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Cultural Resource Management and Aboriginal Engagement: Policy and Practice in Ontario Archaeology

Megan DeVries
The University of Western Ontario

Supervisor
Dr. Peter Timmins
The University of Western Ontario

Graduate Program in Anthropology
A thesis submitted in partial fulfillment of the requirements for the degree in Master of Arts
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CULTURAL RESOURCE MANAGEMENT AND ABORIGINAL ENGAGEMENT:
POLICY AND PRACTICE IN ONTARIO ARCHAEOLOGY

(Thesis format: Monograph)

by

Megan DeVries

Graduate Program in Anthropology

A thesis submitted in partial fulfillment
of the requirements for the degree of
Master of Arts

The School of Graduate and Postdoctoral Studies
The University of Western Ontario
London, Ontario, Canada

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Abstract

The *Standards and Guidelines for Consultant Archaeologists* (Ontario 2011) introduced a new requirement for archaeologists working in Ontario CRM to engage Aboriginal communities in response to growing criticisms from these communities over being excluded from the process. Considered vague by many involved in the industry, both archaeologists and Aboriginal community representatives have developed their own strategies for complying with these requirements and their own opinions on how what they do over the course of engagement does or does not fit into that policy. However, many Aboriginal concerns remain unaddressed in the current engagement process, leaving open the possibility that tension and conflict may arise in the field. While some archaeologists have been open to the recent changes in policy advocating for more transparency and collaboration, others have been resistant and continued to defend their position of authority over the management and interpretation of the archaeological record.

Keywords

Cultural resource management, Aboriginal engagement, archaeological policy

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Chapter 1

1 Introduction

The cultural resource management (CRM) industry in Ontario is relatively young in comparison to other professions, only emerging as a viable practice within the past fifty years as the need for a commercial archaeological response rose in parallel with increased land development. Regulated by the provincial government, the CRM industry employs field archaeologists to protect, manage, and preserve heritage resources. Various codes of professional ethics and provincial policies regulate the processes by which these resources are managed. Recently, the Ontario Ministry of Tourism, Culture, and Sport [MTCS] introduced the *Standards and Guidelines for Consultant Archaeologists* (Ontario 2011). The *Standards and Guidelines* outline the mandatory minimum standards that must be met by archaeologists in their work, which is reviewed by the MTCS. Failure to comply with the regulations may result in the revocation of an individual's archaeological licence, which is needed to practice archaeology in the province.

Alongside increasing regulation within the profession (see Dent 2012), the discipline has faced external challenges from Aboriginal communities who have long felt that they have been excluded from the CRM process and that consultant archaeologists have largely failed to address their interests and concerns. The CRM industry has been slow to address these criticisms, but recently there has been growing recognition of Aboriginal interests in and concerns about the archaeological work that is conducted in the province.

1.1 A Note on Terminology

A quick aside is necessary at this juncture. For much of the terminology utilized in this thesis, I have taken my lead from the participants in this study as well as relevant academic and theoretical discourses on the subject. The terms “First Nations,” “Aboriginal communities”, and “Indigenous populations” are used relatively interchangeably in accordance with the definition provided by the International Labor Organization. It identifies Indigenous peoples as:

“Peoples in independent countries whose social, cultural, and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws and regulations [or] regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present State boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural, and political institutions.” (International Labor Organization 1989)

It is important to remember that First Nations do not represent a monolithic and homogenous culture who all share the same concerns or common worldview (Atalay 2008: 30). In working with Aboriginal communities, a diverse range of experiences and ideology can be encountered and, while at times this research uses vocabulary that may lump together viewpoints and approaches, it is not my intention at any point to claim that all First Nations – or even all archaeologists for that matter – agree or support the statements in question.

In addition, I have attempted, as much as possible, to avoid controversial terminology. However, I have continued to use the term “monitor” to refer to the specific role of Aboriginal community representatives who work alongside archaeologists in the field. Though this word is increasingly outdated and reflects a somewhat negative history which will be considered in chapter seven, it remains the one most widely used by

participants throughout the interviews. The term “monitor” therefore refers to a distinct role. In contrast, I have opted to use “community representative” to refer to the Aboriginal participants with whom I conducted interviews.

1.2 Thesis Justification

In recent years, there has been an increasing recognition within the CRM industry of archaeology’s failure to respond to Indigenous criticisms and include First Nations in decision making about cultural resources (see Atalay 2006; Kapyrka 2005; Watkins 2005). This development has been accompanied by new movements within academia addressing the many ways Aboriginal communities have traditionally been excluded from the archaeological process and advocating for increased involvement (see Colwell-Chanthanphonh 2010; Atalay 2012; Smith and Wobst 2005). Often, this critique has come in the form of challenges to archaeologists’ perceived right of stewardship, the idea that, as a result of their professional expertise, archaeologists alone are in the position to protect, manage, and interpret the archaeological record (Nicholas 2009: 208). Usually stewardship is combined with the assertion that heritage is to be cared for on behalf of the public and only archaeologists are able to determine what is significant and what is not (Nicholas 2009: 208).

As scholars in academia have begun to challenge this notion and the purported neutrality of archaeology as a discipline, this has slowly inspired similar attempts in the CRM industry to open up the management and interpretation of heritage. With the 2011 policy, the new Ontario *Standards and Guidelines* introduced an “Aboriginal engagement” component. For the first time, archaeologists were expected to speak with First Nations

during the course of their work and, potentially, consider Indigenous input when making decisions about the archaeological record. Although this requirement was not a surprising addition, rooted in recent academic scholarship on the lack of collaboration between archaeologists and First Nations, and prefaced by a rising chorus of voices from Aboriginal communities calling for more involvement in the discipline, its introduction has not been a smooth one.

1.3 Research Goals

It has been three years since new policy in Ontario obligated CRM archaeologists to engage with Aboriginal communities in the course of their work. It is due time to ask whether or not this policy has been effective in achieving its goal of encouraging stronger relations between parties. In that vein, this study was undertaken to answer the question of how engagement is actually taking place in practice: What does engagement involve? Who participates in engagement? Where do conflicts arise and how are they solved? In addition, this research set out to determine what archaeologists and Aboriginal community representatives think about the province's new policy on engagement and if and how they think that policy can be improved.

1.4 Methodology

Before I began my research efforts in earnest, I obtained approval from the University of Western Ontario Research Ethics Board (see Appendix 1). The best method of investigation was clear: I needed to sit down with a variety of people involved in the industry and ask them about their experiences engaging with the “other side.” Obviously, to avoid bias in my results, I thought it necessary to divide my interviews in half between

licensed archaeologists and the representatives from Aboriginal communities with whom they engaged. Ultimately, this was easier suggested than accomplished, and the final numbers of participants in each category were somewhat different than originally anticipated.

For each category, I compiled a list of potential participants, using the member directory of the Ontario Association of Professional Archaeologists and a map of Ontario First Nations published by the provincial government. Other archaeologists, personally known to me or my supervisor, were then added to the list. Only active professionally licensed archaeologists and Indigenous communities situated in southern Ontario were selected, both out of practical concerns about timelines and expense of travel, and also to provide a better focus on the region's issues. I used an online random number generator to pick a selection from these two lists and then potential participants were contacted by email with an explanation of the study and an invitation to participate. For each First Nation selected to participate, I consulted the website of the community to determine which person was most likely to participate in engagement on archaeological matters, often someone associated with the Lands and Environment department within the First Nation's administration. For those who responded indicating that they would like to be involved, further information about the study was provided in the form of a "Letter of Information" (see Appendix 2) and, eventually through continued correspondence, a date and time was selected for the interview. In all cases, I travelled to the participant or met them at a location of their choice. When the original round of email invitations did not produce sufficient response, a second subset of potential participants were chosen again by the online random number generator and contacted. Following a third round, fifteen

participants had agreed to participate in the study. As a sample size, this allowed for the coverage of a wide range of opinions, while still remaining a small enough number to focus on the quality of the interviews and the analysis of them to follow.

The interviews were carried out between July and November 2013. At the time of the interview, a Letter of Consent (see Appendix 3) was signed both by the participant and by myself. Interviews generally lasted between forty-five and ninety minutes in length. The interviews were semi-structured, with a prepared list of approved questions brought to the meeting (see Appendix 4), but in many cases participants were eager to speak about their experiences and thoughts with little provocation. With the understanding that the study was on the subject of Aboriginal engagement, many participants spoke at length about related topics they believed to be important to the research and required little guidance to cover areas I thought pertinent to the issue. Interviews were audio-recorded with the permission of the participant and transcribed by myself at a later date. Using the completed interview transcriptions, I analyzed the data I had gathered, comparing participants' answers to the same questions and highlighting recurring themes for further examination.

Of the fifteen interviews conducted over this five month period, six were with licensed archaeologists currently working in Ontario. These interviews were conducted with three principals or partners of consulting firms [A01; A02; A03], two project managers [A04; A05], and one field director [A06]. As a result, these six interviews showed a wide variety of experience and knowledge, from the high-level communications between proponent, firm, and First Nation, to the practical and everyday interaction of the field. Seven interviews were conducted with representatives from Indigenous communities, the

majority of whom self-identified as individuals responsible for receiving, evaluating, and participating in requests for engagement on behalf of their communities. These, too, covered a wide range of large and small communities with varying levels of involvement in archaeology. Finally, two additional interviews were conducted with individuals who could not easily be placed in either category, falling somewhere between or outside the strict classification of these two distinct groups.

All participants were promised anonymity for their participation in the study. However, I have struggled with the reality that Ontario CRM is a relatively small industry and many individuals are familiar with one another. As a result, I have decided to remove any possible identifying features (including gender pronouns), statements, or other information, to the extent that I am aware, even if the consequence is less clarity in the data that I can provide with respect to, for example, project names or areas of work. Additionally, this has meant that no participant is identified by name, even if they felt comfortable in doing so, as that reduces the pool of options for those who do not wish to be recognized. In my own analysis and in this report, all participants have been given a coded identifier. A01 through A06 have been used to identify participants who are archaeologists, F01 through F07 identify participants who are representatives from Aboriginal communities, and B01 and B02 have been used for the two participants who fall into or between both categories.

1.5 Overview

It is impossible to begin an examination of Aboriginal engagement in Ontario CRM without the necessary background information. Therefore, chapter two will discuss the

early provincial policy that paved the way for the introduction of the *Standards and Guidelines* and highlight some of the Supreme Court decisions behind increasing recognition of Aboriginal land and treaty rights by the federal and provincial governments. In addition, tragic crises like the one at Ipperwash in 1995 have pushed the need for better, stronger, and more positive relationships with First Nations into the forefront of the public's mind. Ontario's requirement for archaeologists to engage with Aboriginal communities during the course of their work emerged, in part, out of this history. The specific details of this requirement will be examined in depth.

Chapter three will attempt to answer the research questions posed previously by examining how archaeologists and Aboriginal community representatives interpret provincial policy on engagement and how their own specific internal approaches differ from the government's vision. It will also briefly examine the ways participants define the engagement that they do and how it differs from the province's duty to consult with Indigenous populations.

Chapter four will recount participants' experiences with the process to paint a picture of how engagement is carried out on a daily basis. In particular, this chapter will examine how Aboriginal communities provide feedback to archaeologists about the work that is being done and how differences in interests and opinion are managed or, if conflict arises, negotiated.

Engagement, of course, does not occur within a vacuum, and there are external factors that impact the step-by-step process of engagement between archaeologists and First Nations. Chapter five will consider the larger context of Aboriginal concerns as well as

specific areas of interest, such as the disturbance of human remains and the question of ownership of artifacts. It is important for archaeologists to remember the history of poor treatment of Indigenous populations at the hands of the government, as continued feelings of distrust play a role in how Aboriginal communities conceive of and approach archaeology and engagement.

Chapter six will provide insight on the roots of engagement and explore how relationships between archaeologists and First Nations originally began to grow.

Pertinent to this topic, some participants revealed the lack of engagement taking place before the introduction of a policy requirement. However, some archaeologists contend that they have always tried to engage Aboriginal communities and continue to go beyond the minimums outlined in the *Standards and Guidelines* today.

The practice of monitoring, or having Aboriginal community representatives out in the field working alongside archaeologists, will be discussed in detail in chapter seven.

Participants will describe their interpretation of the monitor's role in the field and whether or not monitoring has been successful in achieving its goal. The reaction of the archaeological community to the proliferation of this practice will also be examined.

Finally, chapter eight will discuss the ways in which the traditional attitudes of archaeologists reluctant to collaborate with Aboriginal communities have negatively impacted the progress of relationship building between parties. There has been growing recognition that unchallenged stewardship over the archaeological record excludes Indigenous peoples from access to and control over their own heritage. In light of this, new approaches to engagement will be examined. Although engagement may require the

relinquishing of authority, it can also have benefits for archaeologists. If current provincial policy has failed to encourage effective and meaningful engagement, it follows that changes must be made.

Chapter 2

2 Provincial Policy Review

It is necessary to begin with a brief examination of the Canadian legislative and cultural context that paved the way for the introduction of Ontario's current policy on Aboriginal engagement. It is not my intention to chart the rise of consultant archaeology in the province and the future of the CRM industry. Others have skillfully undertaken such tasks, coupled with a comprehensive literature review (see Dent 2012). Instead, I have opted to privilege the practical experiences of my participants as reported to me through the interviews. Yet it is critical to inform those thoughts and opinions with a background in relevant policy.

The concurrent expansion of consultant archaeology and increasing pressure from Aboriginal communities are both contributing factors to the need to police and legislate the CRM work that is being done in the province. In Canada, there exists no federal legislation on the domain of archaeology; each individual province is responsible for regulating CRM activity within their own borders (Ferris 2003: 159). As such, over the past half century, Ontario has implemented policy that has created new obligations for archaeologists in the hope of regulating the archaeological consulting industry and providing standards for work. This policy has both recognized and upheld the position of archaeologists as the primary stewards of archaeological resources, despite recent challenges by First Nations and a growing recognition of their legitimate claim to their archaeological heritage (Ferris 2002: 81-82).

2.1 Late 20th Century Provincial Policy

The first piece of archaeologically relevant legislation introduced by Ontario in 1953 was the *Archaeological and Historic Sites Protection Act* [AHSPA]. Several key elements of the document, including ideas about “archaeological significance” (though itself not defined in the Act), still remain in use today (Dent 2012: 30).

As consultant archaeology grew as a practice in Ontario, the shortcomings of the 1953 Act became obvious. Archaeologists pushed for new policy that would include archaeological resources not previously covered by the AHSPA and also require archaeologists to hold a licence in order to work in the province (Dent 2012: 32). The result was the *Ontario Heritage Act* [OHA], introduced in 1975, which addressed these concerns. In addition, it established a bureaucracy of regional offices staffed with public employees to oversee archaeological work in the province (Dent 2012: 32). Around the same time, regulation of archaeology was transferred from the Ministry of Natural Resources to the newly formed Ministry of Culture and Recreation (now the Ministry of Tourism, Culture, and Sport).

However, the OHA did not introduce any guidelines for how archaeological work in the field should be done, leading to what Dent identifies as “a spectrum of questionable field methodologies” as Cultural Resource Management archaeology developed throughout the late 1970s and early 1980s (Dent 2012: 72). As a result, the Ministry consulted with the archaeological community to create its first “technical standards of practice,” released in 1993 as the *Archaeological Assessment Technical Guidelines* (Dent 2012: 72).

Adherence to the guidelines was supposed to be mandatory, for fear of losing one’s

archaeological licence, but they were inconsistently enforced (Dent 2012: 73). Although the document acknowledges that local Aboriginal communities may have an interest in archaeological sites, there are no guidelines that require engagement or consultation between the archaeologist and these interested groups (Ontario 1993: 12).

2.2 Ethics and the Canadian Archaeology Association

The growth and regulation of the CRM industry in Ontario was not the only change affecting archaeology in the latter half of the 20th century. At the same time, Aboriginal communities became increasingly vocal in their criticisms of the treatment of their cultural and ancestral remains by archaeologists (Atalay 2006: 288). In response, some archaeologists began to critically examine their perceived right to control artifact collections consisting of Indigenous material culture, coming together to address these ethical issues at conferences, in academic publications, and other venues (Atalay 2006: 289). Around the world, archaeological associations offered statements on archaeology's ethical responsibilities to Indigenous populations, in an attempt to confront the issue (Watkins 2005: 440).

In Canada, the Canadian Archaeological Association [CAA] released its revised *Statement of Principles for Ethical Conduct Pertaining to Aboriginal Peoples* in 1996 (CAA 1996). Considered an official accord by the CAA, it celebrated the principle of including Indigenous peoples in archaeology, but did not define what such involvement would look like or how it would be accomplished (Yellowhorn 2000: 129). The statement covered four areas of concern - consultation, Aboriginal involvement, sacred sites and places, and communication and interpretation - with the thrust of the document

acknowledging Aboriginal interest and encouraging Aboriginal involvement in the protection, management, and interpretation of archaeological resources (CAA 1996).

The statement emerged out of regional conversations with Aboriginal communities on a variety of archaeology-related issues, but the overarching theme that emerged from these dialogues was the need for more cooperative efforts between Indigenous and non-Indigenous people, both in archaeology and beyond (CAA 1996: 12).

The response to the CAA's initiatives was not overwhelmingly positive. In committees organized by the CAA, archaeologists expressed frustration that they should accept responsibility for issues that should be addressed by the government (CAA 1996: 27).

Archaeologists were insulted, too, by the stereotype of the archaeologist as the "Native bone-digger" and the lack of understanding among Aboriginal groups about what archaeologists actually do (CAA 1996: 27). Others showed concern that special considerations for sacred sites might be used to exclude archaeologists from excavation (CAA 1996: 38).

Three years after the publication of the CAA statement, Pokotylo and Guppy conducted a survey of public understanding and support of the initiative, as the statement had since been "adopted as guidelines by many institutions and archaeologists in Canada" (Pokotylo and Guppy 1999: 411). The study found that a sizable minority (39.9%) disagreed with the idea that Aboriginal people should hold majority control over ancestral sites and artifacts, and nearly half (49.6%) disagreed that Aboriginal people should be responsible for their care and preservation (Pokotylo and Guppy 1999: 411). The authors concluded that "a significant segment of the public does not appear to acknowledge, or support, the increasing number of Aboriginal claims of proprietary rights to, and

ownership of [. . .] archaeological resources” (Pokotylo and Guppy 1999: 411). They also determined that the public was more likely to accept interpretations of the past offered by archaeologists (45.7%) than Indigenous populations (14.3%) (Pokotylo and Guppy 1999: 411). However, 87.5% of respondents agreed that archaeologists have an obligation to include Aboriginal people in archaeology (Pokotylo and Guppy 1999: 412).

2.3 Relevant Supreme Court Decisions

The atmosphere of change was further cemented by a series of Supreme Court decisions on the issue of Aboriginal rights. *Guerin v. the Crown* (1984) declared Aboriginal land rights to be “inalienable” and recognized the Crown’s obligation to First Nations on such interests (Ferris 2003: 169). *R. v. Sparrow* (1990) upheld Section 35 Aboriginal and treaty rights and acknowledged the government’s responsibility to protect the cultural identity of Aboriginal peoples. Although the decision was in regard to fishing rights, Ferris has argued that this responsibility can be extended to archaeological heritage (Ferris 2003: 169).

Additionally, *Delgamuukw v. British Columbia* (1997) found that the “inalienable” Aboriginal title to land could not be infringed upon unless justified by compelling societal needs. This decision also required meaningful consultation between the Crown and First Nations whenever such infringements were considered and/or occurred (Ferris 2003: 169). This duty to consult was seen to extend to all surrendered public and private property and, in *Donald Marshall Jr. v. Canada* (1999), the Supreme Court restated that the Crown had a responsibility to honour treaty rights, now specified outright to include Aboriginal interest in archaeological heritage (Ferris 2003: 169). Of course, the

recognition of Aboriginal cultural patrimony as an “unsurrendered interest” and acknowledgement of the pre-existing Aboriginal ownership of archaeological resources had implications for the CRM industry (Ferris 2003: 169). However, in *Kitkatla Band v. British Columbia* (2002), the court approved of the Crown’s responsibility to balance care for heritage on one hand, and societal growth and resource extraction on the other (Ferris 2003: 170). In doing so, the court also implicitly endorsed the role of the Crown as caretaker of the archaeological record, though not without responsibility to Aboriginal interests (Ferris 2003: 170).

2.4 The Ipperwash Inquiry

Such a balance is fraught with tensions. The Ipperwash crisis exemplifies this as a case in point. In a 1995 dispute over a reported burial ground in Ipperwash Provincial Park, protests culminated in a violent confrontation between members of Stoney Point First Nation and the OPP, during which Dudley George, an unarmed protestor, was shot and killed by police. The incident brought to light the possible extreme consequences of a system that overlooks the need for Aboriginal engagement (for background information on the Ipperwash crisis, see Edwards 2001 and Hedican 2013). The incident occurred in 1995, but it was not until 2003 that an inquiry headed by Hon. Sidney B. Linden would be launched. Its results were released in 2007 (Hedican 2013: 5).

In the Ipperwash Inquiry Report, Linden stated that “the best way to avoid Aboriginal occupations regarding Aboriginal burial and heritage sites is to engage Aboriginal peoples in the decision-making process” (Linden 2007: 129). Linden called on the provincial government to take a lead role in developing clear rules and expectations on

how best to balance Aboriginal interest in the archaeological record with the rights of landowners, highlighting a need for increased accountability and transparency when making decisions concerning these issues (Linden 2007: 130). In essence, he recognized a need for Aboriginal engagement where heretofore it had not been required. He noted that archaeological sites had the potential to become “flashpoints” for occupation or protest when archaeologists or developers refuse to acknowledge Aboriginal cultural patrimony, as in the case of Ipperwash, or Oka before it (Linden 2007: 132). As such, Linden urged the province to design a new process, in partnership with First Nations, that would balance the needs of development and the protection and preservation of cultural heritage (Linden 2007: 138). He identified the shortcomings of the current system, which failed to adequately acknowledge Aboriginal interests or allow for engagement with First Nations, and hoped that these would be rectified in new or amended policy (Linden 2007: 141).

