19 Archaeology and the *Sechelt Indian Self-Government Act*

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> WHEREAS Parliament and the government of Canada are committed to enabling Indian bands that wish to exercise self-government on lands set apart for those bands to do so;
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> AND WHEREAS the members of the *Indian Act* Sechelt band, in a referendum held March 15, 1986, approved of
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> (a) the enactment of legislation substantially as set out in this Act for the purpose of enabling the Sechelt Band to exercise self-government over its lands, and
>
> (b) the transfer by Her Majesty in right of Canada to the Sechelt Indian Band of fee simple title in all Sechelt reserve lands, recognizing that the Sechelt Indian Band would assume complete responsibility in accordance with this Act for the management, administration and control of all Sechelt lands;
>
> NOW, THEREFORE, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:
>
> 1. This Act may be cited as the *Sechelt Indian Self-Government Act*.
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> Preamble, Bill C-93, An Act relating to Self-Government for the Sechelt Indian Band

For the Sechelt people of British Columbia, the long search for justice in the modern Canadian federation received renewed impetus from the overhaul of the *Indian Act* in 1951. Although some of the more blatantly discriminatory sections of the Act were removed at that time, it continued to be viewed as an imperfect document that only served to inspire disaffection with the *status quo*. Tired of the paternalistic rule emanating from Ottawa during the 1970s, the Sechelt began to pursue amendments that would secure greater control of Indian lands for the local council. In 1986, the Sechelt leadership finally achieved a model of self-government that is as advanced as an Indian band can be under present legislation in Canada. Bill C-93 (an act relating to self-government of the Sechelt Indian Band) came into existence to fulfill the desire for local control over lands and resources. The net effect of this legislation was to enable the Sechelt Band to "exercise and maintain self-government on Sechelt lands and to obtain control over the administration of the resources and services available to its members" (Sechelt Indian Band 1986).

At the time of negotiations, heritage sites and archaeological concerns were not on the Sechelt agenda, hence issues of stewardship, control, and protection remain ambiguous. The main objective of this article is to examine this "silence" in the *Sechelt Indian Band Self-Government Act* (see Table 1) and perhaps to arrive at some point for interpreting the relevant sections in such a way as to include the above-mentioned issues. I would argue that the lack of any explicit mention of heritage-related matters in the act should not be regarded as an impediment. Indeed, one need only apply liberal interpretations to existing clauses when necessary to demonstrate their plasticity. Such concerns as impact assessment, cultural resource management, and heritage preservation are well within the meaning and intent of this statute. I examine this Act from this perspective, and explore several possible routes of action that may prove helpful to the goals of heritage management.

THE SECHELT IN HISTORICAL PERSPECTIVE

The Sechelt, along with the Homalco, Klahoose, Sliammon, Comox, and Pentlatch, comprise the Northern Coast Salish culture group that occupied land on both sides of Georgia Strait on the south coast British Columbia. They are part of the large Salishan language family that extends along the coast and into the interior of British Columbia (McMillan 1995). The traditional land of the Sechelt Indians is centered on Jervis Inlet, and encompasses the watershed that drains from the enclosing mountains. In historical times, they maintained 17 villages along the coast and the inlet, with the principal villages at the head of the inland arms. Coastal groups were on the frontier and could retreat towards the inlets in the case of hostile raids. The main villages were strategically located for trade with such interior tribes as the Squamish. The waterways of the coast and inlets served as a transportation corridor that linked the villages with each other and neighbouring groups. Today, two villages at Trail Bay and Porpoise Bay house the majority of band members.

