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Past Tents: Temporal Themes and Patterns of Provincial Archaeological Governance in British Columbia and Ontario

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Graduate Program in Anthropology
A thesis submitted in partial fulfillment of the requirements for the degree in Master of Arts
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PAST TENTS: TEMPORAL THEMES AND PATTERNS
OF
PROVINCIAL ARCHAEOLOGICAL GOVERANCE IN
BRITISH COLUMBIA AND ONTARIO

(Spine title: Temporal Themes and Patterns of Archaeological Governance)

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by

Joshua <u>Dent</u>

Graduate Program in Anthropology

A thesis submitted in partial fulfillment
of the requirements for the degree of
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The School of Graduate and Postdoctoral Studies
The University of Western Ontario
London, Ontario, Canada

THE UNIVERSITY OF WESTERN ONTARIO
School of Graduate and Postdoctoral Studies

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The thesis by

Joshua Benjamin <u>Dent</u>

entitled:

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Abstract

Archaeological governance in Canada is a patchwork of provincial jurisdiction. Comparing past and present archaeological legislation, regulation and policy in British Columbia and Ontario, this thesis identifies temporal themes and patterns both common and distinct in the two provinces. Themes of process, performance and balance and the common transition from empirical archaeological values to conceptual valuations of heritage are discussed using a combination of literary review, archival research and interviews. Analysis of the past and present offers insight into the trajectory of heritage governance and the increasing role of descendant communities in managing their own heritage. The role of archaeologists in this new environment, particularly in Ontario, is still nascent however cross-jurisdictional comparison provides a degree of foresight.

Keywords

Acknowledgments

This thesis would not exist without the invaluable contributions of all interview participants. Their first-hand insights into past and present archaeological governance and their willingness to share those insights helped me to only begin to comprehend the depth and complexity of the subject. My supervisor, Dr. Neal Ferris, especially deserves credit for encouraging me to dig deeper into the sub-strata of governments and policies past. Thanks also and always to my wife, Kerry, for keeping me focused and for providing an important, non-archaeological perspective.

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1   Introduction

Working as a field archaeologist in cultural resource management teaches me a great deal, not only in terms of professional skills but personally. Any simultaneous exercise of physical and mental durability, as are often necessary during fieldwork, strips away the protective layers individuals encase themselves in, laying bare a glimpse at something raw beneath. Negotiating with this exposure is often a sense of obligation, of integrity, of wanting to do what is felt to be correct, what is expected.

What is expected of the field archaeologist can originate from a variety of sources: academia, employers, colleagues, descendant communities, ourselves and, as is most often the case in CRM, government. Expectation in this context originates from the coalescence of a public value in and of the past as expressed by their representatives in government. These expectations take a number of different forms: legislation, regulation, policy, and to a certain extent, individual agents. Legislation, enacted by elected bodies and intermittently changing through time, establishes the foundations upon which modern society draws its stability. Regulation, created by bureaucrats the authority for which is delegated by legislation, details the enforceable practicalities of a regulation's corresponding legislation. Policy, responsive and reflexive (or reactive and defensive), is the practical bounds of legislation. Bending, pushing, altering in intensity, policy accommodates the ever-shifting nature of the contemporary in a way stoic legislation cannot. In this dynamic environment are found the agents of policy: the bureaucrats - guiding, responding, failing at times; operating at the nexus of public values and social structure and attempting to reflect each upon the other.

Archaeology's entrée into this maelstrom is a relatively recent occurrence when compared with other more inherent elements such as natural resources and land titles. Though perhaps like natural resources, archaeology's value arises only when the

discipline's potential quantifiable extent is hinted at, particularly given that the further a society progresses through time the more archaeology there is to study as evidenced by recent focus on the recent past (Zimmerman et al. 2010). While particular archaeological resources are finite and subject to destruction, archaeological resources as a research subject are perpetually renewing even to the most recent deposits. Is then archaeology truly the ultimate renewable resource? Or is it simply a perpetual hindrance, constantly underfoot? Accepting that legislation is the expression of public will, the indication seems to be towards the former, at least in the Canadian context. Understanding archaeology's position within Canadian provincial legislation and its satellites, policy and bureaucrat, can shed light on the expectations of the authority-bestowing State towards the field archaeologist.

1.1   What is Heritage? Why is Cultural Resource Management?

To begin to answer these questions within a provincial context is a, if not the, primary objective of this research. I say "to begin", when I should really say "to continue to answer these questions", as they are pervasive within heritage studies literature and cultural resource management discourse. Researchers and theorists have grappled with the nature of heritage and the purpose of cultural resource management probably for as long as these areas have been objects of study.

In this thesis I show that even provincial legislation, foundational to the legal system and requiring operable definitions, nonetheless employs and has employed vague or circuitous representations of what heritage is. Intentional or not this uncertainty filters into related heritage policy and even into the inconsistent definitions of individuals working within the same heritage department. However, it is a mistake to think that this inconsistency is somehow wrong or in need of remedy. Over the course of this thesis I hope to show how the absence of a firm definition of heritage has become an operable

definition in and of itself. In other words, the ability of heritage as expressed in legislation to be construed in multiple ways by multiple people or communities simultaneously has enabled its continued relevance.

Paralleling the amorphous qualities of heritage are the seemingly physically bound properties of cultural resource management. Cultural resource management (CRM) as used in this thesis refers to the coordination between government and culturally-affiliated disciplines, in particular archaeology, in administering the remnants of the past. These remnants have been traditionally considered tangible, however, as will be discussed, the consideration of intangible cultural resources as drawn from conceptual interpretations of heritage is of growing concern. Drawing authority from intellectual and academic disciplines and invoking obligation from interpretation of a universal heritage value, cultural resource practitioners operate in a liminal state between translating and evaluating empirical and conceptual notions of value and significance from and onto sites and objects in the physical landscape. Provincial governance oversees this operation from an imperfect understanding that varying notions and values of these physical elements can result in contested, political engagements between individuals and/or communities.

1.2   Thesis Structure and Justification

The physical and temporal parameters of a Master's thesis played a large role in defining the limits of this research. Ideally all Canadian provincial jurisdictions could be examined within a single project providing broad comparative context, however the consequences of undertaking such expansive research would be the investment of several more years and several hundred more pages. As such, my research is limited to the provincial contexts of British Columbia and Ontario. Why two provinces and why these two specifically? Answering these projected questions is accomplished in two parts; the first relies on the benefits of comparative work when discussing cultural heritage legislation

and policy; the second on my familiarity with British Columbia and recent relocation to Ontario.

Analysis of legislation and policy from an archaeological perspective is not something new. The incorporation of archaeological values and expertise into a legislative framework has resulted in many archaeologists, not surprisingly, wanting to understand the context of this new operational environment. Much of this research uses comparative analyses to highlight their findings. Laurajane Smith's (2004) seminal work on the theory and politics behind cultural resource management compared Australian and American heritage environments; Brian Spurling's (1986) doctoral dissertation compared the heritage policies of Western Canadian provinces; and there are occasional papers addressing the varied nature of CRM administration across Canada (Pokotylo and Mason 2010 most recently). The inconsistency with which heritage resources are administered, even within the same country, provides a plethora of jurisdictional and comparative contexts. Considering a lone example would unnecessarily constrain me and limit the broader applicability of my research. To this end the decision to work from a comparative approach was not a difficult one. However, the question of why the Ontario and British Columbia provincial contexts still remains.

The answers to this question are primarily practical. Accessibility, applicability and uniqueness all played roles in defining the research subjects. Accessibility arose from two sources corresponding to the two provinces. In British Columbia, my previous experience working as a field archaeologist for three years provided me with valuable insight into the processes of heritage administration in that province. In Ontario, working out of the University of Western Ontario provided me with an invaluable network of contacts that had been unavailable to previous western Canadian research (Spurling 1986). The combination of knowledge and network opened many doors that would have otherwise remained closed.

Knowledge is fortunately easier to acquire independently than a network of contacts is and my experiences working and living in Ontario contributed to an understanding of the applicability of comparing Ontario and British Columbia. Moving between provinces I became aware of a general perception of Ontario archaeologists towards British Columbia as being "further ahead" with regards to archaeological governance. Whether Ontario and British Columbia share a common progression in heritage administration is discussed in Ch. 7, however the lack of previous comparative research between these provinces made it an interesting area to study. The "uniqueness" of this research lies in the subjects being compared rather than in using comparison as a methodology in studying heritage administration. Spurling (1986) qualified his exclusion of Ontario in his comparative study as a result of regional and pragmatic factors. The regional factors included the political inter-relationships of the provinces of British Columbia, Alberta, Saskatchewan and Manitoba as separate from those of eastern Canada and the incorporation of western Canada as a valid research area by the Western Canadian Archaeological Council in 1960 (Spurling 1986: 15). The pragmatic factor was Spurling's ability to access large quantities of unpublished documents from western Canada for which the "chances to do so decline at the Ontario and international borders…" (1986: 16).

Overcoming this pragmatic factor which Spurling avoided, and establishing that despite regional variation there exist fundamental consistencies between heritage management in the two provinces, enabled me to undertake a comparative study. The most evident of these consistencies revolves around the practice of archaeological resource management, a thread shown to enable even national comparisons (Cleere 1989; Smith 2004). Important to note here is the deployment of various terms referring to the subject matter in this thesis. Cultural resource management, archaeological resource management and heritage resource management are used relatively interchangeably. Cultural resource

management and heritage resource management represent significantly more than simply that which is archaeological, particularly buildings of historic value and more recently, intangible resources. The use of these terms in the archaeological context of this thesis is meant to highlight the archaeology-centric nature of Canadian cultural resource management.

Field archaeologists operate within the discipline of cultural resource management (CRM). Put simply CRM is the deployment of effort, wealth and power towards the protection, preservation and consideration of the cultural past. Explicit in the term CRM is that this past retains inherent value as a resource. The extent of this value is subject to ongoing debate and is represented in oft-changing definitions within the legislation and policy concerned with this evaluation. The historical origins of CRM internationally are well represented elsewhere (Kristiansen 1989; Schiffer and Gumerman 1977) and as such this thesis does not explicitly address these origins, concerning itself instead with the emergence of CRM-related policy and legislation within the Ontario and British Columbia contexts.

That being said, it is important to note that the historical emergence of provincial heritage protection is contemporaneous with increased heritage legislation in other parts of the world. As the 20th century progressed the global pattern appears to be one of increasing cultural heritage protection evidenced in the increasing number of archaeological and heritage-related international agreements (see Smith 2006; Hinshelwood 2010 for a detailed list of these agreements). Provincial antiquities legislation undoubtedly emerged not only as a result of internal pressures from the domestic archaeological community, but also from this international environment acknowledging the importance of preserving and benefiting from the remains of the human past. Similarities in the evolution of legislation (Ch. 3.1), of policy (Ch. 3.2) and of the role of archaeologists in the governance of archaeological resources (Ch. 3.3) in both provinces allude to the broader

temporal themes and patterns at play during this formative period. Understanding the *heritage* of heritage governance provides insight into its contemporary environment in British Columbia (Ch. 4.1) and Ontario (Ch. 4.2). Temporal consistencies come into sharp relief via this exercise as themes of bureaucratic process, performance, and stakeholder balance all assert their prevalence in the literature and in interviews (Ch. 5). Finally, patterns in how *heritage* has been operationally defined (Ch. 6) and similar successive governance initiatives in both provinces hint at the possibility of a common progression as research findings are synthetically considered (Ch. 7). The aim of these considerations - employing literature reviews, primary document surveys and interviews - is to begin to grasp the circumstances of archaeological expectations within CRM in the environments I am familiar with.

As research unfolded the role of archaeology as a discipline in heritage governance was realized as diminishing, both as a consequence of better understanding the processes of governance, the subjugation of archaeological expertise and its replacement with bureaucratic expertise, but also as a historic trend with practical archaeological control over CRM diminishing through time. With *heritage* having gradually ascended to prominence as the concept of choice when referring to the protection of the past, archaeological or otherwise, archaeology's role appears now to be one of a means to that heritage end rather than an inherently valuable end in itself. The consequences of this transition must be a reflection on the identities and roles of archaeologists within this increasingly non-archaeology-centric context. The difficulty with this exercise is that it threatens to strip away one of those few protective layers left, that of an inherent self-worth to *being* an archaeologist and *doing* archaeology.

2   Methodology

Being a heritage legislation researcher in British Columbia and Ontario uncovered a substantial amount of information concerning the origins and management of the various acts and policies that have shaped heritage statute formation in these two provinces. Interviews, an extensive literature review and a substantial primary document study all contributed valuable data to this thesis. The following sections will examine each of the data collection methodologies employed during research and include occasional distinctions between research conducted in British Columbia and Ontario. These distinctions are important because what elicited data in one province did not necessarily do so in the other.

2.1   Interviews

Given the relatively recent and ongoing changes to heritage policy in British Columbia and Ontario, I decided that interviews should supplement the document research that would frame the majority of data collected for this thesis. A total of seven interviews were conducted (three from British Columbia, four from Ontario) in-person and over the phone. Interviews were modeled after Bernard's (2006) informal interviews. Participants were encouraged to speak about their experiences with archaeological legislation and management. In every case, participants actively engaged in discussion requiring little in the way of external motivation. A brief list of themes and questions were brought into the interview however these were only explicitly addressed if they did not emerge during conversation. These themes were available to the interviewees via the information/consent form (Appendix 2) they received prior to their participation. The consent section of the form was fairly standardized with one exception: participants were given the opportunity to consent to their participation both before and after the interview. This feature was included to provide interviewee's with more control over the outcome of

the conversation. The potentially sensitive nature of policy and legislation discussion with individuals currently or previously employed by enacting governments, I felt, required mechanisms ensuring their comfort and the option of anonymity. While the nature of this dialogue had the potential to be quite sensitive, participants were enthusiastic and eloquent in their contributions, conditions for which I am very grateful. In recognizing these contributions in this thesis each anonymous participant was assigned a code primarily reflecting their provincial expertise in addition to a number of other confidential criteria (example: ON 315, Ontario), while each participant wishing to be openly associated with their contribution is identified by name (example: Bill Huot, British Columbia). When these names and codes appear in the text of the thesis they source the preceding information with a corresponding participant.

2.1.1   Interviews: British Columbia

The interviews conducted in British Columbia were somewhat of a disappointment in terms of number of participants but a massive benefit qualitatively. As specified above, three interviews were conducted in the context of British Columbian heritage legislation and management. Fortunately the interviews were always regarded as supplementary to the document review and indeed this research was designed with the possibility of having no interviews inform the findings. The quality of the feedback the participants provided more than compensated for the lack of numbers, since the informants all had a combination of expertise and first hand involvement in the structure of contemporary heritage legislation and policy in the province.

2.1.2   Interviews: Ontario

Four interviews were conducted with Ontario informants. Correspondence and interview methodologies remained consistent with those employed in British Columbia. The element which encouraged more Ontario participation was likely the familiarity of

participants with the faculty of the University of Western Ontario. Provincial heritage jurisdiction appears to encourage fairly tight-knit (insulated, exclusive) communities in each province. Having an "in" with the community in Ontario almost certainly encouraged participation, surmounting obstacles that would have otherwise limited participation as was likely the case in British Columbia. Future research in this area should focus on fostering these relationships as their value to projects will quickly become apparent.

2.2   Literature Review

The related literature on the subject of heritage legislation and policy derives from several forms of review. The first, British Columbia and Ontario accounts of the formation and management of archaeological-related legislation, remain largely introverted with limited reference to other jurisdictions (for exceptions, see Pokotylo and Mason 2010; Spurling 1986). There are also a few articles that consider legislation in the country as a whole, most notably Pokotylo and Mason (2010). The third form of review revolves around what could be considered more theoretical or policy-oriented analyses. These works are widely applicable, drawing from a range of themes and disciplines to make general statements which are then studied in the context of specific case studies and regions. Policy studies, philosophy and political science are just a few examples of the disciplines whose theories and methodologies are adapted into anthropological and archaeological contexts, creating a genre of multidisciplinary heritage-focused work. Examples of this genre include *Archaeology as Political Action* (2008) by Randall McGuire and *Archaeological Theory and the Politics of Cultural Heritage* (2004) by Laurajane Smith. Finally there are works within policy studies and political science that are not adapted to the heritage context (e.g., Aucoin 1995; Borins 2002; Broadbent and Laughlin 2002; Christensen and Laegreid 2011; and Pollitt 2008). These analyses must be drawn into anthropological and archaeological contexts in a similar way to Smith's

and Spurling's methods, applying broader concepts to specific examples, in this thesis emerging from heritage legislation and policies.

2.2.1   British Columbia Literature

Contemporary analysis and criticism of heritage legislation and government policy in British Columbia continues a fairly well-established tradition in the province. The earliest example found in the course of this research was Charles Borden's unpublished work *British Columbia's Archaeological Sites Protection Act and the Continuing Depletion of the Province's Archaeology Resources* (1965). Sporadic criticism appears in the minutes of the Archaeological Sites Advisory Board (ASAB), and the Provincial Heritage Advisory Board (PHAB), whose meetings appeared to serve as a sounding board for many of the individuals capable of critiquing existing legislation. Perhaps consequently, early published criticisms appear to have been relatively limited. This trend ended with the abolition of the PHAB in the 1980s. No longer able to bring their concerns directly to government, archaeologists eventually resorted to publishing their concerns in various journals (e.g., Burley 1994; Russell 1981; Spurling 1982; Wickwire 1991). Fuelling this early concern was the 1977 *Heritage Conservation Act* (R.S.B.C. 1977 c.37), widely viewed as ineffectual and destructive (Apland 1992, 1993; Russell 1978). The criticisms of the 1977 HCA culminated in Brian Apland's article, *The Roles of Provincial Government in British Columbia Archaeology* (1993) detailing not only the failings of the then contemporary Act but providing a comprehensive analysis of previous pieces of legislation, including the *Indian Graves Ordinance*, *Historic Objects Protection Act* and the *Archaeological and Historical Sites Protection Act* (discussed in Ch. 3.1). One year after Apland's article was published in BC Studies, the long process of changing the HCA ended with the passing of the 1994 and subsequent 1996 *Heritage Conservation Act*(s) (R.S.B.C. 1996 c.187). Though widely regarded as an improvement, criticism did not cease. Contemporary discourse centers on a number of contentious features of the

HCA and on the policies of the Archaeology Branch itself. These features included issues related to culturally modified trees (CMTs) (Klassen, Budhwa and Reimer/Yumks 2009; Nicholas 2006); the 1846 cut-off for automatic protection (Klassen, Budhwa and Reimer/Yumks 2009); enforcement (Apland 1997; Klassen, Budhwa and Reimer/Yumks 2009); and most prevalent, Indigenous inclusion and stewardship (Budhwa 2005; De Paoli 1999; Hammond 2009; King 2008; Klassen, Budhwa and Reimer/Yumks 2009). Criticism of contemporary British Columbia heritage legislation is not likely to end any time soon as many of these concerns emerged before the legislation was enacted (Bernwick 1990; 1991). Given the scope of heritage legislation in British Columbia, archaeologists are understandably not the only professionals and academics interested in its implementation and administration. Environmental management (Flahr 2002), regional and municipal planning (Habkirk 1990; Holman 1996; Savoie 1994), and law (Ward 1988) have also weighed in on the various manifestations of legislation.

2.2.2   Ontario Literature

Ontario heritage researchers are also well-represented by their analyses of Ontarian heritage policy and legislation. Ontario consistently produces papers from individuals with substantial experience in the spectrum of CRM related fields, including academia (Finlayson 1977; Hayden 1976; Noble 1977, 1982), government (Ferris 1998, 2002, 2007a, 2007b, 2007c; Fox 1986), private consulting (Mayer 1994, 2000, Racher 2006; Williamson 2010) and museums (Della Valle 2004; Pearce 1989). This breadth of expertise as applied to the study of heritage legislation contributed greatly to this thesis's understanding of the context of Ontario heritage and effectively supplemented data gathered from other sources.

2.3   Primary Document Study

Archival visits, interviews and literature reviews provided a great deal of additional data in the form of primary documents. Each source of primary documents contributes substantially to this thesis's understanding of the temporal context of contemporary heritage policy and legislation.

2.3.1   Archival Data

Unfortunately Ontario's provincial archives are relatively inaccessible with many documents subject to Freedom of Information and Protection of Privacy Act restrictions. The archives fees and processing times are not conducive to a Master's thesis and as such data from the Archives of Ontario is not present. Where possible this information was acquired from other sources, foremost of which were the online archives of OurOntario.ca and the University of Western Ontario's government document repository.

The British Columbia Archives housed at the Royal British Columbia Museum contains several boxes of historical papers primarily dealing with the period from 1960 – 1982 and concerning the activities of the ASAB and subsequent PHAB as formed by the *Archaeological and Historic Sites Protection Act* (R.S.B.C. 1960 c.15) and *Heritage Conservation Act* (R.S.B.C. 1977 c. 37), respectively. Minutes from board meetings, unpublished papers, publications, and internal and external correspondence composed the majority of these archival files. The information contained in the archives provides a detailed picture of the formation of these public bodies and their duties. Especially interesting are the records concerning repeated attempts by the ASAB to establish an archaeological position/office within the provincial government. Eventually successful in the 1970s, these attempts demarcate the congenial shift from academic oversight of CRM in BC to bureaucratic oversight. This bureaucratization of CRM administration coincided

with a temporary increase in government sponsored heritage-related studies and reports which were also present in the archives.

2.3.2   Government Studies and Reports

Acquired from a number of different sources including interview participants, archives and online research, government authored/authorized studies and reports, the published products of projects, inquiries and commissions originate from both BC and Ontario during the late 70s, 80s and 90s. British Columbia commissioned and produced several such documents including two White Papers (British Columbia 1990, 1991), two task force reports (British Columbia 1979, 1987a) and various other discussion and policy papers (British Columbia 1978, 1979; Hout 1985). Ontario also produced several studies including the Ontario Heritage Policy Review (1987, 1988) and the Red Tape Review Commission (1997). These published documents reveal the polished, publically perceived structure of provincial heritage management and provide an interesting contrast to the less disseminated minutes and correspondence of the previous archival section. Many of these studies also included opinions from outside the heritage establishment. *Stewardship and Opportunity* (British Columbia 1987a), for instance, was the culmination report of Project Pride, an initiative that gathered opinions regarding heritage from experts and laypeople alike from across the province. The importance of non-professional (here meaning not involved in CRM) views emphasizes the responsibility of government in responding to the concerns of various publics (McManamon 1991). The balance the provincial heritage establishment strikes between these publics, industry, First Nations and CRM professionals is one of the integral concepts presented in this thesis and will be discussed in detail in Ch. 5. The breadth of this balance is often lost in the seemingly archaeologically exclusive instructions delivered to CRM professionals by arbitrating ministries.

2.3.3 Archaeological Bulletins and Guidelines

Archaeology's position as an academic discipline is determined not only by the theoretical foundations upon which it is based but also on the tried and tested methodologies archaeologists employ. Transplanting the intellectual authority from academia to government requires the incorporation of these "accepted" methodologies as part of the heritage administration establishment. The results are the standards, guidelines and bulletins produced by the heritage establishment intended to govern archaeological participation in CRM. The contemporary versions of these documents are readily available online on provincial ministry websites. Past versions are somewhat more elusive. Fortunately the University of Western Ontario library retains several past copies of the BC guidelines on microfiche. Past Ontario guidelines were also generously provided by individuals and organizations that had held onto them.