2.5 Province-Mandated Studies

In a similar vein, Ontario commissioned numerous studies during the late 20th century on the state of consultant archaeology in the province. It is possible to attribute some of the impetus for these reviews to increasing Aboriginal concerns about archaeologists’ unchallenged authority over cultural resources. The findings of the *Ontario Heritage Policy Review* (Ontario 1987; Ontario 1988) and the *Red Tape Review Commission* (Ontario 1997b) prompted the province to initiate a program review in 2000, known as the *Archaeological Customer Service Project* [ACSP] (Dent 2012: 74). The ACSP aimed to revitalize the industry through several initiatives, including upholding transparency in business practices, removing barriers in policy regulation, and recognizing the autonomy

of professional and licensed archaeologists (Dent 2012: 74). Among the project's many findings, of concern here is the acknowledgement of increasing Aboriginal involvement in consultant archaeology (Dent 2012: 75). The ACSP ultimately identified the need for what would later evolve into the *Standards and Guidelines for Consultant Archaeologists*. At its most basic, such a functional, comprehensive document would need to outline minimum expectations ("standards") for archaeologists, as determined from a community consensus of best practice, while optional "guidelines" would provide additional clarification while continuing to allow for the exercise of professional judgment (Dent 2012: 75).

It is essential to make note of the development of cultural resource policy as reflecting the changes in the legislative and cultural atmosphere of the province. Such legislation provides the procedural requirements and guidelines to which archaeologists must adhere and thus the inclusion or exclusion of Aboriginal engagement or interests becomes a very powerful choice. Policy can mandate change which some archaeologists might otherwise be reluctant to embrace or it can maintain the status quo until First Nations and concerned archaeologists lobby for adjustment. The reality of cultural resource management is one of "negotiated practice" among various parties with different and sometimes conflicting interests and responsibilities (Nicholas 2009: 217). Prior to 2011, we see advocacy for and policy on Aboriginal interests follow both paths.

2.6 *The Standards and Guidelines for Consultant Archaeologists* (2011)

Out of this background came the *Standards and Guidelines for Consultant Archaeologists*, released by the Ontario Ministry of Tourism, Culture, and Sport [MTCS]

in 2011. It represents the most recent iteration of provincial guidelines for the CRM industry and is considerably more substantive than any of the earlier initiatives (Dent 2012: 76). The 179 pages of standards (required) and guidelines (optional) cover all four stages of archaeological investigation, field methodologies, reporting procedures, and more (Dent 2012: 76). Near the outset, the *Standards and Guidelines* acknowledge Aboriginal cultural interest and the need for engagement with First Nations:

Archaeology in Ontario is particularly relevant to Aboriginal communities because it can help to document Aboriginal histories and peoples and to identify sacred sites and ancestral remains. Engaging Aboriginal communities in archaeology adds to the understanding of the project and enriches the archaeological record. The process demonstrates respect for Aboriginal heritage, recognizes Aboriginal people's connection to the land, and allows everyone to benefit from their knowledge. (Ontario 2011: 7)

Despite this initial acknowledgement of these issues, the actual requirements for Aboriginal engagement are just two standards, both found in the section on Stage Three archaeological site-specific assessment. The first requires the archaeologist to engage Aboriginal communities when assessing the archaeological significance of a site:

3.4.2. Aboriginal communities must be engaged when assessing the cultural heritage value or interest of an Aboriginal archaeological site that is known to have or appears to have sacred or spiritual importance, or is associated with traditional land uses or geographic features of cultural heritage interest, or is the subject of Aboriginal oral histories. (Ontario 2011: 57)

The second requires the archaeologist to engage Aboriginal communities when formulating mitigation strategies:

3.5.1. Aboriginal communities must be engaged when formulating Stage 4 mitigation strategies for the following types of Aboriginal archaeological sites:

- a. rare Aboriginal archaeological sites
- b. sites identified as sacred or known to contain human remains
- c. Woodland Aboriginal sites
- d. Aboriginal archaeological sites where topsoil stripping is being contemplated
- e. undisturbed Aboriginal sites
- f. sites previously identified as being of interest to an Aboriginal community (Ontario 2011: 62-

63)

In addition to the two standards, the document provides a handful of guidelines encouraging the archaeologist to engage with Aboriginal communities at other times

throughout the four stage work process. Guidelines, of course, are left to the archaeologist's own professional discretion, but offer additional clarification or information if needed. Guidelines specific to the topic of Aboriginal engagement include suggestions to engage with Aboriginal communities during the Stage 1 Background Study (1.1.1), when concluding that an area has low archaeological potential and deeming it exempt from further assessment (1.4.1), or during Stage 2 Property Assessment to assess Aboriginal interest in the area (2.2.1) (Ontario 2011). It should also be noted that although the standard related to the formulation of Stage 4 Mitigation Strategies specifies that archaeologists must engage Aboriginal communities on the above listed types of archaeological sites, the accompanying guideline (3.5.1) instructs archaeologists that they “*may* choose to review the recommendations” made by an Aboriginal community (Ontario 2011: 62; emphasis added). In other words, archaeologists are under no obligation to follow those recommendations and may use their own professional judgment when determining mitigation strategies.

It should be noted that all references in this paper to the *Standards and Guidelines*, unless otherwise explicitly stated, refer to this 2011 document, and not any earlier versions or drafts of the policy.

2.7 *Engaging Aboriginal Communities in Archaeology* (2010 Draft)

Recognizing that the Aboriginal engagement requirements of the *Standards and Guidelines* were new in Ontario CRM, the MTCS also released a draft technical bulletin entitled *Engaging Aboriginal Communities in Archaeology* to coincide with the implementation of the new regulations. The bulletin acknowledges Aboriginal

stakeholder interest in archaeological and cultural heritage, but shies away from addressing the province's "duty to consult" afforded to First Nations by the Constitution Act's (1982) Section 35 treaty rights (Dent 2012: 78). Because archaeologists do not represent the government or other approval authority, it has been argued they are not subject to a legal duty to consult (Dent 2012: 78). Rather, the Aboriginal engagement requirement of the new policy acts on the understanding that First Nations have an interest in archaeology because of their ancestral heritage and archaeologists have an ethical obligation to acknowledge and accommodate that interest. With the introduction of new policy on Aboriginal engagement, that ethical obligation becomes a province-mandated one; non-compliance results in such consequences as losing one's licence and being unable to practice archaeology in Ontario.

In practice, the engagement document restates the new policies for Aboriginal engagement as outlined in the 2011 *Standards and Guidelines*, but also expands upon these to suggest actual strategies for this engagement (Dent 2012: 78). It promotes engagement as enriching and beneficial to the archaeologist's interpretation and assessment (Ontario 2010: 5). It also explains that meaningful engagement is best achieved through mutual relationship and trust building between the archaeologist and Aboriginal community and advises the archaeologist to begin this process as early as possible (Ontario 2010: 5). The bulletin attempts to help archaeologists determine which community to engage, acknowledging that multiple First Nations may have interest in the archaeological site or area of work, and suggests several ways archaeologists can initiate contact with the chosen community (Ontario 2010: 6). The archaeologist is also encouraged to follow the First Nations' lead on engagement and try their best to

accommodate the community's unique needs, understanding the traditional tensions between Aboriginal and non-Aboriginal peoples in Canada (Ontario 2010: 7-8). Other recommendations include: privileging face-to-face engagement, incorporating Aboriginal ceremonies into fieldwork, expanding survey or excavation to accommodate Aboriginal interests or concerns, and providing the community with information and reports about the project (Ontario 2010). Once again, such strategies are simply suggestions; archaeologists need only comply with the two standards detailed in the *Standards and Guidelines* (Ontario 2011: 57, 62-63).

Chapter 3

3 Thoughts on Aboriginal Engagement in Ontario CRM

Having reviewed the requirements for Aboriginal engagement under the *Standards and Guidelines*, the next step is to assess the implementation of those policies, beginning with the first question of my research proposal: What do people *think* the requirements are for Aboriginal engagement in Ontario's consultant archaeology? This question was presented to archaeologists and Aboriginal participants in an attempt to understand how those policies are interpreted and what rules those in the industry are following.

3.1 Consultation versus Engagement

To accomplish that goal, it is necessary to take a moment to examine the broader question of what is "engagement" and how does it differ from "consultation"? Furthermore, how does this engagement fit into the province's "duty to consult"? In chapter two, I examined briefly the history of legislation and court decisions behind these concepts. One of my goals for the interviews was to understand how these concepts were understood by individuals in the business.

Many research participants described "consultation" as the Crown's official obligation to First Nations, arising out of common law and supported through court decisions. It was also identified as different from engagement because of the need for accommodation that it placed upon the Crown; in other words, "consultation" meant that the Crown should listen to Aboriginal recommendations:

"So consultation is a word that is used to refer to the Crown's duty to consult with First Nations as upheld by various court decisions, including the Supreme Court of Canada's decisions about the need to consult with First Nations on any kind of development that would impact [or] potentially impact any treaty

rights, land claims, or any of that sort of stuff, and any constitutionally defined rights and obligations.” [A03]

One Aboriginal participant recounted in considerable detail the origins of the “duty to consult and accommodate,” which s/he explained meant that anyone who wanted to build on land that would impact reserve or treaty lands must consult with and accommodate the local First Nation [F06]. In his/her opinion, this extends to archaeology, as digging in the ground necessarily impacts the land. Another community representative explained that s/he believed the Supreme Court’s ruling on the duty to consult and accommodate should open up the *Standards and Guidelines* – a government document – to challenges by Aboriginal communities who disagree with the current requirements [F07].

“Engagement,” on the other hand, was generally identified as being the weaker, non-official version of consultation. Archaeologists explained that they engage not on the responsibility of the Crown’s duty to consult, but because of an ethical imperative to include Aboriginal peoples in their own archaeological heritage. This has been reinforced by the provincial government’s decision to include First Nations in the CRM process through the requirements of the *Standards and Guidelines* that call for Aboriginal engagement. Engagement was referred to in a variety of different ways, including “talking” and “information sharing,” but differed from consultation because engagement carried with it no requirement to accommodate or indeed even truly consider recommendations:

“Engaging in my mind is just communicating, whereas consultation implies that you’re actually asking for opinions on recommendations and the process and everything else.” [A04]

“There’s a series of obligations that can come out of consultation and that means follow up, that means that concerns have to be addressed. Whereas engagement means that, ‘Well, you know, we talked to you and that’s about it.’” [F07]

However, as one Aboriginal participant pointed out, that does not mean that engagement cannot be meaningful, especially if archaeologists and proponents approach the process with true intentions to work with the First Nation and perhaps contribute funding towards their involvement.

Despite the distinctions made between the Crown's duty to consult and archaeology's ethical obligation to engage, some participants expressed frustration at what they interpreted as the Crown offloading its responsibility to Aboriginal populations onto the shoulders of archaeologists [A02]. This is not to say that archaeologists, for the most part, do not acknowledge that engagement can be valuable, but they object to what they view as the government shirking its own obligations to First Nations while they themselves are held to specific requirements to fulfill it.

Regardless, it should be noted that when asked specifically about the definitions of consultation and engagement, respondents did make an effort to differentiate between the two. However, throughout the majority of each interview, the words consultation and engagement were used interchangeably, as synonyms, with no attention paid to context. Therefore, while in actuality many recognize the differences between the terms, in practice it appears that they are often used stripped of their official meanings, as "buzzwords" to signal only that the archaeologist is in communication with the Aboriginal community.

3.2 Interpretation of Provincial Policy

When it came to the specific topic of Aboriginal engagement and how it was described in the *Standards and Guidelines*, immediately some confusion over the exact requirements

was obvious. Two of six archaeologists responded that Aboriginal communities needed to be engaged during both Stages Three and Four, if the site in question is a pre-contact one [A03; A06]. A third archaeologist explained that engagement needs to occur before Stage Three begins, so that the First Nation can provide the archaeologist with a community representative on site, which is not a standard or guideline [A05]. Another archaeologist claimed that the *Standards and Guidelines* require archaeologists to engage with Aboriginal communities before Stage Four begins, but only if the work to be done is on a Woodland or sacred site [A01]. Only one participant was able to correctly identify that the *Standards and Guidelines* require the archaeologist to engage with Aboriginal communities during Stage Three alone [A04]. This participant also pointed out that while archaeologists are obligated to ask for input from the First Nation, they are under no obligation to agree with it or comply with those recommendations.

It should not be surprising then that many of the archaeologists, when asked about the provincial policy requirements, did not respond immediately by listing the standards, but rather exclaiming outright, “Well, they’re quite vague!” When asked what the *Standards and Guidelines* require for Aboriginal engagement, one participant told me:

“Now, what’s interesting about that is it doesn’t say anywhere what engagement means or how that’s supposed to happen.” [A03]

Another archaeologist explained that without clear strategies to follow, the actual application of the *Standards and Guidelines* can present quite a challenge [A02].

Currently, the two standards (3.4.2 and 3.5.1) appear towards the end of Stage Three, but in their wording they leave the exact requirements open to interpretation. According to standard 3.4.1, the ultimate goal of Aboriginal engagement is to assess the cultural heritage value or interest of an Aboriginal archaeological site. There are many ways to

accomplish this task, with varying degrees of completeness and transparency, from engaging early during Stage Three work and inviting an Aboriginal community representative onto site, to providing the Aboriginal community with a copy of the archaeological report after work has been completed and asking for comments or input. These variable practices may explain the confusion seen in the different responses from archaeologists during the interviews. What's more, both standards state that only specific types of Aboriginal archaeological sites require engagement, but careful word choices allow archaeologists to interpret these as narrowly or as broadly as they see fit. Indeed, some archaeologists reported that only particular Aboriginal archaeological sites required engagement (for example, only those sites dating to the Woodland period).

While vagueness is certainly a persistent problem, one participant acknowledged the difficulty in attempting to craft well-defined standards for archaeologists who must, in the course of their work, engage with several different Aboriginal communities with many varied needs and perspectives [A02]. However, in the end, the current policy still leaves considerable confusion over what engagement is supposed to be and how it should be done.

This confusion raises a couple of secondary issues. The first is that when practitioners are unsure of what engagement is supposed to be, they are also uncertain about what it can accomplish. When its benefits are murky, its consequences not clearly defined, and the roles of those involved unclear, people are less likely to invest energy in engagement. One archaeologist raised the question that if proponents and archaeologists are required to engage, what are the limits of the accommodations they should provide [A02]? For example, does engagement give anyone the power to shut down excavation on a site or

prevent a project from proceeding? There are fears that such vagueness could give way to uncertainty, tensions, and, ultimately, conflict. This participant even went so far as to identify Aboriginal engagement as a process that could be “occasionally dangerous” [A02].

The second issue that arose over the course of these interviews was the question of whether archaeologists should have any responsibility at all to engage Aboriginal communities. Having characterized the engagement process as messy, difficult, and expensive, one archaeologist explained that this was a case of the provincial government offloading its responsibility to First Nations onto archaeologists:

“What it looks like is that they’ve [Ontario] more or less delegated anything that’s messy, or difficult, or expensive, or has the possibility to turn legal, they’ve delegated that to us [. . .] They claim ownership of all the, you know, archaeological heritage in the province, but they force us [archaeologists] to curate it and store it in perpetuity and they don’t pay anything for that. They are forced by the Supreme Court decision to engage [. . .] so they delegate that to us, because they don’t want to do it, because it’s messy.” [A02]

In the previous chapter, it was highlighted that the Ontario Ministry of Tourism, Culture, and Sport released a draft technical bulletin – *Engaging Aboriginal Communities in Archaeology* – in an attempt to clarify the new instructions in the *Standards and Guidelines*. As a follow-up question, I asked archaeologists how useful that bulletin has been in answering their questions about Aboriginal engagement. The answers I received were dismissive of the document. Four of the six archaeologists stated that it is unhelpful and identified a variety of reasons why they have no interest in using the bulletin. One identified that even the expanded document was still too vague to be useful, despite its attempt to more finely detail the requirements [A04]. One archaeologist further explained that it did not teach him/her anything s/he had not already learned on his/her own [A05]. Another pointed out that the bulletin was not legally enforceable, and thus

s/he had no interest in it [A01]. Finally, one archeologist dismissed the document, reasoning that because the provincial government had not done a very good job speaking to First Nations about what they would like to see in the bulletin, that it therefore could not be very useful in advising archaeologists how to engage:

“The government put the bulletin out on how to consult without actually consulting particularly well with the First Nations themselves, so telling them how they’re going to be consulted with isn’t really . . . That doesn’t go over very well with them, I have to say.” [A02]

Another archaeologist also expanded on this theme and suggested that the bulletin may provide a good benchmark, but it should be treated as a “living document,” able to be adapted over time as archaeologists and Aboriginal communities work through what is and is not effective in terms of engagement [A03].

3.3 Learning About Provincial Policy

We have seen that many archaeologists criticize the vague *Standards and Guidelines*, but the truth of the matter is that each of these individuals are nevertheless working in Ontario doing something that they deem to be “Aboriginal engagement.” I will address shortly the issue of what exactly is being done under that designation, but first there is one more question to be addressed: How do archaeologists learn how to engage, if not from reading the provincial policy?

While many archaeologists acknowledged that it is necessary to know what the *Standards and Guidelines* require of them, in the end they are too vague to properly instruct archaeologists on how to carry out Aboriginal engagement. Instead, it appears that most come to understand their role in engagement through two methods. “Trial and error” was a common answer on the part of archaeologists when asked how they learned to engage. Respondents cited practical experience and mistake-making as some of the best ways to

familiarize oneself with the process [A04; A05]. Secondly, archaeologists explained that they learn how to engage from their employers, watching the strategies they employ and trying them out for themselves:

“And just from my field directors at [Company X] . . . I learned a lot [about Aboriginal engagement] by watching that.” [A05]

Additionally, many of the project managers and field directors I spoke with explained that they would most likely turn to their supervisor for advice if they had any questions about engagement [A04; A05]. One archeologist pointed out that s/he has in the past asked the MTCS for direction [A04]. Finally, just one respondent explained that s/he believes archaeologists should ask the Aboriginal community in question how best to engage [A02]. S/he elaborated that archaeologists themselves should have no personal preferences or opinions on how engagement should unfold and that they should take their lead from the First Nation:

“Through the whole history of our relations with First Nations has been us showing up and telling them how things are gonna happen, how our relationships are going to be [. . .] So we always ask them how they would like to be engaged with. We don’t tell them how we’re going to do it. And that’s why we object to the government’s engagement bulletin, because for us that document is situated in that tradition.” [A02]

When I presented a similar question to the Aboriginal community representatives with whom I spoke, I received what on the surface appears to be a very different answer. Two participants reported that they would indeed consider provincial policy on engagement, but less for guidance on what engagement should look like and more to understand the bare minimum expected in consultant archaeology [F01; F05]. In particular, one Aboriginal representative pointed out that the community can better advocate for what it wants to see done by working within avenues that already exist in current policy [F05]. However, another participant protested that this is a daunting task, as there exists a

variety of applicable legislation beyond the *Standards and Guidelines* and most of it is written in difficult, inaccessible legalese [F01].

Ultimately, though, most had their own ideas about what Aboriginal engagement should involve. These ideas included turning to trusted archaeologists for advice and guidance or conferring with another First Nation about their strategies:

“I talk to two people. First is [Archaeologist A] and the second, depending on what it is, I’d probably talk to [Archaeologist B]. And to a degree, again depending on what it is, I may contact [First Nation X] and ask for some advice.” [F02]

In the end, the majority of representatives with whom I spoke informed me that they are most likely to look to their own community for guidance on how to approach engagement or any issues related to archaeology which may arise. Four of the seven Aboriginal participants cited this as their preferred strategy. Some noted that the community’s wishes about archaeological matters sometimes run contrary to the requirements of the *Standards and Guidelines* and that, in their view, the community’s needs should be the foremost priority of the representative engaging with the archaeologist [F03; F04; F05; F07]. One example of this is the question of human burials, a contentious topic which will be addressed in chapter five. The idea that the province promotes its own politics, at times running into conflict with Aboriginal interests, was a common theme that appeared in many of the interviews. Many of the frustrations were aimed squarely at the government’s failure to adequately consult with First Nations on its engagement policy. As such, community members are more likely to ignore or outright reject provincial mandates and guidance on Aboriginal engagement than they are to embrace them:

“I’ve never read [the *Standards and Guidelines*] and I don’t need to. We’ve got our own course and path. And others will tell me if, you know, we can’t do that and I’ll say, ‘Yes, we can [. . .] Watch me.’” [F04]

Additionally, the representatives with whom I spoke explained that the requirements for Aboriginal engagement are so minimal that they have needed to carve out their own path in order to advocate for their community's interests. For example, unhappy about receiving only minimal notification about archaeological work in his/her area, one representative knew that s/he needed to start demanding more from archaeologists in order to bring the process of engagement closer to the one envisioned by his/her community [B01]. Frustration and dissatisfaction over archaeologists' failure to adequately engage with them has prompted Aboriginal communities to become more vocal about their own ideas of what engagement entails. However, finding that balance between what the MTCS allows and what the community wants is a difficult one. One participant explained that forging such a road is a challenge, "almost like walking through fog" [B02].