The ancestral culture of the Sechelt was maritime adapted and looked to the waters of the inlet, and those of Georgia Strait, for sustenance. The productive marine fishery provided them with salmon and other fish, along with shellfish and kelp. Small fishing stations were maintained at the mouth of every stream to intercept spawning salmon. Much of their technology, including gill nets, hooks, and harpoons, was produced specifically for the exploitation of the fishery and of sea mammals. They also used weirs and traps to procure fish, and collected shellfish on the tidal flats. From the forests they procured wood for houses, totem poles, and canoes; bark for baskets, cloth, and rope; and edible plants, berries, and roots. They also hunted for ungulates such as deer and mountain goats using bows and arrows, snares, and traps. The hides of these mammals were used in making clothing and the meat was roasted or dried for consumption. Birds were hunted for food, and the feathers used in decorating clothing (Kennedy and Bouchard 1990).

Post-Contact Political Changes

In pre-contact times, the independent Sechelt polity controlled all activity on their land and maintained relations with neighbouring groups through trade, marriage, and warfare. The first truly foreign contact occurred in 1792 when Captain George Vancouver sailed into the Strait of Georgia. This event marked the beginning of their gradual incorporation into a much larger world, a change that would ultimately transform virtually every facet of their cultural traditions.

At first, contact was episodic since the maritime fur trade followed a standard pattern in which individual ships would sail into the strait and trading would commence. Within a few years, however, this pattern changed significantly. When Simon Fraser floated down the Fraser River in 1808, the land-based fur trade was just expanding to the coast where it would soon become a permanent presence. Shortly thereafter, Fort Langley was established as a centre for commercial activity and soon after as a civil community. By 1849, the Hudson's Bay Company not only had another colony on Vancouver Island, but was actively trading with the local Indians. The non-Indian population on the island and adjacent mainland was sufficiently large enough in 1858 that it was promoted to the status of a Crown colony.

By the time British Columbia joined the Canadian federation in 1871, the balance of power had definitely tilted away from the Indians to the extent that the "terms of union" assigned responsibility for Indians to the Dominion government. The first *Indian Act* was passed in 1876, by which time both federal and provincial levels of government felt able to limit the activities of the Indians. Without negotiating treaties to extinguish Aboriginal title, the federal government had lands surveyed and then reserved for the use and benefit of the Indians. In this manner, the Sechelt and other reserves came into existence. Thus, the Indians in the province increasingly became spectators to the politics that were affecting their lives (Hawthorn et al. 1958).

The work of the Reserve Commission was slow and fraught with obstacles as the two levels of government negotiated for land. At the turn of the twentieth century, the commission had dwindled to one member; in 1910, the Office of the Reserve Commissioner was abolished. The federal government continued to manifest its responsibility for Indians through paternalistic policies that severely limited their ability to act on their own behalf. Indeed, when the Indians pressed their claims for compensation for loss of land, the *Indian Act* was amended in 1927 to make it illegal for them to raise funds or hire lawyers to advance their cases. This particularly discriminatory section was not removed until 1951 and land claims were not considered until 1973 when the

Calder case rehabilitated the doctrine of Aboriginal title (Brizinski 1993). Thereafter, the federal government became more amenable to changes that extended greater control of Indian lands to the band.

Prior to European contact, the land, sea, and forest nurtured Sechelt culture and fostered their identity as a distinct community. Although the ancestral Sechelt participated in the ancient traditions that existed along the west coast, the contemporary Sechelt have not been stranded in that past. While the conditions that supported their former autonomy have changed radically in the last century, today they are confronting the challenges of living in the middle of an alien polity that has grown around them. Working under the constraints imposed by an obstinate government and an indifferent society, they follow a course that they hope is leading them back to their independence.

SELF-GOVERNMENT AND THE SECHELT INDIAN BAND

For the Sechelt, the mechanics of self-government began by approaching the federal government and requesting a new deal, one that would require either amendments to the *Indian Act* or companion legislation. The request was neither unusual nor unprecedented as the government of the day had already created statutes for groups like the Cree/Naskapi of northern Quebec and such legislation as the *Indian Self-Government Act* (Bartlett 1990). Therefore, when the Government of Canada in the first session of the thirty-third Parliament (Elizabeth II) gave approval to Bill C-93, an act relating to the self-government of the Sechelt Indian Band, it was not working in a legislative vacuum. The ultimate effect of the *Sechelt Indian Band Self-Government Act* (1986) was to transfer title of Sechelt lands to the Sechelt Indian Band and remove them from the constraints of the *Indian Act*. The *Sechelt Act* must, however, be understood within the context of the *Indian Act*.