Both British Columbia and Ontario have created directing principles and methodologies and both continue to alter these guidelines in response to various stimuli (court decisions, complaints, obvious deficiencies, attrition, shifts in conventions and attitudes, etc.). However given the diversity in each province's heritage legislation it should come as no surprise that these guidelines are equally diverse both in content and in the history of their development, as such British Columbia's and Ontario's versions will be introduced here separately and then expanded upon in subsequent chapters.

2.3.3.1 British Columbia

British Columbia's first set of guidelines emerged not from the provincial government but from the British Columbia Provincial Museum, which published the *Archaeological Data Recording Guide* (Loy and Powell) in 1977. These guidelines were an attempt to standardize the types of data present in the record entries of a catalogue accompanying a submitted archaeological collection. The museum, in conjunction with the Heritage

Conservation Branch, also released the *Guide to BC Archaeological Site Form* in a revised version in 1981. This document acted not only as a guide but established some basic methodological standards through the minimum information required for site recording. The first of what would be many archaeological/heritage impact assessment guidelines published by the province was adapted from Carlos Germann's 1981 MA thesis, *Guidelines for Heritage Resources Impact Assessment in British Columbia*. The guidelines went through several revisions before being adapted into the *British Columbia Archaeological Impact Assessment Guidelines* (Apland, Kenny and British Columbia, Archaeology Division) in 1989 (Table 1).

Table 1: Sequence of British Columbia's Archaeological Guidelines

Date Released	Title	Author(s)
1981	Guidelines for heritage resources impact assessment in British Columbia (Draft)	Carlos Germann
1982	Guidelines for heritage resources impact assessment in British Columbia	Heritage Conservation Branch, British Columbia (Carlos Germann)
1987	Guidelines for heritage resources impact assessment in British Columbia	Archaeology Division, British Columbia (Carlos Germann)
1989	British Columbia archaeological impact assessment guidelines	Brian Apland and Ray Kenny (BC Archaeology Branch)
1991	British Columbia archaeological impact assessment guidelines (revised)	Brian Apland and Ray Kenny (BC Archaeology Branch)
1992	British Columbia archaeological impact assessment guidelines (revised)	Brian Apland and Ray Kenny (BC Archaeology Branch)
1995	British Columbia archaeological impact assessment guidelines (revised)	British Columbia Archaeology Branch
1996	British Columbia archaeological impact assessment guidelines (revised)	British Columbia Archaeology Branch
1998	British Columbia archaeological impact assessment guidelines (revised)	British Columbia Archaeology Branch

The 1998 revision is still in use as of this writing. The purpose of these guidelines, especially when compared to those of Ontario, will be discussed in subsequent chapters.

The Archaeology Branch in British Columbia has also employed a system of bulletins in order to make immediate changes to accepted archaeological methodologies especially

recording and reporting practices (Table 2). These bulletins appear to act in place of consistently revised impact assessment guidelines given their frequency and relatively recent use and the comparatively dated nature of the original guidelines.

Table 2: Current Versions of Archaeological Bulletins in British Columbia

Bulletin #	Title	Last Revised
1	Recording post-1846 CMTs	May 2001
2	Recording Property Identifiers	May 2002
3	Personal Information and Permit Applications	Oct 2002
4	Archaeological Site Inventory Form and Guide	Aug 2005
5	Winter Methodology for Oil and Gas AIAs	May 2003
6	Copying Permit Report Review Comments to Clients	Oct 2003
7	Standards for Electronic Submission of Permit Reports	Nov 2009
8	Permit Report Citations	Nov 2003
9	Client Certification	Jan 2004
10	Interim Permit Reporting Procedures	Mar 2004
11	Protocol Agreement with BC Oil and Gas Commission	Apr 2004
12	Defining Culturally Modified Tree Site Boundaries	May 2004
13	Application Review Process and Guidelines for Consulting Archaeologists	May 2008
14	Post-construction AIAs for Oil and Gas	Mar 2005
15	Permits and Archaeological Site Boundaries	Jun 2005
16	Using the Archaeological Site Inventory Form and Detailed Data Table to Record CMT Features	Jan 2006
17	Field Director Qualifications	May 2007
18	Site Alteration Permit Reports	Nov 2010

Bulletin #	Title	Last Revised
19	Minimum Content and Format Requirements for Recording Archaeological Sites	May 2009
20	Permit Report Copyright	May 2009
21	Restrictive Covenant Process for Consulting Archaeologists	Nov 2007
22	Enhanced Site Form Mapping Standards	May 2008
23	Recording Archaeological Study Areas	Jun 2011

Source: http://www.for.gov.bc.ca/archaeology/bulletins/index.htm

Easily noticeable are the inconsistencies between the consecutive bulletin numbers and the last updated dates. This is a result of the branch continually updating old bulletins rather than replacing them with new ones. Ontario operates under a significantly different set of recently updated standards and guidelines.

2.3.3.2   Ontario

Ontario's *Standards and Guidelines for Consulting Archaeologists* is a comparatively new document that has nonetheless gone through several iterations, the first being in 1993 and the most recent in 2011. The predecessor to this document was the *Guidelines on the Man-Made Heritage Component of Environmental Assessments* (Ontario 1980). This early manifestation contained general attributes and methodologies for all heritage-related sites triggering survey and protection. Eventually, unlike BC's guidelines, Ontario developed very clear methodologies operating on a formulaic approach, for instance determining archaeological sites based on quantities of artifacts and the presence of significant tools. The standards and guidelines also set out specific survey and excavation methodologies, a very clear contrast from BC's more judgmental approach.

Ontario does, however, appear to be following British Columbia in employing more specific bulletins as a tool for the immediate dissemination of new policies and expectations. In addition to *Engaging Aboriginal Communities in Archaeology*, the Ontario Ministry of Tourism, Culture and Sport released two additional bulletins in 2011: *Forest Operations on Crown Land* and *Project Information Forms and the Report Review Process*. The possibility that BC's and Ontario's heritage establishments are slowly growing to resemble each other will be examined in Ch. 7. A primary contributor to this potential trend could lie in the successive pieces of provincial heritage legislation, the last area of primary document survey.

2.4   Heritage Legislation

The legal foundation for the various provincial fields of CRM is contained within the respective pieces of provincial heritage legislation passed in British Columbia and Ontario. My study sought to understand how this legislation has changed over time and hints not only at the driving forces behind the heritage establishment, but also reveals interprovincial patterns in the development of heritage law. Contemporary provincial acts and policies are examined within their temporal context, essentially considering the *heritage* of the provincial heritage establishment. Contemporary versions of acts are available online through various provincial and legal media. Copies of past acts were provided by interview participants, found in several primary documents (British Columbia 1979; Huot 1983), and accessed via the Law Library at the University of Western Ontario. Detailed analysis of each province's legislative history begins in the next chapter.

3 Histories of Archaeological Governance in British Columbia and Ontario

The foundations of the contemporary are in the past, a seemingly self-evident statement to an archaeologist, the past as subject is apparently a neglected area of legislation/policy research (Pollitt 2008). Documenting the progression of legislation, policy and bureaucratic agent provides formational context to contemporary heritage governance and illustrates historical trends. As already mentioned, provincial jurisdiction over property rights has resulted in a myriad of different contemporary laws concerning archaeology. What has not been discussed is how these laws have changed over time, a process unique to each province.

3.1 History of Legislation

The history of archaeological heritage legislation in the province of British Columbia is a progression from narrow to broad, increasing the administration by intellectuals (both inside and outside of government) in determining what is designated heritage and protected as such, while simultaneously eroding the ability of said intellectuals to make such decisions based solely on the values of their respective disciplines. Ontario shares many of these elements in its legislative history, although distinguishes itself in a number of ways. As with any historical comparison, variance arises not only in content but in implementation. An act passed in one province may resemble an act in the other however the timing and regulatory framework will vary. The difference between regulatory frameworks in British Columbia and Ontario are especially evident given the absence of significant heritage regulation in British Columbia. Provided for in corresponding pieces of legislation, regulations provide a means through which bureaucrats can make legally enforceable requirements without the need to amend or reintroduce legislation. Often central in the structure of governance their absence from heritage oversight in British Columbia is contrasted against their prevalence in Ontario. The consequences of this

variation are not yet apparent but their potential impact is discussed in subsequent sections (Ch. 4). This section will provide a brief outline of the history of archaeology-related legislation in both provinces that, combined with the history of policy and the history of the archaeobureaucrat, provides a temporal context to discussions of the contemporary in subsequent chapters.

3.1.1   History of BC Legislation

British Columbia's heritage legislation has been the subject of a relatively substantial amount of historical research (Huot 1983; Apland 1993; Holman 1996; Pokotylo and Mason 2010). Therefore this section will briefly outline each significant piece of heritage legislation in the province guided by the thesis's ultimate objective of identifying temporal themes and patterns.

3.1.1.1   Indian Graves Ordinance, 1865/1867

Pre-dating the creation of the province, British Columbia's heritage legislation can trace its origins to the colonial administration of the separate British colonies of Vancouver Island and British Columbia (mainland). The Colony of British Columbia enacted the Indian Graves Ordinance (IGO) in 1865, a measure intended to curb growing issues surrounding the looting of grave goods from First Nations graves and cemeteries. The IGO was replaced in 1867 with another ordinance of the same name when the colonies of British Columbia and Vancouver Island merged. Like the name, the intent of the law remained the same:

> From and after the passing of this Ordinance, if any person or persons shall steal, or shall, without the sanction of the Government, cut, break, destroy, damage, or remove any image, bones, article, or thing deposited on, in, or near any Indian Grave in this Colony, or induce or incite any other person or persons so to do, or purchase any such article or thing after the same shall have been so stolen, or cut, broken, destroyed, or damaged, knowing the same to have been so acquired or dealt with; every such offender being convicted thereof before a Justice of the Peace, in a summary manner, shall for every such offence be liable to be fined a

sum not exceeding one hundred dollars, with or without imprisonment for any term not exceeding three months for the first offence, in the discretion of the Magistrate convicting. (C.S.B.C. c. 86 s. 2)

The law made a crime of damaging graves or grave goods in addition to the crimes of looting and trafficking, indicating a value placed on the sanctity of Indigenous graves. Whether this was the result of Christian Indigenous cemeteries being looted or an attempt at a broader non-theistic protection is subject to interpretation. It has been noted (Huot 1983: 1) that "both ordinances appear to claim Indian graves and grave goods as Crown property"; a paternalistic approach consistent with colonial administrators' actions towards First Nations groups and foreshadowing contemporary site/artifact ownership issues.

The IGO was supposedly repealed in 1886 by the federal government after British Columbia joined Confederation, although there is some argument as to whether this fell within the federal government's jurisdiction, and thus if it ever truly was repealed in British Columbia (Bill Huot, British Columbia). Nonetheless, it would be 40 years before the now Province of British Columbia readdressed the issue.

3.1.1.2   Historic Objects Preservation Act, 1925

Enacted in December of 1925, the Historic Objects Preservation Act (HOPA) created protections for not only objects, but for sites of historic significance:

> The Lieutenant-Governor in Council may declare any primitive figure or legend cut in or painted upon rock, or any group of such figures or legends, or any structure, or any natural object existing within the Province to be a "historic object" within the meaning and scope of this Act, and may make provision for the erection and maintenance in the vicinity of such historic object of a notice referring to this act, in such form as may be deemed advisable (R.S.B.C. 1925 c. 17 s. 2)

Although broad in its potential scope, inclusive of petroglyphs, pictographs, structures and "natural objects", the Act was only applied to 17 locales over its life of 35 years

(Huot 1985: 10). Of these locales only 3 were designated through the efforts of archaeologists, the remaining 14 exemplified the "gee-whiz" nature of early heritage preservation (Bill Huot, British Columbia). Popular notions of heritage sites outweighed early technical definitions, resulting in the absence of many contemporarily protected sites:

> What was their rationale? As I examined the list of protected sites I tried to infer from what they were choosing why they were choosing it. For example, why were petroglyphs and pictographs among the first sites to be protected, but not the well-known Marpole midden and village site in Vancouver? I concluded that the selection wasn't based on what archaeologists or First Nations would want protected they're 'gee whiz' kinds of things that the general public can appreciate as a historical curiosity (Bill Huot, British Columbia)

The "gee whiz" kind of sites essentially refers to sites immediately noticeable, accessible and known to the general public; one informant referred to these types of sites as the kind anyone could find within sight of a highway (Bill Huot, British Columbia). Another potential reason for HOPA's lack of impact was the requirement of a "notice" in the vicinity of the site:

> Where a notice has been erected in the vicinity of any historic object pursuant to this Act, no person shall, except pursuant to a permit in writing of the Provincial Secretary first obtained, remove, deface, obliterate, alter, add to, or otherwise interfere with that historic object, or the notice so erected, nor shall any person cut, or carve, or write, or paint any figure, legend, or name in or upon any rock or material comprised in or appurtenant to that historic object. (R.S.B.C. 1925 c. 17 s. 3)

The absence of a notice meant the absence of liability meaning that readily apparent sites and locales with no notice were not subject to the government's protection.

3.1.1.3 Archaeological and Historic Sites Protection Act, 1960

The first substantive piece of heritage legislation in BC was introduced in 1960. The Archaeological and Historic Sites Protection Act (hereafter referred to as the BC AHSPA) brought archaeological and historical expertise to the fore in the identification

and preservation of heritage sites in British Columbia. Traditional academic definitions and policies lacking from HOPA permeate the BC AHSPA, marking a transition from popular to technical priorities. *Archaeological*, as administered through the BC AHSPA, referred to traditional archaeological sites (middens, house-pits, etc.), while *historic* referred to built structures. There is some indication that the distinction between archaeological and historic in the BC AHSPA mirrors the distinction between prehistoric and historic, and/or, aboriginal and non-aboriginal, though it is never clearly defined as such. The BC AHSPA contained the first examples of contemporary cultural resource management norms in the province including the issuance of permits, the "polluter pays" mentality, the preservation of objects in addition to sites, automatic protection of sites not yet designated (on Crown land), and the formation of bodies dedicated to overseeing the Act. This last point established archaeologists and historians as able to guide the implementation, policies and oversight of heritage resource management. Several of these initiatives were not unique to the British Columbian context; Ontario had passed its own Archaeological and Historic Sites Preservation Act in 1953 which included a limited permitting system and the creation of an advisory board. A perfect example of similarities in legislative content, the divergent fates of these advisory boards in both provinces highlight differences in practice.

The Archaeological Sites Advisory Board (ASAB) and the Historical Sites Advisory Board were created to advise their corresponding cabinet Minister, as ultimate authority under the legislation, on their duties as specified in the BC AHSPA. These duties included the designation of protected sites, the management of the new permitting system, and the enforcement of the Act's various protections. Membership of the ASAB was, at least partially, laid out in the legislation:

> Any Advisory Board or Boards established under subsection (1) shall include the Director of the Provincial Museum of Natural History and Anthropology or his representative, the Provincial Archivist or his representative, and a representative

from the appropriate department of the University of British Columbia, or any two of them (R.S.B.C. 1960 c. 15 s. 13[1]).

Also worth noting in this legislation is the appearance of the word *significance* in section 2, definitions: "'historic object' meant any object of historic significance found in or on a historic site". Although limited in its early application, *significance* will re-emerge in subsequent legislation and management guidelines as central to determining a site's worth and designation.

The BC ASHPA's reference to the ability of the Minister to designate sites, and the objects found in or on them, continued and expanded the specific categories designated in the IGO and HOPA:

3. (1) The Minister may designate any

(i) Indian kitchen-midden;

(ii) Indian shell-heap;

(iii) Indian house-pit;

(iv) Indian cave;

(v) other Indian habitation;

(vi) cairn;

(vii) mound;

(viii) fortification;

(ix) structure;

(x) painting or carving on rock;

(xi) grave or other burial-place

(xii) other prehistoric or historic remain as an archaeological site

(R.S.B.C. 1960 s. 2 c. 15)

The final clause however accommodates such a general class of sites as to make the previous categories almost redundant. In fact, when the Act was reintroduced in 1972 the preceding list was removed and replaced with the following:

> 2. (1) Where, in the opinion of the minister, land is of exceptional archaeological or historic significance, he may, by order, designate it as an archaeological or as an historic site (R.S.B.C. 1972 c. 4 s.2).

Here *significance* reappears as the deciding factor in determining a site's designation; however nowhere in the act is the term *significance* defined or quantified, effectively leaving determinations to the expertise of the group administering the Act, the ASAB. In this way, the legislation, through its non-specificity allowed the administration, the bureaucracy, the greatest leeway in the interpretation and application of the BC ASHPA. Apland (1993: 10) criticized the 1972 BC AHSPA's shift to *significance* and the subsequent 1977 Heritage Conservation Act, as reducing the power to designate sites given the undefined nature of the term. The 1972 Act did however achieve one important element, the extension of automatic protection to sites not yet designated by the government and situated on private lands (R.S.B.C. 1972 c. 4 s. 6).

3.1.1.4   Heritage Conservation Act, 1977

After 17 years of the BC AHSPA, the provincial government introduced new legislation in the form of the Heritage Conservation Act (HCA) in 1977. This new act was intended to create the British Columbia Heritage Trust, a primary goal of the provincial administration of the time (Bill Huot, British Columbia). The HCA also made several other remarkable changes, some of which met with a fair amount of skepticism from the archaeological community. These included the formation of the Provincial Heritage Advisory Board, and the introduction of *heritage* as opposed archaeological or historic as the term of choice when referring to these resources (further discussed in Ch. 4). The creation of the Heritage Trust concerned historic structures and is not discussed here,

however the other two changes had a direct impact on archaeology in the province. Whether these changes were intended to be as substantive to archaeology as they were or simply by-products of facilitating the Trust is unclear.

The first change resulted in the disbanding of the ASAB and the HSAB in favour of a single advisory board, the Provincial Heritage Advisory Board (PHAB). The consequences of this change and its effect on policy are discussed later in this chapter.

The second change surrounded the addition of the term heritage to the provincial vocabulary. The HCA defined heritage in its opening section as "of historic, architectural, archaeological, palaeontological, or scenic significance to the Province or a municipality, as the case may be" (R.S.B.C. 1977 s.1 c.37). Apland's concern with the vagaries of this definition has already been mentioned, extending from similar concerns with the BC AHSPA 1972. The addition of "scenic significance" as a determining factor in designating a site also added to the confusion, as "scenic" was an even more subjective qualification of significance and could feasibly be determined without the input of a "qualified" professional, distinguishing it from archaeological, architectural, historic and palaeontological significances. The emergence of heritage in legislation marks a shift from technical priorities to a more holistic environment inclusive of multiple definitions of heritage and the past. This shift however, was not without some structural faults.

Ward (1988) criticizes the HCA stating that the government "failed to ensure that the end product was internally consistent" (74). In 1979 the Heritage Legislation Task Force, including Bill Huot who would go on to play a central role in the writing of the subsequent HCA, circulated its report: *A Proposal for a New Heritage Conservation Act*, a mere two years after the passage of the original HCA. The HCA was widely criticized from within and without, however it would be almost 19 years before significant changes were affected.

3.1.2   History of Ontario Legislation

3.1.2.1   Early Legislation

Unlike British Columbia, Ontario does not appear to have any pre-1953 legislation specific to the preservation of archaeological or historic sites and artifacts; however the colony of Upper Canada, Ontario's geographic predecessor did introduce protection for Indigenous burial grounds as early as 1796 (Ferris pers. comm.). There are two acts from the first half of the 20th century that may be viewed as having some relation to preservation, the 1912 Royal Ontario Museum Act and the 1923 Archivists Act. Both acts rely on very vague historic premises and their connection to archaeology may be circumspect.

The Royal Ontario Museum Act provided for the creation of one of Ontario's premier institutions. In providing the museum's mandate, the provincial government at the time included a section inferring the importance, or value, of preserving elements of the human past:

> 4. The purposes of the museum shall be –
>
> (a) The collection and exhibition of objects of every kind calculated to illustrate the natural history of Ontario, and thereby to aid in a knowledge of what it is able to contribute to science and industry;
>
> (b) The collection and exhibition of objects of any kind calculated to illustrate the natural history of the world and the history of man in all ages;
>
> (c) Such other objects as may be authorized by the Lieutenant-Governor in Council.
>
> (R.S.O. 1912 c. 80 s. 4)

The Archivists Act also included a possible reference to archaeological material wherein "the objects of the department shall be… the discovery, collection and preservation of

material having any bearing upon the history of Ontario wherever attainable" (R.S.O. 1923 c. 20 s. 6b).

Neither of these acts explicitly reference archaeological remains, a stark contrast to HOPA in British Columbia. It was not until 1953 that the province introduced legislation that specifically addressed the archaeological and historic features in Ontario.

3.1.2.2   Archaeological and Historic Sites Protection Act 1953

Relatively little is known about this early piece of legislation, particularly given its substantive absence from contemporary literature on the subject of heritage legislation. Predating the BC legislation of the same name by seven years, the Archaeological and Historic Sites Protection Act (ON AHSPA) was the first piece of Ontario legislation to explicitly address archaeological material. The ON AHSPA established several key elements of heritage preservation in Ontario, several of which are still in use today.

The first element revolved around the incorporation of "archaeological significance" as a standard of designation. Being the first Ontario act to include this designation, the ON AHSPA also began a pattern of circular definitions involving archaeological remains as evident in Section 1 of the act:

      (a) "archaeological object" means an object of archaeological significance found at an archaeological site;

      (b) "archaeological site" means land of archaeological significance that is designated by the minister. (R.S.O. 1953 c. 4 s. 1)

Nowhere in the act is "archaeological significance" defined, arguably resulting in a technically driven document giving a fair amount of authority to those capable of assigning such significance, archaeologists, facilitating the second element.

This second element was the establishment of the Minister and his representatives as authorities over provincial heritage. The ON AHSPA gave the Minister sole power to designate sites (Section 2), issue permits for excavation of designated sites (Section 4),

receive reports from permit holders (Section 6), determine where recovered artifacts were stored (Section 7), and appoint an unpaid advisory board to assist in the administration of the act (Section 9); it should be noted Sections 2, 6 and 7 are still largely present in contemporary legislation. In addition to the establishment of ministerial powers concerning heritage, the ON AHSPA also instituted punishments for anyone found in violation of the act up to a maximum $1,000 fine and/or six months in prison (Section 8).

Several amendments were made to the act over the course of its 21 year lifespan, most of which concerned the advisory board. A 1956 amendment saw the board expand to nine members; in 1959 the board members began receiving remuneration; and in 1965 the board was expanded again to twelve members. A final set of amendments to the ON AHSPA was made in 1971 under the Civil Rights Statute Law Amendment Act. These largely redefined ministerial powers of designation and the issuance of permits but also included landowner compensation for losses incurred as a result of designation (Section 2c).

While the ON AHSPA established the discipline of archaeology as a cornerstone of legislative protection and conservation authority it was not without faults in the eyes of archaeologists. Only requiring permits on designated sites and encouraging a patchwork of inconsistent practices the ON AHSPA met with resistance (Dawson et al. 1971; Savage 1972; Noble 1977) as well as success. Successes emerged when particular archaeologists were able to develop relationships with particular projects, encouraging rescue archaeology initiatives (Emerson 1959; Knechtel 1960). The exclusiveness and perceived value of these relationships did contribute to a fairly factionalized environment which undoubtedly extended to the archaeologists on the advisory board. This placement of archaeologists on the minister's advisory board in what would eventually become paid positions marked the incorporation of the intellectual authority derived from archaeology into the legislative establishment. Aspects of this archaeological environment created

under the ON AHSPA would eventually respond critically to its successor the 1975 Ontario Heritage Act.