3.4 Internal Policy versus Provincial Policy

Rather than embrace inadequate provincial policy, Aboriginal communities have begun to develop their own internal processes for dealing with archaeology that more closely match their community interests. Overwhelmed by the volume of requests triggered by the engagement requirements of the new *Standards and Guidelines*, many First Nations find themselves without the time or capacity needed to review and work with that hefty document; instead, they fall back on what they know, trusting the community's own needs to guide their response. If their approach clashes with the vision of the province, that is of little concern:

"It's more of what they [First Nations] need and what they want, because it's coming to that. It's in that time now where they're done doing exactly what the province wants them to do [. . .] So a lot of

internal stuff that they do, it's what the community wants, what the elders want, what they think is best for the future of the community – whether it clashes with what the government wants or not.” [B02]

There are many varied reasons why Aboriginal communities may decide to create their own approach to archaeology and engagement. One representative felt that the requirement of engagement during Stage Three came much too late in the process, far past the point when the community could provide input on “the quality, thoroughness, [and] effectiveness” of Stages One and Two [B01]. In addition to wanting to be involved earlier, another respondent revealed his/her community's push for more meaningful and mutual engagement as part of its policy. S/he explained that this was born out of the need for more of a reciprocal dialogue than the current system permitted, allowing the community to share its knowledge and concerns with the archaeologist [F07]. Finally, one Aboriginal participant explained that his/her community viewed archaeology as an educational tool, with which to better understand their own history and culture; this internal priority conflicts, s/he said, with the province's vision of archaeology, which focuses on the resources as objects to be managed [F05].

Many of the Aboriginal participants with whom I spoke identified that internal policy came not from some sanctioned, physical document, but rather emerged from an atmosphere of cultural interest shared by the First Nation. Some admitted that the community was continuing to work to develop this internal policy, as the influx of requests for engagement was still so new. Two participants revealed that they had turned to archaeologists for help, enlisting them to work alongside the community in creating an archeological master plan or designing internal policy [F04; F07]. Some have found archaeological master plans, which document sites in the community's traditional territory, to be an effective way for the First Nation to document its presence and build

capacity. However, one Aboriginal representative explained that working with archaeologists on a tool for the community's use requires a bond of trust and the proper approach on the part of the archaeologist:

“When we sent out our request for proposals, it was an invitation to provide a proposal on conducting an archaeological master plan and the intent was that [the archaeologists] would work with us. So [Company X] were really intrigued when they saw the words ‘work with’ instead of ‘for us’ [. . .] From the beginning they got it right and that’s the firm we chose.” [F04]

According to one participant, while it is important for First Nations to develop their own internal policy, in his/her experience proponents generally dislike it when they realize that they cannot come in and tell the First Nation exactly how engagement is going to happen [F04]. S/he explained that some people have complained that his/her community has “a big stick,” but said that the real reason it is important to build capacity is so that the community has something of value to bring to the table during engagement [F04]. For example, this might include relevant and insightful comments on the project at a larger scale, so that his/her First Nation can be sure it will benefit the community.

Those Aboriginal communities without a fully developed internal response protocol or the capacity to implement one may not be able to be involved in archaeology to the extent that they may wish to be. We will revisit this topic in chapter five. However, it has been suggested that First Nations may be able to collaborate more among communities. In this vein, one participant explained to me that his/her community turns over all their requests for engagement to an agency of their traditional council, that has the capacity to provide administrative, technical, legal, and tactical support on their behalf [F02]. If that agency did not exist, s/he informed me, the community would be forced to rely on the goodwill of the proponent and the archaeological firm during the course of engagement. At least one archaeologist I interviewed made note of this phenomenon, remarking:

“We talked to some people at [First Nation X] and they said, ‘We’re not allowed to do it; we have to turn it over to [the agency of the traditional council].’” [A01]

For archaeologists, on the other hand, most agreed that they were obligated to comply with the MTCS’s standards and half (three of six respondents) explained that they had no formal, written policy on engagement beyond those requirements [A01; A03; A04].

Instead, many of the archaeologists with whom I spoke commented that they were committed to fostering a culture of positive and proactive treatment of First Nations within their firm and instructed their employees to treat community representatives with respect. Two archaeologists cited the fact that their company was engaging Aboriginal communities before it was required by the *Standards and Guidelines* as proof of this attitude [A01; A03]. While one individual acknowledged that nothing in the *Standards and Guidelines* prevents an archaeologist from engaging the First Nation before Stage Three, s/he admitted that ultimately the decision to do so rested with the proponent, who must pay for any additional work [A04].

3.5 Who is Involved in Aboriginal Engagement?

Aboriginal engagement within the archaeological assessment process can be a challenging and complex process to analyze, as it occurs simultaneously on many levels and involves many different people. When a project is large enough to fall under the auspices of Ontario’s Environmental Assessment (EA) Act, proponents are required by the province to consult about the project with impacted First Nations on their own behalf (see Ontario 1997a). For projects that do not require an EA, the proponent may not be obligated to carry out any consultation with Aboriginal communities. Regardless of the discussions happening or not happening between proponent and First Nation, the

archaeologist always has a responsibility to fulfill the engagement requirements of the *Standards and Guidelines* and is obligated, at least during Stage Three, to contact the local First Nation(s) about the archaeological work taking place.

However, participants reported that at times the lines between the consultation done by the proponent on the project and the engagement done by the archaeologist on the archaeology can become blurred in practice. While in theory there should be a clear distinction between the two, some of the archeologists I interviewed explained that sometimes proponents ask them to carry out the consultation on the project on their behalf [A01; A03; A04]. While the archaeologist should never be responsible for the proponent's obligation to consult and should only be concerned with carrying out their own requirements under the *Standards and Guidelines*, five of the six archaeologists spoke of working closely with proponents to consult with Aboriginal communities [A01; A02; A03; A04; A05]. In such cases, archaeologists mostly provide guidance and insight on the nature and process of consultation for proponents who are unfamiliar:

“We try to help [the proponent] as best we can. Most of the time I spend explaining the ways in which things can go wrong.” [A02]

In other situations, the proponent might be unwilling to carry out the consultation themselves and will ask the archaeologist to take over:

“Some proponents or some clients don't want to have anything to do with it. They just leave it up to the archaeologist.” [A04]

In general, archaeologists identified that larger proponents were more willing and more likely to be committed to the consultation process and have their own strategies in place to carry it out [A03; A04; A05]. This more accurately follows the protocol in place, which allows the archaeologist to focus on his or her own obligations for engagement

under the *Standards and Guidelines*. Often this begins by initiating contact with the Aboriginal community and communicating with whomever is designed to handle requests for engagement. Throughout the progress of the project, the archaeological firm usually continues to stay in contact with this community representative. Potentially, the archaeologist might also ask the First Nation to provide “monitors” for fieldwork (see chapter seven). As a result, principals of archaeological firms, field directors, and even field crew might interact with an Aboriginal community representative at some point during the engagement process.

Three of the archaeologists with whom I spoke told me that their company provides training for employees that includes at least some discussion on the topic of Aboriginal engagement. For one firm, this training was only offered to field directors and explained the process of engagement, instructed them on how to interact with field monitors, and reviewed some of the current issues and concerns of First Nations across the province [A03]. For the other two companies, training was required for all new employees, including field crew, and covered Aboriginal engagement at least briefly [A02; A04].

One training session included an extensive lecture on the contested nature of First Nations artifacts and the traditional role of archaeologists in that history:

“We want the crew to understand that the archaeological remains of Ontario are . . . that their ownership is contested. That archaeologists – from the beginning – are in a conflict when it comes to dealing with Aboriginal cultural properties, because we have licences that are given to us by a government that hasn’t consulted terribly well with them [. . .] We make it clear to them from the start that just because the government has claimed [ownership], that it’s not necessarily so, and that someday there may have to be an accounting made for the work that we do, so it behooves us to, you know, do the best work that we can from the get go. My opinion of it is that part of our job as archaeologists is to attack some of the traditional stereotypes about Aboriginal peoples [. . .] And I like our people to understand that they’re a part of that process.” [A02]

Other companies do not provide employees with training that focuses on Aboriginal engagement and the role of archaeologists within it. Nevertheless, those participants informed me that employees are expected to act in a collegial, open-minded, and respectful manner when working with First Nations, though at least one expressed fears that those expectations may not filter down to the field directors and crew as much as the principals of the company may hope.

Most Aboriginal participants explained that usually one or two people from their First Nation are designated to handle engagement requests for archaeological matters on behalf of the band administration. However, that individual often seeks advice from additional people who may have contributions or comments to make on the project, such as other staff members employed in the administration or lands department. This may include those who simply have an invested interest in knowing what is happening, such as the chief and council.

Chapter 4

4 Aboriginal Engagement in Practice

Having examined the requirements for Aboriginal engagement, how those compare to the internal policy of First Nations and archaeological firms, and who is participating in these processes, we can turn our attention to the second question that drives this research: How is engagement actually being carried out in practice?

4.1 The Start of Engagement

There are, of course, as many different ways engagement can unfold as there are different persons involved in the process. One Aboriginal community representative reported that engagement usually begins with a notification from the proponent at the start of the project as part of the Environmental Assessment [F01]. This occurs well before any archaeological work takes place. After archaeologists have completed the Stage One work, the archaeologist provides the First Nation with a report on the results of their findings. If the work must proceed to the next level, the archaeologist then provides a copy of the results at the end of Stage Two. This participant worried about what the archaeologist may be overlooking by not asking the community for input during Stage One:

“In a number of projects we will get notified that a Stage One didn’t come up with anything, so therefore Stage Two is not required [. . .] But there have been some things that have slipped through, yeah, for sure.” [F01]

While some archaeological firms may begin engagement earlier, during Stage Three it is required. At that time, the archaeologist reaches out to the First Nation and asks if they are interested in participating in the engagement process. One archaeologist noted that sometimes First Nations decline to participate [A04]. The reasons behind such decisions

will be explored in greater detail in the following chapter, but many are related to a lack of capacity.

One archaeologist explained that, in his/her opinion, engagement is essentially about demonstrating to the Aboriginal community that you – the archaeologist – can be trusted [A02]. First Nations, if they are limited by a lack of capacity, are often forced to rely on the goodwill of the archaeological firm. S/he identified that it was important for the archaeologist to form trust-based working relationships with the Aboriginal communities they hope to engage and that one thing the new provincial policy has done right is in encouraging archaeologists to make this connection:

“[Aboriginal communities] want to know who you are and what you’re about and if you’re going to be operating in the interests of money and the proponent or if they can trust you to deal squarely with them. And we find that even for the larger First Nations, really, that there’s a personal relationship with the people involved. [They] just wanted to know that they were dealing with decent people who weren’t going to steamroll their interests.” [A02]

One of the benefits of having an established relationship with the Aboriginal community is that when the time comes for engagement, the archaeologist already knows which person to contact. Generally, when beginning engagement with a First Nation they have never worked with before, archaeologists indicated that they would look to the community’s website for information or simply call the community directly and ask to speak with the relevant person. For their part, the Aboriginal community representatives with whom I spoke explained that this was a good strategy and that archaeologists are for the most part easily redirected to the person in charge of engagement requests.

Participants also noted that the provincial government has a list of First Nations contacts for engagement purposes.

One individual commented that the provincial government's list now includes both elected and traditional councils. This was one of the difficulties identified by some of the archaeologists with whom I spoke:

“Where it gets interesting is in places like [First Nation X] where this is a bit of a problem, because of course at [First Nation X] you have two parallel governments. You have the elected council, then you have the [traditional council], basically both claiming that they are running the show. So how do you work in that situation where, you know, you've got two sort of parallel things happening?” [A03]

In Aboriginal communities where there is both an elected and traditional council, archaeologists may be expected to engage with both. In some situations, archaeologists or members of the Aboriginal community may have different ideas about which council should be engaged, over and above the other. Two archaeologists highlighted the trouble in deciding with which group to engage, if not both in such cases [A02; A03]. One of those archaeologists told me that s/he prefers to engage with the elected council, because his/her firm already had a friendly, long-standing relationship with them, and that s/he was turned off by what s/he viewed as the more confrontational nature of the traditional council in question, explaining that it was not an approach that sat well with most proponents [A03]. Yet another archaeologist informed me that s/he so dislikes engaging with certain groups that when s/he is asked to contact them, s/he will opt to work with a different First Nation instead [A01].

4.2 A Step-by-Step Guide

Because of the vague nature of Aboriginal engagement in provincial policy, and the many approaches to engagement, it is difficult to construct a generalized outline of the process in practice, as each archaeologist I spoke with described a different system. Instead, I

have opted to present a summary of each archaeologist's response when presented with the request: "Take me through engagement, step by step."

A01 explained that no engagement is required until the end of Stage Three. A01 informs me that s/he never engages an Aboriginal community prior to this point, as his/her firm "can be sued by the developer" for going beyond the requirements and forcing the proponent to pay for more work. If Stage Four is required, A01 informs the proponent that they must pay for engagement, before contacting the First Nation to ask if they want to participate. A01 feels that most Aboriginal communities "don't really care that much" and that many are more interested in the money they might receive rather than the archaeology. At the end of Stage Four, A01 sends a copy of his/her report to the First Nation.

A04 explained that his/her company engages the Aboriginal community during Stage Three and asks them how they want to be involved. The First Nation may send community representatives out on site during the course of the field work and/or may ask for a copy of the report when the work is finished. Sometimes they provide feedback on those results. A04 identified his/her company's strategy as reaching out to the First Nation, providing them with all necessary information about the project, asking them how exactly they want to be involved, and doing their best to accommodate that. For the most part, A04 explained, this works well. However, A04 mentioned that s/he dislikes when community representatives (or "monitors") are out in the field but do not participate in the work. This is an issue that will be discussed in greater detail in chapter seven.

A05 revealed that, for the most part, his/her company begins engagement at the start of Stage Three by contacting the Aboriginal community and providing them with information about the project and associated archaeological work which has already been done. A05 then asks the First Nation how they would like to be involved, including having representatives out in the field. At the end of Stage Three, A05 informs the First Nation of his/her recommendations for Stage Four if it is necessary and asks for the community's input. At the end of Stage Three and, if it occurs, Stage Four, A05 provides the Aboriginal community with a copy of his/her report.

A03 described his/her understanding of the two different parts to engagement: initial, early meetings with the First Nation about the project and later hiring community representatives to be out on site while fieldwork is being carried out. A03 reminded me that the engagement being done by archaeologists is occurring at the same time that the proponent is consulting with the First Nation about the project, but the archaeologist should always be mainly concerned with fulfilling their obligations under the *Standards and Guidelines*. His/her company generally contacts the Aboriginal community at the beginning of Stage Three; A03 admits that Aboriginal communities have asked him/her to engage during Stage Two, but s/he believes many are already too overwhelmed by engagement requests and do not have the capacity to handle more. A03 explained that sometimes First Nations do not follow up with requests for engagement even during Stage Three.

A02 told me that engagement is really all about building relationships between the archaeological firm and the First Nation. If the friendship and trust is already there, then engagement is much easier to carry out. A02 pointed out that Aboriginal communities

know that they are entitled to engagement, so archaeologists should approach it as a given right rather than acting as if they are doing the First Nation a favour. A02 encourages the proponent s/he is working with to support community initiatives and to pay for community representatives to be out on site. A02 relies on his/her previously-developed positive relationships with Aboriginal communities when the time comes for engagement.

A06 is a field director whose role in engagement is to arrange for and work with community representatives out in the field. The majority of engagement, A06 explained, occurs at higher levels in the company and A06 admits that s/he knows little about it. A06 told me that s/he is in communication with the contact in the First Nation community provided to him/her by his/her supervisor and that the monitors out on site are taking information about what is happening out in the field back to their community. A06 suspects that the community contact is comparing this information with the archaeological report they receive from the firm. The practice of “monitoring” will be explored further in chapter seven.

There are some key points to take out of these examples. The first is that although the MTCS allows for and even encourages engagement earlier than Stage Three – and Aboriginal communities have asked for this – for the most part it would seem that engagement does not start until Stage Three, and sometimes then not until the end of it. The evidence also reveals three main phases of engagement: initial contact with the First Nation, monitoring, and the final report. Archaeologists may participate in any or all of these phases and consider what they do to be Aboriginal engagement. Aboriginal communities, for their part, may decline to participate after initial contact, or to provide

representatives for fieldwork, or to give feedback on the report. On the other hand, a First Nation may choose to do all three. Some archaeologists demonstrate negative attitudes towards the process, criticizing the lack of participation on the part of the First Nation or the method through which the First Nation chooses to participate.

Archaeologists who report having strong bonds with the Aboriginal community generally appear to have a more positive opinion of the process and seem more accommodating of the various ways the Aboriginal community may be able or not able to participate in engagement.

From the First Nation perspective, the consultation process may start earlier if the project is a large undertaking involving an Environmental Assessment, but this early consultation usually will not involve the archaeologist. Three of the community representatives with whom I spoke described receiving notifications as part of the E.A. requirements from a proponent about a project about to begin in their territory [F01; F07; B01]. This might be followed some time later by a Stage One and/or Stage Two report from an archaeologist. One participant expressed frustration that his/her community is not given a chance to provide input during these initial stages about their concerns and interests, but was instead merely given the chance after the fact to comment on the results of the work [B01].

Whether it be a notification from the proponent, the archaeological report from a Stage One or Two, or a request for engagement during Stage Three or Four, the community representatives with whom I spoke explained that the first thing they would do is review the material for themselves. They may look outside the community for expert advice, bring the project before chief and council, form a committee to discuss the details, or dig

through the information on their own. If they have determined that the project requires their participation, at this point most Aboriginal participants reported that they would speak with the archaeologist about their concerns and/or the community's interests. The overall consensus was that this was best done face-to-face, but telephone calls and emails were cited as avenues that could supplement in-person discussions. Such meetings might also include the proponent. Two participants revealed that at this stage, if necessary, they would negotiate with the proponent for monetary funding in exchange for the community's participation. Such funding covers costs of involvement such as providing community representatives in the field. Two respondents informed me that having monitors on site was one of the ways they preferred to engage [F03; B01].

Among the complaints I encountered during my interviews about this aspect of engagement, there were three that stood out. First, one community representative complained to me about the brief, token nature of notifications, which he claims were scanty on the details of the project and included only a "pathetic little map" [F01]. The second was the observation by another respondent that proponents and archaeologists do little to follow up on the community's recommendations [F07]. Finally, participants reiterated the desire for their First Nation to be engaged earlier than Stage Three.

One of my participants explained that s/he had grown frustrated with the half-hearted engagement his/her community was receiving and set about finding ways to improve it. F04 believes that Aboriginal communities can achieve more meaningful engagement in two ways: by forming a bond with an archaeologist they can trust and by raising a ruckus when proponents and archaeological firms fail to do their due diligence. F04 explained

that when s/he began to challenge proponents on their lack of effort, they soon came to realize that their laissez-faire engagement practices were no longer sufficient:

“So in the past it was normal for projects and their consultants to give us notice and that would be the extent of the engagement. But others knew that [First Nation X] has taken on projects that we didn’t think were good projects in our traditional territory and we’ve stopped some projects through environmental hearings, through the courts, [etc.]. So the proponents do a little bit more for us because they know that a notice won’t do it, and if they fail to engage and consult with us, they know that in the past on some projects, we’ve got the capacity to stop a project.” [F04]

4.3 Providing Feedback

If engagement is conceived of as a mutual, two-way process, then it is important that there are established avenues through which Aboriginal communities can provide feedback and that archaeologists are willing to listen. I have already noted the preference of many Aboriginal representatives to communicate with the proponent and archaeologist in face-to-face meetings, although telephones calls, letters, and emails sometimes supplement this dialogue. In general, Aboriginal participants identified two main methods for providing feedback to the archaeologist. Firstly, the community representative can communicate their concerns or specific interests to the project manager in meetings or through a series of calls and emails. Secondly, monitors can provide ongoing comments to the field director about the day-to-day work being done on site.

Ultimately, it was the proponents who were identified as the main source of tensions during the feedback phase of engagement, because it is proponents who were viewed as holding the final decision about how engagement and the archaeology would proceed. For example, one Aboriginal community representative explained that when it comes to deciding mitigation measures, all s/he can do is try to appeal to common sense when asking the proponent to avoid a site by redesigning the project [F01]. Another participant

lamented that proponents will sometimes go behind a First Nations' back in order to get work done that the community does not agree with, a practice s/he found discourteous and disrespectful [F02]. Some proponents, s/he explained, will try to do the right thing, but others will attempt to circumvent any opposition. In some cases, the tensions created by these tactics cause frustration and anger in the Aboriginal community and that is when situations can escalate into confrontation and potential violence:

“If you’ve got a proponent who wants to do the right thing, then you can work it out. And if you don’t, then you have sometimes, well [. . .] You either have people that want to proceed correctly and you acknowledge that maybe traditional Indigenous folks may have some interest in this thing, or [the proponents] just try and steamroll.” [F03]

Although certainly some Aboriginal communities have become experienced in responding to engagement requests and reporting the community’s concerns to the archaeologist, in the previous section it was noted that the archaeologists in this study reported receiving very little feedback from First Nations. This might be attributed to a lack of resources and capacity on the part of some First Nations to fully respond to all requests for engagement. Additionally, one archaeologist stated that the majority of feedback he receives from Aboriginal communities is brief and superficial [A04]. In his/her opinion, this is usually because the community representative is not trained in archaeology and therefore makes recommendations that do not make archaeological sense. In such cases, s/he takes the time to explain his/her rationale to the contact, but still might not reach an agreement through these discussions. In the end, s/he does what s/he determines is best archaeological practice and includes a note in the report to the MTCS that although the First Nation disagreed with the recommendations, s/he exercised professional judgment in the situation. Another archaeologist also agreed that s/he received minimal feedback commenting on the archaeological work [A01].