Ultimately, the *Indian Act* is an administrative document that describes the powers of the federal government over its Indian wards. The complex implement that exempts the Sechelt from the *Indian Act* is found in Section 60, which authorizes the Governor in Council to delegate administration of Indian lands to any band that requests it; this same section also declares the power to revoke that order. Application of the *Indian Act* is expressed in the wording of Sections 35 and 36 of the *Sechelt Act* (Table 1). Further, the powers conferred on the Sechelt are limited as Section 37 stipulates that the statutes of Canada are applicable to the band, its members, and their lands, while Section 38 affirms that provincial statutes also apply unless they are inconsistent with the terms of any treaty. There is a provision in Section 3 that clarifies the position of the band in regard to treaty and Aboriginal rights, i.e., the *Sechelt Indian Band Self-Government Act* will not negate any such rights obtained under Section 35 of the *Constitution Act* (1982). These limitations led Bartlett (1990: 164) to conclude that self-government is not an accurate description; rather, the "regime is more properly termed self-management and community government."

Bringing the full intent of the act to fruition was not simply a dialogue between the Canadian government and the Sechelt. Without the cooperation of the province of British Columbia, this experiment would not have succeeded; in 1987, in the first session of the thirty-fourth parliament, the Legislative Assembly of British Columbia gave royal assent to Bill 4, the *Sechelt Indian Government District Enabling Act*. It stops short of conferring legislative power on the band; instead its main function enables the provincial government to "extend municipal benefits to the Sechelt Indian Government District, and to provide assistance where the District desires to provide municipal type services." By mutual consent, this particular legislative creature will be repealed in the year AD 2006 unless the provincial and Sechelt governments agree to extend it. In this way, both provincial and federal governments recognize the powers of this local Indian government.

The Sechelt Band thus proceeded to autonomy by directing the Governor in Council to expand their interest by replacing the *Indian Act* with an act that was more responsive to their needs. As directed in the self-government act, the band developed a constitution that was, in due course, ratified by the members and brought into effect. The *Sechelt Act* addressed such issues as the type of government, band elections, membership, and disposition of land.

Although the transfer of title of Sechelt land to the band in the *Sechelt Act* is subject to pro-

vincial interest (Bartlett 1990), it is seen as sufficient to allow the band to act in its own interest and to influence decisions affecting band lands. The status of their land title is based on *fee simple ownership*, which Etkin (1988: 77) describes as "The most common type of estate in land...[it] is the type of ownership most Canadians understand. Under this type of ownership, land can be bought, sold, used as collateral, mortgaged, transferred and inherited." However, title is not conferred on individual band members; rather the band holds the land in trust for its members. This does not mean unilateral action can empower the band council, which represents the band, to alienate Sechelt land, for there are safeguards that act to prevent loss of land. Matters pertaining to the use, occupation, and leasing of Sechelt lands are detailed in the *Sechelt Act*; accordingly, the band may exercise its rights through the band council. Although the band has the power to dispose of land, it must be with the consent of at least 75 percent of eligible voters, as stipulated in their constitution.

The preceding discussion chronicles part of the convoluted pathway that one First Nation traveled to arrive at a point where it could manage its own affairs. The result is a model of self-government that required the action of both the federal and provincial governments to enable this legislation, plus that of the Sechelt band to create a constitution, before it came into effect. While the final products—the *Sechelt Act* and the Sechelt Band Constitution—may be imperfect, they represent the backdrop against which attempts to create heritage protection will operate. As found in any new government, policies are developed through the process of exercising its power, and evolve through experience and precedents. The absence of extant by-laws therefore does not indicate an absence of concern. Instead, the exercise of power by a responsible government at Sechelt to decide on policy issues and, more specifically, to declare heritage protection measures are all viable options within their present constitution.