3.1.2.3   Ontario Heritage Act 1975

The passage of the Ontario Heritage Act (OHA), which received Royal Assent in 1975, was largely driven by the archaeological community's desire to protect archaeological resources not covered under the previous act and that all archaeological work require a permit (Dawson et al. 1971; Savage 1972; Noble 1977). This drive came primarily from a proposal drafted by archaeologists in 1971 concerning antiquities and licensing (Dawson et al. 1971), and an Ontario Archaeological Society brief prepared by then chief archaeologist Donald MacLeod at the Ministry of Natural Resources (Noble 1982). Despite this initial input, the perceived ramifications of the OHA would not be fully realized until years later as early supporters of the act (Noble 1977) converted to critics (Noble 1982).

The OHA continued the spirit of heritage preservation present in the Archaeological and Historic Sites Protection Act and added to it the requirement that anyone dealing with this heritage be a licensee (Noble 1982; Ferris 1998). The OHA also began a shift in authority from arms-length advisory boards comprising of private archaeologists to publically employed archaeologists positioned within the bureaucracy, what Noble referred to as a "cadre of provincial government archaeologists" (1982: 172), while the advisory board of the AHSPA was shifted into the Ontario Heritage Foundation where it retained consultative powers, particularly with regards to license applications, until the 1990s. Regional archaeological offices were established in six areas (London, Toronto, Ottawa, Kenora, Thunder Bay and Sault Ste Marie) and managed through the then Ministry of Culture and Recreation (Ferris 1998). The rise of the archaeobureaucrat in the Ontario context is discussed in greater detail in Ch. 3.3.

The 1975 OHA (R.S.O. 1974 c.122) is split into seven parts of which parts VI and VII directly relate to archaeological management. Part VI details the various areas of political oversight of archaeology including licensing (s. 48), hearings (s. 49), compensation (s. 63), reporting (s. 65), and the fate of artifacts (s. 66). The new licensing process and the old reporting requirement are of particular note. The licensing aspect of the OHA largely broadened the previous scope of the permit requirement of the ON AHSPA requiring all that archaeological excavations, even on previously undesignated sites, be conducted by a license holder. The new act did retain the requirement that previously designated sites be excavated under a permit in addition to requiring a license (s.56). Section 48 laid out two general requirements of license holders: that they be competent (ss. 8a) and that they conduct themselves properly (ss. 8b). *Competency* enabled the government to define who could and could not hold licenses based on selected criteria while *proper conduct* enabled government to monitor a license holder's activities and, in theory, provided government with the means to remove a license, based on the selected criteria of what was "proper conduct". One area of proper conduct can be related to section 65 (1) and the reporting requirement of license holders. Unlike other elements of the OHA, section 65 (1) is practically a word-for-word replication of section 6 of the ON AHSPA detailing the reports required by the Minister. This incorporation of previous legislation extends into Part VII of the OHA.

Part VII lays out the miscellaneous guidelines that affect all previous parts of the OHA including fines, Review Board practicalities and, most importantly, an allowance to make regulations. Laid out in section 70, the government is given the authority to impose regulations on the various areas of the act. Subsection "d" refers specifically to regulations dealing with licenses and by extension the activities of their holders. This power provided government agencies the tools (regulation) needed to enforce subsequent policy, tools lacking from the ON AHSPA's section 4 and the more generic, less

enforceable power to impose "terms and conditions"; a phrase retained in the 1975 OHA referring to licenses however now backed up by successive regulations (O. Reg. 8/06 most recently). The nature of these contemporarily in-force regulations will be discussed in Ch. 4.2. However, as indicated, the ability of the provincial government to impose extra-legislative powers did not begin with the OHA and section 70 although this potential of the ON AHSPA was never practically realized. An examination of the history of government archaeological policy is necessary to appreciate the broader context of legislation and the more reactive elements of its implementation.

3.2   History of Archaeological Policy

Archaeological research has already distinguished the implementing of policy from

corresponding legislation as an area of viable independent research (Spurling 1986;

Hinshelwood 2010). Policy, in these research contexts follows what Hinshelwood (2010:

8) calls the *archaeological policy narrative*, essentially that:

> …archaeological sites hold unknown, but discoverable, insights into the history of
> a group, a people, or a nation, but they are continually under threat from the twin
> scourges of time and uncontrolled excavation. These fragile and non-renewable
> vestiges of a national or cultural heritage must be preserved as a public good so
> that they remain available for future generations to enjoy and study.
> (Hinshelwood 2010: 8)

Reminiscent of elements of Smith's (2006) *authorised heritage discourse* (AHD), this

narrative plays out in the continuous processes of policy implementation. Continuous

because policy is the dynamic companion to legislation, clarifying structure and intent,

filling perceived gaps and responding to day-to-day practical implications that legislation

never foresaw and given the legislative process could never adapt to quickly enough.

Occasionally, as will become apparent in the following sections, policy even emerges to

counter legislation creating dissonance between the two. Reflecting this pattern,

archaeological policy in Ontario and British Columbia has undergone change separate

from new legislative initiatives. In other words, all change in archaeological policy does

not correspond to change in archaeological legislation. Rather archaeological resource

management as a policy area is "subject to shifting political, economic and legal

influences" (Spurling 1986: 34). Policy emerges as a much more dynamic element in the

governance of heritage than legislation, adapting to changes in the fiduciary relationship

between government and Indigenous communities, economic pressures from the

development sector and a host of other areas sharing an interest in heritage and

development planning. Added to these externally-oriented pressures are forces internal to

the bureaucracy as characterized by Hinshelwood's application of Schattschneider's (1960) conflict theory of politics:

> The theory posits that political contests, which I extend to include policy implementation, become destabilized when the scope of participation expands. As implementation contests become destabilized the nature of the contest, and implementation objectives change (2010: 1).

This theory provides the ability and means of policy makers to exercise influence on implementation, understanding that the manipulation of the nature of a political contest can encourage certain desired changes. Hinshelwood (2010: 37) points to one process whereby restricting the scope of a political contest often resulted in the maintenance of the status quo; if change was the goal, the scope of the contest could be expanded with that desired result.

It should be made clear here that policy makers are not a monolithic group pursuing common goals and applying unanimous, unidirectional powers. As Smith (2004) points out in her interpretation of Jessop's state theory:

> Jessop (1990) offers a non-reductionist view of the state. He offers a 'relational' perspective which conceives the state as an ensemble of interacting institutions, whose relations, actions and strategies are both contingent and subject to multiple causations (74-75).

The personalities of those in particular positions of authority at auspicious moments in the history of heritage governance have done much to drive change within the provincial management structures. The nature of policy and to a certain extent regulation as readily malleable to these personalities provides individuals with the initiative a means to effect change. How these changes are negotiated within and without government reflect Schattschneider's and Jessop's social political theories, as well as elements of actor-network theory as applied to archaeological governance by Hinshelwood (2010: 40). Tracing the historical nature of archaeological policy within the provincial contexts provides valuable time-depth to these arguments. Presenting the history of policy and

legislation can hint at pervasive themes and values that might still be present in contemporary management. As with the previous section, the history of archaeological policy is also separated into its provincial contexts, however commonalities transcending spatial boundaries should become readily apparent.

3.2.1   Ontario

Given that heritage policy derives its functional authority from the interpretation of applicable heritage legislation, policy exists because legislation consistently provides the means and structure through which policy operates; it can be asserted that the archaeological policy in the province of Ontario did not effectively begin until the 1953 Archaeological and Historic Sites Protection Act (ON AHSPA). Prior to this act there appears little in the way of direct government intervention into the affairs of archaeologists or legislated concern for the protection of heritage sites. The impetus for the creation of the ON AHSPA is not very clear although certain motivations can be inferred from the content of the act.

The ON AHSPA refers exclusively to archaeological and historic sites and objects and defines the people capable of altering sites and removing objects in addition to restricting the particular activities undertaken on sites by these individuals. These restrictions coupled with the appointment of an advisory board composed of individuals familiar with archaeological and historic sites, indicates an incorporation and regulation of the intellectual disciplines associated with the past into and by government. Subsuming intellectual authority into governance will be discussed in detail in subsequent chapters; however this early period marks the beginning of a power/knowledge dyad in the administration of Ontario's heritage (Foucault 1991; Smith 2004).

It is unclear how cordial this early relationship between archaeology and the provincial establishment was although there is some indication that it was at least partially

appreciated by certain elements of the archaeological discipline given the eventual lament surrounding the era's passing (Noble 1982) and the perceived contributions of the archaeological community, particularly the Ontario Archaeological Society (OAS) in establishing the 1975 Ontario Heritage Act (Dawson et al. 1971; Noble 1977; Savage 1972). If it was anything like the similar scenario existing in British Columbia during the 1960s, then this period of Ontario archaeology saw the advisory board acting on behalf of the Minister in exercising substantial powers to dispense permits, designate sites and conduct government-funded archaeological research (see second half of this section); however it is unclear, to this researcher, to what extent these elements were present in the Ontario context. Nevertheless the volume of activity was enough to see the advisory board increase to twelve paid members by 1965. This relatively shrouded early period ended with the enacting of the Ontario Heritage Act (OHA) in 1975.

The roots of this change can be traced a little earlier to the creation of the Ontario Heritage Foundation in 1967. Initially focused on architectural and historic areas, the Foundation did not incorporate archaeology into its purview until 1970 (Doroszenko 2004). The fundamental shift signified by the creation of the Ontario Heritage Foundation was the formal legislative association of cultural resources under the umbrella term "heritage"; archaeologists had associated heritage with archaeological resources since the end of the 1960s (Ferris pers. comm.). Likewise, when it was enacted in 1975, the OHA replaced explicit reference to archaeological and historical protection with the same term, heritage. While the employment of this term appears underappreciated at the time (Noble 1982), the ramifications of this change, I argue, are still being felt and are discussed in Ch. 6.

The basic concept to understand at this point is that the introduction of heritage occurred simultaneously with the incorporation of archaeologists into the government as direct employees within their own agency rather than on arms-length advisory boards or

operating on ministry-specific projects (e.g. Ministry of Natural Resources). In altering the status quo of discipline-oriented oversight, the provincial government broadened the definition of the past beyond strictly technical definitions through its deployment of the concept of heritage. The government acted in a manner consistent with Hinshelwood's (2010) observations, expanding the scope of a political contest in order to effect change. Whether or not this was an intentional maneuver at the time on the part of government is unclear; however given heritage's reluctance to be ascribed a single definition, the government is currently grappling with a dynamism reminiscent of Pandora's Box, as the scope evoked by heritage has never really narrowed, returning to a framework consistent with maintaining the status quo. This dynamism has placed a heavy burden on policy implementation as there appears to be a continuum in reassessing heritage administration since the implementation of the OHA.

The 1975 OHA affected policy in three key ways: 1) the incorporation of archaeologists into the heritage bureaucracy, 2) licensing, 3) and the emergence of conditions and eventually standards and guidelines. Licensing and the centralization of archaeobureaucrats occurred immediately following the OHA's passing, conditions for licenses emerged as a regulation in 1975 (R.R.O. 715/80), while it took almost two decades before formal standards and guidelines were realized under Part VI section 48 of the act in 1993.

Archaeologists in 1974 had already worked in the Ministry of Natural Resources (MNR) undertaking archaeological work in advance of large provincial projects. The OHA incorporated these archaeologists into a ministry capable of overseeing Part VI of the OHA in addition to continuing to operate as field archaeologists. A more detailed examination of the rise of archaeobureaucrats is conducted in the following section however it is important to note the initial effect these individuals had on policy implementation. As one former archaeobureaucrat put it:

> We were out there doing things that led to policy and that was not the way things were supposed to work. Policy is supposed to be established at the top by policy wonks and then applied in the field as opposed to the field creating policy by their actions. (O225, Ontario)

The consequence of archaeological policy driven by the new archaeobureaucrats as opposed to the old members of the ON AHSPA advisory board now incorporated into the Ontario Heritage Foundation and still acting in an advisory role was a schism between the two groups:

> …we [archaeobureaucrats] had a very vibrant program in the 70s and into the 80s… I mean in the early 70s it was quite funny because it was seen as a threat by academic and institutional archaeologists. (O225, Ontario)

Archaeological policy in this period appears a contested area between different factions of archaeologists navigating transitional legislative waters. Archaeobureaucrats would eventually consolidate their position as directors of provincial archaeological policy, largely as a result of the other two shifts in policy from the OHA.

The creation of formalized standards and guidelines in Ontario did not occur until the 1990s, and will be examined in greater detail in Ch. 4.2, however the capability of the provincial establishment to eventually enact such guidelines is rooted in the regulatory and conditional apparatus built into the OHA, which as discussed in Ch. 3.1, pre-existed the OHA in the ON AHSPA. Archaeobureaucrats were the reviewers of the legislation-required license reports being produced by all archaeologists, but predominantly the private CRM firms that gradually replaced government field workers during the 1980s and 90s (Ferris 1998). The rise of the private CRM firm in Ontario came about through a simultaneous increase in the number of archaeological projects tied to land use development legislation, and a decrease in government-funded excavations (see Ferris 1998 for a good account of the rise of this consulting industry).

The shift from provincial archaeological fieldworker to reviewer/regulator marked a separation of government from discipline. Archaeological practices were no longer of first hand significance to provincial archaeologists excavating sites in the field, instead transitioning to second hand accounts written in reports read by provincial archaeologists behind a desk. Judgments were made by these archaeobureaucrats regarding the quality of fieldwork featured in these reports based on their previous, mostly personal, experiences in the field. In addition, a regional archaeologist reviewed many times more reports than any one archaeologist created and was therefore able to consolidate the lessons learned from these separate projects into a unique set of regional expectations subject to continuous change as new projects encountered original successes or difficulties. Without the means to disseminate these expectations, private archaeologists were subjected to the interpretative shifts of inconsistent bureaucratic oversight. Over time private archaeologists recognized which methodologies were accepted by which provincial archaeologist and adjusted their fieldwork accordingly.

The inconsistency within which the system operated (e.g., no one unifying methodology) in addition to claims by individual consultants and their allies of bureaucratic favoritism (e.g., Red Tape Review Commission) accelerated a pre-existing drive within government to examine whether a common set of standards was possible (Ferris 2007a; 2007b). Discussions in the 1980s and early 1990s led to the first set of technical guidelines released in 1993 (Ferris pers. comm.). The revision to this document began soon after in 1995 culminating in the *Standards and Guidelines for Consulting Archaeologists* released in 2011. These guidelines are examined within the contemporary Ontario context in Ch. 4. The guidelines were made possible by Section 48 in Part VI of the OHA giving government authority to impose conditions specifically dealing with licensees.

Licensing has remained the most consistent element created by the 1975 OHA. While the archaeological bureaucracy has switched ministries and generations and the current

standards and guidelines exist in relative infancy, the licensing requirement has remained relatively stable. When licensing was introduced it was a marked departure from the previous system of permits, a system still in use in British Columbia. Rather than exclusively regulating projects, licensing provides for a constant regulation of professionals. Where before individuals were judged on their eligibility to hold each permit applied for work on designated sites, licensing enabled government to designate those capable of conducting any archaeological survey and excavation and administer the processes through which an individual received and retained their particular license. Focusing on administering heritage professionals rather than heritage resources here appears consistent with Apland's (1993) characterization of archaeological oversight in BC during the 1960s:

> It may have been a great deal easier for those archaeologists to regulate internally their own small community through the use of the permit system than it was to get a handle effectively on the wide-ranging and complex array of external threats to the resource base (12).

This correlation emphasizes a similarity between Ontario and British Columbia in early archaeological policy.

3.2.2   British Columbia

BC archaeological policy developed out of the lessons learned from the successes and failures of early legislation and a coalescing of archaeological values and provincial governance during the 1960s and 70s. The 1925 Historic Objects Preservation Act (HOPA), as already discussed, was the first act under which certain specific archaeological sites were protected. The correlation of the values of the archaeological discipline with governance did not appear until several years after HOPA was enacted. As one BC policy analyst recalls:

> …it basically enabled the cabinet to protect sites. Among the earliest sites to be designated were petroglyphs, pictographs and dinosaur tracks. (Bill Huot, British Columbia)

The source indicates that it was likely only a coincidence that these sites were of archaeological value because designation appears to have followed the already mentioned "gee-whiz" approach to protection. Sites that were easily accessible and of wide public knowledge were typically the ones protected. It was not until the transition from HOPA to the Archaeological and Historic Sites Protection Act (BC AHSPA) of 1960 that archaeological values and, by extension, intellectual authority were structurally incorporated into government administration of the past:

> …if I remember correctly there were a couple of village type archaeological sites near the end of HOPA that they were looking to protect, on crown land and that would have presumably been at the behest of archaeologists. And they probably would have given the argument that archaeologists still use as to why sites should be protected and so by this stage scientific values were beginning to arise as a reason for heritage protection. (Bill Huot, British Columbia)

Though perhaps informally recognized under HOPA, the Indigenous sites of Chinlac and Milliken did not formally become protected until 1961 under the BC AHSPA (British Columbia 1977b). Apland (1993) points out:

> that while most actions were initiated for the purpose of protecting archaeological sites from threats due to natural exploitation and other land development activities, actual regulatory initiatives tended to focus on the activities of archaeologists (11).

He traces this regulatory concern to a Charles Borden assertion that an objective of legislation be the "the control of outside archaeologists" as stated in a 1951 letter to Wilson Duff at the Royal BC Museum (Apland 1993: 12). Borden apparently retained these sentiments through the establishment of the BC AHSPA and his years working with the Archaeological Sites Advisory Board (ASAB) because in 1965, after he left the service of the ASAB, he wrote *British Columbia's Archaeological Sites Protection Act and the Continuing Depletion of the Province's Archaeological Resources* (1965). Never

published, the paper refers to the "wanton destruction" and "annihilation" of the province's material past (Borden 1965: 1). Borden also makes reference to a "clandestine invasion by archaeologists from outside British Columbia" reinforcing the need for regulatory action (Borden 1965: 2). The initial union between the archaeological discipline and government appears, in this context, driven by a fear instilled in BC academic archaeologists that the archaeological record was under threat from not only development projects and natural erosion but from the activities of "outside" archaeologists. Operating under these premises archaeological policy would seek to dictate not only what archaeological projects needed to occur but who was capable of undertaking them; this is exactly what transpired.

Under the ASAB, several activities began with respect to archaeological governance including the advisory capacity of archaeologists on the board with respect to which sites were designated by the minister, government-sponsored excavations and surveys conducted by academics, reviewing resulting reports, and the issuance of research permits. These early activities of the ASAB would lay the foundation for subsequent archaeological policy, allowing government affiliated archaeologists control over who was able to conduct archaeological projects in the province. Given this continuum between distant past and recent past, a continuum absent in Ontario due to the schism between the advisory board there and emerging archaeobureaucrats, I will briefly discuss each of the above policy activities and their various iterations through changing legislation. I will trace these policies up until the contemporary period which I argue begins in British Columbia in 1994 and is the subject of Ch. 4.1.

Nowhere is the continuum between past and present more explicit and distinct from Ontario than in the roles of archaeologists with respect to archaeological governance. Although the rise of the archaeobureaucrats, as already mentioned, is discussed in the following section, from a policy standpoint it is important to note that the ASAB was a

consistent and driving force behind the incorporation of archaeologists into the government bureaucracy. As early as 1961 in a letter from then ASAB chair Wilson Duff to L.J. Wallace the Deputy Provincial Secretary of Buildings, the ASAB recommended the appointment of a provincial archaeologist within the government. After further recommendations (ASAB Minutes May 1968) the provincial government finally created the Office of the Provincial Archaeologist in 1971 (Bjorn Simonsen, British Columbia). Bjorn Simonsen, the ASAB's field director since 1970, was the first to occupy the position. The passing of the Heritage Conservation Act in 1977 altered the advisory structure and shifted the Office of the Provincial Archaeologist into the newly formed Heritage Conservation Branch. The ASAB was incorporated into a new Provincial Heritage Advisory Board (PHAB) representing both historic and archaeological disciplines, with some concern about the representation of archaeologists under this new body (ASAB/HSAB Minutes 1977; letter from Borden to Lloyd Brooks 1977). In response, the second meeting of the PHAB saw the creation of the Archaeological General Committee to act in consultation with the Provincial Archaeologist (PHAB December 1977). By 1983 the PHAB had been disbanded, its duties now largely fulfilled within the Heritage Conservation Branch (Spurling 1986). Archaeological concerns about the PHAB were probably well-founded given that the PHAB Docket Summary of issues to 1982 recorded that only 12 of 82 discussions were of an archaeological nature compared with 50 dealing with built historic issues (the remainder dealt with legislation, policy or unknown). Despite the end of the archaeologist as provincial advisor, the archaeologist as provincial employee continued. The positions pushed for by the ASAB and incorporated into the Heritage Conservation Branch would be reorganized again in 1988 into the standalone Archaeology Branch (Apland 1990). The Archaeology Branch remains the hub of archaeological governance in the province today -- governance but not research.

In fact the Archaeology Branch, and the Heritage Conservation Branch before it, was never tasked with conducting research in the way the ASAB was and did. Under the 1977 HCA the only mandated concern of government employed archaeologists was the management of the permit system, everything else was "discretionary" (Apland 1993). This was a marked departure from the wide ranging activities conducted throughout the 1960s and early 70s by the ASAB. Funded through provincial capital, surveys and excavation were conducted across the province in such archaeologically rich areas as the Arrow Lakes, the Fraser River and many others. The lists of field directors and crews on these provincially-funded projects read like a who's who of British Columbia archaeology including Charles Borden, Donald Mitchell and Bjorn Simonsen, among many others. The research produced in this period is still central in British Columbia archaeological discourse. I remember being a part of relatively recent fieldwork on the Chilcotin Plateau where the only previous work was a survey conducted under this regime by Grant Keddie in the early 1970s (Keddie 1972). Early archaeological policy emphasized the inventory component of archaeological activities in response to cases of imminent threat to the record. The mechanism through which the ASAB captured this information was the required production of reports by investigators.

Reports in this early period were primarily a means of collecting and disseminating archaeological activities and data to the archaeological community-at-large. The Heritage Conservation Board published a number of these during the 1970s and 80s as occasional papers (ex. Whitlam 1980; Mohs 1981). These contributed to the stated policy goals of the Heritage Conservation Branch during this period:

> Knowledge of the past is part of everyone's heritage. Because this knowledge belongs to all, it should not be within the power of any individual or organization to deprive others of such knowledge unless there are over-riding public concerns. (British Columbia 1978: 1)

A secondary product of these reports was the ability of the reviewer to recognize the methodologies and theories employed and to frame those within the wider context of BC archaeological research. The regulatory possibilities of reports especially given the requirements for developers imposed under the 1977 HCA and the eventual jump in the number of permits in the 1980s (Figure 1; see Ferris 2007c for similar figures in Ontario) eventually eroded the research dissemination policy of the provincial government. This was likely due to an increase in costs resulting from the increase in the volume of permits and the need to review the corresponding reports.

