

The State of Archaeology and First Nations

R. Kris Nahrgang

The state of Ontario archaeology and its relations with First Nations communities is criminal! Did all archaeologists train to be consultants only? Where is the research? Must we walk ever faster over fields seeking only the larger sites? Are we solely the products of the developers' environment? Is this what archaeologists train for? These are some of the questions that come to mind when I think of archaeologists.

I am a student and an avocational archaeologist, with a passion for my ancestral history. I am also the Chief of the Kawartha Nishnawbe First Nation, Burleigh Falls, and the Native Liaison regarding all archaeological matters for local First Nations. It is my understanding that archaeologists train to examine, understand and interpret cultures and the stories that they leave behind.

Not so long ago, in many central Ontario communities, lived a great many First Nations people. For a period of around 12,500 years, the people who came before us roamed in relative freedom, making a good life and existence for all. There was a connection to this land and its spirituality, people co-existed in harmony as part of nature itself. These lands still hold the truths of our existence, showing the beauty of our culture and our connection with Mother Earth.

One question that I am asked often is "Why do First Nations people not trust archaeologists?" It is a simple answer that I give. The only time we see archaeologists in our community is when they find our ancestors' bones. So it stands to reason that First Nations people would think that all archaeologists do is dig up our ancestors. Would you trust the people who dug up your ancestors and kept their material goods as their own property?

As First Nations people, we see artifacts in cases, on shelves, on display, interpreting and portraying our past. From our perspective, we are rarely consulted on any issue unless it is attached to a burial. It has been the practice of government and of archaeologists to take control of First Nations' material culture, and to tell us what we did and how we did it. "It disenfranchises Natives

from their past, treats them as objects for study, and belittles their traditions and historical knowledge" (Jamieson 1999:9). It is important to realize that our customs and our traditions cannot be interpreted from a Euro-centric view. It must be realized that our culture is at one with nature and Mother Earth. Every time a site is excavated the spiritual link with the land is broken for us and, with it, the record of our existence is removed. It is important for us to be involved with all land development in this province, and it is just as important to involve those people whose ancestors created its history. Although the people in this area may not be the exact descendants of the people or groups that created the artifacts, there is no doubt that they were created by our family of ancestors.

I have met many archaeologists working in Ontario, and I am always impressed with the knowledge and respect that is held for the past and the people who walked here before us. I see a great wealth of knowledge that should be used in a more focused way to protect the areas of the past that we touch. Sadly, consulting archaeology has become the norm in this province and we are moving in front of the backhoe as we attempt to protect our history.

What methods of protection are in place to watch over these resources? The Ministry of Culture is understaffed and underfunded; none of their archaeologists are in the field and, thus, no one is monitoring activities first hand. Consulting archaeologists are now doing the monitoring. The day of the research archaeologist is quickly becoming a thing of the past.

The New Standard: Consulting Archaeology

If current development-driven excavations are the new standard for the research of archaeological sites, then we are truly going backwards. Gathering information in front of a Gradall should not be considered research, nor should it be acceptable. The amount of destruction that comes with “Gradall archaeology” is obvious. When the archaeologists leave the ground, it is sterile; this piece of land has suddenly lost its past and spiritual links to the present. The documentation taken by the archaeologists is the only record that remains.

The issues surrounding consulting archaeology and the speedy manner in which survey must be completed for the developer can be seen as bordering on misconduct. Common sense tells us that we lose volumes of valuable information as we push rapidly through these sites. Limited time schedules make conservation methods such as capping sites seem feasible and responsible. In the eyes of First Nations, capping a site to allow for construction of a golf course is not preserving our cultural past. In fact, it is the destruction of our past, as chemical fertilizers, golf carts and pedestrian traffic walk over our ancestral remains on a daily basis. These sites are said to be preserved for the future. It is said that archaeologists may have better technology at their disposal in the future. This scenario, in our opinion, is just making developers’ problems “go away”.

