

Custodians of the Past: Archaeology and Indigenous Best Practices in Canada

By

April Chabot

A Thesis submitted to the Faculty of Graduate Studies of The University of Manitoba
in partial fulfillment of the requirement of the degree of

MASTER OF ARTS

Department of Anthropology

University of Manitoba

Winnipeg, Manitoba

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Abstract

The current lack of federal heritage policy and legislation in Canada is examined through a comparative study with two other formerly colonial Commonwealth countries, Australia and New Zealand. The full responsibility for protecting the nation's cultural heritage has been left to individual provinces and a comparative study of policy and legislation across Canada is undertaken. The archaeological excavation at the site of the Canadian Museum for Human Rights has proven to be one of the most significant in the province of Manitoba and serves as the case study for this research. All of this comparative research aspires toward a single goal; the creation of a best practices model broadly applicable to the provinces of Canada, which aims to provide a basis for the creation of federal heritage policy and legislation in meaningful consultation with Indigenous communities.

Acknowledgments

I would like to acknowledge the many people who generously contributed to this research.

This thesis could not have existed were it not for the generosity of spirit and wisdom shared with me by those who participated in this study, sharing their knowledge and perspectives candidly, nudging me in the right direction and/or suggesting who to speak to next. Your contributions were invaluable.

Speaking of nudging, I am convinced this research would not have ever come to fruition without the endless patience and kindness of my Thesis Advisor, Dr. Kent Fowler and those on my committee, Dr. Kathleen Buddle and Dr. Jarvis Brownlie, who also acted as my external on the committee. Whenever life started getting in the way, a conversation with Dr. Fowler always got me back on track and motivated again.

Dr. Leigh Syms has built a long career in Manitoba archaeology and in the minds of those who know him, is synonymous with Manitoba archaeology. Dr. Syms has been instrumental in the success of more careers than there is time to mention and I greatly appreciate our conversations.

This thesis benefitted considerably from the contributions of Neil Ferris, through his personal time, advice and published work. I already admired and respected his work when I had the chance to meet him in 2012. He was kind enough to sit down with me at the beginning of this process to share his insights and encouragement. I am also grateful for the books he loaned to me from his personal collection for my research.

I would also like to acknowledge the contributions of Vanda Fleury, a fellow student researcher who had also compiled information related to my topic and generously shared her research with me.

At this time, I would like to acknowledge the following awards from the University of Manitoba:

Anthropology Department Thesis Write-Up Award (2014); Department of Anthropology Scholarship (2012); Faculty of Graduate Studies Travel Award (2012); Faculty of Arts Graduate Student Conference Travel Award (2012).

Dedication

I dedicate this thesis to my three loving children Joel, Lionel and Amber, who have been with me and were my main source of support and laughter throughout this process. Their confidence in me kept me going through many dark days when the only illumination came through the computer screen. As always, you just make my life so much better.

Louis Speaks to Gabriel Through the Ground

by Warren Cariou

They're building a museum, old friend,
across the river from my bones.
The pilings reach deeper than history
and the cranes stretch higher
than the echo of a drum.
Night and day the cement trucks roll
as if there was no one beneath them.

It makes me envy you:
your place beneath the stone, your
tranquil riverbank that once absorbed
the thwack of the Gatling gun.

Bullets are less dangerous
than pile-drivers, believe me.
The only museum near you
has something of you in it.

But here I see nothing I recognize,
only flashing lights and punctured earth
and a bland directionless goodwill
that crushes the bones of our dead.

They say all the walls will be clear
so someday I'll watch the tourists
staggering through the exhibits
sick with the iniquities of elsewhere.
A crystal palace, they call it,
transparent cathedral of light.
But to me it's just a glass house.

With so many windows, I wonder
if anyone will ever look outside
and see our people walking here
leaving sage and tobacco
for the old ones.

Warren Cariou. Four poems. *Prairie Fire*, vol. 34 no. 1, Summer 2013. 34-40



Building of the Canadian Museum for
Human Rights (CMHR)

Photo Credit: April Chabot

Table of Contents

Abstract.....	ii
Acknowledgments.....	iii
Dedication.....	iv
Table of Contents	vi
List of Tables.....	ix
List of Figures.....	x
List of Appendices	xi
Chapter 1. Introduction.....	1
Chapter 2. Archaeology in Manitoba.....	12
Introduction	12
History of archaeology in Manitoba	12
Permit System in Manitoba	16
The Forks and The Canadian Museum for Human Rights	18
Timeline of construction (CMHR)	20
Conclusion	24
Chapter 3. Materials and Methods.....	34
Introduction	34
Public policy and legislation	35
Methods	37

<i>Methods – Study Area</i>	38
<i>Methods – Data Collection</i>	39
<i>Methods – Research instruments</i>	44
Methods – Data Analysis	46
Methods – Strengths and Weaknesses	46
Summary	48
 Chapter 4. Comparative Study of Policy and Legislation in Canada	 49
Introduction	49
Provincial Policy and Legislation	50
Constitution	53
Federal Policy and Legislation	54
<i>New Zealand</i>	58
<i>Australia</i>	61
Common Law	63
Indian Act	64
Conclusion	65
Introduction	69
Participant Interviews/Discussion	71
<i>Indigenous – Themes</i>	71
<i>Archaeologists - Themes</i>	74
<i>Government – Themes</i>	76
<i>Academic – Themes</i>	78
<i>Development</i>	81

Conclusion	83
Chapter 6. Conclusion: Best Practices	87
Introduction.....	87
Directions for the future	88
Best Practices.....	93
Summary and Conclusion	97
Bibliography	100
Appendices.....	109
Appendix 1: Definitions and terms.....	110
Appendix 2: Recruitment Email and Telephone Scripts	113
Appendix 3: Consent forms on University of Manitoba letterhead 1/3	114
Appendix 4: Questionnaires 1/9.....	117
Appendix 5:List of Canadian provincial legislation 1/17	126
Appendix 6:List of federal legislation Canada, New Zealand, Australia	143
Appendix 7: CMHR Factsheet.....	144

List of Tables

Table 1. Summary of key findings made during the CMHR Archaeology Project.	25
Table 2. Timeline of the construction of the CMHR.	26
Table 3. Summary of federal legislation in Canada, Australia and New Zealand concerning cultural heritage	67
Table 4. Summary of provincial legislation in Canada concerning cultural heritage.....	68
Table 5. Summary of the interview themes	84

List of Figures

Figure 1. Flow chart of Heritage Resource Impact Assessment (HRIA) process (Manitoba Culture, Heritage and Citizenship 1995)	30
Figure 2. An aerial photo of The Forks today (Source: http://www.canadianbucketlist.com/wp-content/uploads/2015/08/the-forks-dan-harper-tourism-wpg-700x420.jpg)	31
Figure 3. A Visual History of The Forks (Source: modified after www.theforks.com).....	32
Figure 4. Aerial view of the parcel of former Via Rail yards that became designated as "The Forks." (Source: https://www.flickr.com/photos/manitobamaps/3899914667/in/photostream/).....	33
Figure 5. Photo of a human footprint recovered from site DiLg – 33 (Source: Kroker 2010:118)	34

List of Appendices

APPENDIX 1: Definitions and terms	110
APPENDIX 2: Email and telephone recruitment scripts	113
APPENDIX 3: Consent forms on University of Manitoba letterhead	114
APPENDIX 4: Questionnaires.....	117
APPENDIX 5: List of Canadian heritage legislation	126
APPENDIX 6: List of federal heritage legislation: Canada, New Zealand and Australia..	143
APPENDIX 7: CMHR Factsheet.....	144

Chapter 1. Introduction

Both Colonialism and culture contact are suited to anthropological and archaeological analyses...a key aspect of colonialism is material, as objects themselves are part of power and status differentials (Paterson 2009:245)

Archaeological investigation is guided by policy and legislation that governs practices (in the private as well as public sphere) known as cultural heritage resources management (CRM). In this thesis, the term “cultural heritage material” shall be used to describe archaeological remains instead of “resources” to indicate that this material is finite and precious, not to be conflated with either renewable or non-renewable resources that can be mined from the earth. This is reiterated in the next chapter. Further terms and definitions are covered in Appendix A.

In Canada, most archaeological work is conducted by archaeologists working for cultural resource management (CRM) firms in the private sector. CRM companies liaise with clients who are often private land developers, as well as Indigenous groups or the government sector. Chapter four examines the impact of policy and legislation on archaeology and Indigenous communities in Manitoba.

There is a tendency to romanticize archaeology through popular films like Indiana Jones, or by imagining teams of archaeologists toiling in the field under the hot sun in exotic locales. Much of the work involved in the study of archaeology takes place before and after the fieldwork has been completed, behind the scenes so to speak. While there is certainly much toiling and

sunscreen involved, fieldwork ultimately represents only a fraction of the duties that archaeologists perform on any given project.

This thesis examines those crucial stages in the archaeological process as they took place on one of the most significant sites in Manitoba: the site where the Canadian Museum for Human Rights (CMHR) now stands at the Forks in Winnipeg. This site will be covered in Chapter Five.

Before an archaeologist enters the field, there is much planning and preparation involved. There is background research to be done; permits to apply for and methodology carefully outlined, not to mention project budgets and a myriad of other project management tasks that must be completed. There are standards and guidelines to be met; policy and legislation that dictate what is or is not allowed to happen during an archaeological investigation or excavation and specific requirements for all levels of personnel allowed to work on the site. Permits must be applied for and received based upon often stringent criteria. These criteria vary by province within Canada, which will be discussed briefly in a later chapter. Meetings with the proponents or academic institutions as well as local Indigenous groups are held to negotiate each step that will be taken in the field. The procedures that are in place attempt to ensure that the best possible outcome is achieved for those involved. For the purposes of this research, groups involved within the various stages of land development and archaeological inquiry shall be referred to as “stakeholders” due to their vested interests in the outcome of a project.

Beginning at the national/federal level, Canada lacks cohesive federal policy and legislation regarding Indigenous cultural heritage property. Thus, policy initiatives and resulting legislation have been left largely to the individual provinces and territories. (Bell 2009:98) states:

Law reform entails either the amendment of existing legislation or the creation of new legislation. Provincial and federal legislation affecting ownership and trade of Aboriginal material culture is largely dated and has not kept pace with developments in the area of Aboriginal rights law.

This has led to the development of provincial policies and practices that vary in the degree of accountability for government, development and cultural resource management firms from province to province. Consequently, Watkins (2003:277), quoting Syms, emphasizes that “...there is no leverage to hold the province accountable for bilaterally funded projects, no precedents for the provincial politicians to become used to funding large scale mitigations projects and no heritage legislation for federal lands, including reserves”. This point is exemplified by the archaeological case study examined for this thesis: the excavation and construction of the Canadian Human Rights Museum at the Forks site in Winnipeg.

As an applied archaeology project, this thesis brings into focus the policies and legislation that govern First Nations’ cultural heritage material within Canada and Manitoba specifically. The research undertaken includes a brief comparative analysis of provincial policy and legislation across Canada and to other Commonwealth countries such as Australia and New Zealand at the federal level, with the aim of creating a best practices model broadly applicable to the provinces of Canada. It is imperative that Indigenous interests as major stakeholders in any archaeological investigation dealing with their cultural heritage be included in any future considerations of policy and legislation at all levels of government. It is equally imperative that Indigenous voices and principles are given *equal weight* in the process of developing cultural heritage policy and legislation going forward. This thesis argues for the need to move past the bare minimum requirement of engagement with Indigenous people currently in place within

Canada, toward being reflexively and truly inclusive at each step throughout the process. It is a disservice to everyone involved in the archaeological process, irrespective of their role, to simply pay lip service to the notion of engagement and inclusivity while practices remain unchanged.

The literature also demonstrates a tendency to refer to repatriation (of cultural heritage material or human remains) claims of “North American Indians” where it is in fact almost exclusively a discussion of the debate in the United States regarding NAGPRA legislation. In this instance, North America is used as a synonym for the United States and repatriation refers specifically to cases subject to NAGPRA legislation. Thus, it is a very different debate for many reasons from the issue of heritage conservation and Federal legislation within Canada and other Commonwealth countries, which are the focus of this research and is not considered here. NAGPRA legislation does not apply to all of North America, only the United States. In Canada and other Commonwealth countries, repatriation is but one of many issues related to cultural heritage.

The objective of this research as noted earlier is to ultimately establish a best practices model for the recovery of Indigenous cultural heritage material within Manitoba. The specific goals of the project are to (1) assess the policies and practices utilized by public and private sector archaeologists governing Indigenous cultural heritage property in Manitoba, (2) broadly evaluate these approaches with those adopted provincially across Canada as well as with other Commonwealth countries such as Australia and New Zealand at the federal level, and (3) seek out and include Indigenous concerns within the quest for a best practices model. The case study that outlines which policies and guidelines were applied during the excavation and construction of the Canadian Human Rights Museum shall draw these elements together.

In the following sections the rationale, methods and materials, research questions and the significance of this applied archaeological project shall be discussed in greater detail to provide an overview of the upcoming chapters.

Chapter Two provides an overview of the history of archaeological exploration in Manitoba and the area now known as The Forks. In Canada, the term Indigenous people encompasses many extremely diverse communities that cover vast, geographic areas, in Australia they are known as Aborigines and in New Zealand as Maori.

The recovery of Canadian Indigenous cultural heritage is situated within a context of colonialism insofar that it cannot be separated from the current struggle of indigenous populations to obtain control and exercise influence over their cultural heritage. To appreciate the position of both archaeologists and Indigenous people working together toward a truly postcolonial period, it is necessary to first outline the legacy of colonialism which continues to impact both policy and practice. Atalay (1996:282) outlines how a colonial past has informed and continues to inform the present reality faced by Indigenous people in stating:

The colonial past is not distinct from today's realities and practices, as the precedents that were set continue to define structures for heritage management practices and have powerful continuing implications for Indigenous peoples in North America and elsewhere precisely because they disrupted the self-determination and sovereignty of Indigenous populations with respect to their abilities to govern and practice their own traditional forms of cultural resource management.

To indicate the continued influence and impacts of colonialism in contemporary Canadian society (as well as other countries considered 'post-colonial'), I introduce the term "Colonial Present" to this thesis. It is the point where my research diverges from some of the

literature presented, with the exception of Figueira (2000:252), who states, “All the essentialisms of the precolonial and colonial past are harshly criticized but cannot be done away with because they still embody a reality that is deeply embedded in the present”. Hall’s (2011:296) statement suggests the usefulness of such a term as well as the importance of applying postcolonial theory to the resulting dialogue; “...placing colonial experiences in conversation with postcolonial conditions may help us survey the problem space of colonial history with fresh eyes and instruments, in ways that locate salient historical questions *because of their enduring resonance in the present*”. Croucher and Weiss (2011:10) likewise describe the need for recognition of what is described here as the “colonial present”, as well as the need to examine it through the lens of postcolonial theory; “Our primary interest...is the utilization of postcolonial theory as it pertains to helping to understand the complex and intertwined role of capitalist and colonial formations over the past several hundred years, and as can be argued to continue into the present”. Thus, the term “colonial present” shall be used to describe the ongoing impacts of colonialism on First Nations and Indigenous peoples living in what are considered postcolonial societies and the need to recognize these impacts within archaeological contexts. Countries such as Canada, Australia and New Zealand share this history of colonial domination in different ways and are still living with the consequences imparted by colonial conquest.

Chapter Three outlines the materials and methods used to conduct the research and personal interviews for this thesis. The results of the interview process with the representatives of the major stakeholders involved are included in this discussion with the hope of offering threads to be picked up for further investigation by future researchers.

Materials include Canadian provincial and territorial policy literature, examples from Australian, Canadian and New Zealand case law as well as the materials used in the data

collection process itself, such as specific recording devices and interview questionnaires. The methods employed to achieve the goals of this research are threefold. First, a cursory examination and analysis of current provincial and territorial policy across Canada in comparison to that of Australia and New Zealand is conducted. Next is the application of this analysis to the case study: the construction of the Canadian Human Rights Museum at the Forks in Winnipeg. This stage also involves participant interviews to gain some perspective of each of the identified stakeholder groups. Lastly, a comparative analysis of these countries provides the opportunity to examine and develop a best practices model with respect to provincial heritage policy and supporting federal heritage policy and legislation.

Within the existing policy structure, the weak points as well as the strong points are sought. How well are recommendations from archaeologists and Indigenous under current policy and legislation utilized by land development interests? What are the barriers stemming from direct or indirect policy measures that conflict with the ultimate goal of cooperation between these various viewpoints? Are the best interests of these groups reflected both within current policy and practice? Are there key elements that are missing and that should be considered for amendments to future policy and legislative initiatives? Ultimately, are there greater burdens (financial, political, etc.) placed on some groups but not others? For example, are the measures currently in place to protect cultural heritage material adequate while not directly or indirectly applying pressure to one group over another? The key players or groups with vested interest in this particular case study are represented by Indigenous groups, archaeologists, government, and land development companies.

It is my hope that by undertaking this research I shall be able to build on positive, established relationships between these diverse stakeholder groups and to contribute by including

Indigenous groups in the search for a best practices model. In this way, it is the intent of this study to give back to communities by ensuring Indigenous communities have a voice in the proposal of new policy initiatives and best practices models regarding the regulation of their cultural heritage material.

Chapter Four explores both provincial and federal level policy in Canada, paying particular attention to the potential impacts on Indigenous communities in relation to the practice of archaeology and the management of cultural heritage. A discussion is initiated regarding Indigenous groups as well as archaeologists in relation to these policy directives within Manitoba as well as the outcome of the ongoing effects of the colonial present in Canada.

As noted by Murray (2004:7), settler societies and their resulting nations are complex entities to be examined through multiple lenses. To achieve this, Murray (2004:7) argues that we must “integrate our global comparisons...with the analysis of the systemic relationships between the ‘new worlds and the ‘old’”. Such reasoning underpins the reasoning of this thesis as well and it follows that a comparative study, however brief, of other formerly colonial countries should accompany any discussion of the Canadian context. Australia and New Zealand are discussed in relation to Canada. This presents a significant opportunity for further research as it is beyond the scope of what can be adequately explored in this research.

The case study in Chapter Five examines the application of current policies and guidelines in place within Manitoba to a particular archaeological site. This chapter examines the construction of the Canadian Museum for Human Rights in Winnipeg and provides an excellent case study to illustrate the issues faced from an archaeological as well as Indigenous and land development perspective. The Canadian Human Rights Museum provides an opportunity to examine not only existing policy regarding items of cultural heritage significance in an

archaeological context, but the ways in which policy impacts the major stakeholders and is enforced through current legislation throughout the process of development. It provides a concrete example of how policy and legislation are interpreted and engaged by the major stakeholders involved.

Through an examination of the archaeological processes and provincial level legislation and heritage policies guiding these processes prior to and during construction of the museum, the strengths and weaknesses of current provincial legislation shall be

illuminated with the aim of bringing clarity and a sharp focus to the issues as they pertain to Manitoba. The goal is to determine how federal legislation could complement and enhance existing policy and legislation within Manitoba for the benefit of all stakeholders involved.

The policy initiatives aimed toward addressing the questions raised by the debate about current cultural heritage resources management have direct implications for the collection, study and protection of cultural heritage property for both archaeologists and Indigenous communities.

Some of the most compelling questions this research attempts to answer are:

1. Is the lack of a cohesive Federal policy or legislation regarding the protection of cultural heritage property a detriment to Canada or an opportunity for provinces to strengthen their policies and practices?
2. Where do the issues of recovery and protection of Indigenous cultural heritage material fit within Indigenous cultural landscapes?
3. What is important to Indigenous groups in dealing with the protection of cultural heritage material?
4. In the future, how should Manitoba specifically and the rest of Canada deal with issues of ownership of cultural heritage material?

5. Is there a best practices model that can be developed by studying other Commonwealth countries in comparison to the status quo in Canada?

The fact that this research takes place within Manitoba where many consider little cultural heritage regulation to be in effect and where awareness of Indigenous worldviews are not necessarily taken into account, particularly in northern regions, is significant. The case study provides an avenue to explore the perceptions held by some both inside and outside the archaeological profession. Where there are competing or conflicting interests between Indigenous groups, archaeologists and land developers, resolutions are yet to be found. The development of a best practices model that is broadly applicable to Canada could provide a way forward toward new solutions.

Finally, Chapter Six briefly provides a recap of the salient points found in the previous chapters and presents the case for a best practices model that could be beneficial within Canada moving forward.

The issue of creating federal level policy and legislation in Canada to protect cultural heritage material has stagnated for well over two decades. Previous attempts to address this serious issue have failed, no doubt in part due to a lack of knowledge or agreement about the best way to proceed. A comprehensive best practices model based on comparative study among other Commonwealth nations that have faced and resolved these issues seeks to correct this problem, heal the current paralysis, and provide the mechanism to move forward with the creation of federal policy and legislation that protects Canada's most precious of cultural heritage material.

The main benefit of this study is that through the creation of a best practices model for the protection of cultural heritage material informed by cross-cultural and comparative study that

is inclusive of Indigenous perspectives, it attempts to provide a comprehensive approach to the creation of federal and provincial policy and legislation regarding this issue. This research seeks to constructively include Indigenous viewpoints into the creation of a best practices policy model that reflects the interests of Indigenous people, private and public sectors, as well as the archaeological community. Once the links between these diverse interests and countries have been established, it is the endeavor of this research to propose a best practices model for the development of future heritage resource management policy and legislation that is broadly applicable across Canada.

Many scholars and CRM specialists in the academic, public, and private spheres have noted lack of a federal policy regarding these interests and issues as a detriment to Canadian archaeological standards (Bell 1992, Eden 2005; Ferris 2003, Hanna 2003, Watkins 2003). This is simply not acceptable in a country rich with history, traditional knowledge, and Indigenous cultural heritage material. In order to reflect this richness of cultural diversity, our policies and legislation, particularly those that aim to protect cultural heritage material, must move beyond colonial influence into a future that includes the multiple worldviews informing the core of Canadian experience.

Chapter 2. Archaeology in Manitoba

Introduction

This chapter discusses the history of archaeological research and development in Manitoba as it led to the development of policy and legislation. The steps involved in archaeological investigation are outlined and the difference between the two types of archaeology practiced today are explained.

History of archaeology in Manitoba

Manitoba has a long and rich history of archaeological exploration and investigation, even predating the incorporation of the province into Canada. Manitoba got a head start on archaeological explorations on the prairies beginning as early as 1859 and took off after 1879 with the help of government sponsorship and the aid of the Historical and Scientific society (Dyck 2009:1). By contrast, it is generally thought that the rest of the prairie provinces did not start explorations in this discipline until the late 1930s (Dyck 2009:1). In 1867, the British North America Act passed in London, consolidating most of its eastern colonies into a single federation that became the Dominion of Canada (Dyck 2009:11). In the 1860s a small village of settlers had been established next to Fort Garry. By 1866, the village became Winnipeg (Dyck 2009:11).

The 1870s saw even more waves of settlers coming into Winnipeg, and this growth brought a renewed interest in the archaeology of Manitoba (Dyck 2009:11). Two important events resulted. In 1877 the federal government passed an act that created the Geological Survey of Canada (GSC) (Dyck 2009:12). The GSC was charged with the assignment to begin “a full and scientific study of the natural history of the country, including aboriginal history” (Dyck

2009:12). The Historical and Scientific Society Manitoba (HSSM) was established on January 23, 1879 in the courthouse of Winnipeg. The HSSM is significant because it represents the first “public enterprise...operating under a provincially incorporated and funded body” (Dyck 2009:17). Their mandate was the “collection and preservation of publications, manuscripts, antiquities, curiosities and specimens of natural history, and the formation of a library and museum all pertaining to lands north and west of Lake Superior” (Dyck 2009:12). Dr. Robert Bell was the first visiting scientist, a geologist with GSC, to join the HSSM in 1879. He would later supervise archaeological excavations of a mound in St. Andrews on the west bank of the Red River (Dyck 2009:12). While conducting work for the HSSM, Bell’s team also included traditional knowledge in their undertaking by learning about the mound legends from local “elderly Native women” from nearby communities (Dyck 2009:13). This is most likely the earliest incorporation of traditional knowledge within archaeological field work in Manitoba.

However, there are parallels between Manitoba and the other prairie provinces, such as a period of sporadic archaeological work and private collecting that characterized interest in the last half of the 19th and early 20th century (Dyck 2009:2). Things changed in the post-World War II era when “the Historical and Scientific society of Manitoba employed Chris Vickers as a part-time archaeologist in the late 1940s and early 1950s” which added “considerable new information and systemization of archaeology” to the province (Dyck 2009:2). Vickers was the first full-time professional archaeologist in Manitoba. This also brought about the hiring of J. William Oakes by the University of Manitoba in 1962 (Dyck 2009:2).