MANAGING THE CULTURAL LEGACY OF SECHELT

How does heritage protection work under the Sechelt Act, as, for example, when a site of exceptional value is discovered? A comprehensive, long-term management policy has yet to emerge within the present regime. Nonetheless, the mechanics for engaging aspects of the act to make heritage management possible merit special attention; a timely review of pertinent sections is thus in order.

Although a number of sites has been recorded on Sechelt lands, and these are a matter of public record, the Sechelt have yet to designate any as eligible for heritage management. Their embryonic efforts have established a modest museum, however, that serves as a repository for antiquities incidentally collected by residents. Beyond this, the extent to which archaeological material can be embraced by this act is conditional upon the interpretation those sections of the Act that define the legislative powers of the council. In Section 14, for example,

> 14(1) The Council has, to the extent that it is authorized by the constitution of the Band to do so, the power to make laws in relation to matters coming within any of the following classes of matters:
> (b) zoning and land use planning in respect of Sechelt lands;
> (c) expropriation, for community purposes, of interests in Sechelt lands by the Band;...
> (f) the administration and management of property belonging to the Band;
> (j) the preservation and management of natural resources on Sechelt lands;...

Although heritage is not explicitly mentioned here, there is enough latitude to interpret its various subsections to include it. Furthermore, Section 6 states that the Sechelt Band "is a legal entity and has, subject to this act, the capacity, rights, powers and privileges of a natural person..." In addition, it allows the band council to "do such other things as are conducive to the exercise of its rights, powers and privileges." Therefore, acting as a "natural person," the Sechelt band, as represented by the council, can exercise its various rights on Sechelt land, including overseeing work conducted by archaeologists (Taylor and Paget 1988).

In the *Sechelt Indian Band Self-Government Act*, title to Sechelt land is vested in the band, in

trust for its members, and the council acts as the manager, making decisions over land use. Under such an arrangement, designating sites as special areas becomes an issue with local solutions since the council has power over zoning and planning. The act also contains a clause for expropriating band land for community purposes. Presumably this would mean that there are no constraints on designating parcels of land for parks, where heritage or archaeological themes are promoted. As a general rule, public parks on Indian reserves are a rarity, but they do exist; for example, the Kamloops Indian Band maintains a heritage theme park where an archaeological site and reconstructed traditional pit-houses are open to the public (see Nicholas, Ch. 6). Thus, if the Sechelt desired to set aside, or restrict development in, an area so as to display examples of their historic or prehistoric cultural traditions, it would fall within the intent of this clause.

Inevitably, archaeological sites are tied to land issues, and these necessitate a clearly defined land-related policy. The management of artifacts is more problematic since they tend to be portable and thus removable from their original provenience or indeed from Sechelt land. Again, this issue was not anticipated in the wording of the *Sechelt Act*, but this does not preclude the band council controlling artifacts discovered on their lands. There are precedents for treating artifacts either as property or natural resources, two options that may be equally applicable and immediately recognizable to professional archaeologists. Since the council has control over the administration and management of property, *and* the preservation and management of natural resources, the Sechelt Chief and Council thus have two approaches to choose between; they can treat portable artifacts as *property* or they can incorporate antiquities under the umbrella topic of *natural resources*. Either approach would place control of artifacts within the jurisdiction of the council's authority, although there are different implications for each, as discussed below.

Archaeology and the Property Clause

The interpretation of archaeological material as *property* would be a strong statement of legislative control. In the *Sechelt Indian Band Constitution* (Sechelt Indian Band 1986: 48), Section 6, which deals with laws, contains the statement that the leadership "shall have the right to make fair and reasonable laws with respect to the control and management of property belonging to the Band." Although *property* is not defined, the term is broad enough to include cultural material; in addition, in the vocabulary of the archaeological and legal disciplines, the phrase *cultural property* has specific connotations (Burke 1990). It defines the products of different traditions and speaks not only to the spiritual achievements of past societies, but to those contemporary people who may ally their cultural identity with those products. Even the Canadian government employed that term when creating the *Cultural Property Import and Export Act.* Therefore, it is not stretching the imagination to apply it in this instance.