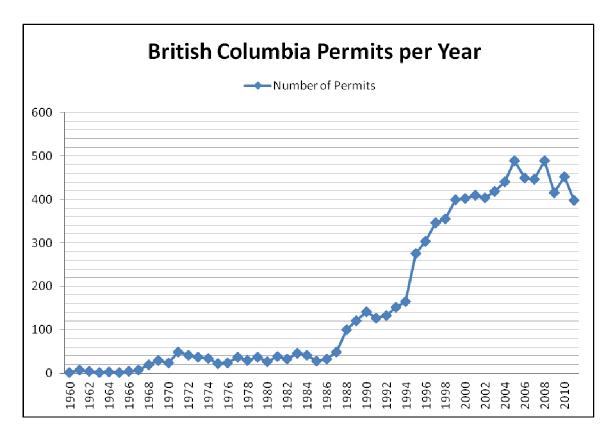**Figure 1: BC permits by year (Courtesy BC Archaeology Branch)**

The occasional papers were no longer published and submitted archaeological reports became "grey literature". Another contributing factor might have been the pattern of standardization beginning in the 1970s whereby reports were subject to top-down imposed standards. The first of these was arguably the *Archaeological Data Recording*

Guide (Loy and Powell 1977) published by the provincial museum in an effort to standardize record entries for cataloguing. In 1981 the administration of the provincial site inventory passed from the Royal British Columbia Museum to the Heritage Conservation Branch. The Branch immediately released the *Guide to the BC Archaeological Site Form* (British Columbia 1981) establishing similar basic standards through the requiring of certain information when submitting the form. It was not until 1982 that the government released a formal set of guidelines, the *Guidelines for Heritage Resources Impact Assessment in British Columbia* (Germann 1982). The document was based on Carlos Germann's 1981 Simon Fraser University master's thesis and according to Apland (1993) was initially directed at developers, providing information and establishing expectations with regards to CRM activities. Through time and multiple versions (Table 1) the guidelines came to represent a guiding document for the permit holding archaeologists. As Table 1 indicates these guidelines were subject to frequent revisions not coinciding with any legislative change allowing the documents to reflect policy direction in the disbursement and oversight of permits.

Permits enabled the ASAB to regulate archaeological activity in the province; at least that was what the legislation inferred. In practice it appears that the permits were simply a means of keeping track of what was happening archaeologically in the province and who was doing it. By 1977 and the explicit shift in focus from research to the administration of permits, the Heritage Conservation Branch appeared to have taken on a much more regulatory role. The standardization of the 1970s and 80s was likely due, at least in part, to the ability of archaeobureaucrats to determine who received permits and who did not. The distribution of these permits coupled with the acceptance and approval of reports remain the primary functions of the Archaeology Branch and the archaeologists working within. This mandated focus on managing people as opposed to the "discretionary" possibility of managing the physical resource essentially developed because it was easier

for government to regulate a small community of archaeologists than to attempt to control the wider, external threat to cultural resources (Apland 1993: 11-12). The rise of these archaeologists to positions of government sanctioned authority is discussed in the next section.

3.3   Rise of the Archaeobureaucrat

The term *archaeobureaucrat* has already shown up repeatedly in this thesis; however the origins of term and the emergence of the role have not been discussed. It is not clear where the term originally came from although references to an archaeo-bureaucracy are made as early as the 1970s (Gramann 1979; Turnbull 1976; Wildesen 1979). The Canadian study of this particular facet of government did not begin in earnest until the 1980s with Spurling's 1986 dissertation, *Archaeological Resource Management in Western Canada: A Policy Science Approach*. Since then, as outlined in Ch. 2, several other researchers have studied archaeological bureaucracy and the term, archaeobureaucrat, is establishing itself as the identifier of the individuals engaged in that role.

The role of archaeological bureaucrat in the two provinces covered by this thesis, BC and Ontario, emerged contemporaneously but from two very different sources. The reasons and consequences for each of these formative processes are especially interesting given common elements in the administration of archaeology prior to the creation of the archaeobureaucracy. Both provinces had managed archaeological resources through an advisory board consisting of academic archaeologists and yet the roles these advisory boards played in the establishment and maintenance of archaeologists within the government bureaucracy were very different. This section will discuss the emergence of the government-employed archaeologist in both provinces and how that history has shaped not only contemporary archaeological policy, but the contemporary identities of the archaeologists involved.

3.3.1   British Columbia

With the passing of the BC AHSPA in 1960 the provincial government affirmed that archaeologists and historians (architectural and otherwise) were necessary participants in

the administration of historic and archaeological sites and objects. This initial participation took the form of the archaeological and historic sites advisory boards. These boards consisted of well known academics and administered project-to-project operations including the dispensation of permits and the receipt of reports. The ASAB, from the beginning (Duff letter 1961), advocated for the placement of an archaeologist within the government structure (ASAB May 8, 1968 Minutes). The board repeatedly demonstrated the importance of individual positioning within the bureaucratic and advisory framework. This extended from the appointment of a provincial archaeologist to the composition of the board itself. For example in 1970 the ASAB discussed appointing an "Indian" representative to the board (ASAB October 1, 1970 Minutes). By 1975 a letter (Mitchell 1975) to the provincial archaeologist, Simonsen, laid out a proposed new ASAB composition; one member from the Royal British Columbia Museum; one member from each of the three provincial universities; one member representing the province's colleges; two members from the Union of BC Indian Chiefs; one non-status Indian member; and two members from the Archaeological Society of BC representing the public. Having achieved the goal of the provincial archaeologist in 1972, the board was apparently poised to disseminate its now somewhat limited powers among a wider interest group. With the dismantling of the ASAB in 1977, this new composition was never employed; however it does speak to the nascent environment of the British Columbia archaeobureaucrat.

The ASAB, as discussed in Ch. 3.2.2, was not only willing to cede power and control to what they felt was a more capable government office, but was also cognizant and validating of a variety of interest groups with a stake in the province's archaeology. This extroverted, contemplative origin of archaeology's shift from exclusively academic to public policy and the deployment of the term heritage in British Columbia, strike a remarkable contrast to contemporaneous events in Ontario. Nowhere is this more evident

than in the continuum between the ASAB and the Office of the Provincial Archaeologist and the appointment of the ASAB's own field director, Bjorn Simonsen, as the first provincial archaeologist. When the Provincial Heritage Advisory Board, the ASAB's successor, disbanded in the 1980s it did not mark the end of a continuum between the earliest ASAB and the contemporary administration of archaeological resources. An unbroken chain existed linking the Office of the Provincial Archaeologist (now the Archaeology Branch) with the board members of the ASAB, a heritage of sorts for the modern archaeobureaucrat in BC.

This stability has arguably resulted in the relative longevity of several archaeobureaucrats still working in the Archaeology Branch, although signs of a generational shift - similar to Ontario - are beginning to appear (Bjorn Simonsen, British Columbia). Additionally, despite Ontario having older modern legislation (AHSPA, OHA), British Columbia introduced contemporary reforms, particularly the Indigenous consultation process, almost 15 years before Ontario followed suit. Having archaeologists in academia and government not engage in a clash of personalities and reputations may have encouraged simultaneous reform in both academia and government, or at least the willingness to consider such cooperative changes. Perhaps the absence of academic archaeologists actively condemning these early archaeobureaucrats enabled them to maintain a continuing identity as traditional archaeologists without the need to distinguish themselves from hostile elements of the wider discipline. The early days of the Ontario archaeobureaucrat do not seem nearly as cordial.

3.3.2   Ontario

Prior to the 1975 OHA several archaeologists were engaged by the Ministry of Natural Resources (MNR) in what began as contract work surveying large swaths of Ontario. Over time several of these positions became permanent and by 1975 MNR, with regional archaeologists in several areas, had transferred their archaeological operations to a newly

formed ministry (the origin of the various iterations of the Ministry of Culture). This ministry arose out of the 1975 OHA and required a bureaucratic framework of archaeologists to administer archaeological licenses and reports. The transferred MNR archaeologists also continued the tradition of direct government-managed fieldwork already established, conducting excavations that would eventually be managed by private consultants. The shift from the previous structure under the ON AHSPA and the eventual absorption of the advisory board into the Ontario Heritage Foundation (established 1967) was largely driven by the concerns of an archaeological community with respect to the extent of fieldwork conducted on previously unrecognized sites and not requiring a permit under the ON AHSPA (Dawson et al. 1971; Noble 1977; Savage 1972).

However the afterglow of the act's inception in 1975 would not last much past the 1970s as the factionalized archaeological community incorporated the legislation and subsequent policies into pre-existing battle lines (Noble 1982). The "intrusion of law into *our* archaeology" (Noble 1982: 171, emphasis added) emphasized the growing schism between the newly minted archaeobureaucrats and elements of academia. As one former archaeobureaucrat describes these early days:

> …certainly we had a very vibrant program in the 70s and into the 80s… I mean in the early 70s it was quite funny because it was seen as a threat by academic and institutional archaeologists. (O225, Ontario)

The impact of the changes implemented under the OHA was felt especially hard by individuals within the discipline who had expected a degree of input and control. Proposals and briefs submitted prior to the eventual passage of the Act were considered signs of a continuum between the ON AHSPA and what would become the OHA (Noble 1982). The reactions, among particular factions, whose interests were eventually perceived as threatened, to what resulted ranged "from total bafflement to uncertainty and rebellion" (Noble 1982: 171). A reaction noted from the archaeobureaucratic side as well:

> And in fact I think they [academics] did have some influence in the establishment of the act. The only thing was is that to their horror it created even more of a provincial government program, the monster of these Young Turks. (O225, Ontario)

While British Columbia was undergoing a relatively peaceful transition from the ASAB to the Office of the Provincial Archaeologist, Ontario was engaged in fierce intradisciplinary feuding. The presence of the archaeobureaucrats on field sites in regions thought to be the domain of one archaeologist or another indicated not only a shift in authority but the beginning of an increase in volume and the emergence of private CRM practitioners:

> A rather mistaken belief, but it just goes to show the sort of mental situation the mindset that existed, and so when all of a sudden all of these non-academic individuals started working and the volume increased and increased and increased it was like it was out of control. And frankly at this point, so far as I can see, I mean it's kind of funny actually, kind of back it up a bit. Back in the 80s it was quite obvious that CRM archaeology was a happening thing. There was not much, I mean there was nothing academia could do to stamp it out even if they had wanted to. Most just grudgingly accepted that this thing was developing and then some finally, some from an academic standpoint finally got on board to the extent that they began to put together courses to address the requirements of the industry. (O225, Ontario)

By the 1980s in an era of government cutbacks and budget restrictions, the field opportunities for archaeobureaucrats began to fade and by the 1990s were all but gone. As archaeobureaucrats transitioned from the field to the office, private consulting firms began to take their place, the first created in 1976-77 by Dean Knight and Peter Ramsden (Ferris pers. comm.). The academic stigma of the archaeobureaucrat was extended to these new interlopers from the very beginning as new consultant archaeologists were distinguished from "existing ranks of PhD. trained professionals" (Noble 1982: 172). Only recently with a shift in generations in academia and government has the schism between the two shown signs of healing. However this transition between old and new is not without its own unique challenges as the identity of this new breed of archaeobureaucrats appears more bureaucratic and less archaeological, a development

consistent in both the British Columbia and Ontario. The consequences of this recent development are discussed in Ch. 4 but here note the historical environment which gave rise to this shift.

4   Contemporary Heritage Governance

Archaeological governance in Ontario and British Columbia in the 1960s, 70s and even 80s was about archaeological resources. Archaeological in that these resources were archaeologically defined and studied but also in the sense that the resources were monopolized by archaeologists. Even the use of the term *resource* in referring to archaeological sites and artifacts infers that these things have some intrinsic value in much the same way natural resources have value. Archaeological *resource* management has also been distinguished from archaeological *research* management as "such projects do not entail the replacement of existing archaeological ideals, standards or goals, but rather they simply add a new dimension to the objectives of the investigation" (Byrne 1976: 114). The term resource has other implications including connotations of the finite, under threat from destruction and depletion. An abbreviated narrative of government management could be the following: characterizing resources as fragile, finite and valuable requires that they fall under a management scheme to protect resources often portrayed as collectively owned and for the public good. Representative of this public trust is government as manager bounded by sets of rules laid out in legislation and regulation and enforced by the courts. The government monitors and regulates who can and cannot do what and what not within the established, but responsive and evolving, structure of governance, including legislation, regulation and policy.

In characterizing archaeological resources governments and archaeologists determined who could harvest and benefit from said resources, shaping governance through the inclusion and exclusion of actors (Hinshelwood 2010). Protecting the archaeological record from, as MacLeod (1975: 57) so colourfully put it, "resource rapists" characterized archaeologists as the heroes of rescue archaeology.

The contemporary period marks the shift from archaeological resources to heritage resources and the corresponding de-monopolization of sites and artifacts. In redefining them as heritage resources governments explicitly, if not intentionally, conveyed that these resources were no longer the exclusive domain of the protagonist archaeologist.

While still largely archaeologically defined and studied, the benefits of the resources are increasingly being reaped by those whose heritage these resources represent. Indigenous communities in particular, whether through employment in consultative roles, increased authority in development approval processes or simply just a wider ability to collaborate with and direct research have realized sites, artifacts and research narratives as community rather than discipline-oriented resources. Heritage, as will be discussed in Ch. 6, is a very inclusive term able to not only represent both archaeological and historical frames of reference within a single term but capable of including any past-oriented frames of reference on any scale. From the individual considering her grandfather's service medals to the municipality considering the fate of a historic landmark. In other words, *archaeological* resources essentially belonged to archaeologists while *heritage* resources potentially belonged to anyone and everyone. The contemporary period of heritage governance marks this transition in formalized (as expressed through legislation, regulation and policy) notions of resource ownership and the, what must be, unforeseen consequences of that shift.

4.1   Contemporary British Columbian Heritage Legislation and Administration

The creation of the 1996 Heritage Conservation Act was a much different exercise than those that created its predecessors. Arguably the process began prior to the 1979 distribution of *A Proposal for a New Heritage Conservation Act*, 17 years before the final

act was passed and only two years after the enactment of the 1977 Heritage Conservation Act. The processes that would eventually form the 1996 HCA occurred simultaneously with changes in the provincial heritage bureaucracy, including the separation of the Archaeology Branch from the Heritage Conservation Branch, the disbanding of the Provincial Heritage Advisory Board, and the creation of the *Guidelines for Heritage Resource Impact Assessment* in British Columbia (Germann 1981; Germann, 1982). Operating under the 1977 HCA, many of these administrative changes were essentially trying to make the best of a bad act, creating processes to encourage archaeological assessments, compensating for deficiencies in addressing previous designated sites and providing criteria for what could be considered significant (Apland 1993; Ward 1988).

Consequently the administration of heritage resources, particularly archaeological resources, was defined through internally developed policies as opposed to direct interpretation of a piece of perceived inadequate legislation. This practice of making substantive administrative policy did, however, allow for the provincial management of archaeological resources to be a relatively responsive and flexible mechanism from the perspectives of archaeologists working within the Branch (Apland 1993) and eventually from the perspectives of legislative writers who built such flexibility into the subsequent HCA. The Heritage Conservation Branch and the subsequent Archaeology Branch exercised this independence frequently, creating guidelines (reporting and field) and bulletins to quickly address emergent issues. The formation of the contemporary 1996 Heritage Conservation Act occurred during this period of substantive bureaucratic administration. Many of the contemporary guidelines and bulletins are continuations of bureaucratic policy initiatives of the 80s, and as such the incorporation the "new" HCA occurs only sporadically with regards to specific areas of management policy and methodology, particularly those dealing with Indigenous consultation.

The result appears to be a dissonance between an administrative policy created to compensate for weak legislation, and a subsequent piece of legislation that arguably has not yet realized its potential. Recognizing this dissonance, the discussion in this chapter of contemporary policy and legislation in British Columbia is organized into two parts. The first examines the changes to archaeological practice resulting from bureaucratic and legislative forces. The second part revolves around the emergence of non-archaeological interests as increasingly capable of affecting archaeological policy and, preemptively, legislation. These interests are first and foremost Indigenous communities but also include developers, municipalities, and McManamon's (1991) broader "publics." The roles these groups adopt and powers they exercise are indicative of a "Heritage Phase" of archaeological governance, discussed subsequently in Ch. 7.

4.1.1   Foundations of Contemporary BC Heritage Administration

As previously discussed in Ch. 2, the 1980s was a transitional period for archaeological governance in British Columbia. Not only was the PHAB disbanded and the Archaeology Branch split from the Heritage Conservation Branch, but the 1977 Heritage Conservation Act which governed this period was largely regarded as ineffectual, particularly by archaeologists (Apland 1993). As the 1980s progressed, the Archaeology Branch's ability to conduct site salvage and rescue operations was unable to match the demands of growing industrial responsibilities and a proponent pays mentality allowed by section 7 of the HCA (S.B.C. 1977 c. 37) was activated to compensate (Apland 1993). The simultaneous development of environmental impact assessment guidelines by the Environment and Land Use Committee in the late-1970s had already tempered industry expectation of new development clearance hurdles (Apland 1993). Additionally government learned from:

> …experiences of the 1970s that development proponents were willing to do what was required as long as the requirements were stated "up front" and that the rules

did not constantly change. This, of course, did not preclude the occasional situation where re-assessment of management options was required. (Apland 1993: 13)

A consequence of this development was the need to explain to proponents what was necessary in order to meet not only the requirements of heritage legislation, but the clearance of the bureaucracy, in a clear and efficient manner. The result was the first impact assessment guidelines released in 1982 based on Germann's 1981 thesis and modeled after existing environmental review policies and the developing archaeological resource management of the United States (Apland 1993: 13). Subject to a total of eight revisions (Table 3) from the original thesis the guidelines' primary purpose was not to harmonize the methodologies of archaeologists but to inform developers and establish expectations with regards to the archaeological assessments they were now paying for (Apland 1993). Over time the document became tailored as a resource for the archaeologist with appendices addressing report content, qualifications for professional archaeologists, various site evaluation criteria, and impact assessment indicators. Despite these alterations the guidelines, unlike Ontario's, are not nor have they ever been a "cookbook" for archaeological excavations (British Columbia 1998: Preface).

Table 3: Sequence of British Columbia's Archaeological Guidelines

Date Released	Title	Author(s)
1981	Guidelines for heritage resources impact assessment in British Columbia (Draft)	Carlos Germann
1982	Guidelines for heritage resources impact assessment in British Columbia	Heritage Conservation Branch, British Columbia (Carlos Germann)
1987	Guidelines for heritage resources impact assessment in British Columbia	Archaeology Division, British Columbia (Carlos Germann)
1989	British Columbia archaeological impact assessment guidelines	Brian Apland and Ray Kenny (BC Archaeology Branch)
1991	British Columbia archaeological impact assessment guidelines (revised)	Brian Apland and Ray Kenny (BC Archaeology Branch)
1992	British Columbia archaeological impact assessment guidelines (revised)	Brian Apland and Ray Kenny (BC Archaeology Branch)
1995	British Columbia archaeological impact assessment guidelines (revised)	British Columbia Archaeology Branch
1996	British Columbia archaeological impact assessment guidelines (revised)	British Columbia Archaeology Branch
1998	British Columbia archaeological impact assessment guidelines (revised)	British Columbia Archaeology Branch

The contemporary guidelines are those last revised in 1998, as recent changes to archaeological practice have instead been expressed through information bulletins. The motivations behind this shift are unclear and uncovering them difficult due to a lack of recent publications from archaeobureaucrats about their work and my inability to get

answers from them personally. However the Archaeology Branch's website states the bulletins' purpose as follows:

> The Archaeology Branch has developed a series of information bulletins which provide up-to-date information on branch policies and procedures. These bulletins are intended to be an effective and efficient mechanism for communicating with various stakeholders such as professional archaeologists, development proponents, First Nations and other government agencies. (http://www.for.gov.bc.ca/archaeology/bulletins/index.htm, accessed Mar 13th, 2012)

The deployment of new and revising of old information bulletins supplement the 1998 guidelines, allowing changes in policy to be directly related and addressed rather than incorporated into the pre-existing document that would require updating every time a policy shifted. Table 4 (a duplicate of Table 2) presents all contemporary versions of the 23 bulletins including last revised date. The specific bulletin numbers are temporally sequential with the revised dates indicating when the most recent changes were made to particular bulletins. It is difficult not to notice the prevalence of procedural and reporting-related policy updates, perhaps reinforcing the impression of governance concerned more with process than with substance. For example Bulletins 7 and 17 dealing with electronic submission and qualification processes respectively have each existed in at least three separate incarnations according to the internet resource the Way Back Machine (web.archive.org accessed July 2, 2012); Bulletin 7 created October 2003, altered June 2004 and November 2009 (information between June 2004 and November 2009 was absent and the bulletin may also have been revised during that period); Bulletin 17 created July 2006, altered October 2006 and May 2007. By contrast, Bulletins 1 and 12 addressing CMTs, a source of conflict for the Ministry, have never been revised.

Table 4: Current Versions of Archaeological Bulletins in British Columbia

Bulletin #	Title	Last Revised
1	Recording post-1846 CMTs	May 2001
2	Recording Property Identifiers	May 2002
3	Personal Information and Permit Applications	Oct 2002
4	Archaeological Site Inventory Form and Guide	Aug 2005
5	Winter Methodology for Oil and Gas AIAs	May 2003
6	Copying Permit Report Review Comments to Clients	Oct 2003
7	Standards for Electronic Submission of Permit Reports	Nov 2009
8	Permit Report Citations	Nov 2003
9	Client Certification	Jan 2004
10	Interim Permit Reporting Procedures	Mar 2004
11	Protocol Agreement with BC Oil and Gas Commission	Apr 2004
12	Defining Culturally Modified Tree Site Boundaries	May 2004
13	Application Review Process and Guidelines for Consulting Archaeologists	May 2008
14	Post-construction AIAs for Oil and Gas	Mar 2005
15	Permits and Archaeological Site Boundaries	Jun 2005
16	Using the Archaeological Site Inventory Form and Detailed Data Table to Record CMT Features	Jan 2006
17	Field Director Qualifications	May 2007
18	Site Alteration Permit Reports	Nov 2010
19	Minimum Content and Format Requirements for Recording Archaeological Sites	May 2009
20	Permit Report Copyright	May 2009

Bulletin #	Title	Last Revised
21	Restrictive Covenant Process for Consulting Archaeologists	Nov 2007
22	Enhanced Site Form Mapping Standards	May 2008
23	Recording Archaeological Study Areas	Jun 2011

Source: http://www.for.gov.bc.ca/archaeology/bulletins/index.htm

Despite the inclination to seemingly superficial changes, these bulletins have assisted the Archaeology Branch in creating an unparalleled digital system for the dissemination of site location and archaeological report information. Remote Access to Archaeological Data (RAAD) and the Provincial Archaeological Report Library are the two best examples of this digitization and database project. Among the groups allowed access: "archaeological consultants, federal and provincial land use planning agencies, regional districts, municipalities and First Nations" (http://www.for.gov.bc.ca/archaeology/accessing_archaeological_data/index.htm, Accessed Mar.16, 2012). RAAD provides individual members of these groups access to archaeological site information including location, site forms, maps, and GIS files, all through a web-based interactive provincial map application. The report library provides a searchable database of practically every eligible report submitted to the government since the 1960s. The creation and up-to-date maintenance of these two valuable tools necessitates consistent report and form submissions particularly those laid out in Bulletins 4, 7, 19, 20, and 22. Given the need to police submissions so closely, the bureaucracy's limited capabilities now appear focused in an information "clearing house" capacity, effecting heritage preservation through the intake and dissemination of archaeological data.