The period of 1960-1975 has been referred to as a “Boom” period in Canadian archaeology (Forbis et al. 2015). The trends at the time were aimed toward the expansion of museum programs and increased funding for archaeological research (Forbis et al. 2015). Jobs in

the field of archaeology were plentiful and coincided with an increased interest in conservation issues at the federal level (Forbis et al. 2015). The Canada Council began supporting archaeological endeavors in 1961, “followed by the National Research Council (briefly) and the Social Sciences and Humanities Research Council of Canada” (Forbis et al. 2015). The Social Sciences and Humanities Research Council of Canada are a mainstay today for all research conducted in the Social Sciences, including archaeology, although the heyday of the 1960s and 1970s levels of support are long gone. Due to this robust boom period in archaeology, professional archaeologists across Canada “came together to form the nationwide Canadian Archaeological Association (CAA) in 1968, which continues to be a vital organization allowing the sharing of archaeological research among peers (Forbis et al. 2015).

By 1971 there was a “substantial increase in [federal Archaeology Department] operating budget to launch a country-wide archaeological salvage program” in support of a “country-wide salvage program” and the “Archaeology Department was renamed the Archaeological Survey of Canada” (Forbis et al. 2015). Out of the increased budgets for archaeological salvage programs and greater interest in conservation, grew the field of “salvage archaeology,” or cultural resource management (CRM).

The 1980s saw less funding for academic projects but still provided funding for CRM projects (Forbis et al. 2015). The trend now moved toward “increasing public awareness and appreciation of our nation’s cultural heritage” (Forbis et al. 2015). However, since the 1990s, declining government support and funding has led to stringent funding cuts resulting in fewer professional positions within offices such as Parks Canada as well as fewer grants for student researchers. The rapid growth and legacy of the boom of the 1960s and 70s archaeology has firmly established the field within a broader framework that now includes the concerns of

Indigenous communities (Forbis et al. 2015). Another outgrowth of this boom was industry-driven changes such as better quality dating techniques for artifacts and the sheer quantity of research produced. For example, the James Bay Project in Québec, the Nipawin Reservoir Heritage Study in Saskatchewan, the Site C Dam Project on the Peace River, BC, and the Northern Oil and Gas Action Plan in the Mackenzie Delta (Forbis et al. 2015).

Today archaeological work is split between work carried out by academics and students who are funded through their universities or other grant sources on the one hand, and private cultural resource management companies (CRM) on the other. In this study, it is CRM archaeology that is the subject of discussion since the majority of archaeological work today is undertaken by private CRM firms who hire archaeologists as their staff. Typically, academic archaeology projects have larger budgets and can allocate more time to the students who work in the field and the lab examining recovered artifacts as part of their field school or advanced training with professional archaeologists. As a training opportunity for students, more time and a slower pace are necessary. This is the type of project most people imagine constitutes archaeological work, but that is not the case. Funding sources for these sometimes large-scale projects is not readily available or easily obtained.

CRM, by contrast, is funded by private land development companies (the client or proponent) according to legislation, so time and budget constraints make up the bottom line. “Any work, activity, development or project that alters or disturbs the surface of the land is subject to review by Manitoba Culture, Heritage and Citizenship” (Manitoba Culture, Heritage and Citizenship:4). Work must be rapid and make the most efficient use of resources possible. This is the type of work that the majority of archaeologists do in the field. Just like any other private company competing for contracts, CRM owners or managers must establish a client base

and produce satisfactory results for them within the allocated time and budget constraints while meeting the professional requirements of their permit. Unhappy clients do not make return customers. When the work is concluded, a written report of the findings must be submitted both to the client and the Historic Resources Branch (HRB), or the equivalent set up in each province and territory (For the steps of the HRIA process, see Fig. 1).

This is another significant difference between academic and CRM archaeology. When an academic project is completed, the artifacts and reports are typically stored in the university, available for future researchers and presentations of the findings may be shown to local communities as well as at professional conferences. It is common for advanced students to produce their thesis or dissertation on the available information in subsequent years.

Within the corporate nature of CRM, reporting findings to local communities or presenting findings at professional conferences is rare; viewed as a luxury not available to many companies as they must move on to their next client. Summary reports of archaeological findings are only submitted to the client and local heritage branch. Although such reports are usually publicly available on the website of the local heritage branch, there is little awareness of them among the general public. Most CRM companies do send archaeological material for curation and storage to the local museum or university, whichever has room to store the items. This also allows students and researchers access to the collections.

Permit System in Manitoba

In Manitoba, archaeologists working in the private or public sector must apply for a permit from the Historic Resources Branch (HRB) to begin work. There are three phases of archaeological investigation in Manitoba, each requiring a different permit.

A phase one environmental impact assessment is required before progressing to the next two phases. Heritage resource impact assessments (HRIA) fall within this category as well. As an environmental assessment, this step falls under the purview of the CEA legislation. Dependent on the outcome of the initial phase one, further archaeological testing may or may not be required.

Phase two consists of systematic testing, which involves digging by shovel 40cm x 40cm square test pits to a depth below surface of 40 centimeters. If the test pits are negative, meaning no cultural heritage material is found, then no further testing is required and this will be reflected in the report. If the test pits are positive, meaning cultural heritage material is discovered, then the next phase of investigation is required.

Phase three is the mitigation of a site based on findings from the preliminary testing. The permit issued by the HRB dictates how mitigation must proceed and what is required of the mitigation process. All parties are aware and have agreed to the conditions of the permit. Mitigation may involve digging 1m x1m square excavation units by shovel and/or trowel or some other form of excavation outlined in the permit. Once mitigation is completed, the archaeologist in charge of the project will let their client and the HRB know what steps must be taken to avoid destroying the archaeological site. Their findings along with recommendations are written up in a report and submitted to both the client and HRB within a given timeline after completion of fieldwork; typically, the following spring. One of the most notable cases where CRM and public archaeology have been conducted in Manitoba is the Forks in Winnipeg. The impact of one of these sites, designated by the Provincial Borden number as DiLg-33, which now sits under the Canadian Museum for Human Rights (CMHR), is the focus of this thesis (Fig. 2).

The Forks and The Canadian Museum for Human Rights

DiLg-33 is one of several other archaeologically rich sites collectively known as The Forks (NHSC). The Forks has been a meeting place for Indigenous groups and later European settlers for the past 6000 years (The Forks 2017). Thanks to archaeological investigations over the past 15 years and the oral traditions shared by Indigenous Elders, layers of cultural heritage have revealed the activities of early people at this site (The Forks 2017). Stone tools, pottery and even remnants of the once active fur trading posts have provided a glimpse into the lives of the people who camped and worked there (Fig. 3). With the growth of the Northern Pacific Railroad in 1888 and the establishment of Union Station during a massive wave of immigration into Winnipeg, followed by the High Line Main Track in 1911, the area became inaccessible to most for the next 100 years (The Forks 2017) (the former railyards can be seen in Fig. 4). In 1988, The Forks Renewal Corporation and The Forks National Historic Site of Canada (Parks Canada), once again established the area as a meeting place for diverse cultures (The Forks 2017). Since then, development of the many attractions at the national historic site have required environmental impact assessments. Many of those conducted since the 1980s were directed by Sid Kroker of Quaternary Consultants Ltd. who was also in charge of the archaeological investigations for the CMHR from 2008-2009. “Numerous other projects had recorded archaeological data in the nearby vicinity. A comprehensive list is provided in Archaeological Impact Assessment for the Proposed Canadian Museum for Human Rights at The Forks (Quaternary 2004a:1-2)” (Kroker 2010:1).

The initial environmental assessment of The Forks (NHSC) for the CMHR development was completed on behalf of The Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals in 2004 (Parks Canada 2007:15). “A Heritage Resource Impact

Assessment (HRIA) is a written evaluation of the effect that a proposed development project may have upon heritage resources or human remains at a site” (Manitoba Culture, Heritage and Citizenship 1995).

In 2003, Quaternary Consultants Ltd. operated by Sid Kroker, was contracted by the Friends of the Canadian Museum for Human Rights Inc. to conduct an impact assessment of the CMHR site. An initial comprehensive report entitled “Quaternary 2004a”, *Archaeological Impact Assessment for the Proposed Canadian Museum for Human Rights at The Forks*. “...examined data obtained from twenty-four assessment trenches located east of Waterfront Drive and between Water Avenue and the Forks Axial Pathway” (Kroker 2010:1).

Mel Falk and Associates issued a report to the Friends of the Canadian Museum for Human Rights Inc. in 2006 which examined compliance requirements in relation to the archaeological component of the site (Kroker 2010:1). In 2007, the “definitive requirements regarding archaeological resource management were encompassed in a report by the Canadian Environmental Assessment Agency and submitted to Western Diversification Fund which detailed compliance concerns under the Canadian Environmental Assessment Act” (Kroker 2010:1).

Archaeological investigations that took place at the CMHR site in 2008-2009 revealed thousands of artifacts as well as a perfectly preserved 800-year-old human footprint (Kroker 2010:118) (Table 1; Fig. 5). In total, 379 941 artifacts were recovered from excavations at the site. The site is known as a location that has long been important to Indigenous people who camped and later traded there (Kroker, 2010: i Executive Summary).

Timeline of construction (CMHR)

The following timeline of construction of the CMHR is based on my interview notes and the report submitted by Sid Kroker in 2010. I have separated the information by year for clarity and present a condensed form of the timeline in Table 2.

2003

In the fall of 2003, the Friends of the Canadian Museum of Human Rights hired Quaternary Consultants Ltd. to conduct a preliminary impact assessment of the proposed development area for the CMHR. A brief report of preliminary stratigraphic data was submitted by Quaternary Consultants (Quaternary 2003b) to the Friends and circulated to architects.

2004

A comprehensive report including 24 assessment trenches was compiled by Quaternary Consultants (Quaternary 2004a).

2006

Mel Falk and Associates submitted their report on the archaeological assessment to the Friends of the Canadian Museum of Human Rights in 2006.

2007

A report by the Canadian Environmental Assessment Agency was submitted to the Western Diversification Fund showing detailed compliance concerns under CEA legislation. During this time, the architects and engineers decide a basement is wanted for the CMHR. Originally there were no subsurface components beyond piles and grade beams to support the basal slab of the CMHR.

2008

In January, Sid Kroker, owner of Quaternary Consultants and the lead archaeologist for the project, was informed of the decision to include a large basement. The stipulations included:

- 1) Rectangular, 14, 400 sq. feet (1338 meters)
- 2) Downsize costs -changed basement to an L shape with 21.5m east/west by 14.4 m north/south. The northern extension is set at 11 x 10 meters
- 3) Long access brought down to 21 x 11 meters

On May 21, local Elders from Thunderbird House performed a blessing ceremony with pipes prior to the start of construction. It is the only formal ceremony to take place on site. On May 23, a contract is signed with PCL for construction services. On May 30, Permit A26-08 was issued as a separate permit to cover archaeological monitoring of construction components for the last half of the project.

The construction of the CMHR was split into two segments since it was known by all involved in advance that the land would transfer from provincial to federal jurisdiction. According to the participants representing the government, the understanding by all was that even once land transferred to federal jurisdiction, due to the lack of federal heritage legislation, provincial guidelines set out for the first segment would still be followed by CMHR. The first segment was covered by provincial legislation and the permit was issued to Sid Kroker on behalf of Quaternary Consultants Ltd., but the once the land transferred to federal hands, continued compliance was left up to the CMHR's discretion. This type of loophole is precisely the reason this thesis argues for federal heritage policy and legislation. It is an ethical red flag for anyone involved in the recovery and protection of cultural heritage to leave land developers to hold themselves accountable to provincial heritage permit regulations.

In June, permission is granted to begin planning in early June although planning was already underway since April of that year. June 27 marked the Official Media Day for the museum. PCL as the prime contractor for construction and the Friends of the Canadian Museum of Human Rights attempt to minimize budget costs by attempting to modify actions necessary to comply with the permit. As a result, the position for a Site Interpreter is eliminated, as is water hook-up and wet screening on site. The decision to include a basement for the museum is also cancelled. Instead, the southern portion of the basement area will be mitigated in addition to the area for freight elevators. Ten isolated excavation units are dug to a depth classed as Level 2 and then closed in this area.

In September, the project budget is capped and the basement eliminated altogether, leaving only a footing area for a service elevator. However, by the time the basement is cancelled, staff had already excavated four times the original budget allowed with more to go. The freight (service) elevator is 5 x 7.5 meters at the eastern end of the former basement. It is a depth of 2.2 meters depth below surface (dbs). On September 8, the CMHR board decides most of the excavation area will become research excavation since there is no impact to mitigate. The elevator footing area is mitigated 100% and the decision of an original target closure date for September 15th is now considered unrealistic. Eight cultural layers have been uncovered instead of three as expected.

November 5, 2008 is the last day of excavation. The heritage permit stipulates: exploratory, machine-assisted excavation of a 4 x 4-meter block below base of hand excavations are to be completed in the southwest corner of the project. The original plan to have the Manitoba Museum catalogue the recovered artifacts is scrapped due to the late start of excavation (due to flooding on site from heavy rainfall) and the fee charged by the Manitoba

Museum for the work. Instead, the University of Winnipeg produced a catalogue of artifacts tailored to the project. In total, 380 000 artifacts were processed, resulting in 25 000 catalogue numbers. On November 12, the backhoe arrives to excavate as per the permit.

2009

The mitigative parameters (survey boundaries) of the site could not be established until a legal land survey was completed to determine the elevation of the site. There is no available information as to why this was not completed prior to construction on the site.

Some of the problems encountered early on included:

A reduction in staff. Full field staff was initially supposed to consist of: one Project Director, one Lab Director, twenty-one field archaeologists, and six interns. However, there was a field staff shortage as time progressed for a number of reasons. It was also difficult to rent a trailer for the lab work on site, so a PCL trailer was used for a lab facility instead. Finally, a major problem was posed early on by flooding of the excavation area due to rain. This caused the delay and late start mentioned above. In the end, the Friends of the Canadian Museum of Human Rights, PCL and the Historic Resources Branch (HRB) contributed funding to finish the project, which allowed completion of field requirements as well as some analysis (carbon dates, residue analysis).

In his final recommendations, Mr. Kroker (Kroker 2010:552) expressed considerable concern and frustration with the process of excavation on the construction site at the CMHR:

At this time there is no point in writing several paragraphs of recommendations for the Canadian Museum of Human Rights Site. The organizations involved in the construction of the Canadian Museum for Human Rights have demonstrated that they will not be bound by the terms

of heritage permits. Recommendations for reasonable heritage resource management practices were ignored during and after the mitigative excavation project. More of the same would be as futile as King Canute railing against the tide.

Conclusion

The research for this chapter revealed a surprising fact. The conclusions drawn and recommendations made by Mr. Bell in 1885 over 130 years ago, while doing archaeological work in Manitoba are still relevant today and mirror that of this thesis! He too, called for more professional training for archaeologists and more involvement from the federal government in the study of cultural heritage (Dyck 2009:22). These issues will be discussed in detail in the final chapter of this study. To this day, archaeologists are waiting for the federal government to support the recovery and protection of cultural heritage. It is my hope we do not have to wait much longer.

Table 1. Summary of key findings made during the CMHR Archaeology Project.

- Recovered artifacts include over 13,000 ceramic pottery shards, with 121 vessels identified (between five and 10 of these have never been found anywhere before); 191 hearths; over 200 stone tools such as projectile points, scrapers, flakes, an adze, rare pallettes, hammerstones and groundstones; over 50 bone tools such as awls, spatulas, a double-pointed needle, harpoon, possible hoe fragments and squash knives; a rare shell tool; shell beads; pipe fragments (including one intact pipe); and evidence of a major bison kill.
- Two human footprints were found, including one very clear impression from a person who lived about 800 years ago, apparently wearing moccasins. This sparked a CMHR public event called “Amazing Feet” in 2009, where people were invited to leave behind their own foot and handprints.
- A complete female horse skeleton and fetus bones were found, believed to be from the Hudson’s Bay Company Experimental Farm of the mid-1800s. This is significant as much of the archaeological history from more recent times (fur-trade era) was destroyed during subsequent use of the site as a rail yard.
- A total of 379,941 artifacts were recovered by Quaternary in 2008 in a block excavation and another 33,000 artifacts recovered by Stantec during monitoring of construction and drainage work, primarily during 2009 when construction first began.
- Eight cultural levels were uncovered to a depth of three metres during the Quaternary block excavation, with radio-carbon dating tracing artifacts to 600 to 900 years ago, corresponding to what is known as the Late Woodland Period.
- The block excavation occurred over a 150-square-metre area beneath the Museum’s freight elevator footing and classroom spaces, contained in Root A. Because the building has no basement but was built on piles at grade, sub-surface impact was mainly confined to the elevator footing and drill holes for piles and caissons
- Excavators used a dry-screening technique and tools like trowels, sharpened teaspoons, grapefruit knives and dental picks. Water-screening was also done to recover tiny artifacts, botanical and faunal remains.
- Radiocarbon dating was conducted by Brock University in Ontario, the University of Laval in Quebec, the University of California and Beta Analytic in Florida. Residue analysis was conducted by the Paleo Research Institute in Colorado.
- The CMHR plans to integrate some of the archaeological findings into its public and educational programs, in close collaboration with Indigenous community representatives. Aspects of the project may also become part of Museum exhibits, but no decisions have yet been finalized. (CMHR News release 2013).

Table 2. Timeline of the construction of the CMHR.

2003

Fall – Friends of the Canadian Museum of Human Rights hire Quaternary Consultants Ltd. to conduct preliminary impact assessment.

-Brief report of preliminary stratigraphic data submitted by Quaternary Consultants (Quaternary 2003b) and circulated to architects

2004

-Comprehensive report including 24 assessment trenches compiled (Quaternary 2004a)

2006

-Mel Falk and Associates submit report on the archaeological assessment to the Friends of the Canadian Museum of Human Rights

2007

-Report by Canadian Environmental Assessment Agency submitted to Western Diversification Fund showing detailed compliance concerns under CEA

-Architects and engineers decide a basement is wanted for CMHR

-Originally no subsurface components beyond piles and grade beams to support basal slab

2008

January – Informed Sid (Quaternary Consultants owner) of decision to include large basement

-Stipulations:

1) Rectangular, 14, 400 sq. feet (1338 meters)

2) Downsize costs -changed basement to an L shape with 21.5m east/west by 14.4 m north/south. The northern extension is set at 11 x 10 meters

3) Long access brought down to 21 x 11 meters

May 21st - Local Elders perform Blessing ceremony with pipes prior to starting construction.

It is the only formal ceremony

May 23rd - Contract signed with PCL

May 30th - Permit A26-08 issued

-Separate permit issued to cover archaeological monitoring of construction components

June

-Permission granted to begin planning in early June (planning already underway since April)

June 27, 2008 Official Media Day

-PCL (prime contractor) and Friends of the Canadian Museum of Human Rights attempt to minimize budget costs by attempting to modify actions necessary to comply with permit

-Site interpreter is eliminated, as is water hook-up and wet screening on site

-Basement cancelled

-Mitigate southern portion of basement area in addition to freight elevators

-10 isolated excavation units dug to depth of Level 2 then closed in this area

September 8 – Board decides most of excavation area will become research excavation since there is no impact to mitigate

-Elevator footing area is mitigated 100%

-Decision made that original target closure date of September 15th is unrealistic

-Eight cultural layers uncovered instead of three.

September

-Project budget capped

-Basement eliminated, leaving only footing area for service elevator

-Freight (service) elevator is 5 x 7.5 meters at the eastern end of former basement. Depth of 2.2 meters depth below surface (dbs)

November 5, 2008 Last day of excavation

-Heritage permit stipulates: exploratory, machine-assisted excavation of 4 x 4-meter block below base of hand excavations in the southwest corner

-Artifacts – original plan to catalogue - Problem: late start and Manitoba Museum fee

-U of W catalogued instead, tailored to project

-380 000 artifacts processed, 25 000 catalogue numbers

November 12th - Backhoe arrived to excavate as per permit

Problems encountered early on:

- Full field staff initially (1 Project Director, 1 Lab Director, 21 field archaeologists, and 6 interns) - field staff shortage as time progressed-staff greatly reduced for a number of reasons

- Difficult to rent trailer for lab work, so PCL trailer used for lab

- flooding of excavation area due to rain

- By the time the basement is cancelled, staff had already excavated four times the original budget allowed with more to go

- Friends of the Canadian Museum of Human Rights, PCL and the Historic Resources Branch (HRB) contributed funding to finish, which allowed completion of field requirements and some analysis (carbon dates, residue analysis)

2009

- Mitigative parameters (survey boundaries) of site not established until legal land survey completed (elevation of site)

Figure 1. Flow chart of Heritage Resource Impact Assessment (HRIA) process (Manitoba Culture, Heritage and Citizenship 1995)

Heritage Resource Impact Assessment (HRIA) Process

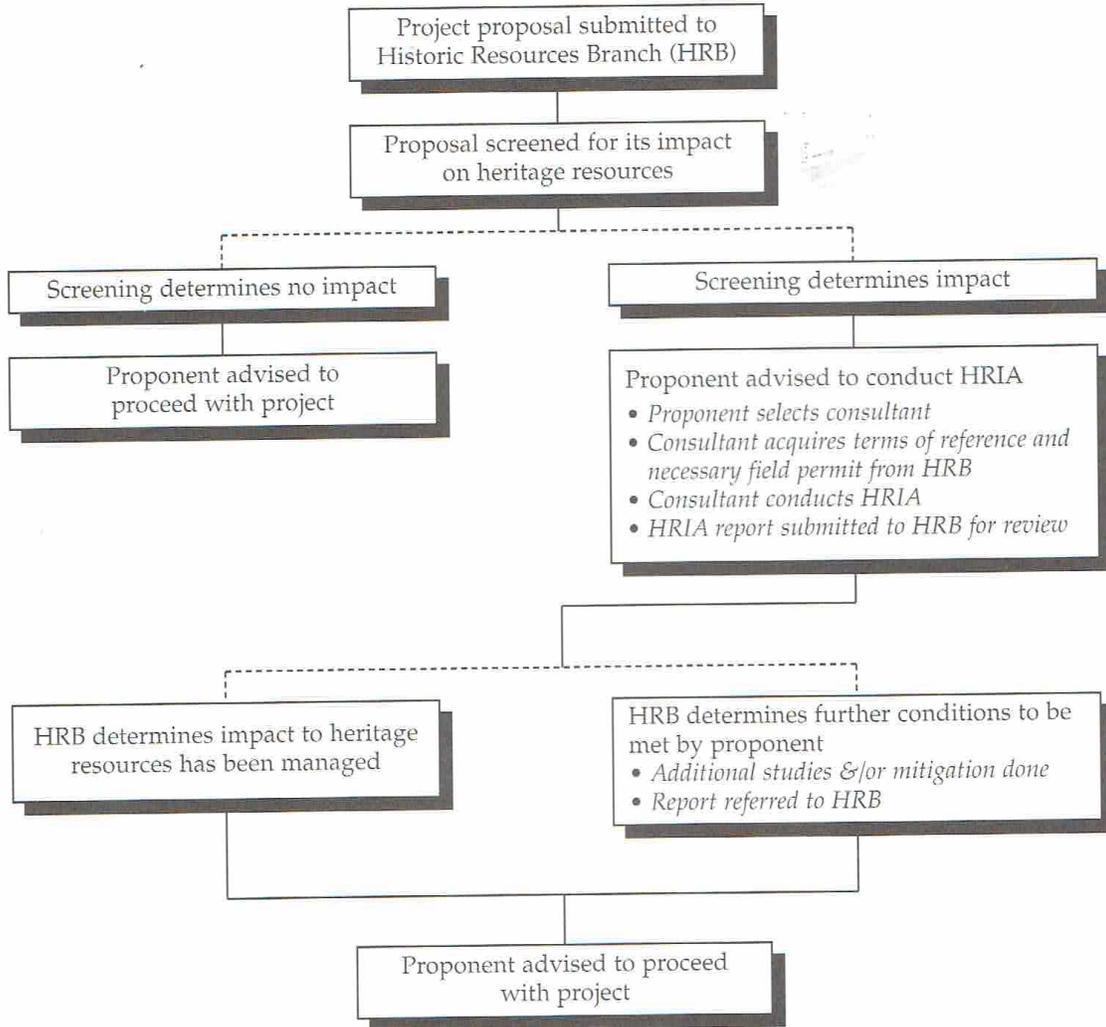


Figure 2. An aerial photo of The Forks today.



Figure 3. A Visual History of The Forks (Source: modified after www.theforks.com).