Given that both the *Sechelt Act* and the *Sechelt Band Constitution* acknowledge the right of the Sechelt to assume responsibility for property, the council subsequently becomes trustees for cultural property, which is analogous to the role the British Columbia government adopts with respect to archaeological sites on provincial Crown lands. Since this class of property is unique, and inalienable by band members, curating it merely expands the extant duty of the council. In other federal institutions, like Parks Canada, individual departments routinely exercise responsibility for archaeological materials within the ambit of their legislation. The absence of federal legislation assigning responsibility over cultural property on Indian lands should therefore not be viewed as a constraint.

Another consideration regarding portable cultural property is the ease with which it can be removed from its original provenience, an incalculable loss if not done properly owing to the loss of valuable data that might be gained from its context. While archaeologists are trained to record such information, illicit collectors are not so conscientious and may deliberately seek out artifacts for collecting or trafficking. In response, the council may make laws restricting illicit collecting, contravention of which can result in penalties as described in Section 14(2):

> A law made in respect of the class of matters set out in paragraph (1)(p) may specify a maximum fine or a maximum term of imprisonment or both, but the maximum fine may not exceed two thousand dollars and the maximum term of imprisonment may not exceed six months.

Furthermore, if the council decides to sanction archaeological research, they can develop and control a permitting system as indicated in Section 14(4):

> A law made by the Council may require the holding of a license or permit and may provide for the issuance thereof and fees therefor.

Archaeology as a Natural Resource

The alternative scenario—of antiquities as a *natural resource*, not property—is consistent with the definition adopted by the British Columbia government, whereby archaeological material falls within the aegis of Section 109 of the *British North America Act of 1867*, which acknowledges provincial title to "Lands, Mines, Minerals and Royalties." As Spurling (1986: 90) relates, "archaeological properties were equivalent to timber, fisheries and other provincial resources... Archaeological sites and objects no longer were strictly viewed as objects of purely scientific or antiquarian interest. Rather they began to be considered as common property resources... Obviously this view was owed to the B.C. legislation which treated archaeological sites more or less the same as other natural provincial assets." My consideration here relates to the interaction between the archaeological community and the Indian's heritage.

Spurling (1986: 89), in describing the proceedings of the Western Canadian Archaeological Council meeting hosted by the Glenbow Foundation in Calgary in 1960, states that a "significant outcome of this meeting was the explicit acknowledgment of archaeological sites and objects as *resources*" (original emphasis). This was the first phase in the process of incorporating culture into a resource dependent economy. As a result, provincial jurisdiction over these "cultural resources" became the unchallenged opinion.

Trepidations about the cultural resources approach in archaeology flow from the poor record of resource management in North America since the advent of recorded history. During that time, resource management has come to mean exploitation and harvesting. While this approach may conceivably work for timber plots, it is a dangerous model to follow for *non-renewable* "resources," given both demonstrated the short-sighted goals of professional resource managers and the fact that archaeological sites are finite. Indeed, the historic record provides us with too many examples of extinctions caused by indifferent attitudes toward natural resources. If there are any lessons to be learned, the main one is the need for a more sympathetic model of resource management when applied to antiquities.

Indeed, there are instances this century where Indians utilized their culture as an economic resource, thereby liquidating the inherent value of medicine bundles and other objects of culture (Stepney and Goa 1990). Private collectors, museums, and other such institutions were the main beneficiary of this traffic. This practice has had a disastrous impact on tribal patrimony, which the current generation is still trying to undo. Benefiting from hindsight, the present generation of Indians should ensure that they leave a better legacy of dealing with their inalienable cultural property. A starting point would be to reassess the merits of regarding antiquities as equivalent to natural resources and to consider other options.