4.1.2   Critiques of Contemporary BC Heritage Management

This preoccupation with "clearing house" duties has led to a number of critiques of

current BC administration of archaeological management, though these critiques are

more often leveled at the HCA than at the Archaeology Branch. These contemporary

published criticisms appear to have largely emerged from the increasingly contested

nature of heritage within British Columbia, and a perceived failing of the legislation to

adequately enshrine First Nations interests with regards to their heritage. Critiques range

from a specific dissatisfaction with the HCA being "...narrow in its interpretation of

cultural heritage, as it only addresses physical evidence of past human activity" (Klassen,

Budhwa and Reimer/Yumks 2009: 205), to a more general dissatisfaction, arguing the

Act is "highly ineffective for protecting heritage" (King 2008: 11). Nicholas (2006)

indicated that while progress has been made since the early days of the IGO and HOPA,

CRM in BC still has a ways to go incorporating "emic" or subjective data into analysis.

Budhwa (2005), employing De Paoli (1999), states:

> It is encouraging to see that British Columbia is one of the only provinces to have
> developed a policy regarding minimal standards for First Nations consultation
> prior to archaeological work in their associated traditional territories (De Paoli
> 1999: 2.6). However, despite this policy and progress made by consulting
> archaeologists individually and independent of this structure (such as consultation
> with First Nations during the archaeological permitting process), the First Nations
> have not had a real voice in the interpretation of their cultural heritage. Nor have
> they been included in the development of cultural heritage management
> legislation and impact assessment guidelines (De Paoli 1999: 3.2.2). (26)

This statement obfuscates not only the difference between government and non-

government action - forwarding of archaeological permits to First Nations is a Branch

policy - but alludes to general misconceptions regarding the involvement, limited but

present, of First Nations in the creation of the 1994 HCA. Additionally, while some

critics (King 2008; Klassen, Budhwa and Reimer/Yumks 2009) account for interests

outside of archaeologists, these groups, particularly developers, are rendered invisible

and without agency in the formative stages of the legislation. The perceived absence of these active but understudied forces in the development of contemporary legislation negates not only their contribution to but also any responsibility for the resulting HCA.

The 1970s and 80s saw a rapid expansion in the number of groups with a defined interest in the policies and outcomes of heritage legislation: developers under the proponent pays model, municipalities under the Municipal Act and, especially, Indigenous groups in Treaty negotiations. Each stakeholder group developed an interest in heritage legislation and policy as a result of initiatives where the archaeological resource was simply an element in a larger narrative. Indigenous communities were beginning to engage in legal battles that would result in the Supreme Court of Canada decisions of the 1990s (Sparrow and Delgamuukw) where archaeological evidence was deployed by both sides. Section 714A of the Municipal Act was passed in 1973 allowing municipal designation of heritage lands and buildings (Holman 1996). The nurturing of the "proponent pays" model in the 1980s forced developers to consider archaeological sites not only as delays but potential fiscal drains, encouraging them to take an active interest in heritage legislation and policy. Factor in the shift from government to commercial archaeological survey and this period packed the heritage environment with stakeholders just prior to new legislation. As discussed previously, when a policy-writer wants to retain control of a process they limit the groups involved in that process, the expansion of vested heritage-interested parties in a period of legislative reform, as was the case in British Columbia in the 1980s, meant there were that many more interests to placate in the final product. This environment was front and centre in the minds of those writing the HCA:

> I figured if we could come up with a package that had enough in it for everybody that everybody would agree that the things that are getting worse from their point of view are more than made up for by the things that are getting better, that they would then be supportive of the new package and understanding of the fact that if we tried to give them what they wanted some other party would be vehemently

opposed and vehement opposition to the heritage package from any party would kill it.   (Bill Huot, British Columbia)

In addition to Project Pride, a task force that toured the province in the 1980s accumulating public input with regards to provincial heritage (British Columbia 1987a; 1987b), quiet diplomacy steps were taken with several organizations in an attempt to preemptively address community concerns before legislation was introduced. Drafters conferred with municipalities, Indigenous organizations, archaeologists, and developer representatives gathering concerns and seeking to establish a middle-ground for legislation to occupy (Bill Huot, British Columbia). Some of the most important of these steps (contrary to De Paoli's [1999] assertion cited above) were consultative meetings with Aboriginal groups, known as the First Nations Heritage Symposium. These meetings took place in 1992 between the provincial government, the Union of BC Indian Chiefs, and the First Nations Summit (Bill Huot, British Columbia; Lane 1993). The consequence of these broad consultative efforts was widespread support for the proposed heritage legislation as seen in the following quotes: the First Nations Summit "fully support the Bill as drafted" (letter to Bill Barlee 1994); "a job very well done" (Heritage Society of BC letter to Colin Campbell 1992); "The Institute strongly believes that the current heritage proposal will encourage municipalities and developers to work out sensitive and creative solutions to conserve heritage properties in British Columbia" (Urban Development Institute letter to Bill Barlee 1994); "new heritage legislation is still supported by UBCM" (Union of BC Municipalities letter to Darlene Marzari 1993).

The common interests and support reflected as a result of those consultations over the legislation and proposed means of managing BC's heritage continue in interesting ways today, especially in respect to the relationship several of these groups have been able to develop directly, and beyond government oversight. For example, as Klassen, Budhwa and Reimer/Yumks (2009: 218) point out, the power has begun to shift away from the Archaeology Branch with regards to First Nations consultation and into "high-level

provincial land use planning" and formal/informal agreements with industry and ministries. Improvements achieved through the HCA are being built upon by developing relationships on a local, operable level. These agreements often exceed obligations required under the HCA and by the Archaeology Branch but fulfill the recognized potential within the HCA for these agreements to exist (Bill Huot, British Columbia). In addition to Klassen, Budhwa and Reimer/Yumks's (2009) discussion of these agreements in the forestry context, the Archaeology Branch itself has entered into various memoranda of understanding (MOUs) with First Nations communities (MOU – MTSA and HTG First Nation Heritage Conservation in Hul'qumi'num Tumuhw 2007; MOU-Treaty 8 First Nations). Municipalities are also beginning to exercise their 1973 Municipal Act powers in creating programs similar to the municipal archaeological management plans developed in Ontario (Mason and Zibauer 2012; Williamson 2010). Given the implausibility of passing heritage legislation that is everything to everyone, these individual agreements and programs compensate for perceived faults in a very meaningful and focused way without forcing the provincial government to reopen the legislative process. The opportunities for communities, companies and government to arrive at situational solutions regarding heritage issues emphasize the benefits of a legislatively-cultured inclusive environment built around a common "heritage," rather than a technical and specialized archaeology managed for archaeological interests.

Despite the relative progress made in areas such as Indigenous engagement and informal agreements, British Columbia does lag behind Ontario in two significant areas: municipal heritage planning and the deployment of regulations. As mentioned above, only recently have cities in the province such as New Westminster (Mason and Zibauer 2012) begun to develop heritage protocols similar to those of municipalities in Ontario despite having the nominal ability to do so since the Municipal Act gave them the ability to designate their own heritage sites in the 1970s. As well, the absence of meaningful regulations attached

to the HCA also poses potential future problems should government heritage policies not explicitly laid out in legislation ever be challenged in court (Bjorn Simonsen, British Columbia). Ontario's consistent use of regulations, particularly those dealing with licenses, will be reviewed in the following chapter.

4.2   Contemporary Ontario

The provincial administration of CRM in Ontario has undergone some fairly significant changes in recent years. Trends from the 1980s coalesced in the 90s with the update of various regulations to the OHA (Table 5) and in dialogues between archaeologists (inside and outside of government) and between archaeologists and heritage stakeholders. The 2000s eventually emerged as a period of policy and generational shifts reflecting the trends and events of the previous two decades.

Table 5: Ontario Regulations Past and Present

Regulation #	Title	First Created	Last Revised
R.R.O. 1990 Reg. 875	Archaeological Sites	1950s	1990
O. Reg. 9/06	Criteria For Determining Cultural Heritage Value or Interest	2006	-
O. Reg. 10/06	Criteria for Determining Cultural Heritage Value or Interest of Provincial Significance	2006	-
O. Reg. 170/04	Definitions	2004	-
R.R.O. 1990 Reg. 876	Grants and Loans	1975	2010 (revoked)
R.R.O. 1990 Reg. 877	Grants for Museums	1975	1993
R.R.O. 1990 Reg. 878	Grants for Plaquing	1975	2010 (revoked)
R.R.O. 1990 Reg. 879	Grants to Incorporated Historical Societies and Organizations	1975	1990
R.R.O. 1990 Reg. 880	Historic Sites	1950s	1990
O. Reg. 8/06 (Formerly 881)	Licenses under Part VI of the Act – Excluding Marine Archaeological Sites	1975	2010

Regulation #	Title	First Created	Last Revised
O. Reg. 11/06	Marine Archaeological Sites	2006	-

4.2.1 Foundations of Contemporary Ontario Heritage Administration

The 1980s and 90s saw a series of government-led initiatives to either change heritage legislation or to address issues with heritage policy and provincial review mechanisms. The first, formally titled *Heritage: Giving our Past a Future*, the Heritage Policy Review was a very open exercise involving public submissions and hearings, similar to Project Pride in British Columbia (Ontario 1987; 1988). Conducted under the Liberal government of David Peterson (1985-1990) the review was intended to overhaul the OHA and establish an "overall policy framework" for heritage in Ontario (Ontario 1988: 1). Interestingly, the 1987 *Heritage: Giving our Past a Future* Discussion Summary and the 1988 Public Submissions included several instances of foreshadowing of future heritage management. Two particular examples are striking: from the public consultations came calls for Indigenous consultation; and from the ministry came ideas surrounding private not-for-profit service providers exercising what were referred to as "decentralized partnerships" (Ontario 1987: 10). How these two ideas eventually emerged is discussed subsequently since despite substantial public consultation the review's goals were never realized as Peterson's government fell to the New Democrat Bob Rae in 1990. Under Rae's tenure (1990-95) the OHA remained relatively unchanged, although several changes were made to the Planning Act that reinforced the archaeological protection measures contained there. It was not until Mike Harris's conservative government (1995-2003) that substantive changes to the OHA and archaeological review policies were made.

Delays and costs associated with addressing repeated negative ministry CRM reviews under the OHA and the Planning Act led several developers and sympathetic CRM consultants to organize and apply pressure on the provincial government to engage in reviews of the provincial archaeological program; the first, under the government-wide Red Tape Review Commission, or just Red Tape Commission (RTC), and the second under the Archaeological Customer Service Project (ACSP). Here I will digress briefly and re-outline the archaeological report review environment that the RTC and the ACSP were attempting to remedy.

As already discussed in Ch. 3, the absence of a means, and perhaps even a will, to disseminate the oft-changing criteria by which archaeological reports submitted by licensees were evaluated, contributed to a fairly antagonistic environment between archaeobureaucrats and private consultants (see Ferris 2007b for a colourful account of some of these exchanges). Extant guidelines were ill-equipped to prevent review inconsistencies. The *Guidelines on the Man-Made Heritage Component of Environmental Assessments* (Ontario 1980) emerged from the Environmental Assessment Act 1975. Dealing with multiple categories of heritage including archaeological, architectural, and historical concerns in addition to cultural landscapes these early guidelines were more focused on built heritage and were never employed by archaeobureaucrats (Ferris pers. comm.). By 1985 the absence of archaeology-centric guidelines and a spectrum of questionable field methodologies led the Ministry to begin a consultative process towards the creation of "technical standards of practice" (Ferris 2007a: 86). Government sponsored workshops in 1987 and 1988 combined with detailed questionnaires established a general consensus within the archaeological community with regards to field methodologies (Ferris 2007a). This consensus was formally incorporated, after several drafts, as the *Archaeological Assessment Technical Guidelines* in 1993 addressing stages 1-3 (Ontario 1993) and adherence to them was mandated as a condition of holding

a license for commercial purposes (Ferris 2007a). Despite succeeding in practically defining which archaeological methodologies were perceived as good methodologies and achieving a measure of enforced consistency, the guidelines met with some criticism (Mayer 1994) as reviewers variably enforced adherence to the document, inconsistently allowing exceptions under certain circumstances or for certain individuals, effectively creating what Ferris (2007a: 8) called a "ghost set of standards". In this environment the ability for reports to receive positive reviews was less based on the methodological and analytical merit of corresponding fieldwork and more on the licensee's ability to tailor the report to its individual reviewer's values and maintain a positive relationship with that reviewer (Ferris 2007b). The inevitable clashes between opposing values and personalities led to the formal complaints which directed the RTC's attention to the archaeological review process.

The RTC was primarily a stakeholder-oriented affair interested in the overall efficiency of the provincial bureaucracy as opposed to the specifics of any one department or ministry (Ontario 1997). However under the gaze of the commission many of the archaeological governance structures were reaffirmed and even strengthened. The red tape secretariat found that not only was archaeological conservation firmly established in land use development processes, thanks to efforts of individuals like Bill Fox in the late-1980s, but that the processes of archaeological oversight were actually effective in reducing bureaucratically-induced delays (red tape) (Ferris 2007a). Most of the issues surrounding heritage oversight were attributed to shortcomings of the OHA, a finding which triggered the first substantial legislative changes to the Act. The most significant of these changes were the alterations to section 48(1) creating automatic protection for archaeological sites. The first attempt by consultants and associated developers to address perceived bureaucratic hindrances actually strengthened the archaeobureaucracy by: 1) reaffirming the bureaucracy's efficiencies and even crediting earlier initiatives including

the removal of the requirement to consult with the Ontario Heritage Trust regarding the granting of new licenses (Ontario 1997); and 2) leading to new and updated provisions within the OHA including automatic protection, the power to appoint inspectors and the updating of fines (Government Efficiency Act S.O. 2002, c.18 Schedule F; Ontario Heritage Amendment Act 2005 c. 6). When confronted with an external attempt to impose change, the archaeobureaucracy was able to let its merits and past actions defend themselves; however the internal inconsistencies with which reports were reviewed was not resolved and the Ministry was confronted with an inability to "defend such an informal undefined structure operating far beyond any policy direction" (Ferris 2007a: 89) under scrutiny from the RTC. A "crescendo of complaint" from two particular consultants combined with the findings of the RTC eventually drove the Ministry of Culture to initiate a program review, the Archaeological Customer Service Project (Ferris 2007b).

The ACSP began in 2000 developing four objectives as laid out in Ferris (2007a: 90):

1) to recognize provincial responsibility for protection and preservation of Ontario's heritage;
2) to ensure transparent and fair business practices and high customer service standards;
3) to encourage conditions for the consultant archaeologist and development industries to prosper by removing unnecessary regulatory barriers;
4) to recognize that consultant archaeology is carried out by trained professionals capable of operating with an appropriate degree of autonomy.

The language of these objectives clearly indicates the program's reflection of the goal of bureaucratic efficiency found in the RTC. As the program advanced three key elements effectively limited the extent of any bureaucratic overhaul (Ferris 2007a: 90): first, that the commercial archaeological community did not have sufficient capacity to self-regulate; second, that the basic premises of archaeological conservation in the province were largely uncontested and effective; and third, that increasing Aboriginal involvement corresponded with developments perceived to lack archaeological consideration or have

engaged in sub-standard archaeology. These realizations led to a redeployment of the ACSP's focus:

> Since ARM programs and processes could not be eliminated or delegated out of the ministry, then the direction of the ACSP increasingly shifted towards addressing systematic deficiencies of past practices by formally articulating standards, best practices, and laying out expectations for all those involved. (Ferris 2007a:91)

The ultimate aim then, was the creation of a functional, comprehensive document, capable of clearly demarcating the minimum expectations (standards) while still providing an element of professional independence (guidelines). Complementary to the development of *what* was considered archaeologically proper was the consideration of *who* was capable of conducting proper archaeology. As a result of these considerations the ACSP's first substantial achievement was the creation of licensing categories explicitly formulating the qualifications and corresponding competencies of consulting archaeologists. The resulting professional, applied researcher and avocational licenses were formally adopted in 2006 in O. Reg. 8/06 replacing Reg. 881 (R.R.O. 1990). Knowing who now was doing archaeology, complete attention returned to what these archaeologists were doing.

4.2.2   Standards, Guidelines and Extra-Provincial Government Developments

By 2010, a decade after the beginning of the ACSP (see Ferris 2007a for a more complete chronicle), the *Standards and Guidelines for Consulting Archaeologists* (S&Gs) was essentially complete and scheduled to take effect in 2011. The document was a substantial achievement, 179 pages compared to the Technical Guidelines' 12, covering all four stages of archaeological resource management. Detailing field methodologies, reporting procedures and formats, even artifact cataloguing just looking at the Table of Contents infers that the S&Gs left little room for professional judgment; however as alluded to in its very name the Standards and *Guidelines* do provide for elements of

professional discretion. Although, ironically, formatted somewhat awkwardly the S&Gs

detail minimum standards alongside suggested guidelines (Table 6).

Table 6: Excerpt from Standards and Guidelines regarding Stage 2 Pedestrian Survey (Ontario 2011: 30)

Standards	Guidelines
Actively or recently cultivated agricultural land must be subject to pedestrian survey.	For orchards, vineyards or comparable situations where the open space to be ploughed between plants measures more than 5 m, strip-ploughing is an acceptable alternative to full ploughing.
Land to be surveyed must be recently ploughed. Use of chisel ploughs is not acceptable. In heavy clay soils ensure furrows are disked after ploughing to break them up further.	When appropriate based on crop conditions, (e.g., corn fields where herbicides have prevents weed growth, young winter wheat without weed growth between the rows), survey transects less than 5 m may be used to achieve the minimum 80% visibility.
Land to be surveyed must be weathered by one heavy rainfall or several light rains to improve visibility of archaeological resources.	

While the example guidelines are optional their specificity appears to relegate

professional judgment to a very limited set of circumstances. A perception of

professional freedom is promoted by the other less specific guidelines where versions of

the phrase "on the basis of professional judgment" appear to provide for some degree of

flexibility. However whether these guidelines do not become a source of confrontation

upon review has yet to be determined. Paralleling these developments through the ACSP

and the RTC were other initiatives, in particular the reinforcement of municipal heritage

processes from a variety of sources including the 2005 Provincial Policy Statement and

changes to the Planning Act and the Environmental Assessment Act (see Williamson 2010 for a detailed description of recent changes).

These developments further encouraged an already increasing role for municipalities in managing their own archaeological heritage through archaeological management plans (AMPs). Pre-existing archaeological priorities within legislation besides the Ontario Heritage Act, the means through which widespread provincial conservation was originally achieved, became even more important after the provincial downloading of approval authority to the municipalities during the 1990s. Municipalities became the focus of practical heritage engagement and potential arenas for substantive heritage policy change; a significant difference from municipalities in British Columbia, although recent initiatives such as those in New Westminster are promising (Mason and Zibauer 2012). The contemporary role Ontario municipalities play in the progression of heritage management is increasingly innovative as one consultant put it:

> The other thing that all of these things at the municipal level is doing is broadening the horizons of many cultural resource managers especially archaeologists who think about heritage and equaling archaeology and are now really having to grapple around the notion that heritage is a continuum from below to above ground. (O535, Ontario)

Able to employ processes and methodologies transcending those required by the provincial government, municipalities are able to enter into comprehensive partnerships with developers, archaeologists and First Nations. In fact, in many ways Ontario municipalities might be compared to British Columbian developers, in that both occupy a spectrum of heritage strategies and relationships with First Nations communities and archaeological consultants; some of which going far beyond the legislated requirements. The contemporary pattern in both provinces is of relationships between stakeholders that essentially pay lip service to provincial regulatory agencies by meeting perceived unsatisfactory, minimal standards while collaboratively creating project or region specific

heritage programs that could never emerge from a provincially focused heritage governance regime.

Perhaps the best example of an inability by government to directly nurture meaningful relationships among stakeholders is the 2010 *Engaging Aboriginal Communities in Archaeology: A Draft Technical Bulletin for Consultant Archaeologists in Ontario* (Ontario 2010). Intended to further explain new conditions for consulting with Indigenous communities featured in the 2011 S&Gs, the bulletin describes not only the particular standards and guidelines under which this consultation occurs but suggests actual consultation methodologies. The bulletin and corresponding standards seemingly address a provincial "duty to consult" on areas that may impact Aboriginal or Treaty rights originating from section 35 of the *Constitution Act* and reaffirmed by the Supreme Court of Canada in the *Haida*, *Taku River* and *Mikisew Cree* decisions. Legal readings of the act and decisions, however have determined that the "duty to consult" applies only to approval authorities, as such:

> …the legal opinion that they received was that the ministry licenses archaeologists we don't approve developments so we're not an approval authority. So we don't have the duty to consult but we do have this sense that there's value to gained from archaeology from engaging aboriginal communities, we do understand that engaging aboriginal communities not just in Ipperwash and Caledonia have an interest abiding in their heritage and that we should engage at some level… we also recognize that politically it's a good thing to do. (O315, Ontario)

Not required to consult according to the legal reading they have received, the provincial heritage regulatory structure need not effectively engage Indigenous communities so long as they maintain that they are not an approval authority. Consistently read as such in other jurisdictions, this interpretation has not prevented provincial governments from recognizing that Indigenous communities have a stake in heritage management:

> While the routine application of *The Heritage Property Act* [H-2.2 Saskatchewan 1980] whether related to archaeological objects or "sacred" sites is not likely to

trigger the strict legal duty to consult, this is not to say that the Heritage Conservation Branch does not consult FNs on these and other matters of special interest and concern to FNs. In fact, the Branch has a long history of working closely with Aboriginal peoples on archaeology and sacred sites, including development of the province's archaeological burial management policy, protocols and etiquette for visitation to sacred sites, co-management of the Central Burial Site, repatriation of culturally sensitive objects, and involvement in archaeological impact assessment/mitigation projects especially where sites of a special nature are encountered. As noted in the (Government of Saskatchewan) *First Nations and Métis Consultation Policy Framework (2010)*, this type of consultation with FNs and Métis, which is outside of any legal obligation that the government may have, is referred to as interest-based engagement. Its purpose is to ensure that government policies, plans and actions will effectively meet their intended goals and objectives, including the needs and interests of those most affected. Good interest-based engagement also helps develop and maintain positive working relations with FNs and Métis organizations and communities. (Carlos Germann speaking of his experiences in Saskatchewan)

In Ontario, the aboriginal engagement bulletin does not exist because it is legally required to exist; rather it promotes a perception of engagement and facilitates the potential for meaningful consequences of even a superficial engagement to emerge:

Well there's a bit of scope creep on the part of archaeologists who are willing to talk about archaeological sites as the sum total of the cultural heritage values that may exist in a place. I was just on the phone with somebody, just a minute ago, who was telling me exactly the opposite, a FN person who's saying "yeah the place is different than the site. You can take the site away but the place remains". And that's an argument that we don't hear from archaeologists often and if we do hear it from archaeologists we hear it in the contexts of "we can look after it". We can put it into a cultural landscape type of context so that the archaeology can be done by archaeologists for the benefit of archaeologists and the cultural landscape can continue to be this vaguely defined policy concept that has no real power behind it or there's no structure behind it… and that diffuses, that blunts a lot of the critiques that FN peoples might have. (O315, Ontario)

Consequently, even the most dramatically superficial of policies, intended to create the perception of addressing an issue, can have very real implications in much the same way an actor playing a role can elicit conversation among members of the audience.

As the Ontario archaeobureaucrats have continued to see their roles develop into reviewers and copy-editors, as opposed to agents capable of meaningful engagement, the

criticisms surrounding their contribution to CRM have only deepened, further strengthened by the capability of non-provincial agents to achieve more satisfactory results. Like British Columbia, reports are scrutinized for even the most minor of formatting infractions and the degree of scrutiny of each individual report is no doubt reminiscent of the subjectiveness of the early 1990s (Ferris 2007b). Unlike British Columbia there still exists no easy method to acquire site or report information remotely, not even the slightest benefit exists to show consultants often frustrated by the emphasis placed on perceived minor details, that would have at least some justification if an accessible database requiring some degree of formatting consistency was present. The changing roles of archaeobureaucrats further contribute to a dissonance between past and present perceptions of previous and contemporary heritage governance.