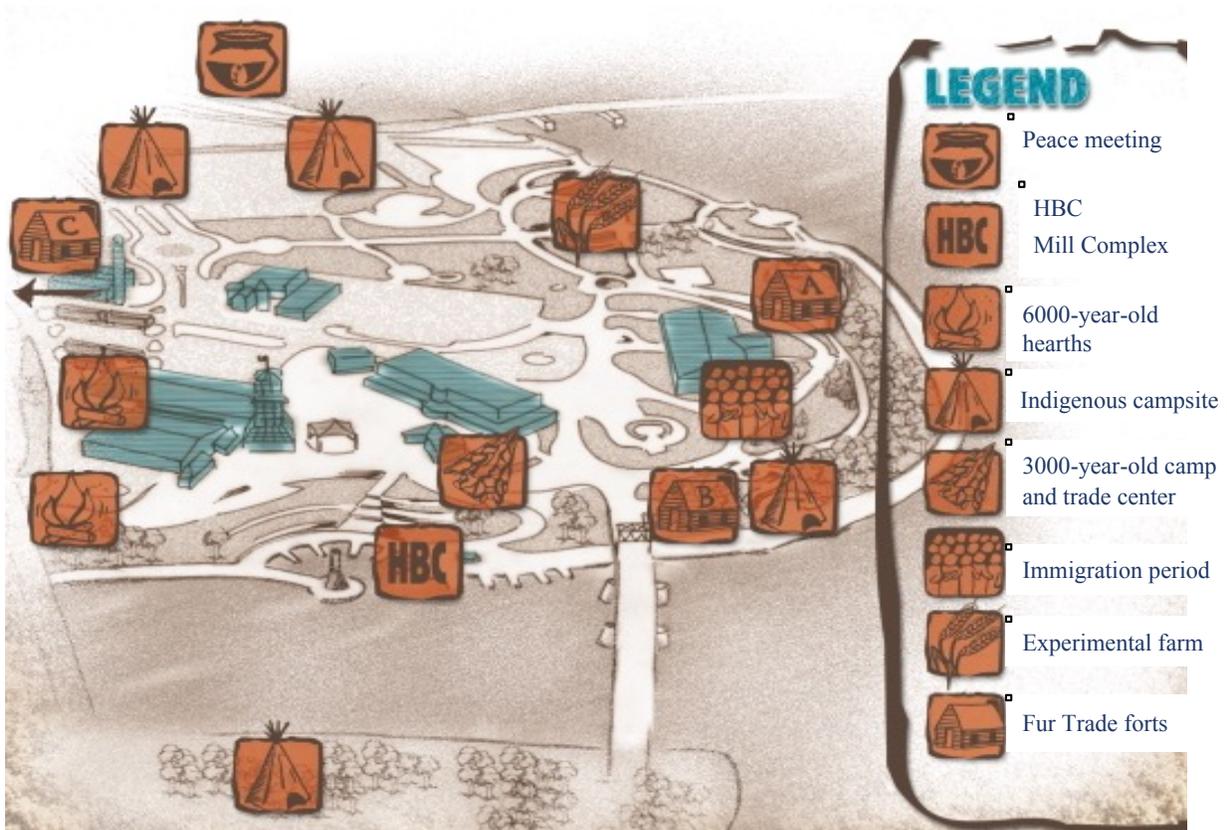


Figure 4. Aerial view of the parcel of former Via Rail yards that became designated as "The Forks." (<https://www.flickr.com/photos/manitobamaps/3899914667/in/photostream/>).

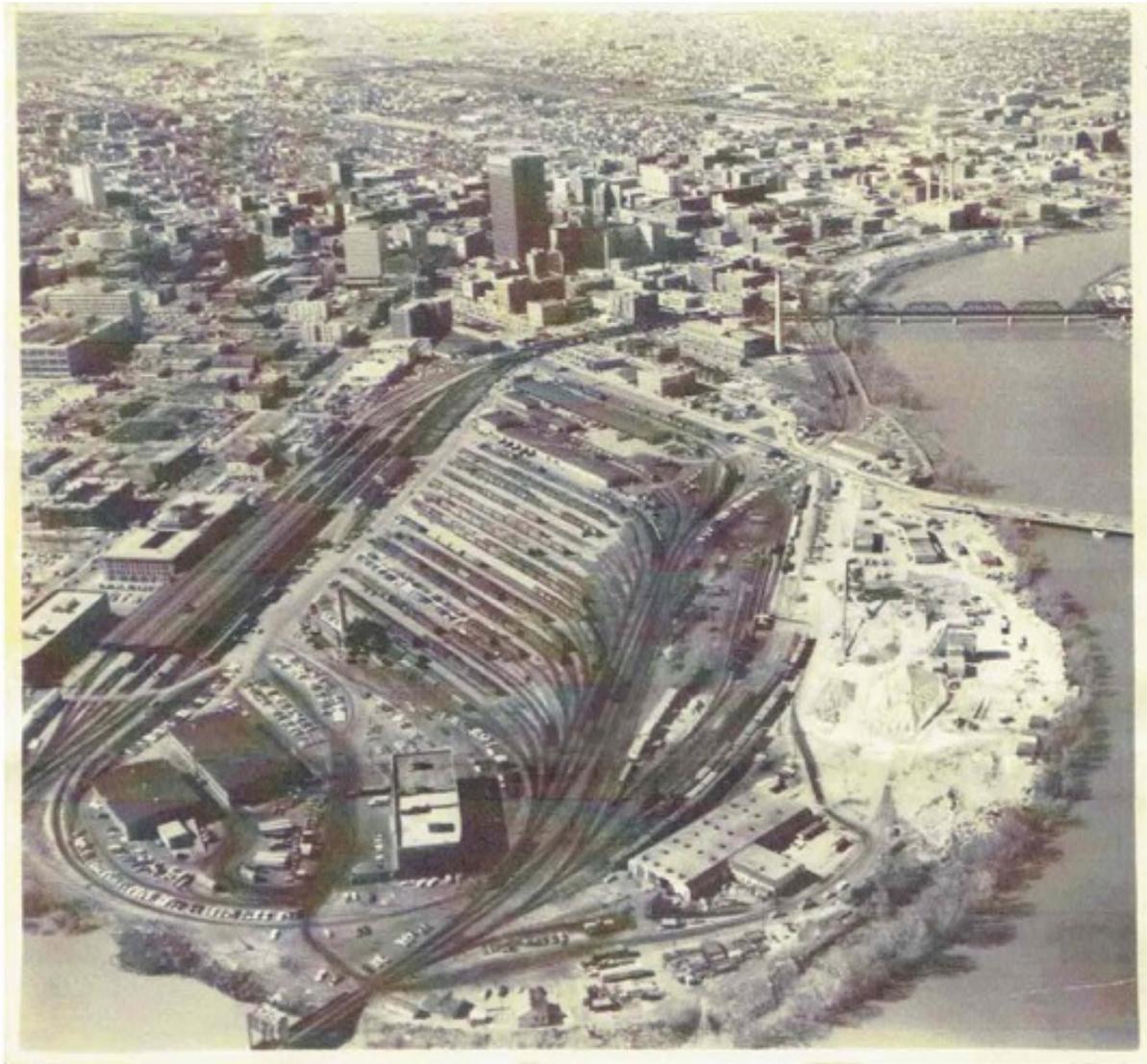


Figure 5. Photo of a human footprint recovered from site DiLg – 33 (Source: Kroker 2010:118).



Chapter 3. Materials and Methods

So, to uncover the rootedness of ‘modern’ knowledge systems in colonial practices is to begin what Raymond Williams called the process of ‘unlearning’ whereby we begin to question received truths

(Loomba 2005:66).

Introduction

This chapter provides an explanation of the materials and methods used during the research process to gather information and analyze data. The purpose of this study is to ultimately provide a basis for the argument for Federal legislation to protect Canada’s rich cultural heritage. The Canadian Museum for Human Rights (CMHR) in Winnipeg presents an ideal case study for this research since it was subject to both provincial and federal heritage policies and jurisdiction during archaeological excavations over the course of its development in 2008 and 2009.

The comparative study of provincial policy examined in relation to the federal policies of two other Commonwealth countries that share similar colonial histories, namely Australia and New Zealand are presented in the next chapter. The methods outlined in this chapter below were designed to address the impact of our shared colonial history, settler colonialism in particular, on the peoples of Canada, with specific attention paid to Indigenous communities. How does one measure such an impact? The next chapter addresses the ways in which our current policy and practices continue to be subject to colonial influence. In order to closely examine how these practices are influenced, participant interviews allowed first person accounts from members of each of the stakeholder groups to outline the impact of current provincial level legislation in

Manitoba and the lack of federal policy and legislation within Canada to them both as individuals and as members of a stakeholder group.

Public policy and legislation

The complexity involved in policy analysis and the approaches advocated by its associated schools of thought vary according to different scholars across disciplines. Some of these approaches deal with policy on an international or domestic level or at the macro or micro economic scale, while models for decision-making are introduced and critiqued as the field continues to grow (See Howlett and Ramesh 2003, Leung 1985; Guess and Farnham 2000, Pal 2001; Patten and Sawicki 1993). Many of these approaches rely on quantitative rather than qualitative methods, which are not suitable for this project. According to Leung (1985:1), policy is defined as:

...a set of decisions and actions designed to achieve a desired state of affairs. A policy defined in this way has three important elements: (i) there has to be a desired state of affairs, (ii) there must be a conscious and purposeful undertaking of decisions and actions, and (iii), there must be some recognizable causal relationship between the desired state of affairs and the decisions and actions taken.

Mark Considine (1994:3) states simply that policy contains “any or all” of three elements; these are, “clarifications of public values and intentions; commitments of money and services; or granting of rights and entitlements”. Thomas Dye, as cited by Howlett and Ramesh (2003:5), prefers a much more concise definition of public policy, which is; “Anything a government chooses to do or not to do”. Howlett and Ramesh (2003:8) recommend reducing the “level of complexity of the analysis by emphasizing only a limited range of relevant causal or

explanatory factors”. This is exactly in line with the rationale for this project and shall be kept in mind.

Guess and Farnham (2000:5) note that “Policies” derive from legislative statutes and administrative rules...they are systems of rules and standards affecting the public interest that are established by rulemaking bodies such as parliaments, legislatures, and administrative regulatory agencies”. At the risk of over-simplification for the purpose of this research, one may say that policy at the very least, *informs* legislation and that legislation *governs* the conditions placed upon heritage permits issued to private and public companies for the purposes of conducting archaeological investigations. Parks Canada is an example of a federal level agency that develops cultural heritage policy at the Federal level although it is important to note that this is only as an advisory body; Parks Canada does not have regulatory authority. This will be discussed further in a later chapter.

Guess and Farnham (2000:1) explain that regardless of the type of policy under scrutiny, there are four phases of analysis. These are; “formulation, analysis, implementation and feedback”. According to Guess and Farnham (2000:11-12), the first phase involves problem structuring and consists of diagnosis and identification of the existence of an issue. The second phase is forecasting and analysis, which deals with policy alternatives, implementation capacity, costs and benefits. The third phase involves deciding or choosing and optimizing among alternatives, and the fourth phase is the monitoring and evaluation of the results or feedback to the problem-structuring phase. Upon completion of these four phases, the cycle of analysis will have come full circle. Guess and Farnham (2000:135) point out that once a problem is identified, analysis shows whether or not it is “actionable”. This thesis shall rely on the four phases outlined by Guess and Farnham (2000) to analyze both federal and provincial policy and legislation.

The goal of this comparative study was to ultimately develop a best practices model for the development of new policy initiatives which could be applied broadly to Canada and lay the groundwork for future study.

Methods

The methods employed to achieve the goals of this research are three-fold. These stages included the examination of current provincial policy across Canada in comparison to that of Australia and New Zealand. The next stage was the application of this analysis to the case study, the excavation and construction of the Canadian Museum of Human Rights at the Forks in Winnipeg. Lastly, the comparative analysis of the three Commonwealth countries mentioned above provided the basis for the creation of a best practices model broadly applicable to Canada.

First, an examination and analysis of existing policy across Canada with a focus on Manitoba was undertaken. I have put together a chart (Table 2) that tracks the various policy structures in place in each province such as a permit/license system, penalties for infractions of permits and policy such as minimum/maximum fines or jail time for individuals and corporations, appellate resources and reporting periods upon completion of excavation according to provincial requirements.

The case study of the Canadian Museum of Human Rights focused this research squarely on legislation both within Manitoba and on a national level due to its status as a national museum.

The next step examined the lack of a federal policy within Canada, with particular attention paid to why this is the case when other Commonwealth countries such as Australia and New Zealand have successfully implemented similar legislation and policy initiatives. Although

Parks Canada represents federal interests in cultural heritage, their role is strictly advisory rather than regulatory, which means their advice can be ignored without consequence. This clearly is not sufficient.

Finally, a comparative analysis of the countries already listed provide the opportunity to examine and develop a best practices model that incorporates Indigenous interests with respect to federal heritage policy and supporting federal legislation.

Methods – Study Area

Research took place within Winnipeg, Manitoba. The Canadian Museum of Human Rights at the Forks provided an excellent opportunity to examine not only existing provincial policy regarding items of cultural heritage significance, but the ways in which policy impacts the major stakeholders and was enforced through current legislation throughout the process of development. The case study provided a concrete example of how policy and legislation are interpreted and engaged by the major stakeholders involved throughout land development from the planning stages, through the archaeological excavation to the final outcome.

It is my hope that by undertaking this research I have been able to build on positive established relationships between archaeologists, development and Indigenous groups and to contribute to them by including Indigenous groups in the search for a best practices model. In this way, it is the intent of this study to give back to communities by ensuring Indigenous groups have a voice in the proposal of new policy initiatives and best practices models regarding their cultural heritage property.

Methods – Data Collection

Participant Interviews

In order to answer the initial research questions as well as those that emerged throughout the research process, it was necessary to interview members of each of the stakeholder groups mentioned above, representing the diverse interests of indigenous people, archaeology, land development and government. Multiple participants were selected to represent each of the stakeholder groups to provide perspective on the ways in which provincial heritage policy impacted their group either positively or negatively.

In the first stage of interviews, I began with a short list of participants to whom I had been referred or identified myself. From these initial interviews, I relied on snowball sampling to locate more participants who self-selected to participate in the study once the purpose of my research had been explained. Snowball sampling turned out to be a very effective method to locate participants to interview albeit slower than anticipated. It was necessary to conduct interviews with representatives of each of the stakeholder groups to assess the impact of current policy initiatives from each perspective and to seek ways to contribute to current policy initiatives based on first-hand accounts as well as highlight the necessity of federal legislation in Canada. Overall this process was slow and time consuming but the most effective choice for the task at hand. Initially, the fieldwork portion of the research was estimated at two to three months to completion, but in reality, over a year was spent locating, meeting and interviewing participants. This does not include the time spent transcribing notes and recordings of the interviews afterward to tease out themes that would become the threads of my research.

The interview process itself consisted of informal, semi-structured interviews and my role in the process was that of an independent researcher. This role was emphasized throughout the process, indicating my status as an independent researcher with no vested interest in the individual goals of any one particular stakeholder group. The decision to keep interviews relatively informal is based on the fact that for example, to my knowledge, many Indigenous community members are more comfortable speaking informally in small groups or one on one. Rigorous formality would not be perceived favourably and would not likely yield useful results for my research. Although a short list of questions was prepared to initiate the interviews as indicated earlier, the purpose of these relatively unstructured interviews was to learn, for example, what is foremost in the minds of local Indigenous community members regarding the issue of uncovering their cultural heritage material. Thus, I did not restrict my interviews solely to band chiefs or elders for this particular group, although I hoped to include their insights. I also sought to include the opinions of the wider adult Indigenous community as well to get a sense of the level of awareness of what is happening in their communities with the recovery of cultural heritage property, how they feel about it and what they would like to see done about it.

While semi-structured, informal interviews worked well for some community members, a more formal approach was used to prepare for interviews with other stakeholder groups such as representatives of the Canadian Museum of Human Rights, archaeologists and government. The interview process was adapted as required. In most cases, unless requested to do otherwise, interviews took place on a one on one basis with individual participants. In some cases, it was more convenient for the participants to be interviewed together or in a small group (of no more than three) as per their request.

Over the course of my research, another group was informally added to this list. Although they as a group could not be considered a “stakeholder” in this issue, their knowledge and expertise provided valuable insight. This group is comprised of academics who have either devoted their time to studying one or more aspects of one of the issues currently being researched, or contributed a unique perspective that related to one or more of the stakeholder groups. For example, some participants offered perspectives that overlapped the arbitrary divisions among stakeholder groups. Some academics were of Indigenous background, had retired from archaeology (both academic and private), or government, or in some other way provided knowledge that supplied connections between one or more of the groups.

At the conclusion of the interview or shortly thereafter, participants were provided with a thank you note for volunteering their time to contribute to the research. The exceptions to this were the interviews conducted with Indigenous people. In these cases, according to Indigenous protocols, as I was informed by all of my participants, it is customary to provide an offering of tobacco wrapped in red cloth when making a request for sharing of time or knowledge. This is usually presented at the time of the request, so this was a protocol that I followed in my initial meetings with participants of this stakeholder group. Thank you notes were also provided upon conclusion of the interview as they were for all other groups.

The goal of the interview process was to identify the benefits and constraints of provincial policy, its interpretation and actual practice, which invariably impacts each of the stakeholder groups in potentially different but significant ways. This set the stage to best determine how the development of an inclusive federal policy or amendments to provincial policy and practice may benefit the protection of cultural heritage resources in the future.

Ethics

In preparation for these interviews, I completed the required certification for the Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans (TCPS: 2) in July of 2011. Since I went through the Research Ethics Board (REB) certification process during the summer of 2011 shortly before The Tri-Council Policy Statement (TCPS: 2) replaced the former Course in Human Research Participant Protection (CHRPP), I completed the CHRPP requirement in June of 2011 as well, although it was not required of me as a researcher at that point.

No persons were identified as belonging to vulnerable populations (i.e.: children, mentally incompetent, illiterate) for the purpose of this research and deception was not used. Additionally, there were no risks assessed for any of the participants or the principal researcher (myself) involved in the study. While no serious risk or potential threat existed for either the participants the researcher, given the highly sensitive and political nature of the case study in question, it was necessary to take these factors into account.

All participants regardless of the group to which they belonged, were given the option and assurance of complete anonymity if they so desired and this was accomplished by assigning an alphanumeric identifier to my notes for each participant to protect their identity. Considering the relatively small sample size contained in each of the groups (generally a half dozen participants per stakeholder group), I determined that it was best to apply a standard of blanket anonymity to all of the participants involved, regardless of whether it was specifically requested. Only I, as the principal researcher had access to a list of the participant's names and the alphanumeric codes assigned to each person. Once this determination was made, the purpose of the interviews was to extract themes or issues common to each group that reflected the

perspective of the group and shared impacts resulting from provincial policy and practice rather than to identify individual opinions/grievances. For example, to address any given issue I present the common themes or issues that were identified overall during the interview process rather than describing what each individual participant thought or said. This approach benefits the research by allowing the focus to remain on the themes and issues brought forward through the process rather than on the individual participants. This also served to protect the confidentiality of all participants, whether they had requested so or not. Given the relatively small sample size, confidentiality could not be achieved for some if others could be identified, due to the simple process of elimination. To maintain this confidentiality, I have not included the transcribed interviews in the appendices.

During the interview process, a full explanation was again provided in plain language without the use of any jargon to ensure that participants understood the purpose of the interview. Each participant was then presented with a formal consent form on University of Manitoba letterhead and each point on the form was made clear before signing. Participants were encouraged to ask any questions they may have or express any concerns before proceeding. Participants were made aware that if at any time, they felt uncomfortable continuing the interview they had the option to end the interview and decline the use of any of their prior responses without prejudice. Some participants declined to be recorded and in that case, only handwritten notes were taken. Some participants offered to examine the handwritten notes once they were transcribed to verify their correctness and this plan was utilized by the researcher.

Methods – Research instruments

Recruitment

Recruitment of participants for interviews was achieved by contacting prospective participants either by phone or email to set up an introductory meeting. Please see the appendices (Fig. 5) for a copy of the email and telephone scripts used. At the introductory meeting, I sat down face to face with the participant to explain the purpose of my research and what I hoped to accomplish by interviewing them. Upon agreement, they were presented with a consent form (as required during the Ethics Board review process) and a date for the interview was set. During the initial meeting or sometimes at the scheduled interview, participants would identify other persons who may be interested in being interviewed or played a key role as a member of one of the stakeholder groups. This information was completely voluntary and not requested at any time by the principal researcher. However, this information provided the desired “snowball” effect that allowed me to recruit other interested participants.

Consent

Both verbal and written explanation of the purpose of my research was provided to all participants. Verbal and written consent were required from participants before research could advance to the interview stage. Prior to each individual interview the goals of the research were again explained in plain language to ensure that each participant fully understood the purpose of the interview and any questions they may have about the process were answered before signing the consent form. All consent forms followed REB requirements and were printed on University of Manitoba letterhead. A copy of the consent form used can be located in the appendices (Fig. 6).

Interview questionnaires

Interview questionnaires were made available before the scheduled interview if the participant so desired upon their request. The questionnaires consisted of two parts in most cases. The first part contained questions tailored to the individual participant regarding their experience and perceptions. The second part consisted of questions that were more general in nature and were asked of all participants within that particular stakeholder group. Thus, the questionnaires were designed to be specific to the individual as well as their stakeholder group.

The questionnaires were designed to answer the research questions for the study but also to gauge each participant's perception about the topic of the study and their role in the case study in particular, whether as a concerned member of an Indigenous community, government, private archaeological consultant, academic or land development. The general questions that were asked of all participants were used to gauge the similarity or variability of perception among members of a particular stakeholder group. This was done to highlight themes that may emerge or issues that should be addressed for further consideration. Copies of the general questionnaires used in this study can be found in the appendices (Fig.7). Questions tailored to the individual were not included to protect the confidentiality of the participants. Although confidentiality was not a concern for many of the participants, in order to ensure confidentiality for those who expressed a desire for anonymity, and given the relatively small sample size of each stakeholder group, I have chosen to apply the same standard of confidentiality to all.

Recording

Upon consent, in addition to taking handwritten notes, interviews were documented by audio recording and transcribed as required. If consent was not obtained to record the interview,

then only handwritten notes were used. These recordings were stored separately from any handwritten notes and only coded information was used to identify participants in writing. Both handwritten notes and audio recordings of the interviews were transcribed. All notes, recordings and coded information were stored separately in a secure location known only to me.

Methods – Data Analysis

Data analysis was accomplished by the following methods:

1. Transcription of interview data
2. Coding of raw data through a review of the transcripts to identify themes, issues or categories of responses.
3. Use of these categories or themes provided as narrative text in the discussion of the research.

Once the interview data was transcribed and examined for the purposes of identifying common themes and categories, this data was used as narrative text to shape the discourse of the study from which conclusions were drawn.

Methods – Strengths and Weaknesses

The most difficulty I faced initially was finding the appropriate people to talk to as representatives of each stakeholder group, particularly Indigenous participants, since I had not worked with these communities before and had no established ties. It took a few months to locate the first participants for this stakeholder group, but once located, they were generally very interested and motivated to participate. Participants in this group (as in the others) were extremely helpful in locating other participants that would be interested or felt were important for me to include in the research.

The main weakness of this snowball approach was one I had not even considered. In the case of the stakeholder group for development, one of the major stakeholders for my research; the Canadian Museum for Human Rights, the approach was not effective at all. Although I identified several people who worked for the Canadian Museum of Human Rights at various levels and in various capacities and contacted them as potential participants for this research, I was not able to secure a single interview. Frankly, the level of bureaucracy already established at the museum caught me off-guard. Upon contacting several individuals at the museum (only one of whom responded), I was contacted by another individual (presumably this accounts for the lack of response from the others that were contacted) that I had not initially identified at the museum; who informed me that I was not to contact anyone at the museum directly myself and that they were the official contact person for the institution from this point forward. I complied with their direction and addressed all subsequent correspondence to the designated person. I was informed my request for interviews had been sent to a steering committee for approval and that I would be contacted once a decision had been made. I did not hear from the museum representative again. Upon contacting the museum representative myself again by email, I was informed that the steering committee had in fact reached a decision and that my request to interview staff had been denied. The reason I was given for this was that the staff at the museum were simply too busy at this time to accommodate my request. The result of this decision does not prevent the research from moving forward, it simply forces the research to move forward without the perspective and insights that could have been offered by members of this stakeholder group. Thus, the issues and themes that could have been a product of the participant interviews for this group will not be known for further reference.

Summary

This chapter provided an overview of the materials and methods used in this qualitative study. Each individual section of this chapter provided specific details of the theoretical orientation and the methods designed to address the theoretical underpinnings of the research. The methods outlined in this chapter were designed to take this research from the initial study of policy and literature review, through to participant interviews, an examination of the case study and subsequent analysis to produce a best practices model that is inclusive of Indigenous people in the creation of federal policy and legislation going forward which can be broadly applied to Canada. A discussion of the strengths and weaknesses of the methods employed for this study are included along with the analysis in the following chapters.

Chapter 4. Comparative Study of Policy and Legislation in Canada

In Eurocentric thought, the legal system is where the ideal of colonization has taken on a detailed institutional form. Eurocentric legal doctrine makes it possible to represent and discuss civilization and its institutions, and thus to sustain and develop the privileges of the colonists. We must grasp the negative role assigned to Indigenous peoples before we can effect positive change (Battiste 2000:7).

Introduction

Archaeological research in Canada is the culmination of often many months or even years of work, which importantly involves cultivating and maintaining relationships with Indigenous communities, government and the private sector. The post-excavation period is when the analysis of artifacts and subsequent reports are written in accordance to provincial mandates, which strive to achieve the goal of ensuring the best possible outcome those involved. This is the reason that archaeological guidelines are created and standards (ideally) upheld. Just as archaeological methods are constantly evolving, aimed at improving these outcomes, there is always room for improvements in policy and legislation, guided largely by political will at various levels.