ARCHAEOLOGY IN THE CONTEMPORARY SECHELT COMMUNITY

In their claim to the Jervis Inlet watershed, the Sechelt have acknowledged provincial interests, yet they are also aware of their own rights to a share of the region's resources, and a voice in matters relating to their disposition. Therefore, the Sechelt must determine their policies relating to the survey and excavation of archaeological sites, and to the curation of archaeological material, including human remains. The band must clearly articulate their position on such related issues as informed consent, access to sites, and an archaeological permit system, if so desired. They must also implement such a policy with haste so as to avoid unnecessary encumbrances for managers working in the region *and* to insure that Sechelt interests are protected.

There is no need to reinvent heritage management. A variety of precedents exists where

viable programs have been developed that can serve as models. For example, the Navajo Nation has perhaps the most advanced heritage management scheme under the control of a tribal administration. The initiatives for such management must come from the local community, however, if there is to be any support from the membership. The community must feel comfortable with the decision-making apparatus, which should be responsive to the needs of that community. Guidelines can be implemented only if there is a continuous dialogue with the citizens to avoid the appearance of dictatorial laws. There also must be an awareness of heritage management as an *on-going* responsibility, of which an impact assessment process is part. And a tribal heritage trust must be created to direct the mandate of the tribal government's policy on antiquities. These are some of the elements that will inevitably influence the reclamation of tribal patrimony.

Managing the cultural legacy of Sechelt lands is the responsibility of the leadership who must apply unambiguous language in a comprehensive by-law with the assigned task of protecting antiquities. In doing so, they will be defining or at least influencing the relationship their citizens will have with their heritage, hence those by-laws must reflect their cultural values. The by-law mechanics can be framed within the legal context of the *Sechelt Indian Band Self-Government Act*, which it has already been demonstrated can be construed to provide for impact assessments and protection of historic sites and buildings. Therefore, it is well within the powers of the council to make such by-laws, which would have the full weight of federal law once approved. Any prescribed penalties would then be enforceable.

Sole responsibility for curation, using explicit terms to remove any potential conflicts, can be declared by the Sechelt Chief and Council, which is already in a position of trust, to formalize their role in managing antiquities on behalf of band membership. At the same time, encouraging membership compliance with regulations would place the onus on the leadership both to designate antiquities as a common heritage and ensure that immovable artifacts are properly managed. Creating a registry with the intent of maintaining records of site location and updating it at regular intervals would facilitate heritage site administration and protection. It would be available as a public reference for researchers, archaeologists, or managers involved with terrain-altering activities. Registering heritage sites and protecting them from damage does not actually prevent vandalism; sites are only truly protected when people do not want to damage them. To this end, educating members about the merits of preserving the integrity of archaeological sites could be incorporated into school curricula.

Finally, the band should consider itself to be the representative of all anonymous, deceased persons buried on Sechelt lands and their traditional lands. As a standard practice, the band should avoid disinterment to respect the "final" resting place; if it is unavoidable, a policy of reburial should be persuaded. If the excavation takes place in traditional lands, then human remains should be brought to Sechelt for reburial. This procedure would reflect the Sechelt's particular spiritual concepts, with local support for reburial being a function of their reverence for the deceased. Applications could be entertained that propose to subject human remains to scientific examination, although it would have to be demonstrated that the research would be non-destructive and the results made available to the community. The duration of dislocation also should be limited, with the individual reinterred as soon as possible.

Regardless of the definitions and interpretations identified in the *Sechelt Act*, it should be noted that it is conditional when applied to heritage matters. The current regime has not attempted any archaeological inventory, although many sites have been recorded previously on traditional Sechelt lands by the provincial heritage branch. The nature of the terrain, being both heavily forested and mountainous, has restricted accessibility to much of the interior. Many sites are expected, based on archaeological models and traditional knowledge; for example, Sechelt Chief Thomas Paul (pers. comm., 1992) indicates that prehistoric Indian trails facilitating trade between Jervis Inlet and the Whistler/Squamish region are still known locally.