To a discipline that prides itself on identifying and connecting past cultures nothing is more jarring than a perceived lack of continuity. The presence of a continuum linking different eras through transitional phases fits with the archaeological world-view. Anything that stands out, that does not hold with that continuum must be scrutinized and its existence justified within the context of the record. The archaeobureaucracy in Ontario stands as a series of misaligned steps. The first as discussed in Ch. 3.3, a dissonance between the first archaeobureaucrats and the early ON AHSPA advisory boards. Despite this schism the archaeobureaucracy established itself through knowledge generation and expansion, particularly into the Planning Act and other regulatory pieces of legislation (Aggregates Act, Environmental Assessment Act etc; see Williamson 2010). Contemporary archaeobureaucrats are not perceived as connected to these predecessors, occasional referred to popularly as the something akin to a new generation or "newbies" (Ferris 2007b). This new dissonance does not imbue these newer archaeobureaucrats with the authority of their predecessors; rather it appears to emphasize their perceived inexperience. This will likely continue until, like those before them, they are able to

establish their authority as a consequence of their own actions. Tracking, recording and highlighting the benefits of these actions such as the Standards and Guidelines and the Technical Bulletins, in addition to creating an accessible digital database, will be critical objectives in justifying the future role of archaeobureaucrats. Unwilling to explicitly manage physical archaeological sites, Ontario archaeobureaucrats must follow their BC counterparts and become effective managers of archaeological data; however, like British Columbia, groups outside of the provincial government are beginning to compensate for perceived shortcomings in the traditional heritage management structure through their own initiatives and programs. Unlike British Columbia, the quantity and magnitude of currently unaddressed issues may leave the provincial heritage regime in Ontario somewhat diminished should these problems be resolved before the ministry decides to adequately address them.

For example, Sustainable Archaeology, out of McMaster University and the University of Western Ontario, is engaged in a project to compensate for the lack of a designated and consistently available provincial repository, the long term care of artifacts is left in the care of licensees; this in addition to the project's significant digital information management potential, may pre-empt any similar digital initiatives on the part of the traditional bureaucracy. The proliferation of municipal archaeological management plans in many major Ontario municipalities also mark instances where local governments deploying powers downloaded to them in the 1990s by the Harris government are meeting and transcending provincial regulations and policies with reference to heritage (O415 Ontario; Williamson 2010). The administration of the licensing system, management of an archaic archaeological data repository and the fact that it is the exclusive legislative authority for archaeology appear to be the only things standing between the archaeobureaucracy and obsolescence. Publically shirking any inference that it is an approval authority the contemporary Ontario archaeobureaucracy appears stalled,

able to impose new procedures and processes, but not yet in a position to extol the benefits of these changes. Consequently, as the schism between much of the private consulting industry and academia appears on the mend, the potential exists for an increasing rift between the archaeobureaucracy and the rest of Ontario archaeology unless the government is able to provide a real resulting benefit to consultants and communities.

5   Themes

Researching the legislation and bureaucracy of cultural heritage management through interviews and primary document survey has contributed to the formation of three intuitive themes that appear to permeate CRM governance. Process, performance and balance contribute to an environment of governance where the values and the power to express those values, of multiple communities and interests, collide. Here "cultural resource legislation springs from values of heritage and community, but these run afoul of the market ethos of fast capitalism" (McGuire 2008: 225). I argue that the three themes – process, performance and balance – are representative of attempts, intentional or otherwise, to moderate the contestation between heritage values and the development ethos. Process provides standardization and a mechanism for bureaucratic intervention; performance alludes to the allowance for perceived actions to have real results; and balance is a coordination of McGuire's (2008) praxis and the need for some form of maintenance or regulation in perpetuating the relationship between praxes. Each of these themes will be discussed, using examples from the literature and from the interviews.

5.1   Process

Operating in, indeed facilitating, the most quantitative environment of the three themes, process used here represents the various procedures created and enforced by the provincial governments, both contemporarily and in the past. Permits, licenses, guidelines, bulletins, and reporting practices are all examples of how process is expressed in the governance of heritage. Process is the basis upon which archaeological heritage is administered day to day. Licensing archaeologists in Ontario and permit applications in BC give way to standardized field methodologies as outlined in government produced standards and guidelines, defining the stages of fieldwork to determine the presence or absence of archaeological sites and whether subsequent stages are needed, before ending

finally in the review of a written report that needs to meet an always growing number of formatting requirements.

 The deployment of process through these procedural means appears to fulfill two functions. The first represents process as legitimacy: procedures enforce standardization and standardization conveys intellectual consistency. In other words common process acts as a structure of articulated rules that can be referred to when reinforcing authority. This interaction reflects *organizational legitimacy* as theorized by Dowling and Pfeffer (1975: 122):

> Organizations seek to establish congruence between the social values associated with or implied by their activities and the norms of acceptable behavior in the larger social system of which they are a part. Insofar as these two value systems are congruent we can speak of organizational legitimacy.

The archaeobureaucracy achieves this organizational legitimacy through its deployment of process as capable of complementing bureaucratic norms of procedure with archaeological norms of generally accepted methodologies. As long as these two elements are perceived as complementary, the archaeobureaucracy is perceived as legitimate. Balance can be maintained between the two in three ways (Dowling and Pfeffer 1975: 126-127):

> An organization can do three things to become legitimate [or maintain legitimacy]. First, the organization can adapt its output, goals, and methods of operation to conform to prevailing definitions of legitimacy. Second, the organization can attempt, through communication, to alter the definition of social legitimacy so that it conforms to the organization's present practices, output, and values. Finally, the organization can attempt, again through communication, to become identified with symbols, values, or institutions which have a strong base of social legitimacy.

Archaeology employed the last two methods in establishing itself during the 50s, 60s and 70s as the legitimate heritage authority within government: first, by shaping policy and legislation to dissuade developers from destroying archaeological sites during

construction; and second, by portraying their actions as heroic in rescuing the past from certain destruction (MacLeod 1975). Currently, however, the State is more often forced to employ the first method, adapting process to changing social and discipline-based values as best evidenced by the formal incorporation of Indigenous consultation as social and legal values shifted to require it.

The second function represents process as power and refers to the ability of bureaucrats to invoke a limited authority in managing adherence. The authority here is derived from two sources: conformity (Bovaird and Löffler 2003) and compliance (Brown 2008). Conformity, or adherence to established processes, provides the archaeobureaucrat the perceived authority of the collective which established said processes. In other words, having consulted with the archaeological community to establish accepted field methodologies, the archaeobureaucrat recreates that collective authority through enforcement. Compliance, or adherence to regulation and legislation, also provides the archaeobureaucrat with the perceived authority of the collective responsible for said regulations and acts; which in the Canadian provincial context could be portrayed as wide as the entire voting public (Hinshelwood 2010). The first function, process as legitimacy, appears to provide a defense against attempts to question government policies while the second function, process as power, allows government to question the practices of others, an offensive tool. The emergence of process and its functions in provincial heritage management can be traced to the past development of policies and legislation.

As explained in Ch. 3 the development of heritage policy in BC and Ontario has been a progression of sorts, and the progression of process in heritage management reflects these changes in policy. Both BC and Ontario created process as a government mechanism with the establishment of a permitting system to oversee some or all provincial archaeological projects. While Ontario would eventually shift to a comprehensive licensing system, the fundamental attributes of these two processes remain the same.

Both permitting and licensing allows the provincial government to not only define who conducts archaeological investigations but how those investigations are conducted. This latter function is further achieved through standards and/or guidelines, the adherence to which a condition of holding valid permits or licenses. Both British Columbia and Ontario have created multiple versions of these guidelines, indicating that government processes are in a constant state of flux. In the case of BC the rate of flux eventually led the government to move away from guidelines to bulletins - guidelines presumably no longer being perceived as an adequate medium for conveying changes to provincial heritage policy. As such bulletins have been continually produced since the last edition of the guidelines in 1998. Ontario having recently released a new set of standards and guidelines, has also released a series of three technical bulletins, indicating that the province may be intending to parallel past developments in BC. Having previously consulted on legislation and regulation and on the 1993 technical guidelines and the 2011 S&Gs, it will be interesting to see if the government continues such stakeholder inclusion on the drafting of any future bulletins. The comparative inauspiciousness of a single bulletin next to an entire piece of legislation or set of standards may be thought to mitigate some of the consequences of neglecting future consultations.

Both provinces' heritage bureaucracies are now focused on the administration of this process of permits/licenses and guidelines. As Apland (1997: 4) phrases it:

> The Archaeology Branch administers the Heritage Conservation Act (i.e. maintains the Provincial Heritage Register and manages the archaeological permitting process). It does not, nor is it empowered to enforce the act.

While the above quote is referring to the British Columbia context, it has essentially become the publically expressed position of the Ontario government as well. The Ontario Ministry of Tourism and Culture's archaeology website (http://www.mtc.gov.on.ca/en/archaeology/archaeology.shtml: accessed July 8, 2012) states that:

> This ministry enforces Part VI of the *Ontario Heritage Act*. This portion of the act determines priorities, policies and programs for the conservation of archaeological resources determined to have cultural heritage value.
>
> Among other provisions, the act makes it illegal for anyone but a licensed archaeologist to knowingly disturb an archaeological site. This means that *unless you are a licensed archaeologist, it is illegal for you to dig an archaeological site or dive on a shipwreck to record its condition or remove and keep artifacts.*

However enforcement of the act is restricted to the processes within CRM as the website explains how the Ministry meets its legislated responsibilities by licensing archaeologists, reviewing reports, maintaining the report and site databases and advising licensees, municipalities and approval authorities. Protection of archaeological resources under these circumstances is entirely from within approval and review processes with no function dedicated to preservation outside of these processes.

Consolidating authority around the management of procedure calls into question the bureaucracy's ability to effectively encourage "good" archaeology. As one Ontario archaeobureaucrat expressed:

> …they [archaeobureaucrats] recognize the way archaeology is regulated, it's very much regulated to the process of going through the archaeological assessment and writing the reports and not to the outcomes of good archaeology.　(O315, Ontario)

In the absence of encouraging the best practices of the discipline, so-called "good" archaeology, heritage governance manufactures policy guidelines and standards that mollify multiple interests, an aspect that will be discussed further in the balance section. Note here that these interests are simultaneously external (Indigenous communities, archaeologists, developers) and internal (bureaucrats' senior management, other ministries, elected officials) to the provincial government. Process as legitimacy within the bureaucracy appears to be an effective strategy, as one official discussed:

> …essentially we are enforcing provincial policy requirements… when it comes to a crunch and the politician comes and says "why are we doing this?" - "well we

have to". It is all law you know…we have committed to doing this so it's kind of a nice handy fallback.   (O415, Ontario)

Reliance on a structure of process and procedure manifested in licenses, permits and standards and guidelines appeared in both British Columbia and Ontario under arguably similar conditions. However similar report formatting procedures nonetheless offers insight into a significant difference in the perceived outcomes of these relatively new formatting processes between the two provinces.

In British Columbia, the emphasis on the technical formatting guidelines has already been presented (Table 4). A perceived benefit, or justification, of many of these requirements exists in the form of the remotely accessible archaeological site inventory and archaeological report database. Formatting process has a readily apparent defense to criticism as evidenced by the availability of these access tools. Conversely, in Ontario, the benefits of growing formatting requirements are not as evident. There currently is no remotely accessible equivalent to British Columbia's digital system and consequently archaeologists required to meet the growing number of requirements see no tangible benefit to their efforts. Formatting process in Ontario has no readily apparent defense to criticism as evidenced by the lack of access tools. By no means, however, should digital data dissemination be viewed as a panacea for formatting criticisms, rather, from my own experience submitting reports in British Columbia, it tempers particular complaints related to elements logically applied to database design and integrity including digital file format and size, map and image resolution, and consistent report structure. A consequence of the absence of remote access tools is the appearance of these database justified requirements as somewhat arbitrary exercises of bureaucratic authority.

As previously mentioned the imposition of bureaucratic authority or power through process is achieved via the implementation of standards/guidelines and the ability of government to enforce adherence with permitting and licensing mechanisms. Process as

power gives the archaeobureaucrat a suite of options when dealing with situations running counter to government policy or, as evident in Ontario, the sensibilities and expectations of a single archaeobureaucrat (Ferris 2007b). Deviance from procedure on the part of the consultant provides the archaeobureaucrat some small degree of power, perhaps using small formatting errors to punish perceived faults in other areas. Conversely each instance of strict adherence to procedure is easily perceived or portrayed as a positive quantifiable outcome irrespective of the sum quality of the archaeology undertaken. Addressing past complaints of inconsistency in how this power is applied (e.g., the Red Tape Review Commission and the Archaeological Customer Service Project), the subsequent enforcement of quantifiable standards, as is the case in Ontario, provides the bureaucracy with a veneer of impartiality. Achieving a perception of consistency speaks to the importance of performance as discussed in the following section; however quantifiable elements also reveal a complimentary relationship between the defined categories of culture history, the perceived objectivity of processualist archaeology and a form of governance known as New Public Management:

> …in Ontario they have a management system that, New Public Management they call it in the literature and it is very much focused on results based planning and this reinforces the processualist paradigm because results based planning means measureable outcomes are better than qualitative outcomes. (O315, Ontario)

Originating in the Thatcher/Reagan administrations of the 70s and 80s, New Public Management (NPM) "is the adoption by public organizations of the management and organizational forms used by private companies" (Christensen and Laegreid 2011: 2). Important to note here is that NPM is emblematic of a host of varied initiatives sharing the common theme stated above (Aucoin 1995; Malloy 2003). NPM made its way into the Canadian political system primarily during the Mulroney years however some founding credit is given to Trudeau's "rational management" policies (Aucoin 1995). These Canadian developments' stated aim was the dissemination of controls from

governance structures to individual managers (Aucoin 1995). Maintaining order under this decentralization was facilitated by the core elements of NPM; essentially operating under *accounting logic* (Laughlin 1992; Broadbent and Laughlin 2002) fundamental to which are two assumptions:

1 That any activity needs to be evaluated in terms of some measureable outputs achieved and the value added in the course of any activity.
2 That is possible to undertake this evaluation in and through the financial resources actually used or received. (Broadbent and Laughlin 2002: 101)

The impact of NPM values on archaeological governance is nowhere more explicit than Ontario's ACSP. The incorporation of business metrics under NPM also brought in a new perspective of the users of government services as customers and clients (Borins 2002). The Archaeological *Customer Service* Project explicitly references the shift to NPM, while the metrics of sites recorded, licenses distributed and number of contract information forms submitted were more implicit (Ferris 2007c). Measureable outputs entail definitive outcomes, binary positive or negative results enabling the continued use of cultural historical/processualist methodologies in CRM capable of producing definitive results (Smith 2004). Positive outcomes were measured in the number of sites found, number of projects completed, and number of archaeologists licensed, all quantitative metrics, some of which recorded since the 1970s (Ferris 2007c). Qualitative results, under this NPM-based regime, do not currently conform to the needs of an industry requiring specific recommendations. Despite this practical shortcoming legislation and policy are capable of conveying a perception that qualitative data is indeed of some importance. The conditions promoting this perception are found in the second theme, performance.

5.2   Performance

…all of the assumptions, all of the bad decisions, all of the past actions and contests that the policy is based on have become normalized, they've become invisible; they're no longer addressed and we see this with some people as well

> where they no longer think about archaeology as a very dynamic process of engagement, of performance, between the sites and the knowledge base, other crew members, other specialists and your own expectations to earn a living… (O315, Ontario)

Performance, the second theme in the context of governance, denotes the predominance of perception considerations in the governance of archaeology. A repeating theme during discussions about production of legislation was the phrase "seen to be working" when referring to the government, politicians and bureaucrats alike: "…government had to be seen to be working on this. You can't hold that kind of consultation exercise and not deal with the issues that people have told you are important."(Bill Huot, British Columbia referring to Project Pride). Conveying the perception of action – performance – on an issue has the potential to take on a higher priority than the quality of that action (the Technical Bulletin on Aboriginal Engagement example from Ch. 4.2 being one instance).

There exists a belief both from within government and academia that the public is at the very least perceived to attribute value towards heritage and heritage resources, the provincial government must at least appear to be addressing these values (Carman 2002; Cleere 1989; Hinshelwood 2010). That these perceived public values often emerge from the efforts of academia and government in promoting aspects of national identity and continuity as laid out in Smith's (2006) authorized heritage discourse creates a sort of heritage feedback loop. Heritage is important because of its reinforcing of contemporary identities, the strengthening of which promotes further interest in heritage. The efforts of archaeologists during the early stages of CRM in establishing organizational legitimacy also enhanced public interest by associating the efforts of these archaeologists with a recognizable heroic narrative as discussed in the previous section. The result was a heritage establishment that could be looked to when heritage issues that captured the public eye emerged. Considering archaeological and heritage resource management as performance within this context should not be greatly surprising.

There are no doubt other reasons for the existence of CRM in provincial legislation, not least of which concerning the value placed on heritage by Indigenous groups and by professionals; however archaeology's particular inclusion in the processes of heritage governance contributes an important part to this political performance. Multiple actors play to multiple audiences tailoring their performances to not only meet the expectations of those they represent but even facilitating the performances of others on the stage:

> I called it Janus-faced at the time, in other words they [First Nations Leaders] could portray it as: "we entered into an agreement with the government, we are not accepting that the government is the steward of our ancestral heritage, they are our agent"…On the other hand the courts could look at the legislation and see that protection falls within the legal authority of government. (Bill Huot, British Columbia)

While government and Indigenous actors played to their crowds, the archaeological audience expected "good" archaeology. Many who have participated in an archaeological excavation have probably heard the expression "anyone can dig a hole" or something to that effect. Archaeology consistently emphasizes that while anyone can dig a hole, it takes an archaeologist to know how to dig proper holes in the proper way. Having cultured via a combination of popular media and the impression of scientific rigor, the widely accepted view that archaeologists, to the exclusion of others, do indeed dig "proper" holes, archaeology has established itself as the perceived intellectual authority for all old human things buried, or for lack of a better term, "ground-oriented". The extension of this organizational legitimacy into the realm of State administered heritage management achieves a perpetual reinforcement of archaeology's and the State's authority over heritage. The province draws from the archaeologist's intellectual authority and the archaeologist draws from the province's legislative authority. The maintenance of this cycle requires that each participant also maintain their respective perceived/performed roles. The province does so in numerous arenas beyond archaeology and therefore conveys authority simply by participating in the heritage process. The

archaeologist however maintains authority through the intellectual allowance provided by their perceived expertise. The association of the majority of archaeological work with recognized intellectual institutions, especially museums and universities, by the public despite the practical realities of CRM (majority of archaeology conducted by private consulting firms) highlights the intellectual expertise deployed by archaeologists and the perceived credibility rendered to all aspects of the discipline by an ill-informed public (Pokotylo and Guppy 1999). Because that expertise is explicit in the employment of State and archaeologist-defined accepted methodologies (digging "proper holes"), it is in the interests of both the State and the archaeologist that government somehow incorporate these methodologies into the heritage establishment (standards and guidelines). In this way the publically perceived value of archaeology is co-opted into the provincial heritage establishment, a great example of the power/knowledge aspect of Foucault's (1991) governmentality at work (Smith 2004). Archaeologists derive authority from the State as the recognized experts of the material past, conforming to State-imposed processes and submitting their expertise to State review and approval. Both State and archaeologist symbiotically encourage the production of political and intellectual capital via heritage concerns enabling each to reinforce their positions of authority within wider society (how the State is increasingly partnering with non-archaeologists is discussed in subsequent chapters).

Using this authority, coupled with an understanding of bureaucratic performance (being seen to act), enables the provincial government to negotiate the third theme: balance. Balance also encompasses relationships between government and archaeobureaucrat. As the identity of these archaeobureaucrats shift from intellectual and discipline focused to bureaucratic and process focused, their ability to maintain intellectual authority, particularly to archaeological peers, is diminished. Also arguably diminished is the authority the provincial government draws from the incorporation of these intellectuals

into the power/knowledge dyad, replaced by other relationships with different "experts" (e.g. First Nations), a consequence that may be beginning to play out in Ontario.

5.3   Balance

Balance here refers to two related areas - values and identities - and is a tenuous label which could easily be replaced with the terms contested or conflicted, as in contested values and conflicted identities. I chose balance because of the degree of functionality government has had to achieve and the conscious consideration given to the perceived maintenance of balance. Values and identities are two aspects of what McGuire labels *praxis,* which

> …refers to the distinctly human capacity to consciously create and creatively construct and change both the world and ourselves. The minimal definition of praxis is 'theoretically informed action'. (2008: 4)

I argue that competing attempts to "consciously create and creatively construct and change" the world constitutes a collision of praxes. I limit discussion to heritage values and archaeobureaucrat identities but could easily, given more time and space, incorporate wider aspects of community and worldview as additional factors in praxis.

 The first area, values, encompasses all of the invested stakeholders in the administration and processes surrounding heritage management and is present in even the earliest aspects of heritage governance including legislation drafting:

> I figured if we could come up with a package that from everyone's point of view was an improvement in the status quo and could be supported by parties with differing interests. We understood that if we tried to give one party everything they wanted some other party would be vehemently opposed, and any opposition to the heritage package from any party would likely kill it. (Bill Huot, British Columbia)

These stakeholders include developers, cultural resource professionals including archaeologists, descendant communities, particularly Indigenous groups and the

government itself consistently, with other more transient "publics" entering and exiting depending on the individual project. To use a theatre analogy, the former group would be the season ticket holders with a seat saved at all but the most special of performances, while the latter group would only buy tickets if a particular performance captivated them. The foundry of provincial heritage legislation, regulation and policy exists at the nexus of these stakeholders and must balance their specific agendas so as to not elicit complete opposition by any one group to provincial heritage policy. Achieving a certain measure of balance is also perceived as a necessity in maintaining the status quo:

> …now recognize that part of the strategic thinking, part of the fear is that if you were to open up the Ontario Heritage Act for discussion you're not just going to open it up for discussion by archaeologists, academic archaeologists and practitioners of CRM, you're not just going to open it up to people interested in cultural heritage, you're not just going to open it up to include aboriginal communities but you're going to open it up to include foresters, mining interests, developers, all of these various interests and they all bring with them their skills and abilities in the political system. (O315, Ontario)

To this end the two previous themes of process and performance have been invaluable. Process offers up the abstracted ideal, that every developer jumps the same clearance hurdles, that every archaeologist receives the same scrutiny. Performance allows the provinces to not only work under the auspices of perceived action rather than result, but to define the roles and limit the performances of the stakeholders themselves. Process and performance combined can then obfuscate the reality of outcomes, extolling the subjectively positive and punishing the subjectively negative. In fact this subjectiveness is another example of the importance of balance to archaeobureaucrats, since what may be a positive outcome for a developer (Stage 1 clearance), may be a negative outcome to a descendant community. If outcomes are subjective then the maintenance of balance becomes even more important. Success for the bureaucracy under these circumstances lies in a consistency of outcomes as predictable results when, all things being equal, the correct processes are followed. When all things are not equal and an undesired (read

unpredictable) outcome occurs, perhaps the known destruction of an archeological site, perceived balance is threatened and imbalances are revealed. A perceived modest distribution of value-based positive and negative outcomes must exist to maintain equilibrium (i.e. all known unpredictable results must not be archaeological sites being destroyed). Perhaps the best indication of this equilibrium is universal stakeholder dislike for but not the rejection of, provincial heritage policy.