In this chapter, I examine the creation and impact of provincial heritage policy in Manitoba considering the absence of a federal policy or legislation. I take stock of two main issues that affect or impede legislation and policy regarding cultural heritage to elucidate possible resolutions that could be applied in the Canadian context. First, I examine how law and policies in Manitoba concerning cultural heritage relate to legislative jurisdiction enshrined in federal constitutional acts. Second, I examine the lack of federal policy and legislation

concerning cultural heritage relative to other jurisdictions with similar colonial histories. Understanding heritage policy and legislation in these jurisdictions is potentially informative because “relations between archaeologists and Indigenous peoples in the settler colonies of Australia and North America tend to “mirror” each other because of their similar colonial histories” (McNiven and Russel 2005:3). This broader review highlights the inadequate legislative architecture in Canada to deal with issues of patrimony on lands not owned by the Crown.

Provincial Policy and Legislation

Currently no federal legislation exists in Canada which specifically governs the protection of cultural heritage material. Laws and policies do exist at the provincial level to which federal agencies and museums defer. According to Parks Canada, the law provides that “protected archaeological resources include *all evidence of human occupation that comes out of the ground (or underwater)*” with the exception of Nova Scotia (Parks Canada <http://www.pc.gc.ca/docs/r/pfa-fap/ap-an.aspx> accessed July 11, 2014). Since the protection of “property” comes under provincial jurisdiction according to the Constitution in Canada, provincial and territorial governments have each enacted specific legislation to protect archaeological material (Parks Canada <http://www.pc.gc.ca/docs/r/pfa-fap/ap-an.aspx> accessed July 11, 2014). Parks Canada notes that every jurisdiction has in place a “single workable scenario” for the management of cultural materials and liaison among authorities and although they “all follow the same basic pattern”, it is generally not outlined in written form (Parks Canada <http://www.pc.gc.ca/docs/r/pfa-fap/ap-an.aspx> accessed July 1, 2016). The vague and

informal nature of this commitment is likely the basis for the wide variation in the management of cultural materials seen across Canada's provinces and territories.

While some provinces such as Ontario and British Columbia extend protection to material that is on or above the ground including carvings in rocks and trees, Alberta is an exception; protecting only material that is buried (Parks Canada <http://www.pc.gc.ca/docs/r/pfa-fap/ap-an.aspx> accessed June 29, 2016). Archaeological fieldwork by law requires a permit in the "three westernmost provinces", which includes Alberta, British Columbia and Saskatchewan (Parks Canada <http://www.pc.gc.ca/docs/r/pfa-fap/ap-an.aspx> accessed June 29, 2016).

Many provinces have some form of policy or legislation at the provincial level pertaining specifically to human remains recovered in archaeological context (as noted above for Newfoundland and Labrador). In Saskatchewan for example, skeletal remains "predating A.D. 1700" are "forwarded to the provincial ministry responsible for heritage, for reburial after scientific examination", while remains found "postdating A. D. 1700" are either made available to local communities closest to the site of discovery or the Minister if the remains are determined to be non-aboriginal in origin (Parks Canada <http://www.pc.gc.ca/docs/r/pfa-fap/ap-an.aspx> accessed July 1, 2016). The arbitrary date of A.D. 1700 set by provincial policy and legislation demonstrates a respect for the Eurocentric concept of linear time and chronology rather than the non-linear concept of time common to Indigenous communities, as mentioned in the previous chapter.

Turnbull (1976:124) notes the crucial link between the intent of policy or legislation and actual practice:

The legislation of protection of our antiquities is the legal underpinning of any programme in management. There is, however, no necessary correlation between an act itself, its

implementation through a programme, and its effectiveness in application. In the past some programmes have been quite effective without adequate legislation;(political will) others, with good legislation on paper) have not received the necessary funds for implementation. The aim of any programme, however, is to have a good working relationship between the programme, its legislation and the public.

This is of course the primary goal of best practices. It is important to note that outside of human remains, Ferris (2003:167) writes, “[T]here is little in the Canadian...heritage legislative canon that specifically recognizes any Native American relationship to non-burial archaeology”. Even the treatment of burials varies by province (Ferris 2003:162).

Regarding provincial level policy, it really comes down to finding a way to insulate policy decisions and their corresponding legislation from any potential lack of political will with respect to cultural heritage management. The office of the provincial archaeologist is essentially a bureaucratic role which dictates the person filling such a role is accountable to the Minister and must find the delicate balance between their due diligence as a professional archaeologist and their duties to their political superiors. Essentially, they are in the precarious position of serving two masters who may often present conflicting requirements. As a bureaucrat, they are especially vulnerable to the whims the government of the day who may appoint new ministers overseeing issues of cultural heritage. As an archaeologist, they are bound by their professional code of ethics and duties to local communities. This begs the question, “How can provincial cultural heritage policy and legislation be strengthened so that any potential current or future lack of political will may not have so great an impact on our collective cultural heritage?” In answer to this question, this thesis employs the approach suggested by Guess and Farnham (2000) to evaluate the strength of provincial policy and legislation.

Constitution

The Constitution Acts of 1867 and 1982 divide legislative jurisdiction over the control of personal property and archaeological resources between the federal and provincial governments in Canada (Bell 1992:481). The provinces have jurisdiction over provincial Crown lands, property and civil rights within their respective provincial boundaries and most have created provincial parks and heritage conservation legislation as a result (Bell 1992:481). In Manitoba, only 2% of the total land makes up Crown land. The federal government controls federal property, “Indians and lands reserved for Indians shipping, navigation and the regulation of trade and commerce” (Bell 1992:481).

Section 35 of the Canadian Constitution Act of 1982, recognizes the “existing aboriginal and treaty rights of the aboriginal peoples of Canada” (Eden 2005:120). However, to date this recognition has not translated into legislation at the federal level to protect these constitutional and treaty rights. For example, Eden (2005:131) argues that “statutes must specifically state what is to be done with the remains” of indigenous peoples in order to be effective. The alternative is the existence of non-specific statutes which treat every case before the court on a case by case basis allowing for various interpretations, some of which may exclude even human remains from protection altogether.

Sections 91 and 92 of the Constitution Act (1867) outline the jurisdictional authority in place at the federal and provincial levels (Little Bear 1988:175). Section 91 of the Constitution Act “assigns jurisdiction over ‘Indians and lands reserved for the Indians’ to the federal government, and serves as the constitutional authority for the Indian Act, a federal statute that has been used to govern Indians since early in Confederation” (Little Bear 1988:175). Federal

legislation “directly and indirectly affects the ownership, control, and export as well as import of archaeological and cultural property of national importance” (Bell 1992:482).

Federal Policy and Legislation

Federal heritage policy, legislation and practices in Australia, Canada, and New Zealand are outlined in this section. There are two federal statutes in Canada that can be indirectly applied to archaeology. These are the Canadian Environmental Assessment Act (CEA), and the Cultural Property Export and Import Act (Parks Canada <http://www.pc.gc.ca/docs/r/pfa-fap/ap-an.aspx> accessed July 1, 2016).

At one time, the Canadian government recognized its duty to protect cultural heritage, but the following statement from the Archaeological Heritage Policy Framework in the Department of Canadian Heritage, Ottawa made in 1990 has all but been forgotten: “Archaeological heritage is an essential element in the affirmation of our Canadian identity and a source of inspiration and knowledge. It is the policy of the Government of Canada to protect and manage this heritage” (Parks Canada website, <http://www.pc.gc.ca/eng/progs/arch/page4.aspx>, accessed Nov.9, 2012). Due to a lack of federal heritage policy and legislation, each province in Canada has carried the full weight and responsibility of protecting the nation’s cultural heritage and building positive working relationships with diverse Indigenous communities.

Archaeologists and anthropologists studying Indigenous cultural heritage materials in many cases have achieved cooperative relationships built on trust and interest on both sides. However, working together cannot address all of the issues inherent in the recovery of cultural heritage resources for all groups in all places. Eden (2005:123) writes: “The law must work in

favor of this union, which is why current Canadian legislation must change in order to reflect these attitudes”.

In Canada, cultural resource management programs fall under the jurisdiction of two organizations. The first is Parks Canada, a Federal Crown Corporation which oversees administration of all aspects of Canada’s 29 national parks and more than 100 monuments and forts. The second is the Archaeological Survey of Canada, a branch of the National Museum of Man, renamed the “Canadian Museum of Civilization” in 1990 when it became a crown corporation, and most recently renamed the “Canadian Museum of History” in December of 2013 (<http://www.cbc.ca/news/canada/ottawa/civilization-museum-now-the-canadian-museum-of-history-1.2461738>, site accessed April 1, 2015). Watkins (2005:434) points out that the Archaeological Survey of Canada operated a salvage program that seeks to minimize the loss of archaeological resources and information due to construction projects.

There are two federal statutes under which archaeological concerns are addressed in Canada. These statutes serve as an umbrella for other concerns including environmental, marine, import/export among others. The two pieces of federal legislation in question are the Canadian Environmental Assessment Act (CEA) and the Cultural Property Export and Import Act.

Under the CEA, the terms “archaeological” and “cultural heritage” appear only twice and no section exists which deals with archaeological artifacts or cultural heritage material specifically. In Manitoba, a Stage One environmental assessment is required before progressing to more aggressive testing or excavation. As an environmental assessment, this step falls under the purview of the CEA legislation. Ideally, federal heritage legislation would exist to protect heritage interests that do not fall under the broader umbrella legislation of the CEA.

The Cultural Property Export and Import Act is designed to protect against the removal of cultural heritage artifacts from the country without appropriate permits. Perpetrators may be subject to further penalties under UNESCO sanctions (Cultural Property Export and Import Act :12). Neither piece of legislation deals with the protection of for example, cultural landscapes, sacred land or human remains. The term “archaeology” appears only once under the Cultural Property Export and Import Act in the context mentioned above.

In Canada, both government and members of the archaeological community have begun to work cooperatively with aboriginal groups “to develop policies and legislation for the proper treatment, care, and return of human remains” (Bell 1992:468). Some other examples of this cooperation are burial site provisions negotiated in northern land claim agreements and consultation with native peoples on proposed legislation in British Columbia which provides “inalienable and inprescriptable” ownership of indigenous human remains and grave goods to be vested in aboriginal peoples, and federal consultation with indigenous groups concerning the development of proposed legislation prior to excavation (Bell 1992:469).

As early as 1950, the need for Canadian federal heritage legislation was recognized and tasked to the Massey Commission. The resulting report stated “if the government took charge and provided adequate funding and a comprehensive policy, the “precarious state” of Canadian culture as indicated in its findings would change for the better” (Klimko 1998:205). These findings were not followed up until 1990 when a renewed attempt at Canadian federal heritage legislation was drafted and very nearly came into being. The proposed legislation, known as the “Proposed Act respecting the protection of the archaeological heritage of Canada” (Minister of Communications 1990), was the outcome of concerns raised by the archaeological and heritage communities.

Ponting (1997:119) notes the correlation between colonialism and the subsequent disempowerment of Indigenous people through the arm of federal government regulations. He writes, “Another feature of the colonial orientation adopted by the federal government toward the Indigenous is the geographic fragmentation and dispersal of the Indigenous population” (Ponting 1997:119). This deliberate fragmentation of Indigenous population and identity was also facilitated through the residential schools, which many did not survive. Ponting (1997:119) writes that “In confiscating Indigenous lands, the colonizers struck at the very soul of Indigenous existence...one’s identity and understanding of one’s place in the cosmos was intimately tied to his/her relation to the land and the spirits which inhabit it”. Ponting (1997:119) speaks of the disempowerment suffered by Indigenous people when he comments further, “Such a distribution of any population militates against it ever acquiring the requisite number of members in any given constituency (of the larger society’s political system) to be able to effectively engage in bloc voting for electoral gain”.

Seidemann (2003:575) quotes Neal Ferris to suggest the underlying reasons for the absence of a federal law in Canada which:

[I]n part due to jurisdiction issues (provinces like states, are responsible for heritage off federal lands)...partly due to the lack of willingness [of the federal government] to grapple with such a complex issue, and partly due to major research institutions...being proactive and developing their own repatriation policies in [t]he absence of legislation...Part of this void in legislation is also filled by ethical mandates of national professional organizations such as the Canadian Archaeological Association and the Canadian Museums Association.

It appears that while the federal government in Canada has been content to allow other institutions such as the provincial government, museums and professional archaeological associations to deal with issues of cultural heritage, New Zealand is taking the opposite approach by establishing new government departments and initiatives directed at bringing issues of Maori culture and heritage to the forefront.

New Zealand

According to Barclay (2005:209), New Zealand follows two legal traditions; “Victorian British” and “Customary Maori”, both of which are described as being “very much alive in practice and in spirit” in the modern nation-state, but coming from drastically different perspectives in “thinking about what law is and...describing how human communities develop and practice law”. Maori customary law is known as “tikanga” (after nga tika, right things) (Barclay 2005:202). Barclay (2005:207) writes: “We have in New Zealand a ‘common law’ legal tradition, inherited from England”. As Barclay (2005:209) explains further:

we...are the inheritors of a tradition of legal thinking strongly influenced by the ‘command theory’ of law famously articulated by...Thomas Hobbes and a legal theory called ‘legal positivism theory’ first promoted by the Victorian law theorist John Austin (Austin’s theory ‘defined law exclusively in terms of the “command” of a “sovereign” with the capacity to coerce obedience by means of punitive “sanctions”’.

New Zealand can trace its legal roots to the 1840 Treaty of Waitangi, which marked the establishment of British sovereignty over the country and provided guarantee of Maori possession of their lands and retention of fishing and other rights (Paterson 2009:107). According to Paterson (2009:107), this piece of legislation is the “centerpiece” of Maori legal rights. Barclay (2005:202) quotes Chief Justice Eddie Durie: “There is as much a Maori law as there is

a Maori language”. Paterson (2009:108) further argues that “Without entrenched constitutional protection of indigenous rights, such as that furnished in Canada by Section 35 of its Constitution Act, New Zealand lawyers have had to resort to ingenious strategies to gain judicial recognition of Maori rights”. The Treaty of Waitangi also led to the establishment of the Waitangi Tribunal in 1975, a quasi-judicial body. Although it can only make non-binding decisions with the exception of some cases involving Maori land, the recommendations of the tribunal have influenced the implementation of legislation (Paterson 2009:108). Further, Paterson (2009:109) notes that the tribunal “is not bound by conventional rules of evidence applicable in judicial proceedings”.

In New Zealand, the Historic Places Act (HPA) governs human remains and is comparatively a more powerful piece of legislation than that even of the United States, which is designed to protect areas of historic significance, because it is equally applicable to both Crown and private property (Seidemann 2003:568). Seidemann (2003:568) notes that while NAGPRA extends protection regardless of age, the HPA only protects “archaeological sites associated with human activity that occurred before 1900”.

In the late 1990s the role of government in relation to culture and heritage was reconsidered, which saw the establishment of the Ministry for Culture and Heritage in 1999 along with various other initiatives. The newly established Ministry for Maori Development took responsibility for matters concerning international repatriations of taonga Maori, the protection of the Maori language and monitoring heritage issues as well as other government ministries (Paterson 2009:109).

In 2003, New Zealand instituted a repatriation policy for ancestral remains. The term *koiwi tangata* Maori is defined as “any part of the human body (skeletal or soft tissue) of Maori

or Moriori origin, which is in an unmodified state since death” (Paterson 2009:122). This includes “toi moko”, the tattooed, preserved heads of Maori or Moriori origin.

The following six principles govern the repatriation policy:

1. The government role is mainly one of facilitation – it does not claim ownership of koiwi;
2. Repatriation from overseas institutions and individuals is by mutual agreement only;
3. The repatriation policy does not cover Maori remains in war graves maintained by the Commonwealth War Graves Commission or other similar institutions;
4. No payment for koiwi will be made to overseas institutions;
5. Koiwi must be identified as originating from New Zealand; and
6. Maori are to be involved in the repatriation of koiwi and will determine the final resting place, where possible (Paterson 2009:122).

As a result of the steps taken toward repatriation of Maori cultural heritage, international repatriation of ancestral remains is ongoing (Paterson 2009:122). According to Paterson (2009:122), some foreign museums have already removed toi moko from public display in the interim. Overall, a significant level of accommodation is being developed in relation to Maori cultural heritage and spiritual concerns.

Many of the initiatives taken in New Zealand have produced similar changes in countries such as Canada and Australia (Paterson 2009:133). Among the most unique aspects of New Zealand’s approach is the law-making role of the reports of the Waitangi Tribunal. Paterson (2009:133) compares this to practices in Canada where Aboriginal populations must wait for change through an attenuated treaty process or costly litigation. An important consideration to keep in mind is that New Zealand is roughly equal in size to the state of Colorado and has only

one band of culturally distinct indigenous people to consider in terms of cultural heritage; the Maori (https://en.wikiversity.org/wiki/Comparative_law_and_justice/New_Zealand accessed July 13 2013).

Canada, in contrast, covers a significantly larger portion of land mass and is comprised of many different Indigenous communities who may have conflicting views on the management of cultural heritage material and the study of ancestral remains. It is reasonable to expect that cultural heritage management issues and policy or legislation designed to deal with such issues may take considerably longer in Canada, however it is still remarkably far from becoming a reality. In spite of this, aboriginal groups working with the archaeological community are beginning to say enough time has passed and it is time to put goals of reform into action.

Maori peoples are served by the Tribunal which in turn allows their concerns to be addressed, reported on and often result in the creation of new laws and policies surrounding issues of cultural heritage. Paterson (2009:133) states the “Treaty of Waitangi now actively informs the development of New Zealand law” and “we can expect a continued level of enhanced protection of taonga Maori (Maori treasures)”. Paterson (2009:133) argues that the “form this protection takes” is significant to instituting similar changes regarding the protection of cultural heritage for other indigenous groups as well.

Australia

A parallel can be drawn between Australia’s “aboriginal–state relations” and Canada’s own “Indian–provincial relations” (Morse 1988:218). According to Morse (1988:218), the Atlantic provinces in Canada have generally been less concerned with developing policy aimed toward Indigenous issues, mirroring attitudes in Tasmania. Meanwhile, to use the terminology

presented by Morse (1988:218), Canada's more "liberal provinces—Ontario, Manitoba, Quebec, and Saskatchewan"—are similar to Victoria, South Australia or New South Wales in that they are more like to seek new policy initiatives. Alberta and British Columbia most closely resemble Queensland in the north and Western Australia where the aboriginal population is "viewed as a threat to the resource economy" and there is resistance to land claims brought forward on their behalf (Morse 1988:218)

There are two Indigenous minority groups in Australia. Aborigines account for 145, 000 of the population in addition to 16, 000 Melanesians "...whose ancestral homes are a score of islands in the Torres Strait, between the tip of Queensland's Cape York and the southern coast of Papua-New Guinea" (Beckett 1985:95). Beckett (1985:101) describes the historical setting in which these groups lived until the early twentieth century. Until then he writes, "Islanders had been regarded as superior to Aborigines and not in need of special controls". This changed in 1907, when the Islanders too became subject to the "authority of the newly appointed Protector of Aborigines and to the growing body of legislation regulating Aboriginal life" (Beckett 1985:101). This was accomplished in two steps that are very similar to the approach used in Canada to control Indigenous populations. First, according to Beckett (1985:101), the native population was segregated, "...ostensibly for their own good, but usually in response to European pressure", followed by gaining control of their labour power.

Fredericksen (2002) examines two case studies from Fort Dundas/Punata and Melville Island, Australia, based on narratives from the Indigenous Tiwi as well as archaeologists. He makes several important points regarding the management of cultural heritage in Australia. First, Fredericksen (2002:288) notes that in post-colonial nations such as Australia, contextuality of data is an issue. Second, he states that as the strength of Indigenous voices grow, there is a

growing acceptance of their traditional narratives alongside that of scientific data. This is viewed as a mechanism of decolonization and increasingly welcomed by the archaeological community (Fredericksen (2002:289).

Common Law

Since the federal government of Canada has not asserted a comprehensive legislated claim to ownership of cultural property on federal lands, the common law of property is the basis for determining most questions of ownership, unless aboriginal rights law provides an alternative legal framework (Bell 1992:491).

Bell (1992:502) argues that “Recent trends in Canadian aboriginal rights law appear to support the expansion of aboriginal rights to include collective or communal ownership of moveable cultural property”. Due to the fact that aboriginal rights have been defined on a case-by-case basis, Bell (1992:502) further argues that this has “given rise to the view that aboriginal rights are a bundle of property rights associated with title claims of aboriginal groups to specific parcels of land”. However, property rights are just one subset of interrelated rights that include cultural, religious, and political rights. Bell (1992:503) states that “there are very few cases where this interrelatedness of rights or aboriginal rights has been recognized by the courts”.

Recent decisions by the Supreme Court of Canada suggest a movement toward a broader definition of aboriginal rights. This is due in part to a shift from a contingent theory of aboriginal rights to an inherent theory of rights (Bell 1992:504). Contingent theory “presumes that aboriginal rights are contingent upon Crown grant or recognition and that such rights exist at the pleasure of the Crown”, whereas inherent rights theory “presumes that aboriginal rights are *sui generis* (of its own kind or unique) pre-existing legal rights that exist independent of creation or

acts of recognition” (Bell 1992:504). This marks a significant shift in favour of an expansion of aboriginal rights and as noted by Bell (1992:504), the basis for this expansion rests in the recognition of aboriginal rights in Section 35 of the Canadian Constitution.

Burley (1994:93) warns that “Canadian archaeologists must begin to address the concerns of aboriginal groups regarding uses of their past and create a trust that will allow for future alliance”. Toward this end, the Canadian Archaeological Association has begun to integrate aboriginal perspectives into its policy initiatives and has established a “Native liaison working committee with Indigenous representatives” (Burley 1994:94).

Indian Act

It is the policy of the federal government to assert ownership as “landowner” of archaeological material on federal Crown lands. Thus, aboriginal rights to property buried or partially buried in the land, outside of reserve lands are measured against the rights of the landowner, or the Crown, while “Ownership of aboriginal cultural property on reserve lands is governed by the Indian Act” (Bell 1992:491). According to the Indian Act, tracts of reserve lands are defined as: “the legal title to which is vested in Her Majesty, that [have] been set apart by Her Majesty for the use and benefit of a band” (Bell 1992: 492).

There is little more damning evidence of the impact of colonialism than the Indian Act. Well noted by scholars and Indigenous populations for the perpetuation of its paternalistic, racist and sexist doctrines (Ponting 1997 provides one example), it stands out among other policy and legislation aimed at governing the Canadian people generally and Indigenous people specifically.

As noted above, in terms of legislation, nothing has had comparable impact on the lives of Canadian Indigenous people like the Indian Act of 1876.

The Indian Act is a Lands Act. It is a Municipal Act, an Education Act and a Societies Act. It is primarily social legislation, but it has a very broad scope: there are provisions about liquor, agriculture and mining as well as Indian lands, band membership and so forth. It has elements that are embodied in perhaps two dozen different acts of any of the provinces and overrides some federal legislation in some respects...It has the force of the Criminal Code and the impact of a constitution on those people and communities that come within its purview (Ponting 1997:21).

Conclusion

In the first chapter, I emphasized that there are many types of cultural remains that may be held to be as sacred and/or as valuable as human remains within Indigenous culture in Canada and these should receive no less than the same protection. As far as possible, cultural material should enrich broader living descendant communities, providing links between culture and identities of the past and cultural identities of the present. Recognition of these identities is crucial to not only the material record but to local communities and the creation of policy and legislation that reflects the needs of local communities and archaeological practice. As Ross (2010:124) has stated, “It is only by having Aboriginal people and heritage professionals working together to challenge outdated legislation acknowledged and acted upon by bureaucracies, that Indigenous voice can, once again, be heard.”

Presently, there is a clear need for Canada “to enact a national standard through federal legislation or consistent provincial laws” (Eden 2005:120), not just for human remains, but for all cultural heritage. Such a federal legislation must resolve the issue of locality, wherein federal jurisdiction accommodates specific provincial issues. Eden (2005:134) has proposed that “It may just be simpler for the Canadian government to enact federal law governing indigenous human remains that would project to all the provinces, or to pass law delineating the requirements of provincial law.” In this way, federal provisions would be in place that specifically deal with

indigenous cultural materials of significance can be managed through changes to existing laws within the provinces. Such as provision could both protect Indigenous knowledge and cultural heritage by combating “the structural inability of Eurocentric law to give Indigenous people control of their humanity, heritage and communities (Battiste 2000:292).

Even a cursory review of the literature confirms that lack of a cohesive federal policy regarding cultural heritage material within Canada exists and that such policy initiatives have been left largely to individual provinces (Eden 2005:123). This has led to the development of policies with varying degrees of accountability from province to province. Without meaningful changes to policy and legislation at the federal and/or provincial level, inclusion of Indigenous and Indigenous communities and values remains only theoretical in Canada.