Excluding heritage issues from the *Sechelt Act* did not mean there was an absence of interest in them. Rather, with so many pressing concerns on the agenda, it was inevitable that some matters would be overlooked. When the act was passed in 1986, archaeology was not high in the public mind. In the intervening years that has changed, and Sechelt interests in these matters must now be heard and considered. This is especially so given current land claims, since the possibility exists that the Sechelt will, at some point, exercise control over a larger portion of the land surrounding Jervis Inlet. The extent to which archaeology is integrated into Sechelt affairs will even-

tually depend on band support and the political will of the leadership. But that, in turn, depends on how archaeologists are prepared to define their discipline and their relations with Native people in the future. Efforts must be made by the Sechelt and archaeologists to find some common ground and to encourage acceptance of archaeological methods as a valid means of exploring the Aboriginal occupation of the inlet without alienating Sechelt traditions. Related events in northern Canada indicate that any land claim agreements negotiated must recognize Native desires to be consulted on heritage matters.

At approximately the same time that the Sechelt were negotiating their agreement, the Inuvialuit of the western Arctic were completing their own agreement with the federal government (Government of Canada 1984). Conspicuously absent in the Inuvialuit Final Agreement is any mention of archaeology or heritage issues. Their absence in both documents appears to be the result of the then-prevailing political climate rather than deliberate omission. Subsequent agreements in the North all contain provisions for dealing with heritage in general and archaeology specifically, as discussed below.

NORTHERN DEVELOPMENTS

Political developments in the North may portend the direction in which land claims in British Columbia will evolve. To date, the major accomplishments of the 1990s have been the signing of two major agreements between Native and federal governments, one in the Yukon with the fourteen First Nations represented by the Council for Yukon Indians (Government of Canada 1993a), the other in the Northwest Territories with the Inuit of the eastern Arctic (Government of Canada 1993b). Both groups have agreed to settle with the federal and territorial governments outstanding claims that will fundamentally change the map of northern Canada. This is particularly true where the Inuit are concerned as their agreement will create in 1999 a new territory called Nunavut. The nature of these agreements is such that they will not be creating reserve lands for the Native people; rather, these will be lands directly controlled by the Natives, with certain rights applicable to activities conducted in their traditional territories. As with the *Sechelt Act*, this new arrangement will remove the affected groups from the confines of the *Indian Act*. A final indication of the evolution of interest in heritage and archaeology is the inclusion of articles that specifically mention the manner in which these groups shall interact with sites, artifacts, and professional archaeologists.

The Yukon Land-Claims Agreement

The Council for Yukon Indians began negotiations in the mid-1970s for a comprehensive land claim agreement that would cover the entire Yukon, and which takes into account the fact that the First Nations comprise a significant minority of the population there. The umbrella agreement carries no legal obligations since it only sets out the broad structure that would apply to all fourteen Native groups. The agreement worked out by each group includes provisions specific to their concerns; for example, one group might place the emphasis on harvesting salmon, while a neighbouring group would be more concerned with harvesting caribou and other wildlife. The parties involved have agreed on boundaries for their traditional territories; where overlaps occurred, disputes could be referred to a tribunal.

Within their traditional territories, two types of land status are identified—Settlement "A" or Settlement "B" lands, with certain rights and privileges associated with each. On Settlement "A" lands, the affected First Nation might have subsurface rights, while they would have surface rights only on Settlement "B" lands. They could establish a community on Settlement "A" land, but only have timber harvesting rights on Settlement "B" land. Some issues, like heritage, are not so easily confined to boundaries drawn on a map and must be given special consideration.