It is important to remember that the First Nation is often communicating with both the proponent and the archaeologist at the same time – with the former about the larger-scale project and with the latter about the archaeology taking place. However, in some cases the archaeologists acknowledged that they were often caught between the Aboriginal community and the proponent, acting as an intermediary in the feedback process. One archaeologist in particular mentioned that s/he does not believe that proponents have any idea how much work it takes for the archaeologist to build and maintain good relationships with the community [A05]. S/he explained that often proponents damage those relationships by trying to hurry the project along and then the archaeologist must work extra hard to rebuild them:

“And I think they don’t have any clue what I did to just maintain that relationship. And when things went wrong, I met with people out there and we worked together to fix it, but it was [Proponent X] big wigs screwing it up because they’d come out and be like, ‘Why aren’t you done?’ and ‘What is this? This is all you’re finding here!’ [. . .] Yeah, it can just go haywire. So no, I don’t think the clients, like, know the level [of work that goes on].” [A05]

4.4 Negotiating Conflict

It is no great surprise that the competing interests of the archaeologist, proponent, and First Nation sometimes turn to disagreements, tension, and even conflict. In the larger scale of project negotiations between the First Nation and the proponent, one archaeologist stated that the archaeological site can “become a bargaining chip in the final settlement” [A02]. If the Aboriginal community is happy with the settlement, then this archaeologist’s experience is that, in general, community representatives are more agreeable to the work in the field. However, if negotiations are difficult, the Aboriginal community may take their frustrations out on the archaeologist, becoming more difficult to work with and looking for reasons to shut down the site. In such cases, the interview

participants identified two possible solutions to these tensions. In the first, an Aboriginal community representative suggested that proponents may be more willing to negotiate a satisfactory settlement with the First Nation in order to avoid the bad press of a public conflict. Also important at this juncture is relying on the trust borne out of a pre-established positive relationship between the archaeologist and Aboriginal community. Such respect may prevent a field incident from escalating in the first place, and may be key to maintaining positive communication between the First Nation and the archaeological firm despite bad behaviour on the part of the proponent. One archaeologist and two Aboriginal participants made a point of highlighting again the importance of building trust:

“But it depended, I think in hindsight, on trust and relationships. So the guidelines really don’t build that trust [. . .] So our successes have been on relationship building and trust.” [F04]

In the field, participants reported that the majority of decision making is left in the hands of the field director and the monitor from the Aboriginal community, with supervisors on both sides only interfering when tensions escalate [A04; A06]. The two are left to negotiate how fieldwork will proceed and how much should be done. While one field director with whom I spoke reported that s/he tries to accommodate the preferences of different monitors, in the end s/he felt that some of the recommendations s/he receives do not make archaeological sense [A04]. S/he explained that in these situations, s/he feels obligated to not stray from the requirements of the *Standards and Guidelines*, as the MTCS discourages deviations [A04]. On the other hand, while interviewing a different archaeologist, s/he stated that in general monitors usually request that more work be done in the field, not less, and the MTCS usually does not complain about that:

“The Ministry is not flexible in deviating from the standards. It’s unbelievable. [But] you know, a lot of the requests are ‘I want you to dig more squares.’ So the cut-off is at five or something. So the

Ministry is not going to complain about that in general, [but] they'll still want to see it written in – why you changed your strategy – but they wouldn't argue with that.” [A05]

One of the problems identified during the course of these interviews was that the roles and authority of field directors and monitors need to be better defined. One archaeologist explained that conflict tended to arise out of the confusion over who holds the final decision making power about what happens in the field [A04]. Another archaeologist advised that a field director should never tell the Aboriginal community or its representative that they are not going to consider their recommendations, because such an attitude is what leads to tensions and projects being shut down [A05]. Instead, the archaeologist should do their best to accommodate community requests, up to and including convincing the proponent to listen:

“But you never want to say you won't, because construction's going to be held up, because that's the worst thing you can do [. . .] So it's a matter of reasoning and sometimes it's just like, 'Oh, we've got to do this or, you know, the project will be stopped.' And then I'll go to the proponent and say, 'Well, you know, this is going to increase our budget, but we have to do it, or else the project will be stopped.’” [A05]

One participant stated that monitors should not be on site to “create obstacles” in the field or reflect the state of negotiations with the proponent [B02]. This person explained that s/he instructs his/her monitors that they need a good scientific reason behind any request made to the archaeologist about methodology. Another suggested that field directors and community representatives should understand that they are on the same level and be encouraged to work together to find reasonable solutions to prevent a situation from deteriorating [F03].

Finally, some Aboriginal participants acknowledged the reality that archaeologists are beholden to the terms outlined by the MTCS, from whom they receive their license. One respondent elaborated:

“I finger the province on this, because that is not a fair position to put the archaeologists [in] [. . .] On any project [or] proponent issue that we have, we know that our beef is more our issue, our grievance with the province [. . .] We have to understand that these archaeologists are following the provincial framework so [. . .] we’re not so much on, ‘Let’s have it out with the archaeologists in the field.’” [F07]

Another Aboriginal participant informed me that s/he understood that archaeologists are obligated to comply with MTCS standards and acknowledged that archaeologists often find themselves in a difficult position, caught between the needs of Aboriginal communities and the policies of the provincial government [F02].

Chapter 5

5 Specific Aboriginal Concerns

There is a need to acknowledge that the concerns Aboriginal communities may have about engagement with archaeologists are not solely focused on ensuring adherence to the MTCS *Standards and Guidelines*. For First Nations in Ontario, the situation is far more complex. It is not surprising then that larger scale issues and broader areas of concern began to emerge out of the interviews with many of the Aboriginal participants in this study, including the need to contextualize their experiences with Aboriginal engagement in light of their sometimes strained relationships with the provincial government.

5.1 Overwhelmed by the System

The introduction of required Aboriginal engagement in the *Standards and Guidelines* had a twofold effect: first, it forced archaeologists, especially those who had not done so before, to reach out to Aboriginal communities during the course of their work; second, it inundated First Nations across southern Ontario with requests for engagement, many of whom were unprepared for the increased activity. It quickly became clear that many communities lacked the capacity to respond to requests for engagement as fully and completely as they might like. Requests came pouring in before many even had a chance to read the *Standards and Guidelines* that prompted them. What's more, reports were and are technical documents rife with archaeology-specific jargon with which many in Aboriginal communities were unfamiliar. Time to process reports, learn the new requirements, and train individuals to respond to requests was needed. However, the

capacity to respond was not available in many First Nations' administrations. As a result, some felt overwhelmed by and lost in the new system.

Aboriginal communities have had to deal with this lack of capacity in a variety of ways.

One participant explained to me that s/he is only able to respond to a limited number of engagement requests, so s/he prioritizes larger projects and those that are expected to be the most disruptive:

“So the decision to engage at a more, I think, in-depth level is very taxing on the First Nation [. . .] So we kind of have to pick and choose, you know, which projects on a higher level are going to be the most disruptive, unless there is within that project a really high level of Stage Three or Four that might warrant our involvement. So there's a number of scenarios that go into us making those decisions about our level of engagement, but we cannot sustain engagement on every single project.” [F07]

Another community representative revealed that s/he is forced to rely on expert advice from outside the community in interpreting provincial policy and sometimes even archaeological reports [F02]. In such cases, experts simplify the technical jargon, making a report or request more accessible; afterwards, the First Nation can make decisions about the engagement on its own behalf. With more capacity, s/he confesses, the community would not need to rely on outside assistance. S/he added that though First Nations have asked the provincial government for help building this capacity, their requests have been turned down.

However, some communities have managed to develop capacity and have become quite capable of handling incoming requests for engagement. Even so, there remains a disconnect between the proponents' and archaeologists' understanding of engagement and what it should entail versus the wants and needs of Aboriginal communities. This chapter will attempt to highlight some of the main concerns of First Nations that are being inadequately addressed within the current engagement protocols.

5.2 Cost of Participation

It is generally understood that the proponent is expected to pay for the Aboriginal community's involvement in engagement and archaeology, particularly with respect to covering the cost of having community representatives in the field working alongside the archaeologist. One Aboriginal participant with whom I spoke was quick to point out that archaeological firms are doing a good job of explaining to the proponent that they are required to pay for First Nations' involvement in order to maintain good working relationships and avoid tensions or conflict [F03].

Although the community representatives with whom I spoke acknowledged that it is a good thing proponents pay for some costs of their involvement, there were many shortcomings identified in the interviews. As noted previously, the lack of support from the provincial government has translated into an inability for some communities to build capacity in this area and develop their own technical and legal expertise. One participant explained that this can limit his/her ability to provide meaningful input during engagement [F02]. This becomes a problem when archaeologists receive his/her recommendations and view them as trivial or superficial, allowing them to more easily dismiss his/her comments:

“The problem with ‘consultation’ is, number one, you have to understand what’s going on and, secondly, you have to have the technical or legal expertise to provide meaningful input. And if you don’t have those, than any input that you do provide is really trivial [. . .] If it’s not on point, then it could be rejected really easily.” [F02]

Secondly, although the proponent does pay for the community's involvement on the engagement related to the project, in particular the cost of having monitors on site, this money does not cover the additional efforts a community may want to undertake in order

to further develop their own capacity, such as creating archaeological master plans or pursuing their own interests, such as seeking artifact repatriation [F05].

Archaeologists, for their part, have raised concerns about being caught in the middle of the transfer of funds from the proponent to the First Nation. One archaeologist explained that, in his/her experience, the community bills the archaeologist, who then invoices the client, who then pays the archaeologist, who can finally pass that money on to the community [A04]. S/he calls the process convoluted and would rather see proponents deal directly with the Aboriginal community. This sentiment was echoed by another archaeologist who admitted that s/he no longer budgets for the cost of Aboriginal involvement and instead expects the proponent to arrange payment directly with the First Nation instead of through him/her [A05]. However, some archaeologists noted that in many cases proponents expect the archaeologist to facilitate that process, because the requirement for engagement is so intricately tied up with the need for archaeology, and they would rather the archaeologist expend their energy on processing invoices and transferring money than do it themselves.

Another archaeologist identified further problems with budgeting for Aboriginal engagement on behalf of the proponent [A05]. Though this archaeologist would like to engage communities earlier, during Stage Two, budgeting for their involvement raises the price of the company's bid on the project. Proponents, of course, would often rather select the lower price of a company that will not engage earlier than necessary, than hire a company that wishes to engage sooner than required, in an effort to acquiesce to requests from First Nations. This becomes more of a problem as the costs of hiring

monitors increases. Firms that go beyond the requirements of the *Standards and Guidelines* are taking a risk and, therefore, sometimes lose out on contracts.

When asked about the consequences if First Nations could not or would no longer participate in the engagement process, all of the Aboriginal participants with whom I spoke reported that they were certain development would continue unchecked. In fact, one participant even claimed that proponents are happy to report to the MTCS that the First Nation declined to be engaged, as the proponent is entitled to carry on with development if the community fails to respond:

“The development would proceed, the report would go in, and it would say, ‘Well, we tried talking to them, but nobody wanted to be involved. So we’re going to recommend that we go forward.’” [F02]

Many of the Aboriginal participants of this study stated that, in their own opinion, this would have dire consequences for archaeology: sites would be overlooked, fail to be recorded, and perhaps even destroyed. One participant insisted that this was why Aboriginal engagement and, in particular, the practice of monitoring is so important, in order to prevent poor work from being done [F03]. Another explained that this places a great deal of pressure on First Nations and monitors specifically, as s/he feels obligated to diligently watch over the activities of the proponent and the archaeologist:

“I want to know that they know we’re watching. I want to know that they know we’re concerned. And then if we drop the ball on that, then we’re really screwed. So we can never be quiet. We can never lower our voice [. . .] We always have to chirp when we get a chance to chirp. Because I know how much is being lost.” [F01]

One participant revealed that even when First Nations do engage and express concerns about a project, proponents still sometimes proceed with the work and decide to deal with the consequences of the community’s complaints after the project is finished [B02]. This participant elaborated that this only results in First Nation communities growing angrier

and more vocal. S/he had hope that proponents and the government can learn from earlier mistakes, like Ipperwash and Oka, before another crisis occurs.

5.3 First Nations and the Provincial Government: the Bigger Picture

Archaeologists working in Ontario can sometimes forget that the context of their engagement with Aboriginal communities occurs within a larger framework of sometimes tense relations between the provincial government and First Nations.

However, it is absolutely necessary that archaeologists acknowledge the bigger picture of government relations with First Nations, which affects the way engagement unfolds in Ontario.

In this bigger picture, the provincial government is the dominant player. Previously, we noted that many Aboriginal community representatives believe that development would and will continue unabated regardless of their input. One participant explained that, in his/her understanding, approval authorities will always permit development notwithstanding First Nations' dissent if the government believes the project is for the "greater good" [F01]. In his/her view, nothing Aboriginal community representatives say or do on behalf of their communities will change this reality. This participant explained that when development occurs, including the archaeology that precedes it, and artifacts are removed from the ground, First Nations prehistory is paved over. Archaeologists, s/he says, must be tired of hearing the complaints from Aboriginal communities, but no project is ever stopped because the First Nation objects to it:

"We're like environmentalists. We just keep bleating on like sheep. [Archaeologists] must think we're like sheep sometimes. Because you know, if you work like that, with blinders on [. . .] you don't

have to worry about anything. But I don't work like that and I think it's depressing. In this area our prehistory has been extracted. It's been overrun." [F01]

At the forefront of conversation during many of my interviews with Aboriginal community representatives were the topics of artifact repatriation and the relocation of human burials. These specific issues will be examined in greater depth later in this chapter, but they represent the crux of the argument by some First Nation representatives that the provincial government continues to prioritize policy that runs counter to Aboriginal interests. One participant noted that when First Nations feel they have to stand up and advocate for these rights, they are necessarily forced into an adversarial role with the province. According to F07, extracting the prehistory of Aboriginal peoples erases the historical evidence of their past presence and the spiritual connection they have to the cultural practices of their ancestors:

“With the provincial government, I think we find ourselves in more adversarial types of scenarios, just because it's the province that controls natural resources. And the way I look, I guess, at archaeology is that it's historical evidence of previous occupation by First Nations people. So I take the view that it is a very physical indicator that First Nations people were here and I think it's very important from that level. It's connected to the historical, I guess, cultural practices around how we deal with the dead and view our ancestors and this sort of thing. So there's a whole spiritual component to it as well. So that's why it's important to us.” [F07]

Despite these criticisms by participants, one Aboriginal community representative explained to me that the province refuses to see their own policies as inadequate or to admit that they could be improved upon, in particular by acknowledging Aboriginal ownership of their own cultural history [F07]. In the struggle between the province and the First Nation, the archaeologist must comply, regardless of personal opinion, in order to maintain their provincial licence. This licence allows the archaeologist to continue to access and interpret the archaeological record as an authority in the field. Archaeologists, for their part, often believe that the work they do is an objective science, but one

Aboriginal participant disagreed, suggesting that archaeologists should re-examine the position of privilege afforded to them by the province through the history of colonialism [F07]. These ideas will be further explored in chapter eight. The problem to be highlighted here is the disconnect between concerns expressed by Aboriginal participants in this study and the mainstream policies upheld by the province. There are also important implications to be considered about how wider society understands Aboriginal interests. One community representative pointed out that many non-Indigenous people know little about First Nations communities, including the proponents who may have a responsibility to engage with them [F06].

It is unsurprising then that a common theme in the interviews was the province's failure to listen to the concerns of Aboriginal communities. Two Aboriginal participants claimed that the province's attempts at consultation were merely a token gesture: when the MTCS asks First Nations for their opinions, what they are truly looking for are pre-determined answers that reflect what they have already decided to do [F02; F03].

For another community representative, this extends to the proponent as well. S/he believes that the majority of proponents only engage with the First Nation in order to determine what their objections to the project are, not out of any genuine desire to acknowledge their right to be involved or have First Nations' input on the project [F07]. Proponents are then able to develop a protocol that will allow them to get approval for their project, reducing their responsibility to engage to nothing more than a strategy to better gauge the level of opposition to a project and redesign it so it may more easily be realized.

Consultation done by the province or the proponent that only pays lip service to the concept without actually holding the province or the proponent accountable to address Aboriginal concerns undermines credibility with Aboriginal communities and betrays their trust. A failure to see this larger context can lead to misunderstandings between the archaeologist and the Aboriginal community. If the archaeologist diminishes or ignores altogether the broader concerns of the First Nation, this may affect engagement on archaeological matters, even if the broader concerns are unrelated to archaeology.

5.4 Contested History, Contested Territories

Also prevalent in the discussions generated during the interviews was the feeling on the part of Aboriginal communities that the province has failed to educate the public about Indigenous politics and interests on a wide range of issues, which has specific consequences for archaeology. One participant stated that municipalities know very little about what treaties are and how they impact their lands, and therefore, could give little guidance to the developers to whom they granted permits [F06]. Better education for the public and proponents on Aboriginal rights and expectations during the consultation process might ease pressure on archaeologists who sometimes shoulder the bulk of the interaction. In the school system, one community representative explained that First Nations are written off as “pre-historic” or “ancient” peoples, without acknowledgement of their continuing rights to the land in some areas [F06].

The lack of education has been most obvious in the confusion, on the part of the proponent, over how to deal with unexpected archaeological finds and, on the part of the archaeologist, in knowing who to engage. When municipalities themselves are unaware

of the pre-contact history of the land on which their town resides, they are unable to educate proponents or archaeologists on the appropriate First Nation to contact for engagement. One community representative with whom I spoke described a nearby site on which s/he had been engaged initially, before another First Nation made claims to it and took over the final stages of engagement [F01]. Such situations, s/he describes, can cause tensions and stress, giving rise to hard feelings between Aboriginal communities when both have interest in and ties to the same area.

Obviously, this raises the question: how do archaeologists know which Aboriginal community to engage? For many, the answer is convoluted and tricky to navigate. While one archaeologist explained that s/he always tries to engage with every First Nation interested in the project, s/he did not explain how s/he managed these competing interests [A04]. Another archaeologist described that his/her company had decided to engage [First Nation X] only on sites from the Woodland period and [First Nation Y] on earlier sites to simplify this problem, though s/he did not elaborate as to why this decision had been made [A03]. Identifying which First Nation to engage can be difficult enough, but in some cases archaeologists additionally must decide which council to engage when an Aboriginal community is divided between elected and traditional councils. In some cases they may be expected to engage with both councils.

Some of the archaeologists with whom I spoke explained that there are community members with whom they engage that, in their view, do not truly understand their own First Nations treaty rights or pre-contact history. One archaeologist confessed that it can be difficult to engage with community representatives who, in his/her opinion,

misinterpret treaty rights and believe that land should be returned to the First Nation or that the First Nation has authority to make decisions over what happens to it:

“But there are plenty of people at [First Nation X] who don’t know that history and think somehow that, you know, we should move off this land and leave, not realizing that in fact any treaty rights they have is because they were promised hunting and fishing into perpetuity, not the ability to do whatever they wanted with the land, mineral rights and all the rest of it that some people think.” [A02]

Another stated that s/he has had to teach First Nations communities their own historic origins and believes that for sites over two thousand years old it is impossible to establish an ethnic connection between the sites and any modern descendent communities [A03]. S/he wishes that Aboriginal communities would collaborate on advocating for their interest in such sites, but admits that there is too much distrust and tension between some communities for that to happen. S/he further explained that, in his/her opinion, First Nations are in competition over claims to archaeological heritage, in the hopes that it will bolster their own land claims with the province. To serve this purpose, in his/her experience, First Nations may even interpret evidence differently than the archaeologist would to strengthen their evidence:

“Essentially what we have in that situation are, obviously, traditional [First Nation X] territory, but [First Nation Y] also claim that as a traditional territory and, interestingly enough, [First Nation Z] have also claimed that [. . .] I think you can make the argument that this is more about trying to establish a connection with archaeology for purposes of bolstering land claims and stuff like that, than it is really about the ancestors and stuff like that, you know. That may be a little harsh. That may be a little uni-dimensional analysis, but I think that is a large part of it.” [A03]

Whether or not this is an accurate assessment, the fact remains that it is the archaeologist who decides which community or communities to engage. As we have already seen, one archaeologist reported favouring [First Nation X] over [First Nation Y], out of dislike of working with the latter. Such decisions may account for some Aboriginal community representatives reporting that archaeologists are failing to engage with their communities. With little guidance from the province or municipalities and sparse education about treaty

lands, archaeologists may accidentally (or intentionally) overlook a community's interests in the area. Even when two or more interests are recognized, there is little information about how to accommodate and balance engagement with multiple parties, especially if the communities hold competing interests – whether over existing or potential land claim opportunities or for other reasons.

This lack of policy may be viewed as a large failure. If one or more Aboriginal communities are being left out of the cultural resource management process by an inability of the current engagement policy to accommodate multiple interests in one site location or a preference on the part of archaeologists to engage with one community and not another, some First Nation communities may find themselves without information on the heritage resources that they require to maintain a strong cultural identity in the present and an externally-recognized affiliation to the past. Understandably, First Nations may fear what they might lose when they are shut out of engagement through a gap in policy.

5.5 Human Remains

Other provincial policies criticized by Aboriginal participants in this study concern the repatriation of artifacts and the handling of human remains. Both issues would benefit from a more in-depth discussion than the one that is presented here, but it would be remiss to not briefly touch upon these subjects which were often raised in my interviews.