Balance also appears to be a significant element in the internal maintenance of archaeological values by individual archaeobureaucrats in relation to professional responsibilities, and resulting professional identities, the second area of praxis discussed here. Shifts in the identities of individual archaeologists occurred as they transitioned into the bureaucracy:

> …there are some people who have come into public service with a fair bit of experience and really good abilities as field archaeologists or project archaeologists who have pretty much had to firewall those two parts of their personality. (O315, Ontario)

The incorporation of archaeobureaucrats into the provincial government in the hopes of a continuing cycle of mutual reinforcing intellectual/government authorities through Foucault's power/knowledge dyad appears a doomed proposition. As contemporary events in Ontario and British Columbia appear to indicate, the more subsumed by government an archaeologist-turned-bureaucrat becomes the less intellectual authority they are able to marshal within the archaeological community. What is worse is that the process appears to be hereditarily cumulative as each successive generation is hired not for their ability to fulfill their intellectual end of the dyad but to meet ever growing bureaucratic requirements. As heritage's envelopment of cultural resource management continues perhaps an unintended consequence is the passing of the era of archaeology-centric bureaucrats, balance achieved not through the relationship between power and knowledge but between the varying scales of stakeholder interest (including archaeology)

and their ability to expend various types of capital (Bourdieu 1975) to heritage-related

ends.

6   Heritage

The use of the term *heritage* by provincial governments in articulating their jurisdiction over essentially the remnants of the past is contemporaneous with what could be perceived as related developments. Effectively combining the previous terms of *archaeological* and *historical* into a single word meant to represent both, this legislative redefining has resulted in a much wider potential area of jurisdiction. I say potential because a seemingly pervasive feature of the term heritage is its resistance to narrow definitions. The formal deployment of heritage as the operable term for all things past emerged out of the 1972 UNESCO World Heritage Convention. Initially set out to list heritage sites falling into either natural heritage or cultural heritage categories, the World Heritage Convention perpetuated the Western AHD of monumental and material heritage; tangible heritage (Smith 2006; West and Ansell 2010). The evolution of international agreements concerning heritage and the rapidity with which the definitions of heritage changed to include cultural landscapes and intangible heritage (West and Ansell 2010) parallels the evolution of heritage within individual States. As the definition of heritage internationally and academically (Smith 2006; West and Ansell 2010) now includes the intangible, it fosters dissent against the tangible-centric, archaic definitions of legislation. However these legislative definitions of heritage are sometimes contrasted against more modern definitions of the very people designated to enforce the acts.

Even within the context of the legislation and those involved with maintaining it there exist multiple definitions of heritage, including definitions that hint at intangible heritage. The possibility of multiple operable definitions existing simultaneously may be one of the greatest strengths of heritage's employment by government. Remembering the themes of performance and balance it is clear that this multi-definitional function of heritage allows government to convey multiple ideas to different communities every time it deploys the

term. Intentional or not this function fosters the impression, despite several definitions to the contrary, that legislation like the Ontario *Heritage* Act or the *Heritage* Conservation Act in BC, in the context of CRM, could apply to more than just the historical and archaeological resources protected under legislations past, that it could apply to intangible heritage, if only the formalized provincial definitions of heritage evolved in the same way formalized international definitions have.

Appreciating the developmental sequence of policies and legislation through time creates another area that could be considered a heritage study; i.e., the heritage of heritage governance itself. That the past contributes much to the identities, values and worldviews of the present is a generally accepted element of heritage; however what other definitions of heritage from academia and elsewhere have emerged? How and when did these encompass CRM?

6.1   What is Heritage?

Heritage, as both a concept and practical term, is subject to multiple meanings from multiple areas including academia and legislative policy. In academia defining heritage has been subject to substantial attention. Entire chapters or sections of chapters, as is the case here, can be devoted to a discussion of what heritage means. In legislative policy heritage definitions are much more concise, inferences about what heritage is within these contexts ultimately drawn from the minutia of the legislation rather than from exhaustive, theoretical statements. And within legislative regimes, considering the role of various modifiers to heritage, such as *significance* or *value*, provides additional, implicit qualifiers of definition not otherwise explicit in definitions sections of these acts.

Academic definitions of heritage are numerous and stem from a variety of fields. Given the limitations of this thesis, I will briefly present two definitions that encapsulate the

diversity of contemporary discourse (for information of past heritage discourse refer to Harvey 2008; Smith 2006; West and Ansell 2010).

According to Graham and Howard (2008: 2), who developed a present-centered, constructionist perspective, heritage refers "to the ways in which very selective past material artefacts, natural landscapes, mythologies, memories and traditions become cultural, political and economic resources for the present". Consequently and in support of a distinct discipline of heritage studies:

> …the study of heritage does not involve a direct engagement with the study of the past. Instead the contents, interpretations and representations of the heritage resource are selected according to the demands of the present and, in turn, bequeathed to an imagined future (Ashworth, Graham and Turnbridge 2007). It follows, therefore, that heritage is less about tangible material artefacts or other intangible forms of the past than about the meanings placed upon them and the representations which are created from them (Graham and Howard 2008: 2).

It would follow then that heritage legislation is not about protecting the past but about preserving the capacity of the present and an "imagined" future to draw meaning and create representations from the past. Under these circumstances the role of archaeologists very much interested in the preservation of and critical engagement with the past as cultural resource managers is in conflict with their role as perceived by others. As discussed in Ch. 4, the resource in CRM is still viewed as an archaeological one by archaeologists and the means and outcomes of CRM reflect this monopolization. The CRM establishment (government and archaeologists) largely fail to recognize the wider implications of the shift to a heritage resource by neglecting to significantly alter practice and outcome to reflect the values of communities whose heritage these resources fall under. This dissonance reflects the competing interests in cultural heritage and

> …arises because of the zero-sum characteristics of heritages, all of which belong to someone and logically, therefore, not to someone else. The creation of any heritage actively or potentially disinherits or excludes those who do not subscribe

> to, or are embraced within, the terms of meaning attending that heritage. (Graham
> and Howard 2008: 3)

Perhaps the subconscious fear of we archaeologists is that once these sites and artifacts

are truly recognized as heritage resources, our mandate over them, and simultaneously

our access to them, will end. In that case, the perceived ultimate threat of destruction to

archaeological resources no longer has anything to do with physical dispersal.

Archaeology's salvation lies not in self-interested retention of the resource but in the

adaptation of process to meet and negotiate the desired, sometimes conflicting, outcomes

of communities who claim the resource as heritage.

Laurajane Smith, in *Uses of Heritage,* characterizes heritage primarily as a process of

engagement:

> The practice of heritage may be defined as the management and conservation
> protocols, techniques and procedures that heritage managers, archaeologists,
> architects, museum curators and other experts undertake. It may also be an
> economic and/or leisure practice, and/or a social and cultural practice, as I am
> arguing, of meaning and identity making. These practices, as well as the meaning
> of the material 'things' of heritage, are constituted by the discourses that
> simultaneously reflect these practices while also constructing them. (Smith
> 2006:13)

Smith (2006) "explores the idea of heritage not so much as a 'thing', but as a cultural and

social process" (2). The heritage process, particularly government management schemes,

often reflects what Smith (2006: 29) refers to as the *authorised heritage discourse*

(AHD):

> The authorized heritage discourse (AHD) focuses attention on aesthetically
> pleasing material objects, sites, places and/or landscapes that current generations
> 'must' care for, protect and revere so that they may be passed to nebulous future
> generations for their 'education', and to forge a sense of common identity based
> on the past.

Smith's (2004; 2006) critical realist perspective of heritage is foundational to a distinct

heritage studies field, which concerns itself not only with *forms* of heritage both tangible

and intangible but also with *meanings* of heritage.

6.2   Heritage in Governance

Provincial governance of "heritage" operates within comparatively bounded principles

concerning what is and is not heritage. These principles are based in legislative precedent

and policy consistency, emerging from international consolidation of the past under the

term heritage (West and Ansell 2010); however the statutory implications of legislation

ensure that, though practically limited, these official definitions are subject to the various

interpretations of all interested parties while simultaneously determining which interested

parties' interpretations are recognized as valid by government. The vagueness and

inconsistency within which heritage is defined by government allows for at the very least

a perception that each of these various interpretations, even those excluded by definition,

has, at the very least, the potential to be addressed via interpretive regulation and policy.

Government definitions of heritage range from reflective consideration (Huot 1985) to

simultaneously vague and specific interpretations seen in the successive heritage acts of

British Columbia and Ontario, though also consistently reflect Smith's AHD premised in

protecting selected heritage categories for future generations. Huot (1985: 38) defined

heritage as:

> …anything from the past which contributes, or which has the potential to
> contribute, to the quality of life for present and/or future generations. Under such
> a definition heritage includes cultural values and the expressions of those values
> which are passed from one generation to the other.

This comes definition from a British Columbia policy analyst in a period where cultural

significance was notably absent from the 1977 Heritage Conservation Act (British

Columbia 1979). The act defined heritage as "of historic, architectural, archaeological, or

scenic significance to the Province or a municipality, as the case may be" (R.S.B.C. 1977 c. 37). As part of the first piece of strictly heritage legislation in the province, this definition appears to link the term heritage with predecessor pieces of legislation which featured archaeological and historical conservation rather than defining heritage as something original and unique (Huot 1985). A marked departure from these earlier acts, as previously discussed, was the inclusion of the more subjective concept of scenic significance.

Definitions of heritage based on determining what of the past was significant and to who cultured two models of significance in British Columbia during the 1980s. Germann's (1981) doctoral thesis represented a draft version of what would become British Columbia's first set of archaeological guidelines. In it Germann identifies four primary types of significance – scientific, public, ethnic, and economic (1981: Appendix) – and provides criteria for each. Huot (1985: 35) also established what he called a "Conceptual Model" incorporating five types of significance: scientific, educational, recreational, cultural, and aesthetic. In fact both Germann's and Huot's models could be considered conceptual given Huot's (1985: 9) analysis distinguishing them from what he called "empirical models" of the past. I argue that both of these models represent a philosophical turn in the provincial governance of heritage from narrow and empirical to open and conceptual. This turn is reflected in the 1996 Heritage Conservation Act (R.S.B.C. 1996, c.187) where no attempt is made to define heritage; however heritage *value* is defined as "the historical, cultural, aesthetic, scientific or educational worth or usefulness of a site or object" (R.S.B.C. 1996, c.187 s.1). Notwithstanding the replacement of recreational with historical, the definition of heritage value reflects Huot's Conceptual Model which is not surprising given his role in writing what would become the 1996 HCA. The Conceptual Model, as opposed to the empirical model, provides for

non-technical/non-professional valuations of heritage and their incorporation into the measureable means by which the State determines what is and is not preserved as such.

The shift to classifying provincial pieces of legislation as *heritage* acts, rather than archaeological and historic acts, also occurred in Ontario during the 1970s. The *Ontario Heritage Act* (R.S.O. 1974 c. 122) was actually not the first Ontario act to feature heritage in its title. That distinction belongs to the *Ontario Heritage Foundation Act* (R.S.O. 1967 c. 65). Repealed in 1974 and incorporated into the OHA along with the Archaeological and Historic Sites Protection Act, the Ontario Heritage Foundation Act did not explicitly define heritage, instead practically inferring that the purpose of the Foundation was to conserve "property of historical and architectural interest for use, enjoyment and benefit of the people of Ontario" (S.O. 1967 c.65 s.7a). The subsequent 1975 OHA also failed to explicitly define heritage; only in the definition of object as being "of archaeological and historical significance" (S.O. 1974 Ch. 122 s.1 [j]) does there appear any inference of what heritage might refer to. Given similarities with which heritage legislation in British Columbia and Ontario have developed, one might expect a turn in Ontario towards open or conceptual evaluations of heritage significance. Apart from the current lack of a legislative definition of heritage (R.S.O. 1990 c.O.18) this does not appear to be the case. The initial stages of such a turn may however be found in two areas, the *Planning Act* (R.S.O. 1990, c. P.13), and the 2005 Provincial Policy Statement. The Planning Act, while not using the term heritage even once, does make reference to items that could be considered heritage in Part 1 of the act:

> 2. The Minister, the council of a municipality, a local board, a planning board and the Municipal Board, in carrying out their responsibilities under this Act, shall have regard to, among other matters, matters of provincial interest such as;
>
> > (d) the conservation of features of significant architectural, cultural, historical, archaeological or scientific interest.

Note the combination of conceptual (cultural, scientific) and empirical (architectural, historical, archaeological) categories of significance (Huot 1985). The 2005 Provincial Policy Statement arguably reflects even further progression along the conceptual heritage turn defining significant as "in regards to cultural heritage and archaeology, resources that are valued for the important contribution they make to the understanding of the history of a place, an event, or a people" (36). Arguably a conceptual definition and sharing attributes with academic definitions of heritage, the Provincial Policy Statement continues a progressive attempt by government to qualify what is considered heritage. Like British Columbia these qualifications of heritage grow more intangible and subjective to resemble the heritage of Smith (2006) and Graham and Howard (2008) as measured by and reflecting the values imagined by people in the present as they interact with that heritage, a departure from previous technically and discipline-oriented considerations. Given the rapidity with which these definitions change and the subjectivity of recent definitions, it should come as no surprise that even individuals working within the government share no consistent definition of heritage.

Having already covered the historically established spectrum of heritage definitions the following will simply relate several of the definitions received from Ontario archaeobureaucrat participants alone as an example of the contemporary fluidity of heritage:

> Well I mean you kind of have to define it if you're going to work with it… I tend to specify cultural heritage as opposed to natural heritage and so that's basically a product of human activity from material culture… where the impact of humans on the landscape … whether it's forming landscapes or leaving records on the landscape through activity. From the archaeological side I tend to look at it as either deliberate or incidental alterations and artifacts on the world around but I tend to take a fairly big picture view of it as cultural heritage. But we tend to split it as agencies when we refer to it as archaeological or cultural heritage built landscapes, just to make it a little bit more manageable perhaps in terms of strategizing how to deal with it but as a pretty big picture, archaeology is anything on or below the ground from ruins to below the ground and under the water,

whether it's garbage or otherwise whether it's artifacts or features… Built heritage is I think structural and landscape is, would be, tree-lines and fields and quarries any permanent features… that kind of stuff. That's pretty big picture, I like to think. (O415 Ontario)

Well I mean in regards to the provincial program it ran the gambit from individual structural architecture to cultural landscapes to archaeological sites both historic and pre-contact and underwater of course. And it also entailed, you know in the old days in the 70s we had historians working with us in addition and historical architects. There was a whole range of expertise in the provincial program. (O225, Ontario)

I don't have a definition of heritage, I mean there are all sorts of very apple pie definitions of heritage and I find that… well coming up with a definition does two things it defines what's in and what's out and I'm not comfortable doing that. And also heritage, you got the heritage front, you've got heritage funeral parlors, you've got heritage dry cleaners, you've got the Maple Leaf's heritage and Heritage Brand Milk, I mean you've got all these. Heritage is such an overused term, it's a necessary term but it's really something that is defined in performance at the local level and that's a challenge in policy because you want to have a clear definition so you can identify whether it's your desk or it's someone else's desk that it goes to, but if somebody comes forward and says "this is my birthright, this is my heritage", we run into, well and that's the first challenge we run into, is where does it fit? What kind of heritage is it? Is it folk dancing? Is it intangible heritage? Is it superstition? Is it religion? Is it UFOs? So I think that, my view in policy and I think that operationally is that, to start with a definition that is so vague that it's *bad* (emphasis in voice) and just let it come out in the wash, in the performance of other actions in relation to the heritage. No I don't want to provide a definition of heritage. (O315, Ontario)

The above quotes exemplify the ability of heritage to represent a great deal even from a relatively small group, like Ontario archaeobureaucrats. Heritage in this context is either characterized as having little value beyond the combination of archaeological and historical disciplines or having value only in that it is indefinable, occasionally containing meaning within and to very particular actions. Never is it explicitly suggested that heritage might draw value and definition from the broader communities who in turn draw meaning and value from that which we perceive as heritage. Definitions and non-definitions of heritage are imposed by top-down perspectives; government defines or does not define heritage as a means to its own ends, whether it is determining whose desk

it goes to or whose interests get validated through participation in the process of what essentially becomes heritage-making.

The Western AHD reflects the manufacturing of heritage, irrespective of pre-existing discourses that may or may not include government (Smith 2006). As the definitions of heritage within State governance have changed, from empirical to conceptual, new community actors have taken up roles in the formal administration of heritage changing the dynamics of policy implementation (Hinshelwood 2010). New roles entail new performances as previously excluded groups interact on the heritage governance stage with one another, sometimes finding that the performance is that much easier without government actors, as is the case in British Columbia between particular developers and First Nations communities (Klassen, Budhwa and Reimer/Yumks 2009; Mason 2012). With government actors struggling with and inconsistently defining heritage and archaeology's place on this old stage but with this new compliment of actors, the archaeobureaucrat's role is diminished in favor of more efficient and consistent performances.

7 Synthesis

Document research, interviews and discourse review have revealed a great deal about archaeological heritage governance in British Columbia and Ontario. In addition to establishing a general chronology of change in both provinces, the themes of process, performance and balance were reviewed, and the rise of heritage as an operable term was chronicled.

From both chronologies and themes two inter-related questions emerge. The first, are there similarities between British Columbia's and Ontario's development of archaeological heritage governance enough to suggest a qualified "common progression"? The second, how does the structure of governance appear to effect progression, common or otherwise? These questions consider a heritage *of* provincial archaeological governance, whereas Ch. 6 was a consideration of heritage *in* provincial archaeological governance. The definitions of heritage from Ch. 6 generally create a relationship between the past and present whether through present valuations of the past or in how the present reads the past to contribute to and/or validate contemporary ideas and identities. Answering these two questions seeks to understand the heritage of archaeological governance, as present evaluating the past and determining its influence on present identities and ideas within the provincial CRM regulatory structure.

7.1 Common Progression?

In analyzing the changes in heritage governance between Ontario and British Columbia, I could not help but notice similarities apparent both in where the provinces have been and where they are going. The impetus for these similarities might easily be ascribed to a legislative exchange that occurred at the very beginning of direct government oversight of archaeology in both provinces. In 1953 the Ontario government passed the *Archaeological and Historic Sites Protection Act* (R.S.O. 1953 c.4). That act established

government oversight of archaeological fieldwork in the province through a permitting system concerned with designated sites (s.4) overseen by an advisory board composed of knowledgeable peers (s.9). Seven years later British Columbia passed its own *Archaeological and Historic Sites Protection Act* (R.S.B.C. 1960 c.15), establishing government oversight through an advisory board (s.13) of an archaeological permitting system (s.6). These two Acts represent the statutory foundation upon which contemporary CRM in both provinces arose.

Having started in much the same place it is not unreasonable to expect the provinces to have travelled in the same direction and relatively speaking they did. Early changes after the adoption of the AHSPAs occurred fairly contemporaneously. The introduction of the archaeobureaucracy in Ontario in 1975 was only three years later than the founding of the Office of the Provincial Archaeologist in BC in 1972. Both, as has already been discussed in Ch. 3, created formal, permanent positions within heritage-focused departments of government for archaeologists. In Ontario this shift occurred as a result of the *Ontario Heritage Act* (R.S.O. 1974 c.122), the first heritage-specific statute in the province. British Columbia apparently followed suit three years later, passing the *Heritage Conservation Act* (R.S.B.C. 1977 c.37), incorporating archaeological and historical concerns under the heading of heritage.

Archaeobureacracies in both provinces quickly grasped several of the problems which plagued these early heritage acts and took corrective action, coordinating with other government departments and establishing regulatory and enabling mechanisms to ensure heritage conservation within these agencies and development processes. In British Columbia this coordination occurred between the archaeobureaucrats and various review committees (Energy Project Review Process; Mine Development Steering Committee; Major Project Review Process; and others; Apland 1992). In Ontario archaeobureaucrats went straight to regulatory mechanisms within seemingly non-heritage pieces of

legislation, most important among these were the Environmental Assessment Act and the Planning Act (ON 225, Ontario).

After these initiatives there appears a gap between policies and legislation in British Columbia and Ontario. CRM guidelines were first introduced in British Columbia in 1982; Ontario in 1993. Substantive changes were made to the HCA in 1994 and 1996; the OHA in 2002 and 2005. The transition from releasing new guidelines to specific bulletins occurred in BC in the late 1990s and early 2000s; in Ontario technical bulletins have only recently begun to appear. Perhaps most striking is the formalized institution of practices related to Indigenous consultation concerning heritage. In British Columbia some form of Indigenous consultation has been in place since 1996 (although how effective it has been is argued); Ontario, almost 15 years later, introduced its own limited standards for Indigenous consultation (Ontario 2010). The delay likely due to a reticence to engage with its fiduciary obligations to First Nations and address outstanding land claims (Ferris pers. comm.). Through these examples it appears that while Ontario and British Columbia share various heritage management strategies, Ontario has lagged behind as far as implementing some of the most recent policy innovations.

Consequently it may be expected that there are initiatives in BC that have not yet been initiated in Ontario. Digital access of data in British Columbia was touched on in Ch. 4 and is likely (hopefully for many consulting archaeologists) a future feature of heritage governance in Ontario. Already there are signs pointing towards this eventuality including the standardization of digital report submissions and the government's assertion that:

> Expectations for the submission of electronic files are defined so that, among other things, electronic copies of reports may eventually be used to populate an electronic version of the Ontario Public Register of Archaeological Reports. (Ontario 2011: Appendix B).

The regulation of file size, format, digital imaging and mapping are consistent with the bulletins released by British Columbia in facilitating their own remotely accessible databases.

In addition to data accessibility, Ontario provincial artifact repositories are also being set up, though not by the provincial government directly. While British Columbia and Ontario share similar legislative powers with regards to the eventual disposition of recovered artifacts in a provincially designated repository (OHA s.66; HCA s.12 [3d]) only British Columbia actively employs these powers requiring archaeological permits to specify the public institution willing to receive any material. Having exceeded the provincial government's storage capacity, the Ontarian context has resulted in long-term licensee holdings of archaeological material recovered through CRM practice, stored in a myriad of locations and conditions (Della Valle 2004).

Supported by the Canadian Foundation for Innovation and the Ontario Ministry of Research and Innovation, Sustainable Archaeology, a joint project between Western University in London, Ontario and McMaster in Hamilton, is establishing repositories capable of housing and studying archaeological collections from across the province (http://www.sustainablearchaeology.org: accessed April 20, 2012). By itself the creation of these central repositories in Ontario is further evidence of common elements arising in both provinces; however the fact that these repositories are largely the result of organizations operating outside of the supervision of the provincial heritage establishment is indicative of another trend the provinces appear to share.

When archaeobureaucrats in the 1980s were confronted with the gaps and failings within the prevailing heritage legislation they circumvented these perceived shortcomings through association with other government departments. The prioritizing of archaeological outcomes by these early archaeobureaucrats, who, as discussed in chapters

3 and 5, essentially retained their identities as archaeologists as opposed to bureaucrats, enabled the pursuance of these practical partnerships within government. The erosion of perceived archaeological values held by archaeobureaucrats over time has shifted the driving force of archaeological prioritization from government archaeologists to archaeological agents working within the wider field of CRM. Relationships previously built between government departments are now being nurtured between stakeholder communities. A consequence of this continuing, if somewhat altered, trend of establishing mutually beneficial relationships, is the ceding of archaeological priorities into wider heritage priorities. This contemporary incorporation of archaeological values into wider heritage values is perhaps even reflective of the previous incorporation of archaeological values into government processes. Unable to achieve satisfactory archaeological conservation in isolation, archaeology's practical relationships ultimately define the manner in which conservation is achieved.

