pursuant to subsection 38 (2) by the band for whose use and benefit in common the reserve was set apart. R.S., 1985, c. I-5, s. 37; R.S., 1985, c. 17 (4th Supp.), s. 2.

38. (1) A band may absolutely surrender to Her Majesty, conditionally or unconditionally, all of the rights and interests of the band and its members in all or part of a reserve.

(2) A band may, conditionally or unconditionally, designate, by way of a surrender to Her Majesty that is not absolute, any right or interest of the band and its members in all or part of a reserve, for the purpose of its being leased or a right or interest therein being granted. R.S., 1985, c. I-5, s. 38; R.S., 1985, c. 17 (4th Supp.), s. 2.

39. (1) An absolute surrender or a designation is void unless

(a) it is made to Her Majesty;

(b) it is assented to by a majority of the electors of the band

(i) at a general meeting of the band called by the council of the band,

(ii) at a special meeting of the band called by the Minister for the purpose of considering a proposed absolute surrender or designation, or

(iii) by a referendum as provided in the regulations; and

(c) it is accepted by the Governor in Council.

(2) Where a majority of the electors of a band did not vote at a meeting or referendum called pursuant to subsection (1), the Minister may, if the proposed absolute surrender or designation was assented to by a majority of the electors who did vote, call another meeting by giving thirty days notice thereof or another referendum as provided in the regulations.

(3) Where a meeting is called pursuant to subsection (2) and the proposed absolute surrender or designation is assented to at the meeting or referendum by a majority of the electors voting, the surrender or designation shall be deemed, for the purposes of this section, to have been assented to by a majority of the electors of the band.

(4) The Minister may, at the request of the council of the band or whenever he considers it advisable, order that a vote at any meeting under this section shall be by secret ballot.

(5) Every meeting under this section shall be held in the presence of the superintendent or some other officer of the Department designated by the Minister. R.S., 1985, c. I-5, s. 39; R.S., 1985, c. 17 (4th Supp.), s. 3.

40. A proposed absolute surrender or designation that is assented to by the band in accordance with section 39 shall be certified on oath by the superintendent or other officer who attended the meeting and by the chief or a member of the council of the band, and then submitted to the Governor in Council for acceptance or refusal. R.S., 1985, c. I-5, s. 40; R.S., 1985, c. 17 (4th Supp.), s. 4.

41. An absolute surrender or a designation shall be deemed to confer all rights that are necessary to enable Her Majesty to carry out the terms of the surrender or designation. R.S., 1985, c. I-5, s. 41; R.S., 1985, c. 17 (4th Supp.), s. 4.

Wills

45. (1) Nothing in this act shall be construed to prevent or prohibit an Indian from devising or bequeathing his property by will.

(2) The Minister may accept as a will any written instrument signed by an Indian in which he indicates his wishes or intention with respect to the disposition of his property on his death.

(3) No will executed by an Indian is of any legal force or effect as a disposition of property until the Minister has approved the will or a court has granted probate thereof pursuant to this Act. R.S., c. I-6, s. 45.

Control over Lands

60. (1) The Governor in Council may at the request of the band grant to the band the right to exercise such control and management over lands in the reserve occupied by that band as the Governor in Council considers desirable.

(2) The Governor in Council may at any time withdraw from a band a right conferred on the band under subsection (1). R.S., c. I-6, s. 60.

Powers of the Council

81. (1) The council of a band may make by-laws not consistent with this Act or with any regulation made by the Governor in Council or the Minister, for any or all of the following purposes, namely,

(a) to provide for the health of residents on the reserve and to prevent the spreading of contagious and infectious diseases;

(b) the regulation of traffic;

(c) the observance of law and order;

(d) the prevention of disorderly conduct and nuisances;

- (e) the protection against and prevention of trespass by cattle and other domestic animals, the establishment of pounds, the appointment of pound-keepers, the regulation of their duties and the provision for fees and charges for their services;
- (f) the construction and maintenance of watercourses, roads, bridges, ditches, fences and other local works;
- (g) the dividing of the reserve or a portion thereof into zones and the prohibition of the construction or maintenance of any class of buildings or the carrying on of any class of business, trade or calling in any zone;
- (h) the regulation of the construction, repair and use of buildings, whether owned by the band or by individual members of the band;
- (i) the survey and allotment of reserve lands among the members of the band and the establishment of a register of Certificates of Possession and Certificates of Occupation relating to allotments and the setting apart of reserve lands for common use, if authority therefor has been granted under section 60;
- (j) the destruction and control of noxious weeds;
- (k) the regulation of bee-keeping and poultry raising;
- (l) the construction and regulation of the use of public wells, cisterns, reservoirs and other water supplies;
- (m) the control or prohibition of public games, sports, races, athletic contests and other amusements;
- (n) the regulation of the conduct and activities of hawkers, peddlers or others who enter the reserve to buy, sell or otherwise deal in wares or merchandise;
- (o) the preservation, protection and management of fur-bearing animals, fish and other game on the reserve;
- (p) the removal and punishment of persons trespassing on the reserve or frequenting the reserve for prohibited purposes;
- (p.1) the residence of band members and other persons on the reserve;
- (p.2) to provide for the rights of spouses and children who reside with members of the band on the reserve with respect to any matter in relation to which the council may make by-laws in respect of members of the band;
- (p.3) to authorize the Minister to make payments out of capital or revenue moneys to persons whose names were deleted from the Band list of the band;
- (p.4) to bring subsection 10(3) or 64.1(2) into effect in respect of the band;
- (q) with respect to any matter arising out of or ancillary to the exercise of powers under this section; and

(r) the imposition on summary conviction of a fine not exceeding one thousand dollars or imprisonment for a term not exceeding thirty days, or both, for violation of a by-law made under this section.

(2) Where any by-law of a band is contravened and a conviction entered, in addition to any other remedy and to any penalty imposed by the by-law, the court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may make an order prohibiting the continuation or repetition of the offence by the person convicted.

(3) Where any by-law of a band passed is contravened, in addition to any other remedy and to any penalty imposed by the by-law, such contravention may be restrained by court action at the instance of the band council.

R.S., 1985, c. I-5, s. 81; R.S., 1985, c. 32 (1st Supp.), s. 15.

Trading with Indians

91. (1) No person may, without the written consent of the Minister, acquire title to any of the following property situated on a reserve, namely,

(a) an Indian grave house;

(b) a carved grave pole;

(c) a totem pole;

(d) a carved house post; or

(e) a rock embellished with paintings or carvings.

(2) Subsection (1) does not apply to chattels referred to therein that are manufactured for sale by Indians.

(3) No person shall remove, take away, mutilate, disfigure, deface or destroy and chattel referred to in subsection (1) without the written consent of the Minister.

(4) A person who contravenes this section is guilty of an offence and liable on summary conviction to a fine not exceeding two hundred dollars or to imprisonment for a term not exceeding three months. R.S., cI-6, s. 91.

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