Although it should be noted that not all First Nation peoples object to the relocation of burials, three of the seven Aboriginal community representatives with whom I spoke stated that human remains were not to be disturbed under any circumstances and that the proponent and the archaeologist must find a way to avoid the burials, through a redesign

of the project's impact. One specified that relocating burials was disrespectful to the spirit of the ancestor and how they were interred [F02]. This participant also dismissed the notion that the remains need to be studied in order to determine how people of the past lived:

“I had been engaged in a debate with one of the teachers before [the class] and the question I posed to her was, ‘Why do you dig up people’s remains?’ And her response was, ‘Well, you know, we have to study them [. . .] We have to figure out how they lived.’ [. . .] I think that’s the difference of societies. To me, to us, it doesn’t serve any useful purpose.” [F02]

The same respondent further elaborated that s/he expected the province to be more proactive in creating policy on the relocation or non-relocation of burials, after incidents such as Ipperwash, Oka, and Caledonia [F02]. S/he highlighted it as an area that certainly could escalate into tension and conflict, if the Aboriginal community did not want the remains disturbed but the proponent and archaeologist proceeded regardless. This perceived lack of appropriate policy was heavily criticized by another respondent, who explained:

“You know, we look at Oka and it was the same thing, that there was a burial ground there and that resulted in conflict. That for First Nations, you know, the disturbance or disruption of these burial sites . . . It’s almost like eliminating from the land the memory that our people were here and that they’re not just burials sites to be desecrated, you know. We would want the same respect that other people have for when they bury their loved ones. And they’re historical in nature. But from what I understand, the province views these burial sites as unregulated cemeteries, and so to me that invalidates – when we use that type of language – it already invalidates that First Nation perspective, to call it a non-regulated cemetery.” [F07]

Despite very vocal objections on the part of some Aboriginal communities, burials sometimes are relocated to permit development. In its current form, the *Standards and Guidelines* make no mention of human burials, outside of a reference to the *Cemeteries Act* (Ontario 1990a) and the *Funeral, Burial, and Cremation Services Act* (2002) that instructs those who uncover human remains to report the discovery to the appropriate authority (Ontario 2011: 8). Negotiations over what to do with the remains fall instead to

the proponent and the First Nation. Provincial legislation, specifically the *Funeral, Burials and Cremation Services Act* (2002), requires the parties involved to reach a consensus concerning the burials in a documented site disposition agreement. If the landowner and the Aboriginal community cannot negotiate an agreement, the matter is referred to arbitration (Ontario 2002). There is no Canadian equivalent to the American *Native American Graves Protection and Repatriation Act* that outlines conditions for the repatriation of Indigenous human remains (Ferris 2003: 162).

5.6 Ownership of Aboriginal Artifacts

Another issue at the heart of the frustration on the part of Aboriginal communities, at least the representatives with whom I spoke, was the province's claim of ownership over archaeological artifacts. Aboriginal participants were upset that, according to the *Ontario Heritage Act* (Ontario 1990b), artifacts are "held in trust for the people of Ontario", in the care of the archaeologists who have excavated them. According to one Aboriginal participant, when archaeologists are given sole responsibility over decisions about what is valuable and what isn't in the archaeological record, the interests and needs of First Nations, particularly for establishing heritage and land claims, are ignored [F06].

Under the current system, archaeological artifacts become the property of the province, but are stored by the archaeologists who find them. Some of the community representatives with whom I spoke explained that they and many others wanted to see these artifacts repatriated to their communities [F01; F05; F06], although one individual pointed out that if the artifacts were permitted to remain in the ground, there would be no need for repatriation discussions [F02]. This recalls the earlier discussion of Indigenous

peoples' exasperation with the extraction of their pre-contact history. One participant explained that after archaeologists excavate a site, neither s/he nor members of his/her community are ever able to see the artifacts; in fact, s/he doesn't even know where they are and how to find them [F01].

Some Aboriginal participants reported during their interviews that they had been informed by the MTCS upon inquiring about artifact repatriation that their communities would need to build appropriate storage and curation facilities if they wish to see them returned. These participants also noted that there is no money to construct or staff such facilities. This is a reality that does not sit well with some of the Aboriginal community representatives I interviewed:

“The community stance is that [artifacts] should be returned to the community. We've been very vocal and loud on that [. . .] When [archaeologists] start using terminology like, 'the possession of the province of Ontario' or that it belongs to the archaeologist under their licence, it gives people a real pause. It brings some real rises in the temperature of the room there. Just the terminology of it is deceitful [. . .] According to policy, the artifacts belong to the archaeologist, who is licensed to dig them up, and I think most of the archaeologists that I've known, that I've had working relationships with, probably are more than happy to return them. But again the policy prevents them. They can't give them back to somebody that doesn't have the proper repository, right? So instead lots of them are kept in somebody's garage or basement.” [F05]

Although two community representatives mentioned Sustainable Archaeology, a joint effort between the University of Western Ontario and McMaster University to store, manage, and share collections of archaeological artifacts, they failed to see any justification in keeping the artifacts away from “where they belong” [F06]. One participant pointed out that use of Sustainable Archaeology was at the archaeologist's discretion. The disagreement and conflict over how artifacts are managed and housed is one that has not been resolved and continues to leave many Indigenous people unsatisfied.

Chapter 6

6 Before the *Standards and Guidelines*

Given the recent nature of the requirement for Aboriginal engagement, one of my secondary purposes was to discover if and how archaeologists had been interacting with Aboriginal communities previous to its introduction. It was not a surprise to hear respondents describe engagement before the *Standards and Guidelines* as quite different and almost non-existent. While some of the Aboriginal participants with whom I spoke admitted that it occasionally occurred, the consensus was that it was rare and often amounted to little more than a brief notification of work about to begin in their treaty area:

“There really wasn’t any [engagement]. Not that I’m aware of. Because of my position, as far as I know, there really wasn’t any. There would have been just a letter [. . .] It’s just a notice forwarded to the band, as far as my understanding goes, that, ‘This is what is happening and do you wish to have any input?’” [F03]

Another respondent explained that the engagement that did occur was inconsistent and often only occurred because the First Nation was vocal and insisted on being involved. Before the *Standards and Guidelines* made it mandatory for archaeologists, engagement depended a great deal on the goodwill of the proponent, which was often trumped by a desire to make money, explained one participant. Some of the archaeologists admitted during interviews that engagement before the *Standards and Guidelines* was “very spotty,” although some did try to engage [A03]. In many cases, non-existent policy and poor understanding of what engagement could include resulted in the Aboriginal community having to place a considerable amount of trust in the archaeologist to do good work. However, the engagement that did occur was infrequent and inadequate in numerous ways.

6.1 The Roots of Engagement

There is no clear consensus on the origins of Aboriginal engagement in Ontario archaeology. As we will see in the following chapter, Aboriginal communities, for their part, tend to believe that much of the movement has been driven by First Nations. The archaeologists whom I interviewed had a tendency to trace the emergence of engagement and use of “monitors” back to situations of crisis or conflict and the agreements that emerged out of them. Such agreements, usually between proponents or municipalities and First Nations, were of course developed in response to increasing demands by concerned First Nations to be involved in that process.

A02 explained that before the requirements of the *Standards and Guidelines*, s/he would always ask proponents if they wanted to engage with First Nations, but if the client refused, A02 had nothing “to fall back on for support.” However, when the *Grand River Notification Agreement* [GRNA] was signed in 1996 between the municipalities of the lower Grand River (Brantford, Brant, and Haldimand) and the local First Nations (Six Nations and Mississaugas of New Credit), this gave A02 a justification when asking proponents to engage on work done in that area. S/he credits the GRNA with paving the way for later engagement policy, by being the first to treat engagement as “a matter of course.”

A03 traced the origins back to the Red Hill Valley Parkway project in Hamilton in the early 2000s. An opposition group, who did not want to see the Parkway constructed, allied themselves with a local First Nation in the hopes that they could stop the project. The proponent was then forced to engage with the First Nation and out of those

negotiations came a promise to allow community representatives on site to work alongside the archaeologists. A03 stated that the problems that developed over the course of the project were in large part a result of leaving engagement undefined and allowing people to make their own assumptions about the work that was happening. A03 also explained that there can be many other agendas at play, aside from the archaeology, which contribute to creating tensions in an already fraught process. After the Red Hill Valley Parkway project, A03 explained that archaeological firms, particularly his/her own, began to see engagement and monitoring as a way to build stronger relationships with Aboriginal communities in the area.

Another perspective was offered by A06 who believed that the efforts to increase community involvement and acknowledge the need for Aboriginal engagement were the result of crises such as the one in Caledonia in 2006, which prompted both archaeologists and the province to consider change, at the very least.

However, A04 argued that despite some early initiatives, it was not until the introduction of the *Standards and Guidelines* that engagement began to occur on a regular basis, as it forced the hand of archaeologists who were slow to embrace change and, most importantly, necessitated compliance by proponents who otherwise would not be convinced to participate.

6.2 Are the *Standards and Guidelines* Effective?

The question then, one with no easy or straightforward answer, is whether or not the *Standards and Guidelines* have achieved their goal in promoting Aboriginal engagement in the province. If that question was simplified to “Do archaeologists engage Aboriginal

communities more now than they did before the introduction of the *Standards and Guidelines?*”, the answer would be much easier to ascertain: yes, it would appear so. We have already noted in chapter four that many Aboriginal community representatives report that they are being engaged at least during Stage Three as required, though not much beyond that, and that archaeologists testify that they are complying with those standards, as most are happy to do.

The quality of that engagement, however, remains suspect. If the question is rephrased and one asks, “Do the *Standards and Guidelines* encourage meaningful engagement and relationship building between archaeologists and First Nations?”, then the answer becomes much less certain. The results of my interviews were split down the middle: one archaeologist and one Aboriginal community representative each supported both sides of the issue. The first archaeologist thought that the *Standards and Guidelines* have succeeded in ensuring that “somebody does something at some point,” but that it is difficult for the requirements to be more specific, as every proponent, project, and First Nation, and therefore every engagement, is different [A05]. One participant acknowledged that the *Standards and Guidelines* at least attempt to reflect a broader change that is occurring in archaeology, spearheaded by some archaeologists and forced on others who are slow to comply [B02]. Thus, while it is positive that the MTCS would try to do something to reflect these changing attitudes, the policy in turn causes more issues. On the whole, however, neither of these affirmations were particularly enthusiastic.

On the other side of the coin, while recognizing the forward movement of the *Standards and Guidelines*, a different Aboriginal community representative was disheartened that

there remains “a lot of work to be done” [F02]. Some of the tensions here lie in the view that while some archaeologists have good intentions and have positively reacted to, or even been a driving force behind, improving relationships with Aboriginal communities, others are reluctant to embrace this change. Those archaeologists willing to comply are happy to have policy to refer to when dealing with proponents and are eager to build professional relationships founded on trust. However, some of the community representatives with whom I spoke explained that some archaeologists still try to find loopholes and avoid engagement as much as they can, until they are absolutely forced to participate. For those archaeologists, one respondent explained to me, it is important that the First Nation can bring something of value to the table, to convince the reluctant proponents and/or archaeologists that there is a benefit in return for their participation in engagement [F04]. Negative views of the *Standards and Guidelines*’ engagement policy on the part of archaeologists can range from something as simple as criticizing the vague explanation of what engagement is to larger frustration at the MTCS’s attempts to dictate what archaeologists do in the field. One archaeologist with whom I spoke announced that the *Standards and Guidelines* were “the biggest curse in archaeology” and referred to them as “a useless waste of time” [A01]. While his/her ire was directed at the province for creating “a complete and total nightmare” designed to interfere with his professional judgment, such views may limit one’s willingness to engage meaningfully and respectfully with First Nations.

The secondary issue at play here is the lack of consultation occurring between First Nations and the Ministry of Tourism, Culture, and Sport. A common theme that emerged throughout the course of the interviews was a feeling on the part of Aboriginal

community representatives that the MTCS had not consulted very well with them on the formation of the *Standards and Guidelines*. One participant explained that although the MTCS did ask communities for their opinion on the upcoming changes, very little meaningful feedback was provided as the MTCS failed to explain what those changes would mean for Aboriginal communities. Another informed me that s/he was asked for his/her input on the new *Standards and Guidelines*, but does not believe that his/her input was seriously taken into consideration because so many of his/her suggestions were ignored:

“Input is a little different than consultation. So I was there to provide a little bit of input for them, but it wasn’t consultation. I don’t think so. No, we weren’t really consulted on it, [because if we had been] I think they might have put in their drafting that there must be a community member found on the scene. They probably would have drafted in there that the preference for most communities was to leave burials *in situ* and if they’re unearthed during the course of an excavation, there is a ceremony that has to take place, you know, before they’re covered back up again, too.” [F05]

Today, many Aboriginal communities continue to feel that the province is not listening to them, as discussed in the previous chapter, but especially as they advocate for more than two standards on engagement during Stage Three. One participant explained that although sometimes archaeologists are willing to listen to and accommodate requests from the First Nation, their hands are tied by what the MTCS allows [B02].

Two of the Aboriginal participants with whom I spoke were adamant that the *Standards and Guidelines* were not at all responsible for the positive, forward momentum they have witnessed in the industry in regards to engagement. For one, that change was reflecting a growing grassroots movement, particularly among the people working out in the field, who are building strong, trusting relationships between archaeological firms and Aboriginal communities through the constant and open communication occurring between field crew and community representatives on site [F05]. S/he believes that it is

those relationships that have been responsible in pushing for policy change and will continue to be the path via which these changes take place, as the MTCS realizes its policy must reflect what is happening in practice.

While F02 acknowledges that there has been increased awareness of the needs of Aboriginal communities in the mainstream public and that some sympathetic archaeologists have tried their best to assist First Nations, for the most part the recent changes in archaeology should be attributed to more awareness on the “Indigenous side of the table.” Increased access to education has allowed Aboriginal people to better understand the political agendas that affect them and their rights:

“Where does that come from? I think it’s a combination of things [. . .] There was a real push to get Indigenous people educated. And I used to hear when I was growing up that you go out and get an education and forget who you are [. . .] But at the same time there was other folks that went out to, say, a higher institute of learning and got a sense of, ‘Hey, this is what it’s all about.’ And they analyzed it, looked at it, and said, ‘We understand.’” [F02]

6.3 Beyond the *Standards and Guidelines*

Facing a reality in which provincial policy has failed to address many of the self-reported needs of First Nations, participants in this study explained that many of the things they do under the umbrella term of “engagement” falls outside of anything that can be found in the *Standards and Guidelines*. One respondent explained that because the province did not adequately anticipate how involved Aboriginal communities would want to be and what types of involvement they would like to participate in, the *Standards and Guidelines* are not very helpful for guiding First Nations [B02]. As we have seen, First Nations have worked largely on their own to advocate for considerations such as artifact repatriation or the creation of archaeological master plans for their community. The latter, according to one participant, allows for the community to raise the bar in terms of its expectations for

how the government, proponents, and archaeologists engage because the community now has a better understanding of its own cultural resources [F04]. This is an example of something communities can bring to the table during meetings to encourage more meaningful engagement.

Also falling outside of the requirements of the *Standards and Guidelines* is the recent and growing practice of having community representatives on site as archaeological work is taking place. Two Aboriginal participants identified this as going “beyond” the province’s engagement policy and, indeed, there is no standard nor guideline advising archaeologists to allow community representatives, or “monitors”, on site. The *Standards and Guidelines* focus on emphasizing communication between First Nations and archaeologists; monitoring, on the other hand, is a somewhat different idea, not yet included in provincial policy or even embraced by all archaeologists. The practice appears to have emerged largely out of efforts on the part of Aboriginal communities.

According to one participant:

“It wasn’t the government coming knocking on doors saying, ‘Hey, you know, you should put some monitors out there.’ It was us saying, ‘No, we should have monitors out there. If we’re informed that this has been found, and that has been found, but we’re not at the site, how do we really know what’s being done?’” [F01]

When archaeologists explain that they are going beyond the *Standards and Guidelines*, they are usually referring to the practice of monitoring. One archaeologist explained that s/he makes a distinction between what the MTCS requires and what best archaeological practices are; having community members on site is something s/he considers to be archaeological best practice [A04]. Two other archaeologists each informed me that the practice of having in-field monitors is a concept that their firms and business associates “fundamentally believe in” and that their companies allow for First Nations’ monitors on

site despite the reality that they are not forced to do so by the *Standards and Guidelines* [A03]. However, when discussing how archaeological firms do or do not go beyond the requirements, a different archaeologist admitted that “the *Standards* are so vague” that it takes little effort for archaeologists to do more than the minimum [A05]. On the other hand, just because they can go beyond the requirements does not mean that archaeological firms always do. The archaeologist noted that some companies, like his/her own, who try to do more extensive and meaningful engagement, are losing contracts to those companies that promise the proponent they will do as little engagement as possible, thus decreasing costs [A05].

Chapter 7

7 Monitoring as Engagement

One notable practice that falls outside the coverage of the current *Standards and Guidelines* is that of “monitoring”: the hiring of Aboriginal community representatives to work alongside the archaeologist in the field. The practice of monitoring has become so common that nearly all participants in this study were able to share personal stories about their experiences with it. But despite its ubiquity, there remains considerable dissent on whether the practice has been an effective one and the ways in which it can be improved.

7.1 Practice Outside of Policy

In their current form, the *Standards and Guidelines* hold no requirement for archaeologists to allow Aboriginal community representatives on site during fieldwork, and yet many of the individuals I interviewed described the practice of monitoring as “unofficial policy” [F05] and “quite typical” [F07]. One archaeologist pointed out that although having monitors on site is technically optional, in his/her experience most proponents agree to pay for them to be out in the field working alongside the archaeologist [A05]. Another individual reported that while the practice was first adopted by government proponents, such as the Ministry of Transportation, private proponents have started to recognize the benefits as well [F07]. S/he largely attributes this to Aboriginal communities taking a firm stand during engagement proceedings and informing private proponents that monitors are “becoming more standard for this industry” [F07].

While some communities have succeeded in training monitors and making them available for work, many First Nations are still trying to organize their own response. Yet for those communities that do have a well-developed system in place, two archaeologists reported that it is a relatively easy process to go about requesting a monitor to be on site, provided they have the proponent's permission to do so [A04; A06]. The ubiquity of the practice has further translated into the need for monitors to undergo some archaeology-related training prior to their work in the field.

7.2 Monitor Training

Although not all Aboriginal communities have developed monitor training programs and some have decided that monitors are not needed to participate in engagement, five of the seven Aboriginal participants stated that their community has offered at least some training for new and potential monitors. Such training courses cover varying amounts of material in varying lengths of time; two examples are given below.

F05 explained that his/her community decided to train monitors because s/he had noticed that at engagement meetings archaeologists had many questions for him/her about the cultural traditions and values of the community and s/he thought that it would be better to place someone in the field to answer the archaeologist's queries. Additionally, F05 explained that there was still considerable concern on the part of the community about what archaeologists were actually doing out in the field; having monitors present on site who could give a firsthand account of those activities has done a great deal to alleviate those concerns. Accordingly, F05 worked with archaeologists to organize a week-long training course for potential monitors.

F03 also explained that his/her community offers monitor training programs. In the programs potential monitors are taught about the community's own policies on archaeology, its own traditions and cultural values, what is expected of monitors out in the field, when archaeologists are required to have monitors on site, artifact recognition, field methods, and many other subject areas. In conversations with other Aboriginal participants, the training on the community's cultural values was highlighted as the most important part, as monitors are acting as representatives of the First Nation and should therefore be familiar with their traditions.

Sometimes archaeologists are invited to teach part of the training course, usually sections on field techniques. One archaeologist with whom I spoke was proud to say that s/he had been an instructor at one of these programs, teaching excavation methods, survey techniques, and the requirements of the *Standards and Guidelines* [A06].

Additionally, many of the community representatives with whom I spoke stressed that monitors are expected to fully participate in the field; they are not to watch the archaeologists work from a distance. This was identified as one frustration on the part of archaeologists. One Aboriginal participant also noted that s/he has encountered archaeologists who “express displeasure at having unqualified people in the field and the extra time it takes for teaching and showing examples” [B01]. A more detailed examination of archaeologists and their response to having monitors out in the field will be provided later in this chapter.

Admittedly, the practice of monitoring – and the training of monitors – is a relatively new phenomenon in Ontario. Some of the archaeologists with whom I spoke showed

conflicting attitudes towards the practice, simultaneously acknowledging its benefits while expressing frustration over their experiences. It appears that some archaeologists believe that the training that some monitors receive is insufficient:

“I’ve had monitors [. . .] saying that they’re really experienced, and then they get out there and they can’t recognize cherts, can’t dig, [etc.]. And [the monitor] would be saying, ‘You know, this is significant. This is an artifact. You should keep it.’ You know, it gets uncomfortable for me, because I have to say, ‘I’m sorry. This is natural.’ [. . .] I mean, for a while we were going to do [. . .] a longer-term field school with [First Nation X] and more training [. . .] I think [First Nation X] is trying to do that more, even though it’s still probably not enough.” [A05]

It was often repeated by archaeologists during the interviews that it was irritating for them to have someone who they felt was underqualified criticize their methodology.

According to one archaeologist:

“One of the ways in which we’ve seen some of the monitoring fall apart in a couple First Nations is that they send out monitors who know nothing about archaeology, who have no experience whatsoever, but who feel that they have a right to tell you, tell the archaeologist how they should be doing their work, and that’s certainly a problem. I spent twelve years at university. There’s nothing that gets under my skin quicker than having somebody with no experience telling me I have to up my game.” [A02]

On the other hand, one Aboriginal participant with whom I spoke cautioned archaeologists not to make assumptions about the knowledge, experience, or lack thereof of the monitor with whom they are working. In his/her experience, archaeologists often assume s/he knows very little about archaeology, and they are then surprised when s/he explains that s/he has been working in the field for ten years, sometimes longer than many of the field directors themselves [B02]. S/he encourages archaeologists to ask a monitor about their experience and not make assumptions about their level of knowledge.