I feel that most archaeologists have the best of intentions when they begin work on these sites, but I also feel that what we ask of them on a daily basis is unfair. Simultaneously, we expect them to serve and monitor the developers; to protect and preserve the cultural material as it comes out of the ground; to work within guidelines imposed by an underfunded ministerial bureaucracy that controls their professional lives; to deal with First Nations as issues arise; and to write a detailed report on a site, while every step of the way the developers are pushing for expediency and a final product, which is “clearance” rather than a real contribution to our knowledge of the past. To further complicate the entire situation, archaeologists must work within very limited budgets as

most developers feel these projects are unnecessary in the first place. Finally, the archaeologists remain responsible for housing and curating all materials gathered from these sites. They incur these costs with no help or funding from the Government of Ontario. Somehow this does not seem right.

The Developer: The Bad Guy?

When someone decides to develop a property, it is a conscious decision to put out money in order to make more money. There are conditions attached to this type of activity that must be satisfied before a developer is allowed to begin work. If someone were to state that an environmental assessment needed to be done on a property, there would be no questions asked—this is just a part of doing business. If someone asks for archaeology to be done it is an imposition, even though it is the law. It is up to the municipalities and the Ministry of Culture, to ensure that the legislation is followed and that all people doing development meet archaeological standards.

A prime example of this not happening is in the Township of Scugog. A property had been subject to Stage 1 and 2 assessment. The resulting recommendations were that Stage 3 and 4 assessments were required on 24 sites that had been identified, some of which dated back to the Paleoindian period, about 10,000 years ago. It seemed that all was well, but the planner for the township had “forgotten”, to attach the condition for further archaeological assessments to the developments’ Official Plan application. The developer saw this oversight as a window of opportunity and went through it with a bulldozer, grading the property and proceeding with development. How could this possibly happen? It is obvious that developers are not afraid of the consequences of their actions. Few, if any developers have ever been charged for the destruction of a cultural site. It is time for stiffer penalties and a will to impose them on the negligent developer.

I am sure most of you can name similar instances. At this time, First Nations are in the early processes of litigation over the Scugog property. As Scugog First Nation is the closest and therefore most appropriate community, it is taking the developer to the

courts. But First Nations should not have to bear responsibility for launching such a case when it is the obligation of the provincial government to protect the cultural resources of the people of this province, and the federal government's responsibility to protect the First Nations' archaeological record.

When situations like this arise, one wonders just when in the process the developer weighs his actions according to two basic questions: "what should be done?" versus "what can I get away with?". What are we gaining by doing the bare minimum, or nothing at all? In the eyes of First Nations, every time an artifact is found, it shows that we were here. It proves our history. People wonder why First Nations get upset when *any* site, small or large, is destroyed. When Chief Keith Knott of Curve Lake First Nation was asked what he deemed significant in an archaeological site, he stated; "Anything showing that our people were there is significant to our history" (K. Knott, personal communication 2002). We count on government agencies, municipalities and archaeologists to protect our cultural and material past, as they are our last line of defense. Developers' interests pale in comparison to the information and history that is being destroyed. It must stop.

Once again, we are in the midst of changes to the Ontario Heritage Act. When will these be complete? When will we have binding laws to protect the interests of the people of this province? It seems we are ruled by the will of the tax dollars created by developers and development. There have to be better ways.

But why does the developer have to be responsible for this issue, what does he get for his inconvenience and expense as his employees wait around for the title of his land to be cleared? Who covers his cost when these situations arise? And beyond this, is it really his problem? No wonder developers bury, ignore and turn a blind eye to sites they come across on their properties.

It seems to me that this is a governmental responsibility, but at which level? The Government of Canada has a fiduciary obligation to look after the archaeological record of the people with whom they hold treaty. The Feds download to the province, the province downloads to the municipality, and the archaeologist in the field has to

ensure that he or she complies with the relevant legislation. When the government took our land, it assumed duties and obligations. But here again, what is the remedy? All I ever hear is that the Feds have no money. So where does this leave us? What if we change our attitude towards developers and find a way to ensure that their costs are covered when they do this type of work?

In an attempt to facilitate archaeology where sites are at risk of being destroyed by development, I have been talking with developers, ministry agencies, archaeologists, and MPs. We are trying to put some sort of tax incentive in place to help look after this ever-growing problem. The thought is that if we were to set up some sort of tax relief system, a tax credit, we could actually offer an incentive to developers to report finds on their properties. The idea is that the proponent undertakes Stages 1 and 2 assessments as a regular part of doing business, but if it proceeds to a Stage 3 or 4 operation, the tax credit kicks in, allowing a receipt for monies expended during these more costly and time-consuming phases. This is only in the planning stage at this time, but we need to start somewhere. If something like this cannot be set up to generate the money needed to protect these sites, then the government should be footing the bill and fulfilling its fiduciary obligations. It seems ridiculous and sad that this type of incentive may have to be offered, but it seems that this may be the only way to get peoples' attention.