The re-mapping of these practical relationships is ongoing; in BC and Ontario there is evidence of various non-provincial heritage establishment communities circumventing the heritage bureaucracy almost entirely. Sustainable Archaeology and municipal archaeological management plans in Ontario and various community-developer initiatives in British Columbia (Klassen, Budhwa and Reimer/Yumks 2009; Mason and Zibauer 2012) meet and transcend established government standards by coordinating various heritage interest groups outside of the legislative and regulatory context. The internally driven initiatives of the 1980s are substituted by externally oriented programs of recent times.

I hypothesize that within the context of heritage governance in these two provinces there exists a limited common progression, a result of shared successive temporal patterns and similar origins. Reflective of Huot's (1985) Empirical and Conceptual Models of heritage significance I suggest that both British Columbia and Ontario have progressed and are

continuing to progress through common phases of heritage governance. These phases are strictly limited to the provincial contexts presented in this thesis, and are by no means intended to imply that there exists a universal progression of heritage governance. I characterize these phases as the *Proto-Technical/Popular*; *Technical, Technical/Heritage Transitional*; and *Heritage* phases. Each phase consists of common legislative and policy elements:

Proto-Technical/Popular Phase:

Related acts: Indian Graves Ordinance 1865/67; Historic Objects Preservation Act 1925

Primarily a period of British Columbia governance, this phase represents early attempts at provincial intervention with regards to archaeological and historic areas of interest. Policies and legislation were limited in scope and generally applied only to widely known, popular sites. Ontario's relative absence of explicit archaeological legislation shows that a limited common progression likely did not begin before the passing of the Archaeological and Historic Sites Protection Acts in both provinces.

Technical Phase:

Related acts: Archaeological and Historic Sites Protection Act 1953; Archaeological and Historic Sites Protection Act 1960; 1972

Beginning in 1953 in Ontario and 1960 in British Columbia with the passing of the AHSPAs, this phase stands as the first substantial period of *archaeological* governance in both provinces. I de-emphasize heritage here because policy largely centered around archaeological and historical valuations hence the designation *technical*. Both provinces employed advisory boards and eventually archaeobureaucrats, and oversaw permitting and licensing systems designed to enforce provincial authority established under the

AHSPAs. Empirical models (Huot 1985) of heritage evaluation enshrined the then values of archaeology and history within these provincial policies.

Technical/Heritage Transitional Phase:

Related acts and policies: Ontario Heritage Act 1975; 2005; Ontario Provincial Policy Statement 2005; Heritage Conservation Act 1977

At first I was unsure about including a transitional phase here however this period can be defined as a series of intermediary steps that did not fit into either the technical or the heritage phases. These steps included the combination of Empirical and Conceptual models (Huot 1985) of significance within legislation; the emergence of *heritage* as the presiding term over matters of the past; the creation of archaeological guidelines; and the internal corrective initiatives of early archaeobureaucrats. This phase also marks the beginning of the temporal disjunction between Ontario and British Columbia, with BC emerging from the phase in 1996 while Ontario did not emerge until recently.

Heritage Phase:

Related acts and policies: Technical Bulletin on Aboriginal Engagement 2011; Heritage Conservation Act 1996

Several initiatives mark the start of a heritage phase of governance: the consolidation of Conceptual models of significance (Huot 1985); the seemingly benign shift from archaeological guidelines to bulletins; and the rise of corrective actions external to archaeological governance of perceived legislative failings. All of these processes constitute elements of the heritage phase, however one process in particular stands out as the hallmark of this phase: the formal inclusion of Indigenous values and considerations. This inclusion initiated partially and by degrees, alters the fundamental structure of heritage management. No longer strictly a conversation between heritage professionals,

government and developers, heritage governance inclusive of Indigenous worldviews formally validates those values by incorporating consultation into the CRM process. While the extent of this provincial validation varies the immediate impact is a range of relationships between heritage participants that would otherwise never have happened. Inclusion also makes explicit the contested nature and value of heritage resources and the struggle over whose judgment should carry the most weight. As Pokotylo and Mason (2010: 62-63) point out:

> Legislation and regulatory frameworks provide limited latitude in implementation and interpretation and are, by their very nature, prescriptive or rules-based. However, the Aboriginal decision-making process in archaeological heritage resource decisions, particularly those related to human burial sites, may be more values-based than rules-based. This difference in worldviews continues to be a challenge for First Nations, archaeologists, and government regulatory agencies in Canada.

Just as the definition of heritage reflects a contested and political process, the *heritage phase* of cultural resource governance represents an amplification of this struggle and its pervasive enactment in the exercise of CRM process.

Important to note is the difference between British Columbia and Ontario in the use or lack of use of regulations – the middle member of the legislation-regulation-policy governance triumvirate. Ontario's reliance on heritage regulations contrasts sharply with their absence in British Columbia. The consequences of this dissimilarity have not yet fully been realized as neither province has undergone substantial legal challenges to heritage governance mechanisms. Without the flexibility of regulations, British Columbia's archaeobureaucrats draw their authority directly from the rarely altered Heritage Conservation Act. The ramifications of this lack of regulation in the province could lead to very interesting court proceedings should the system ever be challenged, as, unlike Ontario, there is no firm legal ground upon which to justify government policies not explicitly laid out in the legislation (Bjorn Simonsen, British Columbia). Nevertheless

the inconsistency with which regulations are deployed between provinces is a structural difference and as yet not a very consequential one. Take for example the similarities between HCA Part 2 Section 12 (R.S.B.C. 1996 c.187) dealing with the distribution of permits and O. Reg 8/06 specifying criteria for licenses. Both provide for the authority of government to administer their respective systems, the primary difference being the detail with which the system is described in the regulation as opposed to the discretional powers referred to in the HCA. Again, while the structure shapes practice, government-directed discretionary oversight remains the same.

Intra-provincial structural dissonance, on the other hand, has arguably contributed to a temporal lag between Ontario and British Columbia heritage policies. As stated above while most of the defined developmental phases appear in both provinces, there emerged a temporal dissonance beginning in the 1970s and 80s when British Columbia's heritage policies began emerging at a faster rate than Ontario's. While the causes of this dissonance may lie in other areas of governance not examined, one particular aspect of Ontario heritage governance, as discussed next, may be at least partially responsible for this lag.

7.2   A Heritage of Structural Dissonance

Ontario and British Columbia are remarkably similar in their governance of heritage: similar initiatives, historic acts and policies evoke a consistency to provincial heritage jurisdiction. However the lag between when these policies were enacted in one province and subsequently in the other has grown in recent decades. The cause of this temporal dissonance is suspect. Undoubtedly factors outside of the heritage establishment could contribute to this dissonance (i.e. lack of treaties in British Columbia; differential broader political priorities; etc.). However a possible cause may be found within the structural heritage of CRM governance in both provinces.

Researching the history of legislation and policy in both provinces makes it very clear that heritage governance is constantly subject and reactive to the barbs of its critics. What is not shared, however, is a structural schism between the successive organizations responsible for administering archaeological heritage. This schism in Ontario and the lack in British Columbia have already been discussed within the separate historical contexts of both provinces, but when considered together they may provide a possible cause for the temporal dissonance. British Columbia's transition of powers from the Archaeological Sites Advisory Board to the Office of the Provincial Archaeologist appears to have been amicable enough. The very formation of the office was at the behest of the board, and Bjorn Simonsen, its first occupant, was formerly associated with the ASAB. In contrast the establishment of archaeobureaucrats in Ontario was not perceived as a continuation from the original advisory board (Noble 1982). The contrary assumptions of several established archaeologists in the lead up to the OHA with regards to the distribution and retention of authority and the pre-existing factional environment in Ontario meant that the new "cadre of provincial government archaeologists" had to achieve a credibility entirely of their own making in an environment where their very existence became antagonistic to some (Noble 1982: 171-172). Not only were early Ontario archaeobureaucrats unable to explicitly build on the successes of the predecessor advisory board, as their counterparts in British Columbia were able to, but their preliminary formation was perceived as a threat to established archaeological authority within the province:

> Yeah, it kind of backfired in a way because I know that individuals like Bill Noble and others assumed that the establishment of the act would establish their authority as to what was happening in Ontario archaeology. But it didn't turn out quite the way they expected. (O225, Ontario)

The contestation of archaeological authority in the province must have contributed to a fairly toxic environment as early provincial initiatives and projects on the part of archaeobureaucrats met considerable and sometimes unreasonable resistance (Noble

1982; Mayer 1994). As the lack of continuity between successive forms of archaeological management progressed the ability to marshal the support of the archaeological community for internal policies must have been hampered. This structural dissonance continues today as the current group of archaeobureaucrats is distinguished from their predecessors as being new and inexperienced. Once again provincial heritage managers are required to re-establish credibility and authority, unable to associate themselves with the accomplishments of the past. Time taken to achieve this recognition and echoes of past schisms, I argue, serve to delay new policies resulting in the temporal dissonance with British Columbia where successive archaeobureaucrats draw credibility from their ties to their predecessors.

7.3   What Lies Ahead?

The continuing shift from empirical to conceptual significance in evaluating heritage, particularly in legislation and policy, encourages responsiveness and flexibility within heritage governance. Understanding that in this new environment archaeology currently exists as one often empirical means to a broader conceptual end will enable both private archaeologists and the State to create and facilitate initiatives that reflect individual or collective community heritage values. The potential already exists to a certain extent within legislation enabled by the turn from empirical to conceptual valuations of heritage fulfilling its function as laid out by King (2006: 238):

> …the purpose of cultural heritage law, whether or not it has ever been expressed this way, is to determine what *constitutes* cultural heritage… and then decide whether and how each identified element of that heritage can and should be preserved, given whatever conflicting public interest may exist… And then to effect *that* preservation.

Given that legislation is well underway in its transition to conceptual measurement and value of heritage and that policy is beginning to follow, archaeologists must also find their place within this developing heritage framework or get left behind:

> The current protection for archaeological sites was established (in 1960) with the academic discipline of Archaeology as its constituent interest group, and the legislation continues to be administered for the benefit of this constituency. But increasingly, questions are arising as to the appropriateness of this protection in light of the costs to landowners and impacts on property rights if this relatively narrow focus is maintained. The saving grace is that the public and politicians intuitively accept the need to protect such sites because of their cultural value to First Nations. (Huot 1998: 1)

> …cultural significance is by its nature subjective, and when we apply yardsticks of professions like archaeology and architectural history to the measurement of such significance, we wind up ascribing significance to things that archaeologists and architectural historians value, not necessarily to what regular people in communities think is important. (King 2006: 245)

Archaeology as an academic discipline should be capable of pursuing archaeologically-centric ideals, of achieving exclusively archaeological ends, leaving archaeology as an element of heritage management free to redefine itself as a service provider capable of deploying archaeological means to achieving multiple heritage stakeholder ends.

When archaeology was first legislated it was under the exclusive purview of archaeologists. The success of these archaeologists in incorporating archaeological values into more and more levels of development clearance processes in both Ontario and British Columbia came at the expense of this exclusive control as the capacity for protection exceeded the abilities of the archaeological community alone. Archaeologists heeded MacLeod's (1975: 60) call to "learn the language" of various government ministries and departments and in doing so enmeshed themselves further and further into the provincial bureaucracy in order to achieve large-scale archaeological ends.

The rise of heritage and the turn towards conceptual, non-technical valuations has once again increased the capacity for protection as non-traditional heritage sites become sources of contestation. Developers and communities whose heritage is concerned exceed the government's ability to protect these new sites with their own initiatives; archaeology, firmly associated by legislation with heritage, is often factored into these

wider heritage initiatives. Willingly or not, private archaeological consultants will increasingly find their successes measured by their ability to thrive in a heritage environment that no longer revolves around them; having to once again "learn the language" this time of the communities who wield authority within heritage management. Archaeobureaucrats, especially in Ontario, will also have to rediscover their *raison d'être*, as maintaining the mantra of administering licenses, legislation and archaic databases in the face of increased extra-governmental oversight will only require so many voices speaking a language less are listening to.

8   Conclusion

Archaeology is concerned with the past. The definition of what "the past" is and what these meanings entail for archaeologists is neither a neglected nor an exhausted subject of research. However when considering how and by whom this past is defined, archaeology must also consider the spatial and temporal contexts of this meaning making. Context in archaeology is everything. Understanding the matrix within which an artifact or feature is found composes a prized palimpsest of information. In this regard past policies and legislation can be considered *artifacts* of an archaeological kind; past policies and legislation concerning archaeology even more so by immediate association. Both the context and composition of these governance artifacts can provide archaeology with valuable insights not only into the past, looking at former policies and superseded legislation, but insights into present, dislocated State heritage governance structures.

As archaeology the discipline ages, each successive generation of researchers, bureaucrats and practitioners must appreciate their position in a continuum that shapes their practice, their values, and their positions within wider worlds. The succession of archaeology in heritage governance continues as events of ten, twenty, even fifty years ago reverberate in modern heritage initiatives. Understanding where and why things happened in heritage governance enables archaeologists to reasonably predict things to come particularly when incorporating lessons from jurisdictions travelling similar paths.

The distribution of provincial jurisdiction combined with the extent of varied Indigenous governments, a spectrum of archaeological commitment to a range of heritage issues and the inconsistent deployment of developer interests related to the preservation of the past has created a mosaic of instances where heritage management is achieving practical outcomes everyday across the country. Applying lessons learned from both the historic and jurisdictional plethora available is a continuing effort that I hope this thesis

contributes to, providing archaeologists of various regions with opportunities for relative foresight.

The temporal themes and patterns emerging from an analysis of heritage governance in British Columbia and Ontario highlight a range of values and motivations, goals and shortfalls in provincial heritage management. The consistent themes of process, performance and balance address both the formative and contemporary states of archaeological policy and legislation in both provinces. Process, as deployed by archaeobureaucrats, echoes the methodical underpinnings of archaeology's positivist and cultural historical pasts and perpetuates their contemporary incarnations. Quantitative thresholds and requisite sampling methods validated by Ontario's standards and guidelines and binary value decisions corresponded nicely with the New Public Management approach to bureaucratic oversight. Process also provides a convenient excuse when confronted with uncomfortable realities, a disembodied authority perceptibly removed from the judgment and values of any one individual.

Correspondingly, the theme of performance relates the nature of government actions and policies as driven by perception as opposed to reality. As processes obfuscate and justify particular outcomes, performance enables outcomes to masquerade as something they are not. Performance also provides not only for actor-induced perceptions but for audience self-creation. The First Nations consultations with the government of British Columbia provided the province with the guise of Indigenous input into the resulting legislation; however it also provided First Nations negotiators with the guise of having achieved concessions of the government in the form of particular phrases within that legislation. That multiple audiences are capable of cultivating their own perceptions and the breadth of stakeholders in heritage government segues into the final theme, balance. Balance in heritage governance is relatively recent and knits together elements of process and performance to achieve a fragile stability in cultural resource management. Conscious of

the fragility of this heritage ecosystem, policy and legislative architects actively seek to occupy (or even appear to occupy: performance) the middle ground between the often competing interests of Indigenous communities, archaeologists, developers, and various levels of government.

The necessity of balance has emerged from the end of the archaeological and historical monopolies of past cultural resources. Although in practice archaeologists and historians still effectively control these resources through a variety of legislative and regulatory mechanisms, they are no longer, together with government, the sole arbiters/beneficiaries of the material past. The gradual shift in policy and legislative discourse from archaeological resources to heritage resources, in particular, marks a formally recognized expansion of interest in the material past reflective of the individuals and communities associated with that past. No longer *archaeological* resources consumed by archaeologists, the cultural capital (Bourdieu 1975; Brown 2003; Nicholas and Hollowell 2007) produced by these *heritage* resources is being converted into and spent as political capital by associated communities enabling entrance into governance structures from which these communities were previously excluded; while simultaneously reinforcing and re-establishing identities within communities. This combination of cultural and political capital as well as intra-community value could best be described as *heritage capital* (D'Auria 2001).

Archaeologists' continued access to these resources, for academic advancement or private profit, is likely to increasingly depend on their ability to facilitate the production of heritage capital within associated communities as the State increasingly incorporates non-technical, conceptual valuations of heritage. Archaeology, primarily in CRM, must reconceptualise the *archaeology for archaeology's sake* mentality; in other words recognize archaeology within heritage management as a means to an end rather than an end in itself. One way of achieving this conceptual shift may be to reconsider

archaeology's perception of the past and the role of the archaeologist in managing heritage.

Rather than simply view sites and artifacts as heritage resources, as opposed to archaeological resources, CRM should reconceptualise the material past in a way that reflects the role of archaeologist as facilitator, mediator or translator, no longer end users of the past but intermediaries. How archaeology can further adapt to these roles will require further research, specifically research critically appraising the results of over 50 years of archaeology-centric CRM in Canada. What has the discipline netted as far as collections, data, and disseminated findings resulting from CRM? What have other heritage stakeholders to show for the efforts of an archaeology presumably performed on their behalf? Gauging what archaeological oversight of heritage management has or has not accomplished will best define the path ahead. If we do not know or will not acknowledge what we as heritage managers have done wrong how will we know what must change? With descendant communities increasingly wielding more authority over heritage processes and the day-to-day activities of CRM, the ability to "learn the language" of communities in the same way early archaeobureaucrats "learned the language" of government will inevitably make the difference between success or failure for private archaeologists. Communities in Ontario, as is already the case in British Columbia, will exercise influence with developers and governments in determining who is and who is not permitted access to their associated heritage and by extension the archaeological record of particular areas.

Combine the growing descendant community authority with the continued, if depreciating, oversight of archaeologists by the provincial government and CRM practitioners must exercise a multilingual flexibility capable of speaking not only the language of bureaucracy and community, but of academia and development.

The days of the rescue archaeologist camping out under the stars with colleagues collectively comforted in the knowledge of saving the archaeological record for the good of archaeology have passed. How this passing speaks to an archaeologist should be an indication of their ability to speak the language of non-archaeological heritage interests.

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Appendices

Appendix 1: Ethics Approval

Use of Human Participants - Ethics Approval Notice

Research
Western

Principal Investigator: Dr. Neal Ferris
Review Number: 18027S
Review Level: Full Board
Approved Local Adult Participants: 0
Approved Local Minor Participants: 0
Protocol Title: Origins and Goals of Contemporary Heritage Legislation in British Columbia and Ontario
Department & Institution: Anthropology,University of Western Ontario
Sponsor:
Ethics Approval Date: July 12, 2011   **Expiry Date:** June 30, 2012

Documents Reviewed & Approved & Documents Received for Information:

Document Name	Comments	Version Date
UWO Protocol		
Letter of Information & Consent		
Other	Email Script	

This is to notify you that The University of Western Ontario Research Ethics Board for Non-Medical Research Involving Human Subjects (NMREB) which is organized and operates according to the Tri-Council Policy Statement: Ethical Conduct of Research Involving Humans and the applicable laws and regulations of Ontario has granted approval to the above named research study on the approval date noted above.

This approval shall remain valid until the expiry date noted above assuming timely and acceptable responses to the NMREB's periodic requests for surveillance and monitoring information. If you require an updated approval notice prior to that time you must request it using the UWO Updated Approval Request Form.

Members of the NMREB who are named as investigators in research studies, or declare a conflict of interest, do not participate in discussions related to, nor vote on, such studies when they are presented to the NMREB.

The Chair of the NMREB is Dr. Riley Hinson. The UWO NMREB is registered with the U.S. Department of Health & Human Services under the IRB registration number IRB 00000941.

Ethics Officer to Contact for Further Information

✓ Grace Kelly	___ Janice Sutherland	
(grace.kelly@uwo.ca)	(jsutherl@uwo.ca)	

This is an official document. Please retain the original in your files.

Appendix 2: Interview Information/Consent Form

Information and Consent Form
Research Topic: Origins and Goals of Contemporary Heritage
Legislation in British Columbia and Ontario
Researcher: Joshua Dent BA, Master's Student, University of Western Ontario
          Email:
Supervisor: Dr. Neal Ferris PhD, University of Western Ontario
          Email:

Introduction:

My name is Joshua Dent, I am a master's student at the University of Western Ontario interested in studying the relationship between archaeology, heritage and government.

Purpose of Study:

You are being invited to participate in a study looking at the following objectives:

1. to determine if the goals of heritage management are consistent between British Columbia and Ontario
2. to understand the processes of creating the heritage legislative framework
3. to express the different voices of heritage management in government
4. to identify any common stages in the progression of heritage management
5. to highlight the degree of influence non-governmental communities exert on heritage legislation and the forms that influence takes (ie legal, protest, consultative)
6. to highlight lessons learned and techniques developed by British Columbia and Ontario in managing heritage and question whether these lessons can be applied inter-provincially

Your help is requested in providing information relating to the above objectives. Should you choose to participate your contribution will take the form of a conversation with the researcher regarding the objectives above. The conversation will be digitally recorded. This recording will be erased after it is transcribed to text to ensure anonymity.

Confidentiality:
Transcriptions will be stored in encrypted folders on a password protected laptop until such time as the project is complete (est. summer 2012) when the transcriptions will be consolidated into a single file removing any possible identifying statements and stored digitally for general future consultation by myself exclusively.

Participation:
Participation in this study is voluntary. You may refuse to participate, refuse to answer any questions or withdraw from the study at any time with no effect.

Risks:
There are no risks associated with this study, however should you feel at risk in any way please contact me.

Contact:
If you have any questions about this study or your care/ treatment please contact:
Joshua Dent

If you have questions about research in general, please contact:

The Office of Research Ethics
The University of Western Ontario
519-661-3036

I have read the Information and Consent Form, have had the nature of the study explained to me and I agree to participate. All questions have been answered to my satisfaction.

Name:

_____

Signature:

_____

Conversation Consent (After):

Name:

_____

Signature:

_____

You do not waive any legal rights by signing the consent form.

☐ Check this box **ONLY** if you wish your name associated with your contribution, removing any anonymity and resulting in your name appearing in the final thesis.

Please retain your copy.

Curriculum Vitae

Name:	Joshua Dent
Post-secondary Education and Degrees:	University of Victoria Victoria, British Columbia, Canada 2002-2004 B.A.
Honours and Awards:	British Columbia Provincial Scholarship 2000 Keith Gordon Humanities Scholarship 2000
Related Work Experience	Archaeological Field Technician Norcan Consulting 2002 Associate Archaeologist Altamira Consulting 2007-2009 British Columbia Field Director Altamira Consulting 2009-2010 Archaeological Field Technician Golder Associates 2011, 2012

Papers:

Dent, Joshua

2011 *False Frontiers: Archaeology and the Myth of the Canadian Wilderness*. Presented November 20, 2011 at the American Anthropological Association Annual Meeting, Montreal, QC.

2012 *Excavating Governance: Legislation and Policy as Diagnostic Artifacts*. Presented March 3, 2012 at the 1st Annual Western Anthropology Graduate Student Society Conference, London, ON.

2012 *Defining a Canadian Political Archaeology*. Presented May 17, 2012 at the Canadian Archaeological Association Annual Meeting, Montreal, QC.

Papers (continued):

Dent, Joshua and Neal Ferris

2012   *Of Disconnects and an Archaeological Heritage Beyond Archaeology*. Presented June 7, 2012 at the 1st Annual Association for Critical Heritage Studies Meeting, Gothenburg, Sweden.