7.3 Role of Monitors in the Field

The term “monitor” may be a ubiquitous one, but it is not without its problems. Its use has become somewhat controversial and, although it was the word used by the majority of the individuals I interviewed, some pointed out its flaws:

“Well, I would prefer [liaison] because I think it – from my understanding of what they are doing – is to provide a liaison between First Nations’ communities and the archaeological community. Monitoring in my mind has connotations that mean they are keeping tabs on archaeologists because they don’t trust what we are doing. So I prefer the term liaison, although you’ll certainly hear both terms used.” [A03]

One research participant explained that monitors need to be and are being taught that archaeologists are generally truthful and transparent, and that it is not the responsibility of the representative in the field to police the work that is being done. Instead, their responsibility is to represent the interests of the Aboriginal community [B02]. One archaeologist ascribed the attitude of distrust and watchfulness to the early days of monitoring as a practice (i.e. the Red Hill Valley Parkway project in Hamilton, Ontario) when monitors were instructed by their community not to work alongside archaeologists, but rather to carefully observe their activities [A05]. This approach, however, is changing.

Today, the majority of participants reported to me that monitors – or liaisons – are generally expected to participate in the fieldwork, by both the archaeologist and the First Nation they represent. According to one archaeologist, monitors are treated as one of the crew and are therefore expected to contribute to the team just as anyone else would:

“[Monitors] operate normally as a crew member. They record information and I provide them with additional information, say, what have we found, what we’re doing, but for the most part they operate exactly like a crew member.” [A06]

This archaeologist also refers to monitors as “embedded crew members.” S/he explains that because monitors have undergone training in archaeological techniques, there is no reason why they cannot participate and, indeed, in his/her experience they often do. One Aboriginal participant explained that when s/he is in the field, s/he understands that his/her role is to do exactly as the rest of the field crew does, in addition to taking his/her

own notes on the work [F03]. However, some participants identified that the process continues to have difficulties and that there remains considerable room for improvement.

One Aboriginal participant explained very clearly that the role of monitors should be twofold: to provide general feedback to the archaeologist about the fieldwork and to notify the community about any significant finds or problems [F07]. Another community representative explained that s/he expects the monitors who work for him/her to take daily notes about the fieldwork and submit a report at the end of the short projects or a bi-weekly report during longer projects [F03]. S/he informed me that s/he compares the reports produced by the monitors to the one submitted by the archaeologist as the final report on the work. This allows him/her to not only better understand the technical report, but also double-check that the archaeologist is being truthful and accurate.

On the other hand, three of the six archaeologists with whom I spoke expressed doubt about the information being reported back to the community by the monitor. One archaeologist suggested that:

“[Monitors] are not taking it back to the community and saying, ‘What do you guys think of this?’ They’re making decisions on behalf of the community.” [A04]

Another explained that archaeologists should be more proactive about working with monitors to “develop a product” to bring back to the community, because in his/her experience monitors are not sufficiently communicating with their supervisors and the community about what is happening in the field [A03]. S/he acknowledged that it has been a good step having representatives from the community out in the field, but stated that there also needs to be some information returning to the community, through the representative, about archaeology and the work that archaeologists are doing. In his/her

opinion, archaeologists, who are uniquely trained in the culture history, should help translate the evidence from the site into a more refined understanding of the bigger picture, which might be better understood by the Aboriginal community.

Finally, on some occasions, monitors may take the extreme step of shutting down a site. This usually occurs if a serious concern cannot be resolved with the field director or project manager and is done by asking the archaeologist to halt fieldwork until the issue is resolved. However, because monitoring is not required by provincial standards, the monitor does not actually have any provincially-mandated power to take this action. Nonetheless, when such situations occur, the archaeologist often does temporarily stop work in order to defuse the situation and resolve the problem.

7.4 Technical Aspects of the Practice of Monitoring

Although monitoring has recently become a more common, industry-wide practice, two of the Aboriginal participants with whom I spoke admitted that work opportunities for monitors can be infrequent. One explained that although sometimes there is an abundance of work and the community receives many urgent requests for upcoming jobs, at other times the work is just “here and there” and archaeologists may at any time take a break from working on a site, leaving monitors without an income [F03].

Another community representative explained that although eight individuals participated in their training course, many are no longer working as monitors, as the work that was available was inconsistent and the monitors were paid too little to subsist between periods without work [F01]. Many had quit to find more stable jobs.

One archaeologist acknowledged that some monitors are unable to find steady employment [A02]. In an attempt to rectify the issue, s/he offered those who participated in the training program, at which s/he was an instructor, jobs at his/her archaeological firm as field technicians if they were unable to find work as a monitor. S/he explains that s/he did this with the understanding that experience in the field would benefit them if they chose to return to monitoring positions.

However, another archaeologist was quick to point out that monitoring has become more like a business and offered the opinion that monitors are more concerned about receiving a paycheck than about ensuring good archaeology is done [A05]. In his/her experience, some monitors have turned the practice into a profitable business, charging increasing rates for their services, something s/he believes should be capped. This presents a problem for those archaeological firms, like his/her own, that try to engage beyond the requirements of the *Standards and Guidelines* by involving Aboriginal communities more during Stages Two and Four. When his/her company bids on a project, they must include the cost of having monitors out on site at these optional times, while another company can submit a lower estimate because they have chosen not to engage beyond the requirements. Proponents unsurprisingly often take the lowest bid on the work. One of the Aboriginal participants acknowledged that “Proponents are proponents and they look upon it as an expense, right?” [F05] However, s/he also reported that in general archaeologists have been good about explaining to proponents why having monitors in the field is important and understanding that it is a valuable initiative:

“I think because the archaeologist is out in the field – very many of them are the same that worked through the training program and supported the training program and were at the round table and said, ‘This would be a good idea.’ They all support it, you know? They’re all very supportive of the whole program in general and, I mean, they hire monitors when they don’t have to hire monitors, right?” [F05]

7.5 Reactions of Archaeologists to Monitoring

Aside from questions about the monitor's knowledge and experience levels, some archaeologists expressed frustration over their perception that some monitors only take the job for the money, not out of any love for archaeology:

“So like anything in archaeology, it bothers me when somebody's not in it for the archaeology. Somebody's just in it for a paycheck, no love lost if they screw up or don't find a flake in a screen or anything like that, because they don't care, right?” [A04]

Some First Nations representatives have certainly picked up on this attitude. One participant reported that communication between the monitor and archaeologist is “usually very poor” and that some archaeologists are openly hostile and distrustful of monitors and their presence on site [B01]. The reality is engagement in general, and monitoring specifically, both remain uncertain processes, early in their development. The extreme examples of negativity can make it easy to overlook the positive ones. However, one respondent emphasized that while some individuals may not try very hard, the majority of monitors are doing their jobs “in a way that shows their community in a really good light,” eager to learn new skills and be involved in the archaeology [B02]. One Aboriginal community representative explained that it is important for monitors to be taught that they are acting as representatives of the First Nation and that they should do their best to portray their community as positively as possible [F03].

Other tensions tend to arise when the roles and responsibilities of monitors are not clearly defined or field directors do not respect the monitor's authority to make decisions, especially when it comes to shutting a site down. This has its roots in archaeologists' objection to a monitor's criticisms about their work and the idea that someone they perceive to be unqualified and inexperienced has decided that their methodology is

inappropriate. One archaeologist noted that relations with a monitor can become strained after that monitor has shut down a company's site; on future sites, the archaeologist may feel the need to be more careful around that monitor or may even request a different monitor from the community [A06].

Another archaeologist pointed out that this is the very reason monitors need to be understood as holding the power to shut down a site if they disagree with the work that is happening there [A02]. In his/her opinion, monitors should have this authority, as s/he believes that the quality of work improves when it is being conducted under the watchful eye of someone from the First Nation and that monitoring has been better for archaeology as a result. S/he points out that the MTCS has no field inspectors, meaning that archaeological firms need only lie to cover up poor fieldwork, but when there is someone present who has an "intimate cultural or historical connection to the site standing there looking at you," it becomes more difficult to get away with poor archaeological practices [A02].

7.6 Effectiveness

Although there have been mixed reactions on the side of archaeologists to the emergence of monitoring as a practical method of engagement, in general the Aboriginal community representatives with whom I spoke believed that it was an effective method of increasing the quantity and quality of communication between the archaeological firm and the First Nation. Having someone who understands the community's values and interests immediately available on site means that the archaeologist does not lose time tracking

down a community member through telephone calls or emails when a situation requiring input from the Aboriginal community arises.

More specifically, one participant described monitoring as a process that has “opened up communications that I feel haven’t [traditionally] been very equal,” when asked about the efficacy of the practice [F03]. Having monitors and field directors on the ground, consistently interacting with one another, emphasizes the need for engagement in the minds of both archaeological firms and Aboriginal communities. By forcing it into the forefront of everyone’s thoughts through the physical presence of a community representative on site, monitoring has resulted in better communication between the two parties, though there remain several significant shortcomings as discussed.

Additionally, monitoring provides the Aboriginal community with reassurance that they will be informed about important archaeological work or significant discoveries. Two participants reported that monitoring has been an effective method through which the Aboriginal community has been able to attain better understanding about what is happening out in the field. What’s more, this increased knowledge has improved the Aboriginal community’s opinion of archaeologists, according to one participant, as monitors are able to dispel myths about archaeology and archaeologists with actual, firsthand experience [F05].

Chapter 8

8 On Stewardship

There is no questioning the reality that there have been significant changes in the CRM industry's approach to Aboriginal engagement. The ubiquity of the practice of monitoring, despite its criticisms and controversies, attests to the progress that has been made. But the difficulties and differences of opinion that have been showcased in this research hint at the reluctance on the part of some archaeologists to engage with Aboriginal communities in earnest and with goodwill. Pinpointing the exact origin of this reluctance is necessary if we hope to move forward and make improvements to current policy.

8.1 A Survey of Attitudes

In 2005, Kapyrka published the results of her M.A. research examining the attitudes of archaeologists towards Aboriginal concerns and interests and how those attitudes translated into the practical experience of carrying out archaeology in the province of Ontario (Kapyrka 2005). Kapyrka labelled the attitudes as “varied, ranging from extremely positive to accusatory and negative” (Kapyrka 2005: 12). While not one single archaeologist characterized their own relationship with First Nations as “negative”, 19% reported that the relationship between archaeologists in general and First Nations in Ontario was “negative”, indicating that while archaeologists failed to see their own relationships as problematic, some believed others to be doing a poor job (Kapyrka 2005: 15). Similarly, the majority of archaeologists described their own personal interactions with Aboriginal communities as “positive,” while at the same time 45% of respondents

reported that the relationship between archaeologists in general and Aboriginal communities was “benign”, or neutral (Kapyrka 2005: 15). Kapyrka highlights this disconnect, citing archaeologists’ lack of confidence in the relationships other archaeologists have built or rather failed to build with Aboriginal communities in Ontario. When asked how well archaeology serves Aboriginal interests, the highest number of responses fell in the “some” (30%) or “little” (20%) categories (Kapyrka 2005: 17). Kapyrka also noted that respondents were generally inclined to respond that either “no one” or “everyone” owns the past, hinting at the idea that “everyone has a right to interpret the past” (Kapyrka 2005:16).

Kapyrka characterized archaeologists as complacent, explaining that while archaeologists often acknowledged their responsibilities as stewards of the archaeological record, many jeopardized future positive relationships between archaeologists and First Nations by failing to act upon the ethical principles outlined by their professional associations (Kapyrka 2005: 17). However, most respondents agreed that, in 2005, engagement with Aboriginal communities was severely lacking and in need of improvement. Kapyrka herself suggested that provincial legislation could be rewritten to include the requirement for archaeologists to work more closely with First Nations, but that such an endeavour would need to be supplemented with proactive efforts from within the discipline (Kapyrka 2005:19). Nearly ten years later, the results of this study have demonstrated that while there have been definite strides forward, there remains a great deal more work to do.

8.2 Out with the Old?

Not all archaeologists believe that there is a need for change. Aboriginal participants expressed frustration that, in their view, some archaeologists fail to see the good in engagement and actively try to find loopholes in provincial policy in order to avoid their responsibility to engage with Aboriginal communities. Some archaeologists, for their part, tend to criticize earlier generations of archaeologists, blaming them for any perceived failure on the part of archaeologists as a whole to forge strong, trusting relationships with First Nations. Some academic archaeologists have targeted those who present themselves as stewards of an ancient, extinct culture, who view themselves as the only ones capable of interpreting the archaeological record, and who dismiss Aboriginal oral histories and Indigenous knowledge (McGuire 1997:64; Nicholas 2009: 209). But do such dastardly archaeologists exist, working hard to undermine the forward momentum of Aboriginal engagement policy and increasing collaboration with First Nations? Or are such criticisms no more than boogeymen, a fictitious characterization of a small group of individuals, used by the majority to avoid accepting any blame for their own inaction? Are these difficult, stubborn, old-fashioned archaeologists held aloft to distract attention from the more pervasive attitude held by the larger group of archaeologists unwilling to consider that their own reluctance to re-evaluate their authority over the archaeological record may be problematic?

It would be a mistake to suggest that there are not those working in the CRM industry who hold old-fashioned views and follow traditional approaches to archaeological work and engagement. Indeed, one of the six archaeologists whom I interviewed made

statements that fell well in line with the old attitudes criticized by some archaeologists and Aboriginal community representatives alike.

This archaeologist denied that there were any tangible benefits to Aboriginal engagement and explained that, in his/her view, engaging with Aboriginal communities in any way beyond the minimum requirements set a bad precedent. Additionally, s/he condemned the agendas of Aboriginal community representatives who act as monitors in the field, stating that in his/her experience they had showed poor work ethic despite making, as s/he believed to be the case, an enviable wage. This participant admitted to overgeneralizing the situation and making hyperbolic statements, but was otherwise forthright and frank in his/her criticisms. There was a sense over the course of our interview that many of this archaeologist's critiques stemmed from the dislike of having his/her position of authority over the archaeological record challenged. S/he was skeptical that Aboriginal communities and their representatives should have a right to be involved in archaeology without first undertaking the education and training that licensed archaeologists receive.

In my view, the opinions expressed by this participant fall in line with those that other archaeologists and Aboriginal participants classify as traditional, perhaps out-dated, and responsible for the bulk of bitterness between the two parties: an inability and/or unwillingness in some of the older generation of archaeologists to reconsider stewardship and acknowledge the benefits of working alongside Aboriginal communities. On the other hand, many of the other archaeologists with whom I spoke self-identified as part of a new generation of archaeologists and spoke highly of Aboriginal engagement, though

the question remains if that commendation is merely lip service or translates into practical application.

Questioning these traditional approaches has been at the forefront of academic archaeology for quite some time. The idea of stewardship – archaeologists as the caretakers of both the archaeological record and the artifacts removed during excavation – has been traditionally justified by archaeologists on the basis of their professional expertise. Archaeologists rely on their years of training and experience to justify their “stewardship” in the face of criticisms by Aboriginal community representatives (Nicholas 2009: 209). Archaeologists have recently found themselves challenged on this perceived authority, and accused of complicity in upholding a colonialist, oppressive state when they are insensitive to or completely ignore the interests of First Nations (Ferris 2003: 160; Watkins 2003: 275). As Smith and Wobst elaborate:

“[Archaeologists] often take it as self-evident that archaeology is useful, and that we have a responsibility, as well as a right, to control and create the pasts of others. It seems clear to us that this needs to be done and that it needs to be done in the scientific, rigorous manner that is archaeology. Rarely do we seriously consider non-Western approaches to caring for cultural heritage, or question the agendas that are furthered by our work and how that work can empower or disempower the people we work with.” (Smith and Wobst 2005: 5-6)

According to Nicholas, archaeologists may only be convinced to rethink and relinquish their position as caretakers of the archaeological record if they clearly understand the benefits of increased inclusivity and recognize the legitimacy of Aboriginal interests and concerns (Nicholas 2009: 211). Some archaeologists, of course, do not.

8.3 Authorized Heritage Discourse

Among those archaeologists who recognize the legitimacy of Aboriginal interests in archaeology are several concerned academics who have done an excellent job of outlining the consequences of unchallenged authority over the archaeological record.

Atalay reminds us that archaeological research and knowledge “are part of the history and heritage of living people and have complex contemporary implications and relevance for those people in daily life” (Atalay 2006: 282). Traditionally, Aboriginal peoples have felt disenfranchised from their heritage by archaeologists who have failed to recognize that archaeological sites and artifacts have value beyond the scientific community (Nicholas 2008a: 244-245). The term “stewardship” has therefore been used to convey the privileged access of archaeologists to the sites and artifacts, as they have been given a responsibility to protect the archaeological record on behalf of the public (Ferris 2003: 155-156). As Ferris explains, this privilege is granted to archaeologists “in exchange for consenting to be regulated by the state (through permits, licenses, and accreditation)” (Ferris 2003: 155).

In her seminal work on the subject, Smith explains her conception of the authorized heritage discourse [AHD], the idea that there exists “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 2006: 29). The AHD defines who can fill the role of legitimate spokesperson for the past. This characterization of the ‘past’ furthermore suggests that it is vague and mysterious,

something that requires the expertise of professionals, such as archaeologists and historians, to understand (Smith 2006: 29). But the past is not abstract; it has a material reality in heritage, and exclusion from the conception of that heritage has tangible consequences for Indigenous communities (Smith 2006: 29). When archaeologists are viewed as the sole legitimate stewards of the past to preserve it for future generations, First Nations are disengaged from present, active uses of heritage (Smith 2006: 29).

Smith points out that archaeologists have a vested interest in maintaining their position of privilege. Currently, in the role of steward, archaeologists are arbitrators of the record; they possess artifacts, have access to sites, and give meaning to the past (Smith 2006: 51). To renounce their own authority would translate into a loss of control (Smith 2006: 51). The consequence, of course, is that expert knowledge about the archaeological record comes to represent the authorized interpretation of the past (Smith 2006: 51). We have already seen that, in a survey on the public's attitudes towards archaeology, a majority of participants reported that they were more likely to agree with an archaeologist's interpretation than that of the Aboriginal community (Pokotylo and Guppy 1999: 411). It is thus archaeological, not Indigenous, interpretations of the past that feed into the AHD. If heritage is one tool that can be used to define and legitimize the identity, experiences, and socio-cultural standing of subnational groups, then there are tangible outcomes for those that create and control it (Smith 2006: 52). In recent history, governments and bureaucracies have used the knowledge produced through expert research to help them classify who is or is not 'Aboriginal' and "thus who has rights to certain resources and who becomes subjected to a range of 'special treatments'" (Smith 2006: 282). Stewardship of the archaeological record must then be understood as a politically

influential position with the potential to cause harm, where significant power lies in holding the ability to recognize, validate, and challenge interpretations of the past (Smith 2006: 53).

It should be no surprise that Aboriginal communities should challenge this authority and want for themselves the ability to define the values and meanings given to their heritage (Smith 2006: 279). The control of symbolic heritage resources is a political tool that plays a part in the wider struggle of Aboriginal communities to demonstrate the legitimacy of their identity and cultural claims; when held by governmental policy makers, it may be used to grant, prohibit, or regulate that legitimacy (Smith 2006: 282). In addition, it must be recognized that some communities reject the Western notion that archaeology and its sciences are the only way to objectively reconstruct and explain the past (Smith 2006: 284). For many communities, their own history is already known through oral history and tradition; archaeological input adds nothing or very little to that knowledge (Smith 2006: 284). This is confounded by the refusal on the part of some archaeologists to acknowledge oral traditions as viable sources of information (Smith 2006: 284). To do so would mean relinquishing some control over interpretation of the past.

8.4 Three Different Approaches

Certainly traditionalist archaeologists still operate in today's CRM industry. They are the ones who do not recognize or even actively reject Aboriginal interests in heritage and concerns about archaeological work. They are not proactive about responding to these interests and concerns and may even try to avoid them as much as they are able. When

they do engage Aboriginal communities, it is because they are obligated to meet the minimum requirements of policy, not out of any acknowledgement of an Indigenous right to be involved in the process. They have many complaints about the way First Nations participate in engagement and archaeology, most of which come out of frustration over challenges to their authority over the archaeological record. They view themselves as rightful stewards and do not wish to relinquish any control.