Would this kind of incentive for developers be enough to protect Ontario archaeology? If not, where do we go from here? Maybe we should initiate at a moratorium on all development until a better system is in place. Realistically, of course, this would never happen, but it should. Right now, our front lines are the archaeologists and the municipalities. We need to ensure that these two groups are doing their jobs, but that is a lot of responsibility to download from a federal obligation.

Current Changes

It will be interesting to see what will transpire with the new changes in the provincial Government Efficiency Bill #179. This bill prescribes a fine for corporations of up to a million dollars for the destruction of heritage buildings, but it is unclear

if that would include archaeological sites. These changes are not sufficiently specific to ensure a clear understanding of the consequences of actions. Further, what is the definition of a corporation in this bill? I believe that it includes not only developers, but municipalities within its definition. This makes them responsible for the destruction of First Nations sites that are under their jurisdiction. We will be watching closely to see whether this new change adds teeth to the Ontario Heritage Act, or just adds another unenforceable fine to an already toothless act. Although it is good to see this remedy for the destruction of sites on the part of unscrupulous developers being put on paper, I wonder if the political will is there to prescribe it.

Underwater Issues

White Island is an incredible piece of property situated in Rice Lake, encompassing approximately 200 acres of land. This property is adjacent to Alderville First Nation and contains at least one burial area, 15 acres in size. Excavations were apparently done in the late 1960s to remove human remains that were exposed by the elements (Richardson 1968). This island is close to Serpent Mounds, East Sugar Island, and is directly across from the mouth of the Indian River. Plans show that a golf course and homes are to be built on this property, so Alderville First Nation requested that the island be assessed. It was decided that the best way to look at this island was from the water, as erosion of the shoreline has displaced sites, leaving them underwater. In a walking survey of the shallow water we came across numerous artifacts in a very heavily-used public area. It turns out that this public area is adjacent to the burial site, which extends into the water. We have commenced test pitting around the shoreline and have discovered approximately 350 meters of continuous deposits related to the occupation site.

In the late 1700s and early 1800s, dams were built by loggers along the Trent-Severn system between Georgian Bay and Lake Ontario. Dams were installed to flood areas in order to facilitate the storage and transportation of logs. Due to

lack of maintenance, dams would often break, flooding out those below. In an attempt to regulate this sporadic flooding, the Federal Government assumed responsibility for the waterway. This waterway is now known as the National Historic Site of the Trent-Severn Waterway. It is under federal jurisdiction, and its rights and interests are protected federally by the Trent-Severn Waterway and Parks Canada.

I have been diving since 1998 and found my first artifact in 1999. My life has not been the same since that day. The Trent-Severn Waterway, with all of its flooded lands, has become a huge issue of contention with First Nations' interests. It was stated by the Parks Canada liaison in charge of this area, Jim Norris (personal communication 1999), that "there is no culturally inherent right to First Nations artifacts on federal lands". I found this to be quite disturbing as I realized that my ancestors and the people who are still here now have no ownership of the past and the material culture that lies upon the bottom of the Trent-Severn Waterway. I also found it disturbing that Parks Canada stated that they owned the bottom of these waterways where my people once lived and left their history. With the flooding of this waterway, vast amounts of land were lost, along with the cultural remains of the people who came before us. The issue of the actual ownership of the flooded area is contentious and Parks Canada's position is disputed by First Nations. Parks Canada's view is that all submerged lands, including any artifacts, are the property of the federal government. I was told not to touch any of the materials relating to the history of my people under water, and that I would be charged if I did not follow the rules. The protection arises from the Historic Canals Regulations, SOR/93-220, issued under the Department of Transportation Act, which prohibits the removal, alteration, or destruction of any cultural resource or object in an historic canal. These are issues that may only be decided by the courts.