Table 3. Summary of federal legislation in Canada, Australia and New Zealand concerning cultural heritage

COUNTRY	Canada (Federal)	Australia	New Zealand
NAME OF LEGISLATION	CEA and Cultural Property Export and Import Act	<ul style="list-style-type: none"> Local Planning and Environmental Act 1987 State Heritage Act 2016 Aboriginal Heritage Act 2006 National-Environment Protection Biodiversity and Conservation Act 1999 	Waitangi Tribunal
OTHER RELATED LEGISLATION		<ul style="list-style-type: none"> The Aboriginal Heritage Act 2006 The Burra Charter 1976 Moveable Cultural Heritage Act 1986 	Historic Places Act (HPA)
CONSULTATION WITH COMMUNITY		Yes	Yes
PROTECTED MATERIAL		<p>Local</p> <ul style="list-style-type: none"> Heritage Overlays include places of local heritage significance as well as heritage precincts. <p>State</p> <ul style="list-style-type: none"> historic archaeological sites and artefacts; historic buildings, structures and precincts, gardens, trees and cemeteries; cultural landscapes; shipwrecks and relics significant objects. National-Environment Protection Biodiversity and Conservation Act 1999 and The National Heritage List is a register of places of outstanding Indigenous, historic and/or natural heritage values. The Commonwealth List is a register of important Commonwealth-owned places. Heritage places can be on one or both lists. Moveable Cultural Heritage Act protects export of cultural heritage material 	HPA protects human remains and archaeological sites associated with human activity that occurring before 1900

Table 4. Summary of provincial legislation in Canada concerning cultural heritage.

PROVINCE	NAME OF LEGISLATION	OTHER RELATED LEGISLATION	CONSULTATION WITH COMMUNITY	PROTECTED MATERIAL	IMPACT ASSESSMENT	PERMIT	LICENCE	REPORT	BOARD/ COMMITTEE OVERSIGHT	FUNDING	FINES Individual/ Corporation	STOP ORDER	JAIL - TERM	NOTES
British Columbia	Heritage Conservation Act (1996)	Haida Gwaii Reconciliation Act	YES			YES				YES	\$2000 to not more than \$5000 / \$1 000 000	YES	*6 months to not more than 2 years	BC legislation specifies concern for and consideration of First Nations
Alberta	Alberta Historic Resources Act (2010)	The Government Organization Act		Any work of nature or humans	YES	YES		YES	BOARD	YES	\$50 000 max.	YES	*Up to a year	
Saskatchewan	Heritage Property Act (2005)	The Saskatchewan Heritage Act		Any object showing evidence of manufacture, alteration or use by humans.	YES	YES		YES		YES	\$5 000 / \$250 000	YES	Not more than 6 months	Exposed skeletal material predating 1700 goes to the Crown, postdating 1700 goes to local First Nations communities
Manitoba	Historic Resources Act (2003)			Any site, object or work of nature or humans	YES	YES			Council	YES	\$5 000/ 000 max.	YES		
Ontario	Ontario Heritage Act (2009)		YES	means real property, but does not include buildings or structures other than ruins, burial mounds, petroglyphs and earthworks.		YES	YES	YES			Person or Director of a Corporation/ Corporation \$1 000 000/\$250 000	YES	Corporation no more than one year	Only province where penalty fine is higher for individuals than corporations, unless a director of a corporation. Act does not specifically define "archaeological objects" or what is protected under the act
Quebec	Cultural Property Act (2010)			Heritage documents, immovables, objects and sites, landscapes, intangible heritage and historic figures, events and sites		YES	YES							Protection of landscapes, giving back to communities and sustainability - unique

Chapter 5. Case Study

Colonialism thus refracted the production of knowledge and structured the conditions for its dissemination and reception (Loomba 2005:69).

Introduction

This chapter presents an overview of the construction and archaeological research at the current location of the Canadian Museum for Human Rights (CMHR) and details the results of interviews with stakeholder groups concerning the construction process. The CMHR is located at The Forks National Historic Site of Canada (NHSC) in downtown Winnipeg, which covers a total of 25.3 ha of land (Parks Canada 2007:17). See Appendix E for a factsheet about the CMHR. It opened its doors on September 20th of 2014 making it the first federally owned museum outside of Ottawa since 1967. What makes this museum unique, apart from its location in Winnipeg, Manitoba, is that it is conceived as an “ideas museum,” meaning that it exists to highlight issues of human rights and to generate discussion rather than to display artifacts for public viewing. According to the CMHR, “As an “idea” museum, it begins with a concept – not a collection” (CMHR news release 2013). This aspect is what makes the museum truly unique and sets it apart from many other museums, which typically house displays of cultural material or even human remains. Instead, the museum intends to include “...immersive multi-media, digital interaction, built exhibits, images, film, art and performance to encourage reflection and dialogue on human rights” (CMHR news release 2013).

The reason the CMHR was chosen as the case study for this thesis is because the location was initially owned by the province and changed hands midway through the archaeological investigations to become Federal land. This sale was necessary due to the fact that the museum is designated as a “National” museum; the first one outside of the Nation’s capital, and as such,

must reside on federal lands. The fact that the Canadian Museum for Human Rights was subject to both provincial and federal jurisdictions while archaeological investigations were taking place positions it as the ideal case study to examine the impact of provincial and currently non-existent federal policy and legislation.

This raises a significant issue: how does one regulate a museum on federal land that is subject to provincial legislation and possibly multiple levels of funding (cf. Bell 2000) Negotiations or clashes between Indigenous people, archaeologists and museum establishments usually center on arguments over repatriation of cultural material or human remains. This is not the case with the CMHR. Rather, the focus of controversy surrounding the creation of the CMHR dealt with its location within a known and significant archaeological site (The Forks) and the contents of that site rather than the contents of the museum itself. That is not to say that artifacts and cultural heritage have not played a significant role in the creation of the CMHR. In fact, precisely because of the location of the CMHR, on land famous for its historic role in facilitating contact between Indigenous and colonial settlers along an ancient trade route “where the two rivers meet” at what is now known as the Forks in Winnipeg, the very ground on which the CMHR stands has been the subject of heated debate in the media due to its culturally rich heritage. See Figure 8 for a map showing future development at the Forks.

Apart from the media, whom purport to shed light on issues of public concern, there are a number of other stakeholder groups that demonstrate the range of potential issues that arose during the development of the CMHR. The following section outlines the main themes or topics extracted from the participant interviews, arranged by group affiliation. See Table 3 for a summary of these themes.

Participant Interviews/Discussion

Indigenous – Themes

The overarching theme taken from the participants of this group is that respect for their cultural heritage material is key. Many expressed concerns and deep anxiety at the thought that artifacts in general and from the site of the CMHR in particular (and especially sacred objects such as those with ceremonial significance), would not be treated with the traditional respect accorded to them or ever seen again by their communities. The fear was that these materials would be left to gather dust in the basement of a museum or government building. To my knowledge, this is exactly what has happened. The participants I spoke to were happy to share their cultural heritage with any group as long as the proper protocols demonstrating sensitivity and respect for their communities and the objects were genuinely followed. This does not seem too much to ask.

In terms of the location of the site of the CMHR itself, this group unanimously supported it as the continuation of a meeting place from ancient to modern times. The location has evolved just as Indigenous cultures have evolved. It was noted that the concerns of those living in urban centers are much different from those living in remote areas. One of the wishes expressed was for The Forks location to represent Indigenous cultures as it expands, recognizing the importance of the land to people long ago as well as today.

One of the themes that were touched upon in the interviews with this group of participants was the concept of “ownership” of the cultural heritage. This is a distinctly capitalistic aspect of colonialism concept as it was pointed out to me that Indigenous people regard the land and anything in it or on it as under their guardianship, rather than “owned” by them. It was pointed out that there has never been a concept of “ownership” among Indigenous

people because sharing, instead of ownership by individuals, is typically part of their way of life. Ownership of land and resources is a much more Eurocentric colonial concept. The land and its resources are for everyone, to be shared by all. Nonetheless, in order to regain guardianship of their cultural heritage, Indigenous people must work within a system that is based on different notions of possession and sovereignty; vestiges of the colonial mindset.

The notion of Indigenous ownership of cultural heritage material, engagement and control is non-existent since all cultural heritage material is automatically [and legally] considered to be vested in the Crown. Indeed, the Indigenous people interviewed for this research often described their inclusion at all in the development process of the CMHR in particular and development in general as appearing to be an “afterthought” by development, or a way to “cover themselves” that appeared to be little more than simple tokenism. Although there was a blessing ceremony at the start of the excavation, Indigenous people were not further engaged as development proceeded, nor were they informed of any of the outcomes of the excavation process by the CMHR.

One solution that was proposed is that the concept of custodianship rather than ownership be used in reference to cultural heritage material. This was presented as a way to symbolically acknowledge that Indigenous cultural heritage belongs to Indigenous communities and is on loan from them to local museums, universities etc. This was thought to be an effective way to alleviate the stress of not being in physical possession of cultural heritage materials and that alone would be a first step to build trust between Indigenous communities and archaeologists, academics and government or development. This concept reinforces the respectful approach advocated, particularly in regards to sacred objects or human remains that is paramount to building positive relationships with Indigenous people. This symbolic gesture is incredibly

important because it shifts the focus away from the notion of “ownership”, which becomes bogged down in legal issues and instead focuses on cooperative relationships built on mutual interests, trust and respect.

In the US, NAGPRA legislation is an excellent example of the dangers of making cultural heritage a legal or land claim issue, pitting Indigenous people against everyone else for access to and ownership of cultural heritage materials in costly, drawn out court battles that can go on for many years or even decades. Under this model, everyone involved loses. With each interview, we are reminded that cultural heritage material benefits everyone and must be shared equally by all.

Another proposed solution, and one that will be explored further in the next chapter, is the adoption of OCAP principles (Ownership, Control, Access and Possession) for archaeological research (OCAP 2017). Designed originally by Indigenous researchers as a model for studying health issues in northern communities, many noted that this is already standard practice for any research undertaken by Indigenous researchers in northern communities and could easily be applied to archaeological research as well. Additionally, it was noted that some chiefs already insist that OCAP principles are followed for any research that is conducted in their communities.

During the interviews, participants were enthusiastic about using multi-lines of complementary evidence when presenting cultural heritage material to any audience. Instead of merely describing artifacts as classes of data (e.g. what they are made of, where they were found), the significance of such artifacts according to oral traditions passed down by elders would enhance such presentations, ultimately making them far more interesting, educational and three-dimensional to the viewing public.

OCAP principles also seem uniquely amenable to the idea of replacing ownership and control with custodianship, while maintaining the intent of research protocols. Participants emphasized the desire to incorporate Indigenous values and practices into all future development process since all land is Indigenous land. Further, combined with the Seven Sacred Teachings, which will be discussed in the next chapter, OCAP principles exemplify the cultural sensitivity, cooperation and respect that provide the basis to move forward in a unified and equal Canada in support of cultural heritage.

Archaeologists - Themes

Right now in Canada archaeologists are granted access to archaeological or sacred sites etc. by other archaeologists. That is, archaeologists doing contract work gain permits to do so from archaeologists that represent provincial regulatory bodies. The entire process is insular; there is no accountability to anyone outside of the client paying for the work done by the contracting archaeologists and the archaeologists themselves. The provincial regulatory body headed by an archaeologist that represents the province or territory has sole discretion to set the standard for archaeological undertakings and to decide if that standard has been met.

One of the themes discussed in this group was the permit system. In the case of the CMHR, a second permit was issued once the land was transferred to federal ownership. The second permit however, was issued to the CMHR board instead of the archaeologist under contract. None of the participants could recall any other time in their experience that a permit for archaeological investigation was issued to the developer directly rather than an archaeological consulting firm. The permit holder is responsible for producing the final report, so the CMHR

board was technically responsible in this case, even though the archaeological contracting firm still produced the final report. This created a sense of unease among participants.

Additionally, participants felt that permits should be more regulated and backed by clear legislation that outlines who is eligible to receive a permit and under what specific conditions (e.g. professional designation and level of competency). A theme that seemed to weigh heavily on the participants of this group was the perception that policy and legislation in Manitoba not only did not have “teeth”, but it was not adequately enforced so that the end result was that development interests were favoured over others.

Engagement with Indigenous communities was another significant theme that was discussed. The consensus was that engagement protocols need to be formalized in policy and legislation and that engagement should continue from beginning to end of a project. In terms of the case study, it was felt that engagement was limited and insufficient.

The onus rests on archeologists to make archaeology relevant to local Indigenous communities. They must demonstrate the value of archaeological research to living descendant communities. One of the ways this is done is through dissemination of information and sharing knowledge with local communities. An Elder mentioned how they first became interested in archaeology when a site found outside of Miniota (where they grew up) proved to be 1000 years old. This completely changed their lifelong perception that their Dakota people had been a type of refugee in that area when in fact they had been there for a long time. Archaeological evidence in this case gave the Elder a new sense of pride and belonging in their community. This is an example of the value of archaeological research to local Indigenous communities if oral traditions have been disrupted (e.g. there are no living descendants left with knowledge of an area due to cultural alienation or other causes).

In cases where oral traditions are thriving, using multi-lines of evidence to corroborate each other may help to fill in the gaps of knowledge for one or both communities (archaeological and Indigenous). The favourability of using multi-lines of evidence in archaeological practice is one of the strongest emergent themes with this group; one they share in common with the Indigenous group. Another theme that this group seemed to share with some others was a desire to move from a concept of ownership toward a concept of custodianship in an effort to build stronger, positive relationships between archaeologists and Indigenous communities.

One interesting outcome of interviews with all the participants of this group was that they were very understanding of the (Historic Resources) Branch's limited human resources at the provincial level, and that they viewed less regulation at the provincial level with regards to cultural resources as a positive aspect overall. This statement by the participants likely refers to an appreciation of less interference from the branch on sites in progress. Furthermore, each expressed concern as well that if Federal legislation and policy were to become a reality in Canada, that it must be implemented carefully to enhance, rather than interfere with, existing provincial policy and legislation. Flexibility in this area was noted as key by this and all of the other groups.

Government – Themes

In this group, the main theme that emerged was that the provincial policy and legislation in place at the time of construction of the CHMR were adequate to deal with the requirements of development and did what it was designed to do. It was noted that only two percent of land in Manitoba falls under federal jurisdiction, so federal level policy and legislation would have little impact in the way archaeological exploration or development are handled. The museum is a

prime example that distinctions between provincial and federal can be changed according to political will. The transfer of land from provincial to federal shows that designations and distinctions between levels of government do not remain static over time; they can and do change, so policy and legislation must be in place to address such possibilities and their implications. Manitoba provincial policy and legislation are modeled after other provinces that are known for the quality and effectiveness of their legislation and as such, provides excellent guidelines for archaeological work and development protocols throughout the province.

The second emergent theme placed emphasis on the fact that provincial policy and legislation in Manitoba has provided guidelines for other provinces to follow and development compliance within Manitoba has improved greatly since the implementation of the Act. For example, the impending transfer of land from provincial to federal in the case of the CMHR was known from the beginning so that it was agreed between the Heritage Resource Branch, the CMHR and archaeologists that provincial guidelines would apply even after the transfer. Parks Canada, as an advisory body was brought in and approved of the procedures that were in place at the time of the transfer.

In response to questions regarding concerns about the extent of work done on the site and procedures to ensure the protection of artifacts, the consensus was that all the artifacts were processed and stored by the CMHR properly. As for the extent of work done, it was noted that budget constraints are always a concern when working on development projects and that this is an opportunity for academics in the field to take on a leadership role by applying for additional funding to study the materials recovered more thoroughly. In terms of existing policy and legislation guidelines, participants agreed that they had fulfilled their due diligence as had the CMHR in following existing protocols, including engagement of Indigenous communities.

Care and concern for the recovered cultural material was expressed by the participants, who noted that any artifacts that were recovered once the land became federally owned were kept by Parks Canada for a time and then returned to the HRB in order to keep the collection together. Appreciation was expressed for the efforts by the CMHR to keep the collection within the province.

Finally, members of this group felt that by capping (placing a concrete pad on top) the excavation area, artifacts that remained in the ground were adequately protected, allowing the possibility of access from underneath in the future. This is not a viewpoint shared by any of the other stakeholder groups.

Academic – Themes

While this group consisted of a number of individuals that do not constitute membership in any of the identified stakeholder groups per se, many of them as part of their academic work, research, ethnic backgrounds or all of these, represent indirectly the perspectives of the stakeholder groups. Some also overlap. For example, some of the researchers who were kind enough to sit down with me to discuss their area of research or expertise represented perspectives that could fit into more than one of the identified categories. Some academics were active members of Indigenous groups; others were archaeologists who had studied policy and legislation pertaining to either the case study or provincial or federal level politics. Still others were active on boards that dealt directly with the case study, while others had worked for the government. Many of them had held multiple positions and played multiple roles throughout their careers and thus offered a unique and valuable insight to this research. For this reason, they are included here.

It is also due to the overlapping nature of their combined experience that I have chosen to create a separate group to represent their diverse contributions instead of attempting to fit their perspectives arbitrarily within only one of the selected stakeholder groups. This would be a disservice to the quality of information that was shared with me and could lead to ambiguity, distorting the results of each stakeholder group.

One theme that emerged from these interviews concerned a lack of access to public documents such as the final reports written in accordance with permit requirements upon completion of fieldwork. These reports are submitted to the HRB to become public documents available for review. However, often there are unexplained delays or sometimes documents are not made available at all. This speaks to the issue of transparency. In the case of the CMHR, the final reports were not made available to the general public within a reasonable amount of time (over a year). This obstructs further study of a site and makes knowledge of the cultural heritage significance inaccessible to archaeologists as well as the general public. The Aboriginal Peoples Television Network (APTN) produced the following headline on December 20, 2011: “Winnipeg human rights museum could bury 1,000 year-old artifacts” followed by a video clip describing the CMHR as “troubled”:

The troubled Canadian museum for human rights got another blow this weekend as news emerged that the chairman of the board has quit. Meanwhile, funding has dried up and the facility is years behind schedule. But for Aboriginal people, it's not just what's above the ground that's raising concern. It's what's below the ground and what's being buried by museum officials in an 800 page report that few have seen (*APTN National News* Accessed February 12, 2012).

The issues of accessibility to information was secondary to three other themes that dominated interviews with this group. The first of these is that the concept of custodianship replace that of “ownership” of heritage resources. Second, is that minimum standards clarified

through provincial legislation must be applied not only to the profession but also to levels of analysis and standards of care for artifacts. Currently, repositories housing cultural heritage material are not regulated, which can lead to loss or damage of invaluable cultural material. This group felt strongly that there should be a minimum of care according to archaeological standards and guidelines that is backed by policy and legislation at the provincial level. This would act as a protection against the next theme, that of a lack of political will.

An overall theme that has emerged throughout my discussions for this research is a lack of political will to create and enforce necessary policy and legislation, particularly at the federal level, where no such policy or legislation exists. Policy and legislation can only be as strong as the political will behind it to enforce it. Lack of leadership or interest renders any level of policy or legislation useless. Lack of leadership and interest on the part of governing bodies in Manitoba specifically has been attributed by several of the respondents from different stakeholder groups as playing a major role in the current state of weakness of policy regarding heritage issues in the province.

Over the course of my discussions with various participants from the stakeholder groups, one issue we battled with was how can we give heritage policy and legislation “teeth” so to speak, to provide some immunity from lack of political will or the whims of any given government of the day, whether provincial or federal, that happens to hold power over cultural heritage? How do we protect cultural heritage, specifically Indigenous cultural heritage in Canada, from conflicting agendas? This requires injecting some type of immunity or outside accountability into the process.

What is being suggested here is a measure of protection for the process itself, not immunity in the sense that there is a creation of an untouchable entity known as cultural heritage

that would give carte blanche to whomever may lay claim under this status. The answer immediately seems obvious. The one solution that has as yet been ignored or excluded is that Indigenous people must be part of the design of any process that leads to the creation of new cultural heritage policy and legislation, whether provincial or federal. This does not mean that inclusion means consulting with Indigenous groups and coming away with ideas that are refined through a Western lens, or worse, ignored completely. Rather, inclusion must take the form of real and equal participation resulting in the creation of policy and legislation that demonstrates this real and equal status. The result is cultural heritage policy and legislation that shares for the first time, real, tangible control shared with Indigenous groups and their communities. To achieve this, Indigenous protocols must be built into the policy and legislation, guided not by government appointed officials, but by Indigenous people themselves, appointed as they see fit to ensure collaboration as equals on policy and legislation. A “lack of political will” could be taken as equivalent to a “lack of control” by the provincial government, as it is possible for some corporations to sidestep current legislation altogether. Again, checks and balances are needed to ensure against this. After taking stock of these interviews, it seems that the flexibility of provincial legislation in Manitoba is both a strength and a weakness.

Development

As noted in Chapter 4, the stakeholder group representing development, the Canadian Museum for Human Rights, despite being a major stakeholder and the subject of my case study, chose not to participate in this research. My requests for interviews with staff members were funneled through a designated gatekeeper to an official committee and ultimately, I was forbidden to speak to any past or present employee. Therefore, there are no themes or insights to

be drawn from personal interviews with the participants I had hoped to speak to, and this research must proceed without the benefit of the perspective of those working at the museum.

Perhaps the largest issue facing the museum from the point of view of those outside of the establishment is transparency. It appears a great deal of effort has been expended by senior museum staff to “handpick” those who are allowed access to share input in the planning stages of the museum before it opened in September 2014. One cannot ignore the distinct echoes of colonial-era attitudes in CMHRs selective approach for solicitation of contributions from Indigenous communities and otherwise fearful and exclusionary attitude toward the general public, myself included.

This has not gone unnoticed, and while the attempts are somewhat understandable given the controversy and political sensitivity surrounding the museum, not to mention the extravagant price tag associated with it; in the end, it is not in the best interest of the museum and their goals, nor the public at large, for the museum to operate from a place of fear and secrecy. This could result in the senior museum staff shooting themselves in the proverbial foot, as well as not providing the museum the opportunity to showcase their reported efforts (which have mostly remained out of the public eye and beyond public knowledge) at fairness and inclusiveness that were mentioned by other groups who did participate in this research. The lack of transparency thus far, shields these efforts from the public view, a public with whom the museum hopes one day to build relationships.

Skeates (2000:86) argues for the power of inclusivity rather than exclusivity:

A number of contemporary examples show how working with local people makes good sense in practice: both from the point of view of heritage managers, developers and archaeologists, in terms of minimizing conflict and from the perspective of local peoples, in terms of negotiating some control over the future of their heritage.

Mallea (1994:7) sums up the issues and controversy expressed by many surrounding the CMHR well by stating: "...powerful corporate interests combined with sluggish and wrong-headed legislation and the prejudices of centuries resist substantial progress". The CMHR has managed to illustrate the crux of this by showcasing the effects of powerful corporate interests led by the business class combined with policy and legislation that support, rather than impede such measures, on the marginalized class of Indigenous communities. The fact that the CMHR had so much control over which groups were selected to support their efforts and which groups were not, drives home the assertion that those who inherit colonial authority continue to have the upper hand in deciding whose existence is validated and whose is further marginalized or ignored completely. It is an "Ideas" museum that represents the ideas of a ruling class.

Conclusion

Archaeology is both a creative and a destructive process. There is only one chance to do an excavation properly. Once the fieldwork is complete, an archaeological record is created to be shared by all. However, in the process of obtaining the data that constitutes this archaeological record, the site as it once was is destroyed forever. Even the most thorough excavation can only provide a small glimpse of the total picture. It is simply impossible to find all of the pieces of the puzzle. Instead, we can only hope to add more pieces over time.

This is also the case with the site of DiLg-33 under the Canadian Museum for Human Rights. The site represents one of the largest and most significant archaeological excavations undertaken in the province of Manitoba to date. The finds are not just informative of past lifeways, the very place they were found is highly symbolic. The Forks, where the Red and the Assiniboine rivers meet, is now also the location where ancient meets modern; a meeting place

that has drawn diverse peoples from great distances for thousands of years and continues to do so.

Constructing the Canadian Museum for Human Rights on this site has been socially and politically contentious from the start, not only because of its culturally significant location, but because there have been many questions raised by archaeologists, academics and the public as to the fate of the recovered artifacts and the measures taken to protect what has not yet been recovered; the precious heritage that still resides beneath the museum. Many regard the construction of the museum on such culturally rich and significant ground to be culturally insensitive to Indigenous people, for whom the landscape of their ancestors has been forever altered. Again.

The Canadian Museum for Human Rights could be the ideal platform to address the human rights abuses that have plagued, and continue to plague, Indigenous people in Canada. It is impossible to showcase the advancement of human rights without serious discussions about the violations of those rights that have necessitated change and enlightenment. It is unclear at the time of writing whether the Canadian Museum for Human Rights is up to the task.

At the Federal level during this process, Stephen Harper was the Prime Minister of Canada. Under this administration, massive and unprecedented cuts to federal funding and programs, such as Parks Canada and the protections formerly provided by the Canadian Environmental Act (CEA), placed a strain on the already limited foundations that also protect cultural heritage. There is little hope of obtaining meaningful federal policy and legislation that aims to better protect cultural heritage under such “leadership” that continues to deny and devalue Indigenous people’s lived experience.

This strikes at the heart of what a museum such as the Canadian Museum for Human rights stands for, or for which it should strive. Instead, we are seeing a taboo emerge in regards to naming and facing our racist, sexist and violent colonial past which continues into the present.