These are the archaeologists that others fault for the current state of poor relationships between the archaeological community and First Nations. They are held up in comparison to an archaeologist who does ‘better’ or ‘more’ engagement and condemned for their old-fashioned ways, arrogance, or even racism. Proponents, they say, hire these archaeologists to avoid meaningful engagement with the Aboriginal community and to ensure work is done quickly, unconcerned with the quality:

“[Project X] was the usual situation where the developer didn’t want to engage and so the proponent [hired] the consultant who was in this case of the cut-rate variety, [who] just agreed to get the work done, and we kind of watched it all fall apart [...] They didn’t seem to know what they were doing. The quality of the work was very shabby.” [A02]

The majority of the archaeologists with whom I spoke did not fall into this category of what some would call ‘the old boys.’ Most touted the benefits of meaningful engagement and expressed a commitment to it. However, many of the praises of its worth had more to do with benefits available to the archaeologists, such as avoiding conflict and tension in the field or learning more about artifacts or past ways of living:

“Let’s just say that I have always found – I shouldn’t say ‘always’ – but I’ve frequently found engagement to be a very rewarding experience. Working with [First Nation X], having spent my career as a specialist in their archaeology, it’s so incredible to be talking passionately about a subject that I’m passionate about to the people whose ancestors I’ve been studying for thirty years, you know? That is just fantastic.” [A03]

“So [archaeologists] need anything, any help we can get [in interpreting the archaeological record], and you know a lot of help comes out of engagement. Because when you build those relationships, because they’re so relationship-driven and trust-driven, then the better the relationship, the more the trust, the more access you get to help. It’s useful. So it helps us be a better archaeologist in that way, too.” [A02]

These are more positive attitudes to be sure, but many of the justifications for engagement were rooted in such potentially selfish reasons rather than any recognition of an Indigenous right to be involved. In this second group of archaeologists, there is certainly some acknowledgement of Aboriginal interests and concerns, but little proactive commitment to responding to them. Minimum requirements are met and some archaeologists even go beyond them, but their reasons for doing so seem to have the goal of making engagement easier and more beneficial for themselves. This is not necessarily a problem, and of course archaeologists should be encouraged that forming stronger relationships will make engagement a smoother process in the long term. But when archaeologists take pride in claiming that their firm has been engaging earlier and in better ways than other archaeological firms, it could be seen as simply a self-congratulatory pat on the back:

“There again, we were doing it before anyone else [. . .] We have been doing it for twenty years, literally, having native groups on site.” [A01]

“One thing I should say is, at [Company X], we’ve always been pretty progressive about making sure we engage with Aboriginal groups, even when it wasn’t required.” [A06]

“I would submit that what’s in [the *Standards and Guidelines*] is to some extent . . . I’m not going to claim, you know, we created it, but certainly at [Company X] we’ve been promoting that stuff for a long time [. . .] I would argue that we were part of the process that got those [requirements] in place.” [A03]

There is little acknowledgment on the part of the archaeologists of the reasons why Aboriginal communities might want to or should be involved in archaeology. This perspective is reinforced by the criticisms these archaeologists have about engagement today, that either lay the fault for poor engagement on the first, older group of

archaeologists or criticize the ways First Nations choose to engage, rather than examining their own efforts. These criticisms include speculations on the behaviour and motivations of monitors, the amount charged by First Nations for engagement, lack of qualifications and experience on the part of community representatives, and slow and inadequate responses from Aboriginal communities to requests for engagement. These criticisms often fail to consider underlying reasons for these perceived failures, which often have roots in the complicated and troubled history of First Nations treatment in Canada.

While these archaeologists may actually believe in, or at the very least pay lip service to, the idea that Aboriginal communities have a right to involvement in their heritage, most still consider themselves to be the ones who can best interpret, manage, and protect archaeological resources. This can be seen in the frustrations over apparent unqualified and inexperienced input on their methodology. As a solution, one archaeologist with whom I spoke celebrated the Australian system, in which, s/he explained, a staff archaeologist is hired by the Aboriginal community, who has the archaeological training and experience necessary to make qualified recommendations on their behalf. In his/her opinion, this results in a smoother engagement process and limits the

“unprofessionalism” that archaeologists sometimes encounter and feel they must endure:

“Call it a taboo, but everybody walks on eggshells, like, around First Nations’ communities and engaging with them [. . .] Like, I feel people put up with way more crap and unprofessionalism dealing with First Nations’ communities than they would dealing with any other professional group.” [A04]

The third and final category of archaeologists I identified over the course of my interviews were those who were considerably more proactive in recognizing and responding to Aboriginal interests and concerns. Although some of their reasoning touched on personal benefits, they clearly acknowledged an Indigenous right to

involvement and to at least some control over aspects of heritage and archaeology. Most importantly, critiques of engagement that did indeed highlight concerns expressed by other archaeologists were put into a larger context of Indigenous history and issues:

“Most of the feedback is . . . Well, we get very little actually [...] In a perfect world, a community would have an organized monitoring program where the monitors were like their representatives and would come back and report in a regular reporting framework to the community what was being found, if things were happening in a good way, you know, anything that would be of interest to the community. It hasn't really worked out that way very well. One of the problems too is that the communities . . . They have no money. They have very little . . . They're working on such a narrow revenue base that they have no money to create a position for, for instance, somebody to make sure that [is happening].” [A02]

In this group of archaeologists, there is more understanding of the problematic consequences that unchecked and unchallenged authority over the archaeological record can cause.

It is not uncommon for archaeologists to describe their attitudes as liberal, to undertake positive action in working with Aboriginal communities, and to criticize the provincial government for doing too little to recognize Indigenous interests and concerns in heritage and archaeology (McGuire 1997: 65). But many fail to understand the negative role their own unchallenged authority over the archaeological record has played in this picture:

“Some [archaeologists] are honestly at a loss to understand why many Indian people do not appreciate these efforts. Most Indian people cannot escape the larger history of white-Indian interactions because the history dwells in the relations of their day-to-day lives. It lives in the regulations, bureaucracies, poverty, and discrimination that deny them the ability to determine their own lives and futures. In this larger set of relationship the archaeologist's authority over Indian pasts is simply one other aspect of their lives that has been taken from their control.” (McGuire 1997: 65)

8.5 A New Direction

This unchallenged authority over the archaeological record and interpretations of the past is a struggle that has been addressed before. Smith discusses the discrepancy between archaeologists' attempts to accommodate Indigenous interests while trying to maintain unfettered access to the record: one cannot acknowledge an Aboriginal right of

involvement without jeopardizing in some way their own authority as expert (Smith 2004: 31). She explains that this duality sends “contradictory messages” to Aboriginal communities and undermines any self-professed commitment to engagement (Smith 2004: 31).

Yet we must also be careful to avoid a simplistic dualism that pits archaeologists against First Nations and frames Aboriginal access to sites, artifacts, and heritage as a challenge to archaeology and archaeological knowledge. Colwell-Chanthaphonh does not want archaeologists to assume that the practice of “*including* Indigenous views and values necessitates *excluding* all others” (Colwell-Chanthaphonh 2010: 232). However, it is necessary to remember that archaeologists have held and continued to hold the power of dictating to the public their own views about Indigenous heritage, while some Aboriginal communities struggle to reclaim their identities. That power imposes certain responsibilities:

“As a starting point we can say (as an empirical observation) that there are sectors of society that are marginalized, and we can argue (as a moral contention) that in the interests of fairness marginalized communities need particular opportunities to ensure their voices are heard, their freedoms uncompromised, and their concerns met.” (Colwell-Chanthaphonh 2010: 233)

Archaeologists should be encouraged to understand the ways through which archaeology and their own knowledge can be enriched through increased inclusivity. In fact, this can be an effective motivation for reluctant archaeologists who otherwise might not funnel much effort into engagement. However, it should be understood that the best reason for engagement is not education for the archaeologist by the Aboriginal community. In my view, the most important reason for engagement is that the Aboriginal community has a right to it, because of the consequences of the authorized heritage discourse, and because

descendent groups, who may currently or previously have experienced marginalization, should have a role in the interpretation and perception of their own heritage.

In light of this, stewardship must be reconsidered and re-evaluated with the understanding that authority and control can, at the very least, be shared between parties, without the implication that one or the other approach is the only correct way to examine, interpret, and manage the archaeological record. For those hesitant to relinquish that role, Colwell-Chanthaphonh reminds readers that “giving *equal consideration* is categorically different from giving *equal weight* to Indigenous views, concerns, and needs” (Colwell-Chanthaphonh 2010: 233). The current requirements of the *Standards and Guidelines* do neither, upholding the long-held tradition of designating archaeologists as stewards, whose only requirements for engagement compel them to speak with but not necessarily listen to the interests and concerns of First Nations.

Such discussions have already begun to take place, as Aboriginal and non-Aboriginal intellectuals consider the ethics of archaeological research, its colonial legacy, and its benefits for and relevance to the public and Indigenous populations (see McGuire 1997; Atalay 2006; Nicholas 2009). But the very term ‘stewardship’ implies that archaeologists are the protectors of the past, its spokespersons and its interpreters, by virtue of their training and experience (Smith 2004: 82). Designating archaeologists as the sole caretakers of this heritage leaves room for Aboriginal involvement only on the periphery. It limits engagement to its smallest impact, favouring instead “archaeological best practice,” or those rigorously scientific methods that archaeologists believe are the best measures to follow if they are to be successful in their quest to protect archaeological resources.

This would be noble if archaeologists were indeed the only ones who were invested in the protection of the archaeological record and the way its resources are interpreted, but they are not. Indigenous ties to the human and material remains, as well as their past exclusion from the process of their recovery, analysis, and interpretation, necessitate that they are owed involvement through meaningful engagement today. For those archaeologists who have come to understand this right, better methods of fulfilling it need to be developed in collaboration with First Nations and upheld in the policies that guide the discipline.

In academic literature, this process has been called the 'decolonization of archaeological theory and practice' (see Smith and Wobst 2005). It is rooted in Indigenous approaches to archaeology that have critiqued the unbalanced power relations of the past and present and offered solutions for the future. As archaeologists have benefited from their position of privilege and have played a role in creating and maintaining the authorized heritage discourse, they should have an obligation to deconstruct it (Smith and Wobst 2005: 369). This can only be done in collaboration with the Aboriginal communities who have been previously marginalized by their efforts and with a recognition of the ways their work has sometimes negatively impacted past generations (Atalay 2006: 284).

Chapter 9

9 Conclusions

The data presented in this study demonstrate many ways in which consultant archaeology in Ontario is changing. Not all participants in this study agree that this transformation is a positive one, but there are many who view it as not only necessary, but also as having the potential to produce clear and tangible benefits for all involved.

9.1 Indigenous Approaches to Archaeology

In academic literature, the idea of an “archaeology done with, for, and by Indigenous people” is not a new one and there have been multiple efforts made to challenge the colonialist underpinnings of the discipline (see: Nicholas and Andrews 1997; Smith and Wobst 2005; Atalay 2006). But in my view the CRM industry in Ontario will not be ready to embrace more Indigenous approaches to archaeology until archaeologists have consented to re-examine their position of authority as stewards of the archaeological record and agreed amongst themselves that absolute control over it is damaging. Not only does such control limit the many ways in which engagement can benefit archaeologists, but it upholds a history that has traditionally excluded Indigenous communities from their own heritage. While the inclusion of a requirement for Aboriginal engagement in the *Standards and Guidelines* in 2011 was an initial step forward, the shortcomings and complications that have been identified in this research indicate that it is time to do more.

Guidance certainly may be drawn from the considerable work academics have already done in considering the topic. Nicholas' definition of 'Indigenous archaeology' is relevant here:

“Indigenous archaeology is an expression of archaeological theory and practice in which the discipline intersects with Indigenous values, knowledge, practice, ethics, and sensibilities, and through collaborative and community-originated or –directed projects, and related critical perspectives. Indigenous archaeology seeks to make archaeology more representative of, relevant for, and responsible to Indigenous communities. It is also about redressing real and perceived inequalities in the practice of archaeology and improving our understanding and interpretation of the archaeological record through the incorporation of new and different perspectives.” (Nicholas 2008b: 1660).

In her work, Atalay reminds us that one need not be Indigenous to practice Indigenous archaeological work, but it takes effort, collaboration, and open inclusion of Aboriginal conceptions of the past to avoid replicating the dominant archaeological paradigm (Atalay 2006: 294). It is a mistake to characterize the discipline of archaeology as a force that is necessarily either positive or negative, when in fact what matters is how it is applied and practiced. Therefore, archaeologists must be aware that their work has the “potential to disenfranchise and be used as a colonizing force” (Atalay 2008: 33). As a result, critical reflection on the individual level and positive policy change on the provincial level must both occur if solutions are to be found for the problems highlighted in this research.

9.2 Collaboration versus Engagement

Pursuing multivocality in an effort to avoid replicating traditional mainstream archaeological practices should involve doing a better job of incorporating Aboriginal knowledge and concerns in all aspects of archaeological practice, not just interpretation (Atalay 2008: 31). Only then does it become possible to decolonize the practice of archaeology and the imperialist ideologies archaeologists have upheld (Atalay 2008: 31).

Yet typically many archaeologists need to be reassured that Indigenous concepts will not replace their Western ones or interfere with their access to the archaeological record in order for them to support these efforts. In addition, it will take recognition and acknowledgement on the part of archaeologists that “Western ways of knowing are not in any way superior or natural,” and only increasing familiarity with and understanding of Indigenous traditional knowledge and practices can accomplish this (Atalay 2008: 34). Collaboration with Aboriginal communities is one way to achieve this goal, as a process through which research is carried out in partnership between the archaeologist and the community to produce research that is relevant and useful for both parties (Atalay 2008: 26).

Yet the business of cultural resource management currently allows little opportunity for such endeavours, as the work is funded by a proponent who usually requires work to be completed as quickly and inexpensively as possible. While current provincial policy requires engagement (that is, for the archaeologist to speak with the Aboriginal community) at certain stages in the process, no obligation for true collaboration (that is, for the archaeologists to listen and respond to their concerns) is required. When Aboriginal communities identify the need for more ‘meaningful engagement’, it appears that they are referring to more collaborative efforts. Essentially, they are asking that their interests and concerns be more thoroughly considered and indicating that such collaboration would yield tangible benefits for the community. In other words, there is a need for archaeologists to find a way to put multivocality into practice (Atalay 2008: 41).

There is no easy answer to this conundrum, however. Hodder highlights the complications in bringing multiple stakeholders to the “cultural heritage table”:

“There are many difficult issues here. For example, should all those around the table have an equal voice? Or should those who have suffered more through the colonial process have a louder voice? Should those who have provided more funding have the most sway? Who ‘owns’ the past?” (Hodder 2008: 198)

Nevertheless, any discussions or attempts to engage Aboriginal communities must start with an understanding on the part of archaeologists of the unequal power dynamic between parties, unless the community employs their own archaeologist (Smith 2004: 198). Without an active acknowledgement of this imbalance, any attempts to improve the quality of engagement will fall short of success, no matter how noble intentions might be (Smith 2004: 198). The result is that Indigenous knowledge can be appropriated by archaeologists, while in return Aboriginal communities receive little more from engagement than the superficial ability to ‘rubber stamp’ (Smith 2004: 198). What this means is that “the incorporation of Indigenous knowledge through [engagement] remains nonetheless subject to the interventions of archaeological interpretation and regulation” (Smith 2004: 199). To counter this, archaeologists must acknowledge the legitimacy of Indigenous knowledge and values alongside their own (Smith 2004: 199). Yet, as we have seen, many archaeologists react negatively when faced with obligation to adopt or agree with alternative approaches or interpretations. This limits any forward momentum in the quantity and quality of engagement in the CRM industry.

Silliman suggests that the solution to this problem is not through “legal mandates, procedural steps, and compliance,” which archaeologists may react negatively to because they perceive these regulations as limiting their professional judgment and underestimating their intentions (Silliman 2008: 7). Instead, collaboration and engagement are most successful when they emphasize social relationship building, joint decision-making, mutual respect, and open communication (Silliman 2008: 7). Of

course, the choice to invest positive effort in these undertakings varies from individual to individual, but as has been demonstrated, forging collaborative, personal relationships with Aboriginal community members has had easily recognizable benefits, some of which have been identified by the archaeologists who participated in this study.

9.3 Synthesis of Research

In light of these new ideas and approaches to archaeology, we must re-examine the findings of this research and the major problems identified by participants.

A. *Inadequate Provincial Policy*

There is no doubt that the current provincial policy outlining the expectations for Aboriginal engagement in CRM archaeology is inadequate. Aboriginal communities were poorly consulted during the initial formulation of the *Standards and Guidelines* and as a result many of their primary concerns and interests are not covered in the document. Additionally, Aboriginal communities hold their interests as the foremost concern during the course of engagement, even if they run contrary to provincial policy, and this can lead to conflict. For example, current provincial policy allows for human remains to be relocated, although many Aboriginal communities do not want those remains to be disturbed. Additionally, the *Standards and Guidelines* have only two requirements that obligate the archaeologist to speak with First Nations during Stage Three archaeological assessments. Aboriginal participants in this study reported that they wanted engagement to not only begin earlier, but also to be more mutually beneficial and informative. This cannot happen when there is no policy obligation on the part of the archaeologist to seriously consider and respond to First Nation interests and concerns.

On the part of archaeologists, the *Standards and Guidelines* on Aboriginal engagement were identified as too vague and as a result there was considerable uncertainty about what the requirements actually are. Many dismissed the *Engaging Aboriginal Communities* draft technical bulletin as adding little useful information in further explaining what engagement should be and how it should be carried out. One of the shortcomings identified by participants was the failure on the part of the province to guide archaeologists on how to balance and accommodate engagement with multiple parties, particularly if those communities hold competing interests. Instead, many archaeologists reported that they had learned how to engage with Aboriginal communities through trial and error or from their superiors. Additionally, many identified that most of what they do falls beyond the requirements for Aboriginal engagement under the *Standards and Guidelines*; in particular, they pointed to the practice of monitoring, which has become increasingly widespread.

The province should recognize the inadequacy of its current policy and undertake a concentrated effort to consult with Aboriginal communities on the interests and concerns that are currently missing from the *Standards and Guidelines*. As is the case with archaeologists, true collaboration cannot occur without the province relinquishing some of its authority and control. It should be obvious that the province has a valuable resource in the experiences of archaeologists over the past three years, some of whom have moved beyond the current requirements for Aboriginal engagement. It is possible to create better, clearer, and firmer standards and guidelines by working in partnership with both First Nations and archaeologists, whose experiences and thoughts can shape improved policy. This must, however, be a truly joint effort.

B. Avoiding Responsibility

A true incentive for the province to launch such an undertaking, despite the newness of the *Standards and Guidelines*, would be to combat the pervasive conception on the part of the Aboriginal participants in this study that the government has largely failed in its responsibility to consult with and accommodate First Nations. This perception has hampered relations between stakeholders, resulting in both First Nations and archaeologists turning a critical eye towards the province. Some archaeologists, who may feel as if the province is shirking its responsibility and placing it unfairly on their shoulders, want the province take the lead in this regard. Perhaps archaeologists would be more willing and eager to participate in engagement if the province did more to model that behaviour and guide archaeologists on what is expected. For the Aboriginal communities who have long felt disenfranchised by the government, there can be validation in at last having their interests and concerns properly accommodated. This would not mean catering to every request and demand, but simply showing a good faith effort to collaborate with Indigenous populations.

C. Engagement is Complicated

Of course, there is unlikely to ever be one cure-all solution to the difficulties of Aboriginal engagement. This is because engagement is a complicated process, which must consider many diverse needs, making it very difficult to regulate. The majority of archaeologists and Aboriginal communities representatives with whom I spoke recognize this reality. This does not mean that nothing more can be accomplished to ease the process, but that any efforts must take into consideration its complexity.

For example, engagement on archaeological and/or project-related matters occurs between many individuals on numerous different levels, such as between the project manager and Aboriginal community representative, between the field director and monitor, and between the proponent and the First Nation. What's more, engagement can involve any number of different phases, from initial contact, to ongoing updates, to monitoring in the field, to follow-up on the final report. Finally, multiple Aboriginal communities may have an interest in the archaeological work, or there may be multiple factions within one community with which the archaeologist may have to engage.

Ultimately, any policy revisions will still have to leave space for professional judgment, not because the archaeologist necessarily knows what is best, but because there are multiple interests and concerns to be managed and addressed and there will never be one solution that can address all of them. Because engagement is a complicated and diverse process, every situation will be unique and require a unique response. That is not to say that it is impossible for provincial policy to better regulate the engagement process at a broader level and offer more guidance on specific circumstances.

D. The Proponent

The second external factor at play in the relationship between archaeologists and First Nations in the CRM context is the proponent, who can sometimes represent the biggest obstacle to meaningful engagement. Both parties identified the difficulties they face when dealing with proponents. For archaeologists, some participants reported that the proponent can prevent them from engaging more meaningfully, as they felt that any effort beyond the minimum requirements must be approved by the proponent. Although proponents are generally understanding about paying for the Aboriginal community's

involvement in a limited way, the rising costs of engagement have upset some proponents, as their commitment is ultimately to the bottom line. Archaeologists also report that they are sometimes forced into the role of intermediary, caught between the wishes of the proponent and the concerns of First Nations.

Aboriginal participants reported that although funding from the proponent has been helpful in allowing community representatives to be involved in engagement, it does not cover many of the additional efforts the community may wish to undertake, such as creating their own archaeological master plans or pursuing the repatriation of artifacts. Furthermore, some explained that proponents generally dislike when communities have agency and cannot be ignored; when proponents attempt to override Indigenous opposition, then tensions may escalate and conflict may erupt. Often it was the proponent, not the archaeologist, who was identified as the main source of frustration, as participants understood that it is the proponent who holds the final decision about how the consultation on the project will proceed, while archaeologists are only responsible for the archaeological engagement process.

E. Different and Competing Agendas

Also at the crux of the issue is the fact that, simply put, archaeologists and Aboriginal communities have different, and sometimes incompatible, ideas about what archaeological engagement should be and how it should be carried out. The Aboriginal community representatives with whom I spoke pointed to several practices that they disliked, including a failure on the part of archaeologists to engage earlier than Stage Three, despite repeated requests to do so. Aboriginal participants reported that archaeologists do little to follow up on their recommendations and that their comments

are often dismissed rather than acted upon or taken under advisement. Additionally, in many cases, community representatives prefer that engagement is done face-to-face, rather than through telephone calls and emails. Finally, because archaeologists are the ones who decide which community to engage on a project, some communities report that they are overlooked and their interests in an area are ignored.

Archaeologists, for their part, reported that they dislike it when their expertise or methodology is challenged by someone they perceive to be underqualified and/or inexperienced. They are also uncomfortable when they perceive a community or monitor to be only interested in money, not the archaeology. Some accuse Aboriginal communities of competing to lay claim to archaeological sites in an attempt to bolster land claims with the province and others reported that, in their opinion, some Aboriginal peoples do not truly understand their own history or treaty rights.