It has been interesting for me to watch the enforcement of these regulations and the double standard that attaches to it. I have watched shorelines in front of cottages repeatedly being torn up to install docks, "beautify" the scenery,

and to create beaches. Cultural resources are being destroyed, but I am told that there is nothing that can be done. I am told that these are private landowners and restrictions will only apply to developers undertaking these types of activities if there are known resources there that will be impacted. The impacts of private landowners could be stopped, but it would be an unpopular move with the public as it would cause undue financial hardship for landowners who would now find themselves faced with the costs of archaeology. My thoughts are these—if someone in Ontario has the money to have a second home on a lake, he or she should be able to afford the costs of archaeological mitigation. Excuses will always be made, but the reality is that significant sites are being impacted at an unprecedented rate. There are approximately 3000-5000 cottage issues involving shorelines and docks on this waterway per year. It is impossible to quantify the amount of devastation that occurs to archaeological sites on a yearly basis. This is also the case for the province as a whole, as we only require archaeological survey in situations of new development, and even that is not enforced consistently.

In an ideal world, it would be a much better practice if survey were done on these waterways to document site areas through systematic inventory, as was being done in the late 1960s. In a survey done by Fred B. Richardson, it was deemed imperative to look at the shoreline areas because of problems with cottage and resort development. "It was felt to be important that the sites located on the shorelines of the watershed should be located so that they can at least be salvaged when threatened" (Richardson 1968:3).

I am told that this type of research cannot be completed due to a lack of funding. I do realize that money is harder to come by these days, and that there is a greater concern over spending on the part of the public, but there is a fiduciary obligation to First Nations and a further obligation to protect the past for all of the people of this country.

Many people in the First Nations communities know nothing about the processes that deal with their past; it is a mystery to them because they have not been permitted to have a meaningful role to play. It seems to me that the First Nations

communities should have been involved from the start, as it is their history coming out of the ground. A sharing of thoughts would prove beneficial for all parties as we look at the artifacts brought forth for interpretation.

It has been stated that "When two sovereign nations co-sign a treaty which will lead to one being subsumed by the other, as occurred in North America, the remaining sovereign explicitly enters into a relationship of trust with the other sovereign, inheriting a fiduciary responsibility to protect the interests and rights of that other Nation" (Ferris 2003:168). It is obvious by this statement this obligation requires all levels of government to ensure that the cultural past of First Nations remains safe. To what degree does the government of this country prescribe protection to the First Nations past? There is a fiduciary obligation to be upheld for the First Peoples of this land. A culture that is held by Treaty is to be provided protection by the Government of Canada for its cultural past. Is there a lesser degree of fiduciary obligation as finances get tighter?

Burials

A huge concern is that of the proper treatment of burials. It seems to be the norm that when a burial is found, it is excavated, removed and re-interred. It is also expected that the closest First Nation(s) will bear the burden both financially and emotionally. It is assumed that First Nations have a reburial policy or ceremony to satisfy these disturbed ancestors. This is not the case. It has not been our practice to remove our dead from the ground. We need to find a better way to satisfy these needs as they arise. The goal here is to protect the resting place of these people or, in the alternative, move them to an appropriate place for them to continue their journey. It should be the responsibility of the government to ensure that financial assistance is available for both the landowner and the First Nation(s). This can be seen as another reason why First Nations should be involved in the archaeological process from the planning stages through to completion. It is much easier to deal with the issue of a burial if you are an active partner from the beginning.

As a person of First Nations ancestry working in the field of archaeology, I realize how these burial discovery situations arise while properties are being developed. I understand that there are no grave markers showing the burials of our people. I also realize that we very rarely find human remains and that in the 100 to 200 sites in this province that are fully excavated in a year only a few will prove to contain human remains (Ferris 2003:167). Other First Nations communities in Ontario have no experience in this area and do not understand why their ancestors are being brought out of the ground. It is important to us to be involved when these sites are found. For most of us, even one disturbed burial is too many, but we cannot hide our heads in the sand either. We must realize that these situations will arise from time to time, and we must be willing to be involved in the process for the good of the ancestor whose journey and spiritual connections have been disturbed.