Table 5. Summary of the interview themes.

Themes	First Nations & Métis	Archaeologists	Government	Academia
Respect for cultural heritage	•			
Custodianship vs ownership of cultural heritage	•			
Presentation of research findings	•			
Accessibility of research results	•			•
Permit regulations		•		
Inadequate engagement of First Nations and Métis groups	•	•		•
Flexibility of provincial policy and legislation		•		
Enforcement of provincial policy and legislation		•		
Consideration of oral traditions and archaeological evidence	•	•		•
Excavation materials were not adequately curated	•	•		•
There is a general lack of political will to address issues and concerns	•	•	•	•
Provincial policy was effective			•	
Extent of archaeological recovery and post-excavation research was sufficient			•	
DiLg-33 was adequately protected and could be accessed in the future			•	

Chapter 6. Conclusion: Best Practices

This strange road we find ourselves on can only be traveled together

(Sleepy Hollow TV series, 2013)

Introduction

This chapter proposes a best practices model based on the research and participant interviews presented in the preceding chapters as well as suggestions for future directions in archaeological approaches to the issues brought up by this research. The arguments presented in this concluding chapter strive to show that Canada needs to enact federal policy and legislation to protect and conserve its precious cultural heritage for generations to come.

There is a global crisis of destruction of cultural heritage sites due to rapid development that is outpacing the ability of available archaeologists as well as protective measures to contend with it (Allen 2010:162). While countries comparable to Canada, due to similar colonial histories such as New Zealand and Australia, have developed measures and legislation to attempt to deal with the crisis; it is still not even recognized as a crisis in Canada. As a result, legislation and protective measures in Canada have not entered into the discussion for over two decades.

The results of this project aim to contribute to the education and benefit of the major stakeholders involved in the recovery of cultural heritage material in Manitoba. It also endeavours to provide a valuable future reference for the development of policy and legislation initiatives regarding cultural heritage material within Manitoba specifically and more broadly within Canada.

Directions for the future

Countries such as New Zealand and Australia, who share a colonial history similar to Canada, are moving forward in directions that are important at this point for Canada to heed if it is ever to show real progress in its commitment and protection of cultural heritage resources. These countries have taken tangible steps backed by legislation to ensure the inclusion of Indigenous people and their knowledge in their quest for best practices.

Based on the themes that came out of the participant interviews, there is a strong desire to build collaborative relationships between the archaeological and Indigenous communities where engagement is not just a practice but a formal requirement of provincial and federal legislation that allows full and equal participation by all at every stage of archaeological investigation. Toward this end, it was suggested that each province and perhaps each major city (since urban and remote community concerns are vastly different) should have a community-appointed Elder to monitor archaeological and development projects alongside the provincially appointed archaeologist representing the Historic Resources Branch (MB) to ensure that respect is shown and traditional protocols followed for Indigenous cultural heritage materials. I see no reason why this should not be viable. Training opportunities for archaeologists (both academic and private contractors) in traditions and protocols of Indigenous communities as well as archaeological principles for local communities would provide the first steps needed to move forward toward this goal.

Next, an archaeological research database that is accessible to those interested in Indigenous communities would provide access to all archaeological reports and data for a given area. Much of the information would be accessible for the first time to local communities and could aid in preparation for fieldwork, educational purposes or independent research. Both the

specific training and database access would allow collaborative relationships to flourish, providing multi-lines of evidence to present with displays of cultural heritage for the benefit of all involved. In order to strengthen presentations of cultural heritage materials to the public, displaying both traditional knowledge (where appropriate) alongside archaeological data would assist in linking the ancient past to the present to demonstrate how cultures have evolved (instead of remaining static in the past) in a new and engaging way for the viewer/student.

To further strengthen relationships between archaeologists and Indigenous communities as well as demonstrate a commitment to cultural sensitivity and inclusivity, awareness of the Seven Sacred Teachings should be learned and observed through training by the archaeological community when working in Indigenous communities. The Seven Sacred Teachings are typically depicted through six types of spirit animal and a symbol, each demonstrating the characteristics of the teaching although there are some variations. The Calgary Board of Education for example, uses Sasquatch to symbolize honesty instead of Glosscap (<http://schools.cbe.ab.ca/b244/seven.htm>. Accessed October 21, 2014). These include Truth (Turtle), Love (Eagle), Respect (Buffalo), Courage (Bear), Honesty (Glosscap), Humility (Wolf) and Wisdom (Beaver). Each of these teachings are detailed below, as described on <http://www.kakakaway.com/7-sacred-teachings?lightbox=image16es> (Accessed January 23, 2017):

Truth (Turtle)

To know truth is to know and understand all of the original laws as given by the Creator- and to remain faithful to them. It is said that in the beginning, when the Creator made man and gave him the seven sacred laws, the Grandmother Turtle was present to

ensure that the laws would never be lost or forgotten. On the back of a Turtle are the 13 moons, each representing the truth of one cycle of the Earth's rotations around the sun. The 28 markings on her back represent the cycle of the moon and of a woman's body. The shell of the Turtle represents the body real events as created by the Higher Power, and serves as a reminder of the Creator's will and teachings.

Love (Eagle)

To feel true love is to know the Creator. Therefore, it is expected that one's first love is to be the Great Spirit. He is considered the father of all children, and the giver of human life. Love given to the Great Spirit is expressed through love of oneself, and it is understood that if one cannot love oneself, it is impossible to love anyone else. The Eagle was chosen by the Great Spirit to represent this law, as the Eagle can reach the highest out of all the creatures in bringing pure vision to the seeker. Though the purveyor of the greatest and most powerful medicine, love can also be the most elusive of the teachings, as it depends upon a world that acknowledges the importance of spirituality.

Respect (Buffalo)

The Buffalo, through giving its life and sharing every part of its being, showed the deep respect it had for the people. No animal was more important to the existence of Indigenous families than this animal, and its gift provided shelter, clothing and utensils for daily living. Native people believed themselves to be true caretakers of the great herds, and developed a sustainable relationship with the Buffalo resulting in a relationship that was a true expression of respect

Courage (Bear)

The Bear provides many lessons in the way it lives, but courage is the most important teaching it offers. Though gentle by nature, the ferociousness of a mother Bear when one of her cubs is approached is the true definition of courage. To have the mental and moral strength to overcome fears that prevent us from living our true spirit as human beings is a great challenge that must be met with the same vigour and intensity as a mother Bear protecting her cub. Living of the heart and living of the spirit is difficult, but the Bear's example shows us how to face any danger to achieve these goals.

Honesty (Glosscap)

Long ago, there was a giant called Glosscap. Glosscap walked among the people to remind them to be honest to the laws of the creator and honest to each other. The highest honour that could be bestowed upon an individual was the saying "There walks an honest man. He can be trusted." To be truly honest was to keep the promises one made to the Creator, to others and to oneself. The Elders would say, "Never try to be someone else; live true to your spirit, be honest to yourself and accept who you are the way the Creator made you."

Humility (Wolf)

Recognizing and acknowledging that there is a higher power than man and it is known as the Creator is to be deemed truly humble. To express deference or submission to the Creator through the acceptance that all beings are equal is to capture the spirit of humility. The expression of this humility is manifested through the consideration of others before ourselves. In this way, the Wolf became the teacher of this lesson. He bows his head in the presence of others out of deference, and once hunted, will not take of the

food until it can be shared with the pack. His lack of arrogance and respect for his community is a hard lesson, but integral in the Aboriginal way.

Wisdom (Beaver)

The building of a community is entirely dependent on gifts given to each member by the creator and how these gifts are used. The Beaver's example of using his sharp teeth for cutting trees and branches to build his dams and lodges expresses this teaching. If he did not use his teeth, the teeth would continue to grow until they became useless, ultimately making it impossible for him to sustain himself. The same can be said for human beings. One's spirit will grow weak if it is not fulfilling its use. When used properly however, these gifts contribute to the development of a peaceful and healthy community.

Finally, new clear and concise professional standards and guidelines for archaeologists applying to their province for permits needs to be in place to ensure archaeological standards, ethics and competencies are upheld. An archaeologist who does not meet the professional training and educational requirements of the permit process would be denied permit-holding status with no exceptions. Currently in Manitoba, it is common practice to “grandfather in” avocational archaeologists who have worked in the field but lack the minimum education and formal training required by the profession.

The next section provides a best practices model that outlines specific steps toward more culturally sensitive and inclusive practices that could be built into future policy and legislation initiatives.

Best Practices

Watkins (2000:156) presents the outcome of the Canadian Archeological Association's Committee on Archaeology and Aboriginal Heritage in 1992 that was co-chaired by Bev Nicholson and Eldon Yellowhorn wherein the committee examined the "relationships between professional archaeologists and aboriginal people". Together, the committee produced a mandate that included the following three points:

1. To develop, through extensive consultation with the aboriginal and archaeological communities, a draft statement of principles for ethical archaeological practice and minimum standards for intercommunity communication.
2. To examine policies and concepts to assist all levels of government (including aboriginal governments) to realize consensual management of aboriginal heritage features.
3. To encourage direct involvement of aboriginal people, through active recruitment programs, in professional archaeology.

It appears that the early 1990s was a time of reflexive discourse and quest for action in terms of cultural heritage issues. As noted above, this call for change in the way archaeologists and indigenous groups work together came the year following the introduction of a proposal for formal federal heritage legislation in 1991 and its points are still relevant today. It begs the question: why then, have these initiatives and proposals been all but abandoned and forgotten twenty years later?

The best practices model presented here builds on the first two recommendations made by Canadian Archeological Association's Committee on Archaeology and Aboriginal Heritage in

1992. The third recommendation by the committee has already been addressed in the previous section.

The OCAP (ownership, control, access, and possession) model was first introduced to me by one of the Indigenous interview participants at the beginning stages of my research. Since then, my research has shown that although originally developed by Indigenous researchers studying health in northern communities, its principles can, and are, currently applied to other disciplines doing research in Indigenous communities. In fact, I have been informed that the voluntary adoption of these principles is now standard practice for any research conducted by Indigenous researchers working in northern communities. For example, OCAP principles have already been adopted by almost all cultural anthropologists working with Indigenous communities. Further, some chiefs already insist that this model is used whenever anyone is conducting research of any kind in their communities. Knowledge of OCAP principles has also become part of the standard for all undergraduate and graduate level courses in ethnographic research methods. For these reasons and due to the suitability of OCAP principles to archaeological research specifically, as well as the Canadian provinces and territories broadly, this provides an ideal starting point to address new policy and legislation initiatives for cultural heritage research and management. As a best practices model, it is also an opportunity for archaeologists as well as government representatives to collaborate with Indigenous researchers and communities to create a set of meaningful and inclusive form of research protocols. The OCAP principles are outlined below:

What is OCAP™?

The First Nations Principles of OCAP™ (ownership, control, access, and possession) means that control data collection processes in their communities. First Nations own, protect and control how their information is used. Access to

First Nations data is important and First Nations determine, under appropriate mandates and protocols, how access to external researchers are facilitated and respected.

The right of First Nations communities to own, control, access, and possess information about their peoples is fundamentally tied to self-determination and to the preservation and development of their culture. OCAP™ allows a community to make decisions regarding why, how and by whom information is collected, used or shared

(<http://www.rhs-ers.ca/node/2> Accessed Sept.16, 2013).

The Components of OCAP™ are as follows:

- **Ownership:** Ownership refers to the relationship of First Nations to their cultural knowledge, data, and information. This principle states that a community or group owns information collectively in the same way that an individual owns his or her personal information.
- **Control:** The principle of control affirms that First Nations, their communities and representative bodies are within their rights in seeking to control over all aspects of research and information management processes that impact them. First Nations control of research can include all stages of a particular research project-from start to finish. The principle extends to the control of resources and review processes, the planning process, management of the information and so on.
- **Access:** First Nations must have access to information and data about themselves and their communities, regardless of where it is currently held. The principle also refers to the right of First Nations communities and organizations to manage and make decisions regarding access to their collective information. This may be achieved, in practice, through standardized, formal protocols.

- Possession: While ownership identifies the relationship between a people and their information in principle, possession or stewardship is more concrete. It refers to the physical control of data. Possession is a mechanism by which ownership can be asserted and protected (http://fnigc.ca/sites/default/files/docs/ocap_path_to_fn_information_governance_en_final.pdf. Accessed Sept.16, 2013).

The research presented in this thesis has shown a considerable interest in moving away from the concept of ownership applied to cultural heritage by archaeologists, academics and Indigenous alike. Instead, custodianship and proper conservation were emphasized by all as the most important way to deal with current issues in cultural heritage management. In following this positive direction, it is the position of this researcher that the second principle of OCAP be modified to reflect this desire to share custodianship and conservation of cultural heritage material wherever it is recovered.

Where the first principle refers to ownership, this will be fully and automatically acknowledged by future policy and legislation development or amendment at all levels which recognizes that cultural heritage material belongs to Indigenous communities who allow researchers and the various levels of government or private museums to take responsibility (act as custodian) for the conservation and protection of these cultural materials when local communities do not have the capacity to do so themselves. The notion of “ownership” of cultural heritage in the legal sense has created adversarial legal and political relationships between competing interests that have characterized disputes over cultural heritage material. By moving away from a concept of “ownership” these adversarial relationships are no longer necessary. When archaeologists, government and Indigenous communities work together to protect and

conserve cultural heritage material as set out in formal policy and legislation, their actions work as the much-needed form of checks and balances to counteract the main issue identified in this study as obstructing positive relationships between diverse groups: a lack of political will. This one amendment to OCAP principles would thus reflect new collaborative relationships between the stakeholder groups identified in this study based on mutual respect and accountability. The acronym would now stand for Ownership, Custodianship (instead of control), Access and Possession.

Summary and Conclusion

In this thesis, I examined existing policy in Canada against the backdrop of the colonial legacy in the country and introduced the concerns raised by several stakeholder groups in regard to the practices, policies and attitudes about cultural heritage in Manitoba specifically. Chapter 1 of this thesis presented an introduction and overview of the issues under study. Chapter 2 explored the history of archaeology in the province of Manitoba and at the CMHR site specifically. Chapter 3 presented the materials and methods used while undertaking this research, while Chapter 4 examined provincial level policy and legislation with a focus on Manitoba while advocating for the creation of federal level cultural heritage policy and legislation. In doing so, a brief comparative analysis of Canada in relation to countries with a similar colonial experience, namely Australia and New Zealand, was presented. Chapter 5 provided a discussion of the themes extracted from participant interviews with the four stakeholder groups identified in this thesis and the case study, the Canadian Museum for Human Rights, located at the Forks in Winnipeg. The current and final chapter presents some ideas for moving forward toward the goal

of creating inclusive provincial and federal level policy and legislation along with a best practices model and the conclusion, covered in the next section. Please see Appendix F for suggestions for further reading.

The ideas and best practices model presented here have been available in various forms for over two decades and are intended as a starting point for future consideration when designing new policy or legislation. It is a matter of pulling all of the elements together to form a cohesive statement of best practices that ensures it is (to whatever degree possible) impervious to a lack of political will and therefore not subject to the passing whims of whichever federal or provincial political party happens to be in power.

Federal legislation and policy guidelines must be drafted to reflect these elements and to provide coverage of gaps in cultural heritage regulation that currently exist, such as in airports and some waterways. Thus, federal legislation is not only a professional issue but an imperative in order to adequately conserve and protect cultural heritage materials, wherever they are recovered.

This thesis was written at a time when the Conservative government led by Prime Minister Stephen Harper was in power. This provides an excellent example of the importance now more than ever to ensure that legislation is protected from the ignorance and political whims particularly of any one such person, who demonstrates blatant disregard for the work of scholars, anthropologists, archaeologists and Indigenous people generally as well as for the need to protect natural and cultural resources. There needs to be checks and balances built into any forthcoming heritage legislation that prevent lack of political will or short-sighted political vision from destroying decades of hard work and the relationships established out of that work between Indigenous people and archeologists in the public/private sector. These checks and balances need

to be in the form of meaningful control of Indigenous heritage by and for Indigenous people, protected under federal and provincial legislation in which their sovereignty is recognized and put into practice.

The fact that Canada has no federal legislation in place to protect its rich heritage resources is nothing short of a global embarrassment. Could it be (the reason that there have been no further attempts at federal legislation for heritage) that our proud nation is bending under the shame of both our colonial past and the enduring colonial present?

Moving forward requires a look back while charting a new path into unknown territory. In order to establish federal legislation there are many relationships to resolve and burnt bridges to re-build. Legal definitions and sovereign rights must be finally established and codified, case laws have set precedents, and Indigenous people have been fighting since day one to establish their human rights in a now hostile land that once provided both home and livelihood long before settler colonialists set up house. Moving forward requires recognition of this complex and horrific past, which defies the carefully molded national identity of Canada as a multi-cultural success on the global stage. The elephant in the room is not growing any smaller despite desperate attempts to starve it out of existence.

I leave this research for future researchers by re-iterating the opening epigraph to emphasize that we cannot afford to leave anyone behind on the path we must take forward: “This strange road we find ourselves on can only be traveled together.”

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Appendices

APPENDIX 1: Definitions and terms	110
APPENDIX 2: Email and telephone recruitment scripts	113
APPENDIX 3: Consent forms on University of Manitoba letterhead	114
APPENDIX 4: Questionnaires.....	117
APPENDIX 5: List of Canadian heritage legislation	126
APPENDIX 6: List of federal heritage legislation: Canada, New Zealand and Australia..	143
APPENDIX 7: CMHR Factsheet.....	144

Appendix 1: Definitions and terms

The term “engagement” is used to suggest contact and cooperation between industry, government, indigenous community members who are within the vicinity of proposed development, and archaeologists. The term “engagement”, which has replaced the former term “consultation,” is itself ambiguous. What constitutes engagement with indigenous community members is not clearly defined anywhere in the literature or archaeological guidelines dealing with the recovery of cultural heritage material. Thus, it is left to individual stakeholders to define their own criteria for engagement practices and to decide whether they have met their own requirements. Although the standards for engagement fall under the purview of the Archaeology Branch within individual provinces, the ambiguity of the term allows cultural resource management firms considerable flexibility in demonstrating they have complied with requirements of engagement without raising concern. Quite often, this is not sufficient to ensure that the intended spirit of engagement suggested by policy guidelines has actually been fulfilled and can be further detrimental to building trust and good working relationships with indigenous communities. Ross (2010) quotes Smith (2006) in an attempt to better define the concept of heritage and its link to engagement: “...heritage [isn’t]only about the past-though it [is] that as well-heritage [is] a process of engagement, an act of communication and an act of making meaning in and for the present” (113).

In order to avoid confusion, the term “North American Indians” will not be used here as “Indigenous”, “Métis” or “Inuit” are the terms used specifically within Canada. Elsewhere, the

term “indigenous” shall be used to refer to populations that are native to a given country such as Australia, or Maori, in New Zealand, or Canada. In all cases, the correct terms for indigenous populations shall be used according to how those communities or populations identify themselves.

The term “cultural heritage property” for the purposes of this research means any culturally significant object or artifact defined from *both* an archaeological standpoint as well as from an indigenous point of view. As noted above, this term shall also be replaced by “cultural heritage material” unless specified as “property” in the literature since property has legal Eurocentric connotations as in “property vested in the Crown”, which is a phrase common within cultural heritage legislation. This operational definition seeks to avoid any potential conflict in defining Canadian heritage practices from both perspectives. Certain artifacts of cultural significance such as totems or ceremonial items, for instance, may be considered “living” and vital to indigenous people and therefore may have a level of cultural significance similar to that of human remains. Bell (2009) quotes Emma Tamlin when she states, “Objects may be valued because they represent “extensions of ourselves” or because they are “endowed with special significance because they are spiritual, memory laden, rare, mysterious, or in some other fashion worth treasuring” (89). While the same may apply to constructed features (e.g. graves, storage pits), locations (rock art sites) or landscapes (traditional hunting territories, medicinal gathering areas etc.), the definition is restricted here to human remains and culturally modified objects. In this sense, the word “property” refers to a general ownership by the community, represented by local indigenous people, and not the Crown. The term “property” in its current context, implies ownership and control, reflecting its colonial perspective, which strikes at the heart of this

controversial issue regarding cultural heritage regardless of whether the remains in question are human remains or other culturally significant objects.

According to the Manitoba Heritage Resources Act (1985) Section 43(1), archaeological, heritage objects and human remains are defined as the following:

"archaeological object" means an object

(a) that is the product of human art, workmanship or use, including plant and animal remains that have been modified by or deposited due to human activities,

(b) that is of value for its historic or archaeological significance, and

(c) that is or has been discovered on or beneath land in Manitoba, or submerged or partially submerged beneath the surface of any watercourse or permanent body of water in Manitoba;

"heritage object" includes an (a):

(a) archaeological object,

(b) palaeontological object,

(c) natural heritage object, and

(d) object designated as a heritage object by the Lieutenant Governor in

Council under subsection (2);

The term "human remains" means "remains of human bodies that in the opinion of the minister have heritage significance and that are situated or discovered outside a recognized cemetery or burial ground in respect of which there is some manner of identifying the persons buried therein" (Manitoba Heritage Resources Act 1985).

Appendix 2: Recruitment Email and Telephone Scripts

Participants – Oral Recruitment Script - 2013

Hello, my name is April Chabot and I am a graduate student at the University of Manitoba (doing research for my master's thesis). My research looks at provincial heritage policy across Canada and specifically within Manitoba. I am also researching the need for federal heritage policy in Canada. **I am using the Canadian Human Rights Museum for my case study. The goal is to design a best practices model for the development of heritage policy across Canada that is inclusive of Indigenous interests as a major stakeholder in all archaeological excavations and recovery of cultural heritage.**

Could you tell me who may be interested in speaking to me about this topic? I'd really like to talk to some of the elders or other interested community members who came out the site when the museum was first being built.

I would like to come down for a visit to introduce myself and talk to people who may be interested in being interviewed so that I can give them a little more information about my research.

Email version:

My name is April Chabot and I am a graduate student at the University of Manitoba (doing research for my master's thesis) in the Anthropology department. My topic is repatriation policy across Canada and specifically within Manitoba. I am using the Canadian Human Rights Museum at the Forks for my case study. The goal is to design a best practices model for the development of repatriation policy across Canada that is inclusive of Indigenous interests as a major stakeholder in all archaeological excavations and recovery of cultural heritage.

My research includes discussions of colonialism and Postcolonial Theory which I see fit with your areas of research as well. I would like to schedule a meeting with you to introduce myself and to provide a little more information about my research. I will be on campus on Friday in the afternoon if you are available then. I can be available before then as well if you have some time for a brief meeting. I will be leaving for work Monday evening for the remainder of October. I apologize for the rather short notice, this has come up quickly. Please let me know if you are available at all this week and we can work around your schedule.

Thank you in advance,

Appendix 3: Consent forms on University of Manitoba letterhead 1/3



UNIVERSITY
OF MANITOBA

Department of Anthropology

435 Fletcher Argue Building
Winnipeg, Manitoba
Canada R3T 5V5
Telephone 204-474-9361
Fax 204-474-7600
um-anthro@cc.umanitoba.ca

Project title: Federal Heritage Policy and First Nations in Canada: A Best Practices Model

[Redacted]

This consent form, a copy of which will be left with you for your records and reference, is only part of the process of informed consent. It should give you the basic idea of what the research is about and what your participation will involve. If you would like more detail about something mentioned here, or information not included here, you should feel free to ask. Please take the time to read this carefully and to understand any accompanying information.

You are being invited to be interviewed by the principal investigator, April Chabot, regarding your experiences as an archaeologist/member of a First Nations'/government/development community in Winnipeg, Manitoba. This research is being conducted by April Chabot for a Master's level thesis, under the supervision of Dr. Kent Fowler at the University of Manitoba. The primary goal of the project is to better understand how provincial and federal heritage policy impacted the development of the Canadian Human Rights Museum, which is the case study for this research. Interviews will be held during the day in any location that provides reasonable privacy and is agreeable to both of us. The interview is not expected to exceed two hours in length.

You will be asked a series of questions about your role in the construction of the Canadian Human Rights Museum, your experiences, and other topics related to your standpoint on the issue of heritage policy at the provincial and federal level and its impact on your work/experience as a representative of one of the identified stakeholders, namely as a member of a First Nations' community, the Canadian Human Rights Museum, provincial or federal government, a private contractor or academic. Questions will focus on describing how and why heritage policy at either the provincial or federal level impacted you as a stakeholder and how these policies could be implemented in the most efficient and inclusive way for all involved. However, you will be encouraged to share your story and experiences in whatever manner is most comfortable for you. Throughout the interview, you will be encouraged to direct the discussion and provide information you feel is important to better understand your experiences.

With your consent, the interview will be audio recorded in addition to taking hand-written notes. If you do not consent to being recorded, the principal investigator will only take notes. Please note that participation is voluntary, that you may refuse to participate, and that participation can be terminated by the participant at any time without prejudice by telling me that you want to terminate the interview. If you should decide at any point to terminate the interview, none of the information gathered shall be used for research purposes. If any perceived risk to you either personally or professionally is identified at any time during the interview, the interview will be terminated.