There has already been some effort to address these shortcomings. For example, First Nations have offered training to monitors in order to provide them with a better background on artifact identification, field methods and the provincial *Standards and Guidelines*. As well, archaeologists have begun to carry out more of their engagement through in-person meetings. But there is much more work to be done. Archaeologists should make more of an effort to address the criticisms against them. They might, for example, be more forceful in convincing the proponent to pay for engagement at an earlier stage of the archaeological process. First Nations, too, need to consider the concerns of archaeologists and determine how to address them in a way that works for their community. For instance, archaeologists report that proponents are hesitant to hire an archaeologist who budgets for more and earlier engagement. In order to secure the

earlier engagement they desire, an Aboriginal community may need to limit the cost of their participation. Alternatively, in cases where early consultation with the proponent takes place, an Aboriginal community may try to convince the proponent to hire the archaeological firm they believe best understands their interests and concerns.

However, the best strategy for overcoming differing and competing agendas ultimately lies in relationship- and trust-building between the archaeologist and the First Nation. For those who have worked hard to forge positive relations, the benefits far outweigh the effort. Eventually, working together results in learning about one another and this cooperation develops into an understanding and respect for another's position and practices. Ideologies and methodologies may no longer appear irreconcilable and, in the process, creative and mutually-beneficial solutions for the problems that continue to plague engagement will emerge.

F. The Bigger Picture

There are, of course, many things that may interfere with our hopes to achieve this brighter future of positive relations between First Nations and the archaeological communities. Among them is the failure on the part of archaeologists to properly contextualize Aboriginal participation in engagement or, in layman's terms, understand the bigger picture of Aboriginal history and issues. It is important to remember, when archaeologists label the archaeological site as 'a bargaining chip' in negotiations, that there may be many reasons First Nations may use archaeology as a means to make their voices heard.

It is also necessary for archaeologists who may criticize how Aboriginal communities participate in engagement, to consider the limitations many experience. For example, some Aboriginal participants reported that they are unable to respond to requests for engagement as fully and completely as they might like because they lack the capacity to do so. As such, community representatives are forced to make tough decisions on which projects to engage and how extensive their participation may be. In many cases, the government provides little to no funding to help communities build capacity in this area. Archaeologists should do a better job of understanding and accommodating these limitations. This is one subject that is mentioned in the *Engaging Aboriginal Communities*, in the hopes that archaeologists might better understand the limitations they may encounter during the course of engagement, but perhaps it is not a lesson many have taken to heart.

G. Minimal Effort

Another factor inhibiting the progress towards positive, trust-based relationships between First Nations and the archaeological community is the legacy of poor treatment of Aboriginal interests and concerns by the previous generation of archaeologists. This was a recurring theme in the interviews, in which participants often blamed the general Aboriginal distrust of archaeologists on those who came before, who put little effort into engagement and damaged the potential for improved relationships in the present. Yet even today there remain those archaeologists who are reluctant to engage meaningfully with Aboriginal communities for a variety of reasons. There are those who do not see any value at all in engagement, and there are those who see its value but do little themselves to rectify the problem. They might think the government, not archaeologists,

should be responsible for engagement with First Nations. They might believe that it is other archaeologists, not themselves, who are the problem and they may be keen to focus on others' poor efforts at engagement rather than discussing their own. They might state that their company respects and values Aboriginal engagement, but show little effort in practice.

Not all archaeologists will be convinced that Aboriginal engagement is the right thing to do. The hope of this research is to reach out to those archaeologists who already – whether begrudgingly or actively – acknowledge the value of Aboriginal engagement but are unsure of how to improve upon the minimal requirements of the province. For those archaeologists, ‘cultivating’ an atmosphere of respect and positivity within their firm should now be considered insufficient; as we have seen that the problems with engagement continue, and positive attitudes may fail to filter down. It is necessary now to actively teach Aboriginal engagement to employees, solidify it through internal policy, and improve upon it through working openly and in partnership with Aboriginal communities.

H. Rethinking Stewardship

Of course, none of this can be accomplished if archaeologists continue to cling onto traditional ideas of stewardship and defend their position of authority over the archaeological record. There would be no need for archaeologists to change their behaviours or re-evaluate their approaches to engagement if the status quo is maintained. However, as we have already discussed in depth, there are two primary reasons to reconsider stewardship: (1) the understanding that there are benefits to working alongside Aboriginal communities *for the archaeologist* and (2) the acknowledgement that

Aboriginal interests in and concerns about archaeology and heritage are legitimate and should be addressed.

If archaeologists continue to try to accommodate Aboriginal interests while at the same time attempting to maintain their unfettered control over the archaeological record and its interpretation, there will be consequences. Tensions will continue to rise, conflicts will continue to erupt, and engagement will continue to be seen as a difficult, messy, and volatile process. However, if archaeologists can acknowledge that Aboriginal communities have a right to involvement in the interpretation and perception of their own heritage, *and actively work to accommodate that right*, engagement can and will become a smoother, more enjoyable practice which has obvious benefits for both parties. In order for that to happen, the categories of problems outlined above will need to be addressed and solved *in partnership* by willing archaeologists and Aboriginal community representatives. For those archaeologists who are less willing to embrace change in this area, because of their reluctance to abandon their own authority as caretakers of the archaeological record, policy becomes necessary to obligate hesitant archaeologists into compliance. Therefore, any forward momentum and positive developments forged must be reflected in an updated version of the *Standards and Guidelines*.

In summary, archaeologists must acknowledge Indigenous ties to the archaeological record and the principle that First Nations are owed meaningful engagement. Better methods of meeting this requirement can only be developed in collaboration with Aboriginal communities. In order to prevent those strategies from being ignored by those who would rather stick to the old traditions, these strategies must be implemented in the policy that guides the discipline.

I. Case Study: Monitoring As Engagement

The practice of monitoring acts as a case study that demonstrates how a shortcoming in the engagement process can be identified and its remedy be implemented. Allowing Aboriginal community representatives to be present on archaeological sites is not currently required under provincial policy. One participant in this study identified this as a failure on the part of the province to listen to the needs of First Nations when formulating the *Standards and Guidelines*. On the other hand, not all Aboriginal communities want to use monitors to represent their interests on site, so enforcing one blanket rule obligating archaeologists to hire monitors is likewise ineffective. Additionally, both archaeologists and Aboriginal community representatives reported that proponents are sometimes unhappy to pay for the cost of monitoring and that the proponent is more likely to opt for the budget that proposes to only have monitors on site when strictly necessary.

The expectations and effectiveness of monitors has been interpreted differently on both sides, too. For example, archaeologists do not like it when monitors do not participate in the fieldwork or when they criticize methodology. First Nations responded to these complaints by encouraging monitors to fully join in the work and offering training to provide them with the educational background they need to understand what is happening in the field. Still, some of the grievances demonstrate that certain archaeologists fail to consider the larger picture or contextualize what they perceive as failures. Aboriginal community representatives are quicker to point to broader issues within the process, such as a lack of stable work, but most believe that monitoring has been largely effective in

representing the community's interests on site and relaying back information about significant finds or problems.

Many of these comments emerge out of a history of distrust between parties and the past use of monitoring as a way for Aboriginal communities to ensure that archaeologists were not doing poor work. Some archaeologists responded negatively to this suggestion and disliked the idea that community representatives were on site to "monitor" the quality of their work. Indeed, recently the term "monitor" has been recognized to be coded in these negative connotations and there have been calls for its replacement with a less controversial term. Of course, for some archaeologists, the dislike of monitoring has more to do with the challenge to their own authority over the archaeological record and their unwillingness to relinquish it. But those archaeologists who participate in and embrace the practice report that they have begun to see some of the benefits that collaboration can achieve, including access to Indigenous knowledge and a better understanding of the past. In addition, allowing monitors on sites eases tensions that might otherwise arise if Aboriginal communities were denied access. Most importantly, the practice acknowledges a right of involvement on the part of First Nations, though in many ways it still falls short of including Indigenous peoples in the interpretation, management, and protection of heritage. Despite these difficulties, monitoring should be seen as a positive example of forward momentum that can emerge out of collaborative efforts. On the other hand, it remains to be legitimized through provincial policy and is far from flawless.

9.4 The End Goal

It would be unwise to dismiss the progress that has been made or ignore the fact that archaeologists and the province have begun to recognize Aboriginal interests and concerns and, in some cases, respond proactively to them. Certainly some of the Aboriginal community representatives interviewed acknowledged that some archaeologists have made real effort to invest their time and energy into positive engagement, but it would be a mistake for us as archaeologists to give ourselves a self-congratulatory pat on the back, brush the dust off our hands, and claim that our work here is done. This research has indeed identified some successes, but there are still many ways in which engagement fails to effectively address the needs of all parties involved, especially the cultural claims of Indigenous peoples. To ignore or defend this failure is no longer an option.

Improved engagement must be accomplished through policy change, through better education, and through a proactive commitment to work in collaboration with the First Nations of Ontario. This can only be accomplished if stewardship is redefined as something shared and negotiable, and no longer defended as a type of authority and control to be protected.

Participants in this study were quick to point out that the real change was occurring out on site, between the field crews and monitors who were working side-by-side every day. Together, they have begun to open up communication between archaeologists and Aboriginal communities that for so long has been lacking or merely unidirectional. Between them, they have forged positive working relationships and, in some cases,

strong friendships that have begun to change the course of Aboriginal engagement. As Ferris neatly summarizes:

“[T]he most important dimension of this change in the practice of archaeology may be one that will only slowly emerge from the evolving relationship between archaeologists and First Nation communities following the adoption of more direct, regularised interaction and co-management in day-to-day decision making. The anxieties and fears some archaeologists may have had over the fate of their research – and their livelihood – will give way to the practicalities of building working relationships with Native Americans to facilitate research. Moreover, regularised interaction with archaeologists would also do much to alleviate some of the distrust Native Americans may hold today towards them.” (Ferris 2003: 173).

These attitudes and this practice are still young, but that is no excuse for progress to stagnate. Aboriginal engagement continues to operate in a cycle of ebb and flow, as some archaeologists and community representatives begin to model positive interaction, which they eventually push to have legitimized by the province. In doing so, policy creates a mandatory regulation that compels reluctant archaeologists to follow along. Yet sometimes policy becomes outdated and inadequate when compared against the very real concerns of Aboriginal communities. We must not stall now, no matter how recent the previous policy updates. If this research has shown one dominant conclusion, it is the near unanimous consensus that participants view the current provincial policy as inadequate. It fails to provide archaeologists with sufficient instruction on how Aboriginal engagement should be carried out and it fails to address many of the needs expressed by Aboriginal communities. There is certainly hope for the future and commitment to improving Aboriginal engagement has been expressed by many Aboriginal community representatives and some archaeologists participating in this study, but much rests on the willingness of the province to reconsider and rejuvenate its vision for the practice.

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Appendices

Appendix 1: Ethics Approval.



Research Ethics

Use of Human Participants - Ethics Approval Notice

Principal Investigator: Dr. Peter Timmins
 File Number: 103505
 Review Level: Full Board
 Approved Local Adult Participants: 12
 Approved Local Minor Participants: 0
 Protocol Title: Cultural Resource Management and Aboriginal Consultation: Policy and Practice in Ontario Archaeology
 Department & Institution: Social Science/Anthropology, Western University
 Sponsor:
 Ethics Approval Date: June 24, 2013 Expiry Date: August 31, 2014

Documents Reviewed & Approved & Documents Received for Information:

Document Name	Comments	Version Date
Western University Protocol		2013/02/15
Recruitment Items	Email	
Instruments	Interview Questions	
Letter of Information	Consent Form	
Recruitment Items	Email Script for Recruitment, updated	2013/06/20
Revised Letter of Information & Consent	Letter of Information, version 2.0	2013/06/06
Other	Community Engagement Document, version 2.0	2013/06/06
Other	Telephone Script, updated with changes	2013/06/05

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.

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 NMREB is registered with the U.S. Department of Health & Human Services under the IRB registration number IRB 0000941.

Signature 

Ethics Officer to Contact for Further Information



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

Western University, Research, Support Services Bldg., Ste. 5150
 London, ON, Canada N6A 3K7 t. 519.661.3036 f. 519.850.2466 www.uwo.ca/research/services/ethics

Appendix 2: Letter of Information.



Project Title: Cultural Resource Management and Aboriginal Consultation: Policy and Practice in Ontario Archaeology

Principal Investigator: Peter Timmins, Ph.D., Anthropology, the University of Western Ontario

Student Researcher: Megan DeVries, M.A Candidate, Anthropology, the University of Western Ontario

Letter of Information

1. Invitation to Participate

You are being invited to participate in a research project conducted by Megan DeVries from the University of Western Ontario. This project is designed to gather information about Aboriginal consultation in the cultural resource management industry in Ontario. You have been asked to participate in the study because of your professional affiliation with the industry.

2. Purpose of the Letter

The purpose of this letter is to provide you with information required for you to make an informed decision regarding participation in this research.

3. Purpose of this Study

The purpose of this study is to assess participants' opinions on the current state and usefulness of Ontario policy regarding consultation during archaeological work.

4. Inclusion Criteria

Individuals who have participated in a professional capacity in the cultural resource management industry in Ontario are eligible to participate in this study.

5. Study Procedures

If you agree to participate, you will be asked participate in an interview. It is anticipated that the entire interview will take 1-2 hours and be completed in one session. The interview will be conducted in a location convenient to you, mutually decided on before the session between you and the interviewer.

6. Possible Risks and Harms

There are no known or anticipated risks or harms associated with participating in this study.

7. Possible Benefits

You may not directly benefit from participating in this study but information gathered may provide benefits to society as a whole which include opening a dialogue about Aboriginal consultation in the cultural resource management industry in Ontario.

8. Compensation

You will not be compensated for your participation in this research.

9. Voluntary 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 penalty. Additionally, even if your company or community has given its approval for your participation in the study, you may still withdraw at any time with no penalty.

10. Confidentiality

All data collected will remain confidential and accessible only to the investigators of this study. If the results are published, your name will not be used. If you choose to withdraw from this study, your data will be removed and destroyed from our database. While we will do our best to protect your information, there is no guarantee that we will be able to do so. Although unlikely, someone may be able to link the data and identify you.

11. Contacts for Further Information

If you require any further information regarding this research project or your participation in the study you may contact:

Peter Timmins at [REDACTED]

Megan DeVries at [REDACTED]

If you have questions about your rights as a research participant or the conduct of this study, you may contact:

The Office of Research Ethics at [REDACTED]

12. Publication

If the results of the study are published, your name will not be used. If you would like to receive a copy of any potential study results, please contact:

Megan DeVries at [REDACTED]

13. Consent

Completion of the attached Consent Form is indication of your consent to participate.

Appendix 3: Letter of Consent.



Project Title: Cultural Resource Management and Aboriginal Engagement: Policy and Practice in Ontario Archaeology

Principal Investigator: Peter Timmins, Ph.D., Anthropology, the University of Western Ontario

Student Researcher: Megan DeVries, M.A Candidate, Anthropology, the University of Western Ontario

Consent Form

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

Participant's Name (please print): _____

Participant's Signature: _____

Date: _____

Person Obtaining Informed
Consent (please print): _____

Signature: _____

Date: _____

Appendix 4: Interview Questions.

Interview Questions:

Archaeologists

Introduction

1. Ask for their personal background. Who are they? How long have they been working in the field of CRM? Where did they get their training/experience?
2. Ask for some background about the company. How large is it? How many projects does it undertake a year? Where do they generally work?

Archaeology, General

3. Does the company have its own policies on engagement? (E.g. what is to be done when pre-contact artifacts, settlements, or human remains are found.)
4. What are the provinces requirements for engagement in archaeology?
 - a. Tell me about the Ontario Heritage Act, the Ministry of Tourism, Culture, and Sport, and the Standards and Guidelines.

Engagement, General

5. What is the difference between consultation and engagement?
6. Tell me about the process of engagement. When does it start? How does it proceed? When does it end? (How do you know when it is done?)
 - a. What triggers engagement?
 - b. What is the “duty to consult”?
7. Who is in charge of the engagement process? Who decides how engagement will proceed? Who makes the final decision?
 - a. What is the role of descendent community in this process?
 - b. How does the descendent community provide feedback to you? To the proponent?
8. With which descendent communities do you often engage?
9. How do you as the archaeologist know who to contact in the descendent community?
10. Who is involved in the engagement process at your company? The principal? The field director? The field technicians?
11. Do you teach your policies on engagement as part of your training for new employees? What do you tell your employees about their role in engagement (if they have one)? What do you expect them to do when they engage descendent communities or interact with field monitors?
12. How do you know what is required of you in terms of engagement? Did you learn in school, from your company, from the province, etc.?
 - a. If you are uncertain about what is required of you, where do you look for information about how to proceed?

13. How often do you engage with descendent communities? In what circumstances?
How many times a year? How long does engagement last?

Engagement, Standards and Guidelines

14. Please tell me exactly how engagement is supposed to occur within the framework of the provincial policy (e.g. the Standards and Guidelines)?
15. In what ways does company meet the requirements of the Standards and Guidelines when it comes to engagement?
- a. Do you work with field monitors on project? What do they do? What issues does working with a monitor in the field present?
16. Would you say your company moves beyond the requirements of the Standards and Guidelines in its engagement practices?
17. What was engagement like before the Standards and Guidelines were put into place?
- a. How much are the Standards and Guidelines responsible for the nature of engagement that takes place today?

Other Issues in Engagement

18. When first beginning the engagement process, what are the first thoughts that cross your mind?
19. Do you have any memorable experiences about engagement that you wish to share?
20. How much responsibility lies on the proponent when it comes to engagement? How much responsibility lies on you? Or the descendent community?
21. If you could, how would you change the current engagement policy put in place by the province?
22. Do you have any other examples or stories about engagement which you would like to discuss, which have not already been covered?

Other and Misc.

23. How are the costs of engaging a descendent community covered in the project? How are the costs for the descendent community covered?
24. What is the most exciting aspect of working with a descendent community on a project? The most frustrating?
25. What is the number one most common complaint you hear during engagement with descendent communities?
26. Are there any other specific concerns you would like to discuss?

Interview Questions:
Aboriginal Community Representatives

Introduction

1. Ask for their personal background. Who are they? How did they get involved in the administration, with archaeological engagement specifically? How long have they been in this position?
2. Ask for some background about the community. How many people does it include? What are its traditional territories? What are its priorities today?

Archaeology, General

3. What are the community's policies on archaeology? On artifacts and human remains?
4. What are the provinces requirements for archaeology?
 - a. Tell me about the Ontario Heritage Act, the Ministry of Tourism, Culture, and Sport, and the Standards and Guidelines.

Engagement, General

5. What is the difference between consultation and engagement?
6. Tell me about the process of engagement. When does it start? How does it proceed? When does it end? (How do you know when it is done?)
 - a. What triggers engagement? For the archaeologist? For you?
 - b. How often do you field requests for engagement?
 - c. What is the "duty to consult"?
7. Who is in charge of the engagement process? Who decides how engagement will proceed? Who makes the final decision?
 - a. What is the difference between dealing with the proponent versus the archaeologist directly? How often do you deal with one or the other? Why would you deal with one and not the other?
 - b. How does the community provide feedback or communicate with the proponent? The archaeologist?
8. How do archaeologists know who to contact in your community?
9. Who is involved in archaeology in your community (i.e. just one representative, a council that is formed, most of the population)?
10. How do you know what to do as a representative of your community?
11. When involved in engagement, do you follow your own internal policy, the provincial policy, or a combination of both? Which would you prefer to follow?

Engagement, Standards and Guidelines

12. How does engagement occur within the framework of the provincial policy (e.g. the Standards and Guidelines)?
13. Who created the Standards and Guidelines? Was your community asked for their input?
14. In what ways is your community involved in archaeology within the framework of the Standards and Guidelines?
15. In what ways does your community try to get involved in archaeology beyond the requirements of the Standards and Guidelines?
 - a. Do you have field monitors? What do they do? Are they effective in giving your community more insight/control over what happens in the field?
16. What was engagement like before the Standards and Guidelines were put into place?
 - a. How much are the Standards and Guidelines responsible for the nature of engagement that takes place today?

Other Issues in Engagement

17. What would happen if you refused to participate in the engagement process?
18. Do archaeologists ever chose not to engage with you when you think they should have? Ask for examples.
19. What is your relationship with archaeologists in general? With specific firms? (Please don't give names, just "Firm A".)
20. If you are unsure about your role or rights when it comes to engagement, where do you look for more information?
21. Do you have any other examples or stories about engagement which you would like to discuss, which have not already been covered?

Beyond Engagement

22. According to the Ontario Heritage Act, archaeological resources are held "in trust for the people of Ontario." Do you agree or disagree with this? Who owns Aboriginal artifacts?
23. How does the presence of human remains change your response to the engagement process?

Other and Misc.

24. Is being involved in archaeology costly for your community? Who covers that expense?
25. What is the difference between archaeology and heritage? How does one impact the other?
26. Are there any other specific concerns you would like to discuss?

Curriculum Vitae

Name: Megan DeVries

Post-secondary Education and Degrees: Wilfrid Laurier University
Waterloo, Ontario, Canada
2009-2012 B.A.

Honours and Awards: Province of Ontario Graduate Scholarship
2012-2013

Related Work Experience

Archaeological Field Technician
Archaeological Services Inc.
2011, 2012

Teaching Assistant
The University of Western Ontario
2012-2014

Papers:

DeVries, Megan.

2014 *Cultural Resource Management and Aboriginal Engagement: Policy and Practice in Ontario Archaeology*. Presented May 17, 2014 at the Canadian Archaeological Association Annual Meeting, London, ON.