In Campbellford this fall, remains of First Nations ancestry were found under a cottage. Located across the river from the Percy Boom mounds, the cottage was built on a sand mound which was used extensively for burial. The owner was unable to incur the financial burden of an excavation, so the Ministry of Culture offered to do the work for free. Volunteers were used for the excavation, as the Ministry of Culture has no funds to expend on such an activity. Although it seemed necessary to remove these ancestors from their resting place, if proper research were done on properties such as this before homes were erected, these types of things would not happen. I am told that we have only found approximately 15 percent or less of the archaeological sites in Ontario. We have plenty of time to properly investigate the other 85 percent of the sites. We need money for research initiatives to document sites before the developer gets there.

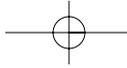
Repository Issues

When I asked about First Nations interest in the artifacts that have been found to date, I was told by the Ministry of Culture that if First Nations wanted to care for these artifacts they would

require a building to house them that met museum standards. Does the Ministry really know where the stuff is stored right now? I don't believe that they do, or they would see the urgency in protecting these objects properly. The irony is that the conditions under which the artifacts currently held by the Ministry are stored is appalling, and inconsistent with the facilities that the Ministry of Culture is asking First Nations to provide. "Behind this door in a public storage space somewhere in Toronto are archaeological artifacts dating back to the end of the Ice Age. There is no climate control, the walls are made of wafer board, and no one guards the place on the weekends. This is only one reason why archaeology in Ontario is an international disgrace" (Dewar 1997:85). Why the double standard? I see the importance of such a facility but feel that it should do even more than house artifacts.

We have a vision for one such facility, to be located in Peterborough. It would be multifaceted, and it would hold an area for ceremonies for the elders and holy people, and a small area for exhibition and interpretation. One of the main areas of the building would be a series of three laboratories designated for Trent University and Sir Sandford Fleming College use in educational programming and research, as well as one for consultants and private researchers.

This building will be a centralized repository and database for the Trent Valley area and perhaps beyond. The goal is to gather all collections from this area, revisit their paperwork, and the collections themselves as we work to digitize them for internet research access. Students will be the main force for this work, and they will have unlimited amounts of material to use for research projects. We will need to work in conjunction with other community museums in an effort to create outreach repositories for the artifacts that are representative of the cultures in their areas. We must also involve the Chiefs of Ontario in this project, as it affects their people and their ancestors. Additionally, we must have the involvement of the consulting archaeologists of this province, since they are a crucial part of the process as we establish standards for the acquisition of these collections.



We need to do this as one group. That is imperative. We need to involve museums, elders, feds, the province, municipalities, First Nations, archaeologists, educational facilities, and anyone else who would be affected. I know this sounds big, and it is, but it needs to be done.

We have been looking into the questions of the resources required to develop such a facility and the scale on which it should be planned. We have found that there are collections everywhere that need attention, and to have them all under one roof for research would be great indeed. We would also be able to offer our opinion on the appropriate treatment and use of these collections, as we would have the involvement of area elders in helping to identify items and any particular concerns they present to our people. This facility needs to be set up to deal with all of the issues that may arise. It is our hope to consult with all affected groups as we head into the planning stages.

Where Do We Go From Here?

It is a fact that consulting archaeology pays the bills and keeps archaeologists in the field. It is imperative that the gathering of information is not compromised by the speed with which the developer wishes to raise his subdivision. In a paper presented at the 1996 OAS symposium, the significance of small sites was considered as it relates to the whole of an excavated area. It was established that only "one percent of the site was visible under surface examination during ideal field conditions" (Kenyon and Lennox 1997:5). This paper reveals the inadequacy of evaluating the significance of a site based on the recovery of a few pieces of debitage collected on a single day. How can we, in good conscience, ignore the potential information offered by these sites just to satisfy the speedy needs of the developer?

It is up to us all to ensure that policies and ethics are upheld. It is the responsibility of various levels of government to ensure legislation and laws are enforced. Clearly the burden has been placed upon us all. It should not be only the responsibility of the First Nations to ensure that every one else does their job to the fullest. We are

asking for new rules to be written, and we are asking that those that exist be enforced. This is in the best interest of us all.

From a First Nations perspective, it is imperative that we are involved in the process that is archaeology. It is a matter of respect when it comes to notifying First Nations as to the digging going on in their territory. It will help to facilitate your needs for information, as new relationships are created for the future. Ontario is way behind in the way that archaeology deals with, and respects, First Nations and their past. It is time to create a new beginning for our communities and the people who dig them up. Communication will go a long way in gaining respect from and for the people you wish to study.