Initial: _____

umanitoba.ca

Appendix 3: Consent forms continued 2/3

Project title: Federal Heritage Policy and First Nations in Canada: A Best Practices Model

Following the interview, I may need to contact you for further information or clarification, which would only involve brief conversations over email or telephone. This contact will be optional and I will ask separately for your consent to do so. At the end of the project, which will be in December 2013, you will have the option of receiving a brief summary of the findings.

At the end of the project, I will be presenting my findings at a professional archaeological conference such as the annual Canadian Archaeological Association (CAA) or the Manitoba Archaeological Association conference (MAS). In addition, I may attempt to publish my findings or present them at other professional conferences. However, in all cases I will do so without revealing identifying characteristics such as names, addresses, and specific employment details. Nonetheless, given the relatively small population of local professional archaeologists in Winnipeg for example, there is a risk that some elements of your story (such as your type of employment) may be identifiable to others.

The only persons who will have access to the information collected are my research supervisor and me. All information will be kept strictly confidential. Documents related to the interviews will be stored on my password-protected personal computer. Recordings and hand-written notes, if any, will be stored in a locked cabinet in my home. I will transcribe interviews and, in the process, remove all personal identifiers. Data containing personal identifiers will be destroyed immediately after the research process has ended, in December, 2013. All documents will be shredded and/or deleted one year later, in December, 2014.

Your initials on each page and signature at the end of this form indicate that you have understood to your satisfaction the information regarding participation in the research project and agree to participate. In no way does this waive your legal rights nor release the researcher from her legal and professional responsibilities. You are free to withdraw from the study at any time, and/or refrain from answering any questions you prefer to omit, without prejudice or consequence. Your continued participation should be as informed as your initial consent, so you should feel free to ask for clarification or new information throughout your participation.

The University of Manitoba may look at your research records to see that the research is being done in a safe and proper way.

This research has been approved by the University of Manitoba Research Ethics Board. If you have any concerns or complaints about this project you may contact any of the above-named persons or the Human Ethics Secretariat at 474-7122. A copy of this consent form has been given to you to keep for your records and reference.

Initial: _____

Page 2 of 3

Appendix 3: Consent forms continued 3/3

Project title: Federal Heritage Policy and First Nations in Canada: A Best Practices Model

If you agree to each of the following, please place a check mark in the corresponding box.
If you do not agree, leave the box blank:

I have read or had read to me the details of this consent form.

My questions have been addressed.

I, _____ (print name), agree to participate in this study and realize I have the right to refuse participation or withdraw at any time without prejudice.

I understand that signing this consent form does not mean I waive my legal rights

I agree to have the interview audio-recorded.

I agree to be contacted by phone or e-mail if further information is required after the interview

I agree to have the findings (which may include quotations) from this project published or presented in a manner that does not reveal my identity.

I agree to be contacted for future research on provincial or federal heritage policy conducted by the researcher.

I understand that I will receive a copy of this consent form for my records.

Do you wish to receive a summary of the findings? Yes No

How do you wish to receive the summary? E-mail Surface mail

Address: _____

Participant's Signature _____ Date _____

Researcher's Signature _____ Date _____

The above participant has been informed of the purpose of this research study and has indicated they fully understand and consent to an interview with the principal investigator, April Chabot.

Signature of Principal investigator _____ Date _____

Initial: _____

Page 3 of 3

Appendix 4: Questionnaires 1/9

Project title: Federal Heritage Policy and Indigenous in Canada: A Best Practices Model

Archaeology Interview Questions:

Intro:

Please state your name and your role in the development process of the Canadian Human Rights Museum.

Please confirm that you have given your informed consent to this recorded interview and know that I will be taking additional notes to be used as part of my thesis research.

1. Q: Who was the proponent when you were hired for further mitigation?
2. Q: Who did the Heritage Resource Branch issue the permit to for the contract?
3. Q: What were the goals of the mitigation at the time you became involved?
4. Q: Were you subject to provincial or federal guidelines for the project?
5. Q: I understand you completed your report in November of 2012, is that correct?
6. Q: Has the report been officially released yet?
7. Q: Did you make further recommendations and if so, were those recommendations followed by the Canadian Human Rights Museum?
8. Q: What constraints if any, did you face once you took over mitigation?
9. Q: Would you say that the work you conducted met or exceeded minimum provincial requirements for the protection of heritage resources?
10. Q: Do you believe, from a CRM professional standpoint or an archaeological standpoint, that the regulations set by the province are adequate?
11. Q: Do you believe the existing provincial policy regulations are adequately enforced?
12. Q: How might Indigenous interests have been incorporated throughout the process at this site? Were they?
13. Q: To your knowledge, are there any formal requirements set by the province to engage with Indigenous communities?

General:

1. Q: How well are recommendations from archaeologists and Indigenous under current provincial policy and legislation integrated by development stakeholders in general?

Appendix 4: Questionnaires 2/9

Project title: Federal Heritage Policy and Indigenous in Canada: A Best Practices Model

2. Q: What kinds of provisions are in place in Manitoba to ensure that such recommendations are considered and where possible, integrated into development plans?
3. Q: Is there an official standard or professional standard set by archaeologists *themselves*, or private corporations *regardless* of the minimum requirements of provincial policy in regards to engaging with or repatriating artifacts to Indigenous groups?
4. Q: Are the best interests of all the stakeholder groups in this case, (archaeologists, development and Indigenous) reflected both within current policy and practice?
5. Q: Ultimately, are there greater burdens (whether financial, political etc.) placed on some stakeholder groups but not others?
6. Q: What are some of the barriers stemming from direct or indirect policy measures that may conflict with the ultimate goal of cooperation between the various stakeholder viewpoints?
7. Q: *What are some of the strengths and weaknesses of current provincial policy in Manitoba?*
8. Q: Based on your experience, how do you feel Manitoba's current heritage policy and enforcement of that policy compares to other provinces?
9. Q: Have you ever encountered loopholes in the provincial system and if so, what are they?
10. Q: Do you feel it is important for Canada to enact Federal legislation and regulation of heritage resources?
11. Q: How might the introduction of Federal regulations affect the way projects such as this one are conducted?
12. Q: What would be some important components in such Federal legislation and regulations?
13. Q: Are there any key elements that are missing and should be considered for amendment to future policy and legislative initiatives at either the provincial or federal level?
14. Q: Do you think under existing legislation enough is being done to engage Indigenous groups throughout the excavation and development process?
15. Q: Are there any other points that you would like to discuss regarding any of the topics we have covered or ones we may not have addressed?

Appendix 4: Questionnaires 3/9

Project title: Federal Heritage Policy and Indigenous in Canada: A Best Practices Model



Interview Questions: Indigenous Community

Intro:

Please confirm that you have given your informed consent to this recorded interview and know that I will be taking additional notes to be used as part of my thesis research.

General:

1. How do you feel about the chosen location for the Canadian Human Rights Museum at the Forks?
2. Are you aware of any Indigenous people or groups that were upset about the chosen location for the museum?
3. Could you tell me what the significance of that site and that particular landscape is to you?
4. Are there any known oral traditions that you know of that are associated with the site where the museum is located?
5. What is *important* to you as an Indigenous person in dealing with the recovery and protection of your cultural heritage property?
6. As a member of an Indigenous community, what would you like to see happen to all the artifacts that were collected during the 2008 and 2009 excavations?
7. Do you feel that the province is fulfilling their duty to consult with Indigenous *communities*?
8. What should be the first step to engage with Indigenous communities?
9. What are some important Indigenous principles that need to be part of the planning process for future developments or policy?
10. What considerations should be in place to protect Indigenous heritage rights?
11. What is the best way to be inclusive of Indigenous people in the development of land and to be respectful?
12. Are there any other points that you would like to discuss regarding any of the topics we have covered or ones we may not have addressed?

Appendix 4: Questionnaires 4/9

Project title: Federal Heritage Policy and Indigenous in Canada: A Best Practices Model



Government (provincial/federal) Interview Questions:

Intro:

Please confirm that you have given your informed consent to this recorded interview and know that I will be taking additional hand-written notes to be used as part of my thesis research.

General:

1. What was the role of the Historic Resources Branch in the excavations that took place at the site of the Canadian Museum for Human Rights at the Forks?
2. There were several changes of scope over the course of the project. Could you explain the timeline for these scope changes (I.E. *when* they happened and *what* changed)?
3. How did this affect the ongoing archaeological investigations at the site?
4. How did the transfer of the land for the museum location from provincial to federal holdings impact the work that was done from your point of view?
5. Under the terms of the heritage permit, what were the provisions for the processing and storage of the artifacts that were collected?
6. Where are the artifacts now?
7. Do you believe that the existing provincial heritage policy is *adequate* as well as adequately *enforced*?
8. What would you say are some of the strengths and weaknesses of current provincial policy and legislation?
9. To your knowledge, were any Indigenous groups that are part of the Treaty 1 area contacted?
10. Is there a formal process in place for Indigenous engagement that is recognized by the province?
11. Do you think under existing legislation enough is being done to engage Indigenous groups *throughout* the excavation and development process
12. What needs to be addressed in our cultural heritage policies and legislation to be more *inclusive* and build healthy partnerships between Indigenous, archaeologists, government and development?

Appendix 4: Questionnaires 5/9

Project title: Federal Heritage Policy and Indigenous in Canada: A Best Practices Model

- 
13. Are the best interests of all the stakeholder groups in this case, (archaeologists, development, government and Indigenous) reflected *both* within current policy and *practice*?
 14. Ultimately, are there greater burdens (whether financial, political etc.) placed on some stakeholder groups but not others?
 15. Are there any barriers stemming from either direct or indirect policy measures that may conflict with the ultimate goal of cooperation between the various stakeholder viewpoints?
 16. What are some of the strengths and weaknesses of current provincial policy in Manitoba?
 17. Based on your experience, how do you feel current heritage policy in Manitoba and enforcement of that policy compares to *other* provinces and territories in Canada?
 18. Do you feel it is important for Canada to enact Federal legislation and regulation of heritage resources?
 19. Are there any key elements that are missing and should be considered for amendment to future policy and legislative initiatives at either the provincial or federal level?
 20. I understand that the 2nd heritage permit for archaeological investigations was issued to a representative of the Canadian Human Rights Museum Board instead of the archaeological project director once the site was under Federal jurisdiction. Could you explain the reason it was done this way?
 21. What do you say to those who allege that recommendations by the archaeologists who produced the initial 800 page report were largely ignored?
 22. Are there any other points that you would like to discuss regarding any of the topics we have covered or ones we may not have addressed?

Appendix 4: Questionnaires 6/9

Project title: Federal Heritage Policy and First Nations in Canada: A Best Practices Model



Academic Interview Questions:

Intro:

Please confirm that you have given your informed consent to this recorded interview and know that I will be taking additional notes to be used as part of my thesis research.

1. What prompted you to research the lack of Federal heritage legislation in Canada?
2. In your opinion, what makes federal legislation in Canada imperative?
3. How might *Federal* heritage policy address ongoing issues of cultural resource management and archaeological mitigation across Canada that *provincial* policy cannot?
4. What conclusions have you reached regarding the need for federal legislation based on your research?
5. Have you found there are any gaps you have come across in your research, between *provincial regulation* and the *advisory* capacity of Parks Canada at the federal level that new federal policy could amend?
6. Do you feel that *regulation* at the provincial level and *advisory status* at the federal level are conflicting in any way?
7. What would you say is your biggest concern about the archaeological excavations and development that took place at the Canadian Human Rights Museum?
8. Do you believe that the heritage regulations set by the province are adequate?
9. What would you say are some of the strengths and weaknesses of current provincial policy in Manitoba?
10. Do you believe the existing provincial policy regulations are adequately enforced?
11. Starting now and into the future, how should Manitoba *specifically* and the rest of Canada deal with issues of *ownership* of First Nations' cultural heritage property?
12. To your knowledge, are there any formal requirements set by the province to engage with First Nations'?

Appendix 4: Questionnaires 7/9

Project title: Federal Heritage Policy and Indigenous in Canada: A Best Practices Model



Interview Questions CMHR

Intro:

Please confirm that you have given your informed consent to this recorded interview and know that I will be taking additional notes to be used as part of my thesis research.

1. What prompted you to write your report on the archaeological investigations that took place at the Canadian Museum of Human Rights?
2. Perhaps the biggest question is why was this *specific* location, an ancient Indigenous meeting place, selected for the development of the museum as opposed to somewhere else?
3. There were over 300 000 artifacts of Indigenous origin recovered and in the past it was indicated these recoveries would be featured prominently in the museum. Is that still the plan?
4. Where are the artifacts that were recovered during excavations now?
5. When do you expect all the artifacts to be available for researchers?
6. What would you say has been the most significant aspect(re-word) of the archaeological investigations that took place here between 2008 and 2011?
7. *It's been stated that the archaeological investigations that took place in 2008 and 2009 represent the largest dig ever undertaken at the Forks site. The final report was completed and submitted in November of last year. When does the museum plan to release the resulting reports?*
8. I understand that as a national museum, the land was sold to the federal government midway through the construction. How did this affect the existing provincial heritage contract with archaeologists performing excavation and mitigation work?
9. How did this change in jurisdiction from provincial to federal impact the project from the museum's standpoint?
10. Parks Canada represents federal jurisdiction but they are strictly an advisory body, not regulatory, so what guidelines were followed during the construction

Appendix 4: Questionnaires 8/9

Project title: Federal Heritage Policy and Indigenous in Canada: A Best Practices Model



of the Human Rights Museum once provincial policy was no longer technically in effect? (i.e. once the property was sold)

11. *It's been stated that in regards to a few key items that were found such as a pipe and animal bones, the museum is working with Indigenous elders primarily from Thunderbird House. Can you elaborate on who these elders are and which communities they represent?*
12. Were any Indigenous groups that are part of the Treaty 1 area contacted?
13. To what degree have Indigenous people been involved *throughout* the process of archaeological investigations and development plans?
14. Have you heard from any Indigenous people who may have expressed interest in having the recovered artifacts returned to their communities?
15. What do you say to those who allege that recommendations by archaeologists who produced the initial 800 page report were largely ignored?
16. Are there any other points that you would like to discuss regarding any of the topics we have covered or ones we may not have addressed?

Appendix 4: Questionnaires 9/9

Project title: Federal Heritage Policy and First Nations in Canada: A Best Practices Model



13. What needs to be addressed in our provincial cultural heritage policies to be more inclusive and encourage healthy partnerships between First Nations', archaeologists, government and development?
14. What does the *Federal* government need to do to protect First Nations' cultural heritage?
15. What is the best way to be inclusive of First Nations' in the development of land and to be respectful?
16. In your opinion, how well are recommendations from archaeologists and First Nations' under *current* provincial policy and legislation *integrated* by development stakeholders in *general*?
17. Do you feel that First Nations' people should ultimately decide whether sites such as this one are developed or not?
18. *Are there any other points that you would like to discuss regarding any of the topics we have covered or ones we may not have addressed?*

CANADIAN LEGISLATION RELATING TO FIRST NATION CULTURAL HERITAGE
(Brian Kiers and Catherine Bell, February 16, 2003)
Updated October 2004

This list is divided into two parts. Part A includes key legislation that affects ownership, protection, and control of First Nation cultural heritage (sites, objects, intellectual property/traditional knowledge, and human remains). Part B is a more detailed list that reveals the scope and nature of Canadian legislation that has direct and indirect impact on First Nation-cultural heritage. Some of this legislation (and regulations enacted pursuant to this legislation) will be implicated in the legal research conducted by members of the research team over the duration of this project.

Heritage conservation and repatriation are also addressed in northern land claim agreements and the Nisgaa Treaty. Relevant land claims and treaties and links to text are included in the appendix to *A Selected Review of Canadian Legislation Affecting First Nation Cultural Heritage*, which can be accessed through the research paper link .

The full text of legislation given below can be obtained through the Canadian Legal Information Institute website (www.canlii.org) which houses a collection of statutes and regulations from each jurisdiction in Canada. Federal statutes can also be accessed through the Justice Canada website (<http://laws.justice.gc.ca/en/index.html>).

PART A: KEY LEGISLATION

CANADA

Access to Information Act, R.S.C. 1985, c. A-1.

Canada National Parks Act, S.C. 2000, c. 32, ss. 16, 17, 32, 33 and 42.

Canada Heritage Languages Institute Act (not yet in force: assented to 1st February 1991)

Canadian Environmental Assessment Act, S.C. 1992, c. 37, s. 2(1).

Canadian Multiculturalism Act, R.S.C. 1985 (4th Supp.), c. 24, s. 3(1).

Copyright Act, R.S.C. 1985, c. C-42, 32.1(1)(c).

Cree-Naskapi (of Quebec) Act, S.C. 1984, c. 18, art. 21.

Cultural Property Export and Import Act, R.S.C. 1985, c. C-51.

Customs Act, R.S.C. 1985, c. 1 (2nd Supp.).

Customs Tariff, R.S.C. 1997, c. 36.

Appendix 5: List of Canadian provincial legislation 2/17

CANADIAN LEGISLATION RELATING TO FIRST NATION CULTURAL HERITAGE (Brian Kiers and Catherine Bell, February 16, 2003) Updated October 2004

This list is divided into two parts. Part A includes key legislation that affects ownership, protection, and control of First Nation cultural heritage (sites, objects, intellectual property/traditional knowledge, and human remains). Part B is a more detailed list that reveals the scope and nature of Canadian legislation that has direct and indirect impact on First Nation cultural heritage. Some of this legislation (and regulations enacted pursuant to this legislation) will be implicated in the legal research conducted by members of the research team over the duration of this project.

Heritage conservation and repatriation are also addressed in northern land claim agreements and the Nisgaa Treaty. Relevant land claims and treaties and links to text are included in the appendix to *A Selected Review of Canadian Legislation Affecting First Nation Cultural Heritage*, which can be accessed through the research paper link.

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PART A: KEY LEGISLATION

CANADA

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Canadian Multiculturalism Act, R.S.C. 1985 (4th Supp.), c. 24, s. 3(1).

Copyright Act, R.S.C. 1985, c. C-42, 32.1(1)(c).

Cree-Naskapi (of Quebec) Act, S.C. 1984, c. 18, art. 21.

Cultural Property Export and Import Act, R.S.C. 1985, c. C-51.

Customs Act, R.S.C. 1985, c. 1 (2nd Supp.).

Customs Tariff, R.S.C. 1997, c. 36.

Appendix 5:List of Canadian provincial legislation 3/17

-2-

Department of Canadian Heritage Act, S.C. 1995, c. 11, s. 4.
First Nations Land Management Act, S.C. 1999, c. 24, s. 31(3)(e).
Gwich'in Land Claim Settlement Act, S.C. 1992, c. 53, s. 4.
Historic Sites and Monuments Act, R.S.C. 1985, c. H-4.
Indian Act, R.S.C. 1985, c. I-5, s. 91.
Industrial Design Act, R.S.C. 1985, c. I-9.
Library and Archives of Canada Act, S.C. 2004, c. 11.
Museums Act, R.S.C. 1990, c. C-3, ss. 3, 5, 6, 8 and 9.
Northwest Territories Act, R.S.C. 1985, c. N-27, s. 57.
Nunavut Land Claims Agreement Act, S.C. 1993, c. 29.
Parks Canada Agency Act, S.C. 1998, c. 31.
Patent Act, R.S.C. 1985, c. P-4.
Status of the Artist Act, S.C. 1992, c. 33, ss. 2 and 3.
Trade-marks Act, R.S.C. 1985, c. T-13.
Yukon Act, R.S.C. 1985, c. Y-2, ss. 60-62.
Yukon First Nations Land Claims Settlement Act, S.C. 1994, c. 34.
Yukon First Nations Self-Government Act, S.C. 1994, c. 35.

ALBERTA

Cemeteries Act, R.S.A. 2000, c. C-3.
First Nations Sacred Ceremonial Objects Repatriation Act, R.S.A. 2000 c. F-14.
Foreign Cultural Property Immunity Act, R.S.A. 2000, c. F-17, S. 2(1).

Appendix 5:List of Canadian provincial legislation 4/17

-3-

Freedom of Information and Protection of Privacy Act, R.S.A. 2000, c. F-25.

Glenbow-Alberta Institute Act, R.S.A. 2000, c. G-6.

Historical Resources Act, R.S.A. 2000, c. H-9.

Limitations Act, R.S.A. 2000, c. L-12.

Provincial Parks Act, R.S.A. 2000, c. P-35.

BRITISH COLUMBIA

Document Disposal Act, R.S.B.C. 1996, c. 99.

First Peoples' Heritage, Language and Culture Act, R.S.B.C. 1996, c. 147.

Freedom of Information and Protection of Privacy Act, R.S.B.C. 1996, c. 165.

Heritage Conservation Act, R.S.B.C. 1996, c. 187.

Limitation Act, R.S.B.C. 1996, c. 266.

Museum Act, R.S.B.C. 1996, c. 326.

Muskwa-Kechika Management Area Act, S.B.C. 1998, c. 38.

Nisga'a Final Agreement Act, S.B.C. 1999, c. 2.

MANITOBA

Archives and Recordkeeping Act, C.C.S.M. 2001, c. A132, c. 35.

Foreign Cultural Objects Immunity From Seizure Act, C.C.S.M., c. F140, s.1.

Freedom of Information and Protection of Privacy Act, C.C.S.M., c. F175.

Heritage Manitoba Act, C.C.S.M., c. H39, s. 9.

Heritage Resources Act, C.C.S.M., c. H39.1.

Limitation of Actions Act, C.C.S.M., c. L150.

Appendix 5:List of Canadian provincial legislation 5/17

-4-

Provincial Parks Act, C.C.S.M. c. P20.

NEW BRUNSWICK

Archives Act, S.N.B. 1977, c. A-11.1.

Limitation of Actions Act, R.S.N.B. 1973, c. L-8.

Municipal Heritage Preservation Act, S.N.B. 1978, c. M-21.1.

National Parks Act, R.S.N.B. 1973, c. N-1, s. 3.

New Brunswick Museum Act, R.S.N.B. 1973, c. N-7, s. 3.3.

Right to Information Act, S.N.B. 1978, c. R-10.3.

NEWFOUNDLAND and LABRADOR

Archives Act, R.S.N.L. 1990, c. A-16.

Access to Information and Protection of Privacy, S.N.L. 2002, c. A-1.1, s. 25. (Not yet in force: assented to 14 March 2002)

Arts Council Act, R.S.N.L. 1990, c. A-17, ss. 3-5.

Historic Resources Act, R.S.N.L. 1990, c. H-4.

Limitations Act, S.N.L. 1995, c. L-16.1.

Municipalities Act, 1999, S.N.L. 1999, c. M-24, s. 200(1).

Provincial Parks Act, R.S.N.L. 1990, c. P-32, s. 2(c).

NORTHWEST TERRITORIES

Access to Information and Protection of Privacy Act, S.N.W.T. 1994, c. 20, s. 19.

Archives Act, R.S.N.W.T. 1988, c. A-6.

Historical Resources Act, R.S.N.W.T. 1988, c. H-3.

Appendix 5:List of Canadian provincial legislation 6/17

-5-

Limitation of Act, R.S.N.W.T. 1988, c. L-8.

Northwest Territories Archaeological Sites Regulations, N.W.T. Reg. 2001-219.

Scientists Act, R.S.N.W.T. 1988, c H-3.

Territorial Parks Act, R.S.N.W.T. 1988, c. T-4.

NOVA SCOTIA

Environment Act, S.N.S. 1994-95, c. 1, s. 3(v)(i).

Freedom of Information and Protection of Privacy Act, S.N.S. 1993, c. 5, s. 19.

Limitation of Actions Act, R.S.N.S. 1989, c. 258.

Heritage Property Act, R.S.N.S. 1989, c. 199.

Municipal Government Act, S.N.S. 1998, c. 18, s. 479.

Provincial Parks Act, R.S.N.S. 1989, c. 367, s. 2(1).

Public Archives Act, S.N.S. 1998, c. 24.

Special Places Protection Act, R.S.N.S. 1989, c. 438.

Trails Act, R.S.N.S. 1989, c. 476.

NUNAVUT

Archives Act, R.S.N.W.T. 1988, c. A-6.

Access to Information and Protection of Privacy Act (Nunavut), S.N.W.T. 1994, c. 20, s. 19.

Historical Resources Act, R.S.N.W.T. 1988, c. H-3.

Limitation of Actions Act, R.S.N.W.T. 1998, c. L-8.

Territorial Parks Act, R.S.N.W.T. 1988, c. T-4.

Appendix 5:List of Canadian provincial legislation 7/17

-6-

ONTARIO

Archives Act, R.S.O. 1990, c. A.27.

Cemeteries Act (Revised), R.S.O. 1990, c. C.4, ss. 71-72.

Foreign Cultural Objects Immunity from Seizure Act, R.S.O. 1990, c. F.23, s. 1.

Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. F.31.

Limitations Act, R.S.O. 1990, c. L-15.

Limitations Act, 2002, S.O. 2002, c. 24.

Ministry of Citizenship and Culture Act, R.S.O. 1990, c. M.18, s. 4

Ontario Heritage Act, R.S.O. 1990, c. O.18, ss. 7 and 10.

Tobacco Control Act, 1994, S.O. 1994, c. 10, s. 13.

PRINCE EDWARD ISLAND

Archives and Records Act, c. A-19.1

Ancient Burial Grounds Act, R.S.P.E.I. 1974, c.

Archaeological Sites Protection Act, R.S.P.E.I. 1988, c. A-17.

Charlottetown Area Municipalities Act, R.S.P.E.I. 1988, c. C-4.1, s. 21.

City of Summerside Act, R.S.P.E.I. 1988, c. S-9.1, s. 21.

Freedom of Information and Protection of Privacy Act, R.S.P.E.I. 1988, c. F-15.01.

Heritage Places Protection Act, R.S.P.E.I. 1988, c. H-3.1.

Museum Act, R.S.P.E.I. 1988, c. M-14.

Appendix 5:List of Canadian provincial legislation 8/17

-7-

QUEBEC

An Act Respecting Access to Documents Held by Public Bodies and the Protection of Personal Information, R.S.Q. c. A-2.1.

An Act Respecting Fabriques, R.S.Q. c. F-1.

An Act Respecting the Cree Regional Authority, R.S.Q. c. A-6.1, s. 6.

Archives Act, R.S.Q., c. A-21.1.

Code of Civil Procedure, R.S.Q., c. C-25.

Cultural Property Act, R.S.Q. c. B-4.

Forest Act, R.S.Q. c. F-4.1, s. 171.

The Education Act for Cree, Inuit and Naskapi Native Persons, R.S.Q. c. I-14.

SASKATCHEWAN

The Archives Act, R.S.S. 1978, c. A-26.

The Forest Resources Management Act, S.S. 1996, c. F-19.1.

Heritage Property Act, S.S. 1979, c. H-2.2.

Limitation of Actions Act, R.S.S. 1978, c. L-15.

The Freedom of Information and Protection of Privacy Act, S.S. 1990-91, c. F-22.01.

The Multiculturalism Act, S.S. 1997, c. M-23.01.

The Parks Act, S.S. 1986, c. P-1.1.

The Wanuskewin Heritage Park Act, 1997, S.S. 1997, c. W-13.

The Western Development Museum Act, R.S.S. 1978, c. W-12.

Appendix 5:List of Canadian provincial legislation 9/17

-8-

YUKON (See also Canada)

Access to Information and Protection of Privacy Act, R.S.Y. 2002, c.1.

Archives Act, R.S.Y. 2002, c. 9.

Cemeteries and Burial Sites Act, R.S.Y. 2002, c. 25.

Historic Resources Act, R.S.Y. 2002, c. 109.

Languages Act, R.S.Y. 2002, c. 133.

Limitation of Actions Act, R.S.Y. 2002, c. 139.

Parks and Land Certainty Act, R.S.Y. 2002, c. 165.

PART B: DETAILED LIST OF LEGISLATION

This is not an exhaustive list of all legislation that implicates First Nation cultural heritage. However, it demonstrates the wide range of legislation that has an impact on issues of protection, ownership and control.

CANADA

Access to Information Act, R.S.C. 1985, c. A-1.

Canada National Parks Act, S.C. 2000, c. 32, ss. 16, 17, 32, 33 and 42.

Canada Shipping Act, R.S.C. 1985, c. S-9, Article 30, s. 1(d).

Canadian Environmental Assessment Act, S.C. 1992, c. 37, s. 2(1).

Canadian Multiculturalism Act, R.S.C. 1985 (4th Supp.), c. 24, s. 3(1).

Copyright Act, R.S.C. 1985, c. C-42, 32.1(1)(c).

Cree-Naskapi (of Quebec) Act, S.C. 1984, c. 18, art. 21.

Cultural Property Export and Import Act, R.S.C. 1985, c. C-51.

Customs Act, R.S.C. 1985, c. 1 (2nd Supp.).

Appendix 5:List of Canadian provincial legislation 10/17

-9-

Customs Tariff, R.S.C. 1997, c. 36.
Department of Canadian Heritage Act, S.C. 1995, c. 11, s. 4.
First Nations Land Management Act, S.C. 1999, c. 24, s. 31(3)(e).
Gwich'in Land Claim Settlement Act, S.C. 1992, c. 53, s. 4.
Historic Sites and Monuments Act, R.S.C. 1985, c. H-4, s. 3.
Indian Act, R.S.C. 1985, c. I-5, s. 91.
Industrial Design Act, R.S.C. 1985, c. I-9.
Mackenzie Valley Resource Management Act, S.C. 1998, c. 25, s. 64. (1).
Museums Act, R.S.C. 1990, c. C-3, ss. 3, 5, 6, 8 and 9.
National Archives of Canada Act, R.S.C. 1985, c. 1.
Northwest Territories Act, R.S.C. 1985, c. N-27, s. 57.
Nunavut Land Claims Agreement Act, S.C. 1993, c. 29.
Parks Canada Agency Act, S.C. 1998, c. 31.
Patent Act, R.S.C. 1985, c. P-4.
Status of the Artist Act, S.C. 1992, c. 33, ss. 2 and 3.
Trade-marks Act, R.S.C. 1985, c. T-13.
Yukon Act, R.S.C. 1985, c. Y-2, ss. 60-62.
Yukon First Nations Land Claims Settlement Act, S.C. 1994, c. 34.
Yukon First Nations Self-Government Act, S.C. 1994, c. 35.

ALBERTA

Cemeteries Act, R.S.A. 2000, c. C-3.

Appendix 5:List of Canadian provincial legislation 11/17

-10-

Child and Family Services Authorities Act, R.S.A. 2000, c. C-11.

First Nations Sacred Ceremonial Objects Repatriation Act, R.S.A. 2000 c. F-14.

Foreign Cultural Property Immunity Act, R.S.A. 2000, c. F-17, S. 2(1).

Freedom of Information and Protection of Privacy Act, R.S.A. 2000, c. F-25.

Glenbow-Alberta Institute Act, R.S.A. 2000, c. G-6.

Government Organization Act, R.S.A. 2000, c. G-10.

Historical Resources Act, R.S.A. 2000, c. H-9.

Human Rights, Citizenship And Multiculturalism Act, R.S.A. 2000, c. H-14.

Limitations Act, R.S.A. 2000, c. L-12.

Provincial Parks Act, R.S.A. 2000, c. P-35.

Wildlife Act, R.S.A. 2000, c. W-10.

BRITISH COLUMBIA

Adoption Act, R.S.B.C. 1996, c. 5.

Child, Family and Community Service Act, R.S.B.C. 1996, c. 46.

Coal Act, R.S.B.C. 1996, c. 51.

Commissioner on Resources and Environment Act, R.S.B.C. 1996, c. 59.

Document Disposal Act, R.S.B.C. 1996, c. 99.

Environmental Assessment Act, R.S.B.C. 1996, c. 119.

First Peoples Heritage, Language and Culture Act, R.S.B.C. 1996, c. 147.

Forest Act, R.S.B.C. 1996, c. 157.

Forest Land Reserve Act, R.S.B.C. 1996, c. 158.

Appendix 5:List of Canadian provincial legislation 12/17

-11-

- Forest Practices Code of British Columbia Act*, R.S.B.C. 1996, c. 159.
- Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165.
- Heritage Conservation Act*, R.S.B.C. 1996, c. 187.
- Limitation Act*, R.S.B.C. 1996, c. 266.
- Mineral Tenure Act*, R.S.B.C. 1996, c. 292, s. 17(1).
- Mines Act*, R.S.B.C. 1996, c. 293, s. 38(2).
- Museum Act*, R.S.B.C. 1996, c. 326.
- Muskwa-Kechika Management Area Act*, S.B.C. 1998, c. 38.
- Ministry of Provincial Secretary and Government Services Act*, R.S.B.C. 1996, c. 309.
- Nisga'a Final Agreement Act*, S.B.C. 1999, c. 2.
- Oil and Gas Commission Act*, S.B.C. 1998, c. 39, s. 3.
- Special Accounts Appropriation and Control Act*, R.S.B.C. 1996, c. 436, s. 4(1).
http://www.qp.gov.bc.ca/statreg/stat/S/96436_01.htm

MANITOBA

- Archives and Recordkeeping Act*, C.C.S.M. 2001, c. A132, c. 35.
(TO BE PROCLAIMED: ASSENTED TO 6 JULY 2001)
- Foreign Cultural Objects Immunity From Seizure Act*, C.C.S.M., c. F140, s.1.
- Freedom of Information and Protection of Privacy Act*, C.C.S.M., c. F175.
- Heritage Manitoba Act*, C.C.S.M., c. H39, s. 9.
- Heritage Resources Act*, C.C.S.M., c. H39.1.
- Provincial Parks Act*, C.C.S.M. c. P20.

Appendix 5:List of Canadian provincial legislation 13/17

-12-

NEW BRUNSWICK

Archives Act, S.N.B. 1977, c. A-11.1.

Municipal Heritage Preservation Act, S.N.B 1978, c. M-21.1.

National Parks Act, R.S.N.B. 1973, c. N-1, s. 3.

New Brunswick Museum Act, R.S.N.B. 1973, c. N-7, s. 3.3.

Right to Information Act, S.N.B. 1978, c. R-10.3.

NEWFOUNDLAND and LABRADOR

(Alphabetical search for each Act under Table of Public Statutes for this section)

Archives Act, R.S.N.L. 1990, c. A-16.

Access to Information and Protection of Privacy, S.N.L. 2002, c. A-1.1, s. 25.
(TO BE PROCLAIMED: ASSENTED TO 14 MARCH 2002)

Arts Council Act, R.S.N.L. 1990, c. A-17, ss. 3-5.

Child, Youth and Family Services Act, S.N.L. 1998, c. C-12.1, 7(g).

City of Corner Brook Act, R.S.N.L. 1990, c. C-15, ss. 272, 273 and 275.

City of Mount Pearl Act, R.S.N.L. 1990, c. C-16, ss. 272, 273 and 275.

City of St. John's Act, R.S.N.L. 1990, c. C-17, s. 355.

Historic Resources Act, R.S.N.L. 1990, c. H-4.

Municipalities Act, 1999, S.N.L. 1999, c. M-24, s. 200(1).

Provincial Parks Act, R.S.N.L. 1990, c. P-32, s. 2(c).

NORTHWEST TERRITORIES

Access to Information and Protection of Privacy Act, S.N.W.T. 1994, c. 20, s. 19.

Archives Act, R.S.N.W.T. 1988, c.A-6.

Appendix 5:List of Canadian provincial legislation 14/17

-13-

Territorial Parks Act, R.S.N.W.T. 1988, c. T-4.

Wildlife Act, R.S.N.W.T. 1988, c. W-4, ss. 63-64, 98(j), 99, 116 and 118.

NOVA SCOTIA

Environment Act, S.N.S. 1994-95, c. 1, s. 3(v)(i).

Freedom of Information and Protection of Privacy Act, S.N.S. 1993, c. 5, s. 19.

Heritage Property Act, R.S.N.S. 1989, c. 199.

Municipal Government Act, S.N.S. 1998, c. 18, s. 479.

Provincial Parks Act, R.S.N.S. 1989, c. 367, s. 2(1).

Public Archives Act, S.N.S. 1998, c. 24.

Public Service Act, R.S.N.S. 1989, c. 376, s. 71.

Special Places Protection Act, R.S.N.S. 1989, c. 438.

Trails Act, R.S.N.S. 1989, c. 476, s. 10(1).

NUNAVUT

Archives Act, R.S.N.W.T. 1988, c.A-6.

Access to Information and Protection of Privacy Act (Nunavut), S.N.W.T. 1994, c. 20, s. 19.

Territorial Parks Act, R.S.N.W.T. 1988, c. T-4.

Wildlife Act, R.S.N.W.T. 1988, c. W-4, ss. 63-64, 98(j), 99, 116 and 118.

ONTARIO

Archives Act, R.S.O. 1990, c. A.27.

Appendix 5:List of Canadian provincial legislation 15/17

-14-

Cemeteries Act (Revised), R.S.O. 1990, c. C.4, ss. 71-72.

Child and Family Services Act, R.S.O. 1990, c. C.11, ss. 1 and 34.

Foreign Cultural Objects Immunity from Seizure Act, R.S.O. 1990, c. F.23, s. 1.

Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. F.31.

Ministry of Citizenship and Culture Act, R.S.O. 1990, c. M.18, s. 4

Ontario Heritage Act, R.S.O. 1990, c. O.18, ss. 7 and 10.

Planning Act, R.S.O. 1990, c. P.13, s. 2.

Regulated Health Professions Act, 1991, S.O. 1991, c. 18, s. 35.

Tobacco Control Act, 1994, S.O. 1994, c. 10, s. 13.

PRINCE EDWARD ISLAND

Archives and Records Act, c. A-19.1

Adoption Act, R.S.P.E.I. 1988, c. A-4., s. 2.

Ancient Burial Grounds Act, R.S.P.E.I. 1974, c. A-9.

Archaeological Sites Protection Act, R.S.P.E.I. 1988, c. A-17.

Charlottetown Area Municipalities Act, R.S.P.E.I. 1988, c. C-4.1, s. 21.

City of Summerside Act, R.S.P.E.I. 1988, c. S-9.1, s. 21.

Freedom of Information and Protection of Privacy Act, R.S.P.E.I. 1988, c. F-15.01.

Heritage Places Protection Act, R.S.P.E.I. 1988, c. H-3.1.

Museum Act, R.S.P.E.I. 1988, c. M-14.

Appendix 5:List of Canadian provincial legislation 16/17

-15-

QUEBEC

An Act Respecting Access to Documents Held by Public Bodies and the Protection of Personal Information, R.S.Q. c. A-2.1.

An Act Respecting Fabriques, R.S.Q. c. F-1.

An Act Respecting the Cree Regional Authority, R.S.Q. c. A-6.1, s. 6.

Archives Act, R.S.Q., c. A-21.1.

Code of Civil Procedure, R.S.Q., c. C-25.

Cultural Property Act, R.S.Q. c. B-4.

Forest Act, R.S.Q. c. F-4.1, s. 171.

The Education Act for Cree, Inuit and Naskapi Native Persons, R.S.Q. c. I-14.

SASKATCHEWAN

The Archives Act, R.S.S. 1978, c. A-26.

The Forest Resources Management Act, S.S. 1996, c. F-19.1.

Heritage Property Act, S.S. 1979, c. H-2.2.

The Freedom of Information and Protection of Privacy Act, S.S. 1990-91, c. F-22.01.

The Multiculturalism Act, S.S. 1997, c. M-23.01.

The Parks Act, S.S. 1986, c. P-1.1.

The Wanuskewin Heritage Park Act, 1997, S.S. 1997, c. W-13.

The Western Development Museum Act, R.S.S. 1978, c. W-12.

YUKON

Access to Information and Protection of Privacy Act, S.Y. 1995, c.1

Appendix 5:List of Canadian provincial legislation 17/17

-16-

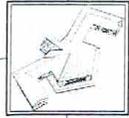
Archives Act, R.S.Y. 1986, c. 8.

Childrens Act, R.S.Y. 1986, c. 22, s. 131.

Historic Resources Act, S.Y. 1991, c. 8.

Parks Act, R.S.Y. 1986, c. 126.

Appendix 6: List of federal legislation Canada, New Zealand, Australia



ALLEN HARRY 2010 FROM
BRIDGING THE DIVIDE: INDIGENOUS
COMMUNITIES AND ARCHAEOLOGY IN THE
21ST CENTURY

List of Heritage Legislation,
Documents and Organisations

Australia

Aboriginal and Torres Strait Islander Act
Aboriginal Cultural Heritage Act (ACHA)
Aboriginal Relics Preservation Act
Archaeological and Historical Preservation Act
Australian Heritage Commission Act
Cultural Record Act
Designated Landscape Area (DLA)
Heritage Register
Indigenous Land Corporation (ILC)
National Parks and Wildlife Act
Native Title Act
Sacred Sites Authority

ICOMOS

Burra Charter, Australia
→ Charter for the Protection of Places of Cultural Heritage
Value, New Zealand

New Zealand

Antiquities Act
Foreshore and Seabed Act
Historic Places Act (HPA)
Department of Conservation (DOC)
Maori Heritage Council of the NZHPT
Maori Heritage Unit of the NZHPT
Mataatua Declaration on Cultural and Intellectual
Property Rights of Indigenous Peoples
Ministry of Culture and Heritage
National Policy Statement
New Zealand Biodiversity Strategy
Protected Objects Act
New Zealand Historic Places Trust (NZHPT)
Resource Management Act (RMA)
Statement of Intent
Town and Country Planning Act
Treaty of Waitangi
Wahi Tapu
Wahi Tapu Area



Facts about the Museum

The Canadian Museum for Human Rights (CMHR) was declared a national museum in 2008 by the Government of Canada, with a mandate “to explore the subject of human rights with special, but not exclusive, reference to Canada, in order to enhance the public’s understanding of human rights, to promote respect for others and to encourage reflection and dialogue.”

It opens September 20, 2014. High-res photos of the Museum can be viewed and downloaded at www.flickr.com/photos/cmhr_mcdp

About the building

- Total capital cost, including building and exhibits, is \$351 million. The private sector is the largest contributor, with \$142 million raised as of December 2013. The Government of Canada contributed \$100 million, Manitoba \$40 million and Winnipeg \$23.6 million.
- World-renowned American architect Antoine Predock borrowed images from the Canadian landscape: mountains, clouds, Prairie grass, ice and snow. Complex geometry and human rights symbolism grace every component, weaving light through darkness.
- The four stone Roots represent all humans as children of the Earth. Three sprout indigenous Prairie tall-grass, the fourth forms an outdoor amphitheatre. Inside are classrooms, restaurant, retail, ticketing and – in future – a theatre and temporary gallery.
- The site, on First Nations Treaty One land and the homeland of the Métis people, has been a meeting place for thousands of years. In consultation with Aboriginal Elders, the CMHR funded an archaeological excavation that re

- covered more than 400,000 artifacts. Traditional medicine bags were deposited
- in over 500 holes drilled for the piles.
- The Tower of Hope rises to 100 metres, equivalent to a 23-storey building. The building's total area is 24,155 square metres (equal to four Canadian football fields).
- Built by PCL Construction and Smith Carter Architects, the CMHR is a high-performance "green building" constructed to meet LEED Silver certification. There are 1,300 individual pieces of glazing. About 35 000 tonnes of concrete was used: equal to 3,000 elephants! □
- Visitors ascend through exhibit spaces along a kilometre of glowing ramps clad in Spanish alabaster. An enormous glass "cloud" wraps around the northern façade, designed in the image of dove wings, flooding the upper levels with natural light.
- Up through the Mountain Galleries are the Museum's main exhibits, housed between walls of Manitoba Tyndall Stone and concrete. The interior Garden of Contemplation is a space of light and serenity, full of water, greenery and Mongolian basalt rock arranged to facilitate peaceful reflection.



CANADIAN MUSEUM FOR
HUMAN RIGHTS

About the experience

- The Museum will be open from 10 a.m. to 5 p.m. every day except Mondays. A free evening will be held on the first Wednesday of each month, beginning in January 2015. Adult admission will be \$15 (taxes included), youth (age 7 to 17) will be \$8, and students and seniors \$12. Children under 7 may visit for free. A family of six or less can enter for \$42. A membership program will also be available.
- Developed by expert CMHR researcher-curators, the Museum's content was informed by cross-Canada public engagement with over 2,000 people, input from a Human Rights Advisory Council, peer-reviewed approach papers and rigorous ongoing scholarship.

- Dynamic, interactive exhibits – presented by master exhibit designer Ralph Appelbaum Associates – are arranged around human rights themes, using multimedia technology and stunning visuals. Artifacts and artwork become tangible touchstones that connect visitors to human rights. Storytelling and performance make concepts come alive.
- The Museum’s exhibits include over 100 hours of video; four feature films; an immersive multimedia experience; 26 small format films; 37 large scale linear media projections; 512 video clips; more than 250 artifacts and works of art; 2,543 images; two soundscapes; 18 mixed-media story niches; 19 digital interactive elements; 100,000 words of original text; and seven theatres. □
- Human rights stories will be showcased from multiple perspectives, in unique and remarkable ways. The Museum will also house a vast digital collection of recorded oral histories, relayed by people with lived experience of human rights in Canada and around the world.
- Interpretive learning programs use human interaction to enhance the museum experience. Activities include guided tours, games, issue-based theatre, art, music, debates and discussion. Beyond the walls, programs extend to a robust online presence, lectures, outreach kits, a national teachers’ resource data base and a national student program.
- Inclusive design has been embraced by an approach that sets new Canadian and world standards for universal accessibility. Cutting-edge technology, nationwide input from the disability community, and pioneering Canadian research ensure the visitor experience is designed to include the full range of human diversity.
- Fully bilingual exhibits and programs make the Museum a first-class destination for francophones and French-language students from across the country and beyond. **Built in Winnipeg...for good reason** The CMHR stands as the first national museum built outside the National Capital Region in Ottawa. It sits on a historic site, surrounded by a city with an inspiring human rights legacy – from the labour rights struggle of the 1919 Winnipeg General Strike to Nellie McClung’s fight for women’s right to vote, defence of French-language rights, the push for Aboriginal self-determination... and so much more. □Winnipeg is a city of diversity, home to the country’s largest urban Aboriginal population, immigrants from around the globe, and the largest French-speaking community in Western Canada. It

boasts globally- inspired cuisine, world-class arts organizations and vibrant ethnic festivals. It is also a growing centre of human rights scholarship at its four universities.



What you'll find inside

The Museum's galleries are built around human rights themes. Complex issues must be explored from multiple perspectives. As a result, the Museum weaves human rights stories of many diverse groups throughout its galleries – reflecting powerful lessons that transcend individual experiences. For example, equality rights are relayed through stories about Indigenous Peoples, women, children, persons with disabilities and the LGBTTTQ community. Democratic rights and freedoms are also an important focus, examined from a uniquely Canadian perspective.

1. What are Human Rights? Visitors are immersed in a multisensory experience when they enter this physically imposing installation, featuring a remarkable “object” theatre and undulating timeline that presents a survey of human rights concepts throughout the ages and around the world.
2. Indigenous Perspectives: Aboriginal concepts of humanity and our responsibilities to each other are explored in one of the most dramatic spaces of the Museum. The focus is a circular theatre of curved wooden slats representing the multitude of Canadian Aboriginal traditions, which will play a 360-degree film and serve as a space for storytelling, performance and discussion.
3. Canadian Journeys: This largest gallery takes a multi-layered approach to dozens of Canadian human rights stories from French-language rights to the Chinese head tax, from voting rights to cultural dispossession in the North. A digital canvas relays stories across a 96-foot screen, while others are told in floor stations and story niches.
4. Protecting Rights in Canada: Legal aspects of Canadian human rights are examined here. An ambient “living tree” projection evokes the constant growth of laws with social change, while a digitally interfaced debate table enables visitors to explore pivotal cases from different perspectives.

5. **Examining the Holocaust:** This gallery explores the fragile nature of human rights and the importance of defending them for all. A “broken-glass” theatre examines Canada’s own experiences with anti-Semitism. Touch-screen monitors allow visitors to analyze Nazi techniques of genocide and compare them to methods used in other genocides around the world.
6. **Turning Points for Humanity:** The Universal Declaration of Human Rights is a central focus of this gallery, examining how grassroots movements have expanded the concepts of rights. Large monitors relay the power of activism and the role of social movements in motivating change.
7. **Breaking the Silence:** This gallery explores the role of secrecy and denial in many atrocities around the world. It includes a focused examination of the Ukrainian Holodomor, the Armenian genocide, the Holocaust, the Rwandan genocide and the Srebrenica genocide in Bosnia.
8. **Actions Count:** Human rights express a vision for the world we wish to create for the next generation. This gallery includes an interactive table about action against bullying and inspiring stories of Canadians who have worked to make a difference.
9. **Rights Today:** Bringing visitors face-to-face with contemporary human rights struggles and action, this gallery features an interactive wall map, a tapestry of human rights defenders, and a media literacy theatre.
10. **Expressions:** A changeable gallery that will feature a diverse range of temporary exhibits focused on many aspects of human rights.
11. **Inspiring Change:** Intended to spark a personal commitment to positive social change, this gallery incorporates objects and images from events that have promoted human rights, and asks visitors to contemplate their own role in building a better world for all people.



To find out more

Media relations

Maureen Fitzhenry Media relations manager T: 204.289.2112 C:
204.782.8442 maureen.fitzhenry@humanrights.ca

Web: humanrights.ca Blog: humanrights.ca/explore/blog FLickR
photo gallery: www.flickr.com/photos/cmhr_mcdp Twitter:
[@CMHR_News](https://twitter.com/CMHR_News) Facebook: www.facebook.com/canadianmuseumforhumanrights YouTube: www.youtube.com/user/Human-RightsMuseum Instagram: [@cmhr_museum](https://www.instagram.com/cmhr_museum) or [@mcdp_musee](https://www.instagram.com/mcdp_musee).

E-mail

info@humanrights.ca

Phone

(204) 289-2000 Fax: 204.289.2050 TTY204.289.2050 Toll Free:
1.877.877.6037

Address (offices):

85 Israel Asper Way Winnipeg, Manitoba Canada R3C 0L5