Now, the big question...

Who owns these artifacts? I was told by Parks Canada, that there was no inherent right to cultural artifacts and was ensured that they own all artifacts on federal lands. I also am told that the provincial government controls all artifacts on provincial and private land. I have also read that under English common law, the vested interest in these items belongs to the property owner. And last, but certainly not least, I believe that First Nations have claims of good standing to these items.

I have been told by an elder, Vera Martin (personal communication 1999), that "there is no ownership attached to these items, that we are merely their caretakers and stewards. We are not to fight for ownership of these items, nor are we to fight over our dead ancestors we find along the way".

It is the belief of our culture that we are to protect not only our present and future, but we must also be responsible to our past. This, as we all know, is where many issues arise.

It appears that we are in crisis. I am told that we have a central data base for all of the collections in Ontario. It is not enough to have the data in one place, we need to be able to use this information and the related materials for research.

We need to keep working on the Heritage Act to develop legislation that actually works to pro-

tect the great history of our province. There needs to be First Nations involvement in these talks, and it should not be an afterthought to have us involved. I have had to make phone calls to the relevant people to ensure First Nations participation in these types of talks. The Mississauga bands of this area hold treaty with the Government of Canada over a vast area of this province, and we should be involved in this process. *It is called respect and it should be automatic.*

We need to redefine the roll of the municipality. It seems that it is very much at the discretion of each one as to how it handles development. We must all realize that archaeology is a mandatory requirement for development and it should be seen as a regular part of the process. We have fines established for the destruction of heritage resources, so let's use them. We must send a message that ignoring or circumventing the archaeological assessment process will not be tolerated any longer, and we must back up that message with action. A hundred years from now scholars from all disciplines will be scratching their heads and wondering what we were thinking when we allowed sites to be willfully destroyed.

In fairness, as the stewards of this area, you may see some things that I have spoken to differently, because you may be familiar with issues or processes that I am not. But if First Nations were fully involved in this process our differences may not be as large as they might seem.

British Columbia is well ahead of Ontario, as it has a house of Hereditary Chiefs who decide who gets an archaeological license within their territory. This group also establishes crews of people from their First Nations who will work on-site with the archaeologists to ensure that communication is maintained and that protocols designed to ensure the interests of the community. Further to this, all reports are shared with the involved First Nation and they are the regulatory body for archaeology in their area (Paul Prince, personal communication 2002)

We have started the process for change in Ontario. At a Special Chiefs Assembly held in Thunder Bay, on March 18th 2003, 132 Nations unanimously adopted the following resolution:

Resolution 03/12 Ontario Heritage Act

WHEREAS the Ontario Heritage Act affords no true protection for the cultural, and other ancient sites of the First Peoples in Ontario;

WHEREAS First Nations have been left out of the archaeological process in Ontario;
THEREFORE BE IT RESOLVED that we, the Chiefs in Assembly, demand that First Nations be involved in the revision of the Ontario Heritage Act, with the absolute priority given to protecting our cultural past:

FURTHER BE IT RESOLVED that we mandate the Political Confederacy to form a Committee, representative of the PTO's and the Independent First Nations, to examine the protection of First Nation heritage sites and the effect of provincial legislation;

FURTHER BE IT RESOLVED that all future requests for archaeological licenses or permits, and all related reports processed by the Ministry of Culture, must be forwarded at the earliest opportunity to the affected First Nations (s) for review and consent;

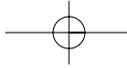
FINALLY BE IT RESOLVED that the Committee shall have the mandate to work in support of First Nations dealing with cultural site and archaeological issues.

MOVED BY: Councillor Shelley Gray, Proxy, Alderville First Nation

SECONDED BY: Councillor Andrew Big Canoe, Proxy, Chippewas of Georgina Island

Things are about to change. As I write, the first meeting of the committee of the 132 Nations is being organized.

We must remember that when the work of developers and archaeologists is finished, the record of our past is gone forever. We are not dealing with a renewable resource or a dead culture. We must protect these sites as the crown jewels of this country. It is all we have.

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