One chapter in the umbrella agreement is devoted to heritage and sets out a comprehensive framework for the treatment of antiquities, heritage sites, human remains, heritage trails, archival documents, and the cultural landscape. A point of interest is their adoption of the resource model of heritage management, at least in the wording of the text. The objectives for heritage are to promote public awareness, appreciation, and understanding of culture and heritage in the Yukon; to promote the traditional cultural knowledge of Yukon Indians; to involve First Nations in the man-

agement of heritage resources; to promote protection and conservation; to facilitate public access and research; to apply assessment processes to planning and development; and to recog-nize the cultural landscape of Yukon Indians. Ownership and management of heritage resources in their settlement lands will rest with the First Nations. Priority in allocation of government programs shall be given to developing heritage resources of Yukon Indians until there is an equitable distribution. Government agencies will also assist Yukon Indians to develop programs, consult the First Nations in formulating policy and legislation, and facilitate preparation of an inventory of moveable heritage resources. A Yukon Heritage Resources Board will be created, comprised of ten members, five nominated by Government and five by the Council for Yukon Indians. It will operate in the public interest and make recommendations to the Minister over a broad range of topics related to heritage resources. Research conducted in the Yukon will include a report that will be made available to the affected First Nation, but recognizing the sensitive nature of some information, this may be restricted from general release. Heritage sites in the traditional territory of a First Nation will be the subject to ownership and management between the Government and the affected First Nation; the parties will institute a permit system for research at any site that may contain moveable heritage resources, and access to any site may be limited. Burials will be given special protection to preserve their dignity and will be the responsibility of the First Nation in whose traditional territory they rest. Under the supervision of the First Nation, exhumation will be allowed if it is as a result of some other activity, and scientific examination and reburial will be at the discretion of the affected First Nation. Finally, the naming of geographical features in any traditional territory will apply Native names to recognize the cultural landscape of Yukon Indians.

The Northwest Territories Land Claims Agreement

The other settlement that may serve as a model concerns the Inuit of the Northwest Territories who have accepted an agreement in the eastern region, known as the Nunavut Settlement area. There are parallels with the Yukon agreement, but, significantly, the Inuit are still the majority population in the eastern Arctic and they consist of one homogeneous culture. The new territory will not be a large Inuit reserve; instead, it will be similar in nature and function to existing polities. There will be a territorial government with elected members who will act on behalf of the total population. Within the territory, however, there will be Inuit Owned Lands that will be the exclusive domain of the Inuit. They will be able to exercise control over surface and subsurface resources on these lands, while in the larger region they will be able to exercise only surface rights. There are no overlapping traditional territories, hence no competing claims within the territory.

Shifting to topics of heritage, the general principles of the Inuit settlement acknowledge that the archaeological record reflects "Inuit use and occupancy of lands and resources through time," and is of "spiritual, cultural, religious and educational importance" to them. Of interest is the fact that the Inuit are opting for a model that does not apply the language of resource management to heritage; instead, it is a cultural legacy that has spiritual significance. The agreement commits both the Government and Inuit to share responsibility for management and conservation, and to establish facilities within the territory. Inuit will have special rights and interests in certain areas because of their spiritual, cultural and religious importance. They will participate in developing policy and legislation on archaeology, and an Inuit Heritage Trust (IHT) will be created that will assume responsibility over archaeology. A permitting system will be established in legislation to protect archaeological sites; the respective government agencies and the IHT will share ownership of all archaeological specimens found in the settlement area; and archaeological specimens will remain in the north, with the IHT able to recall specimens curated by other federal and territorial agencies. Toponomy will also become a part of the mandate of the IHT, which will review place names within the settlement area to reflect the cultural landscape of the Inuit people.

The Yukon Umbrella Final Agreement and the Nunavut Final Agreement both contain articles addressing the very topics that are usually the concern of archaeologists. If these documents are used as templates for settling land claims in British Columbia, then, in all likelihood, similar structures will be embedded in a Sechelt agreement. These examples also indicate that the Sechelt will have to accept greater responsibilities where heritage management is concerned. Thus, the creation of heritage by-laws by the band council will not be a frivolous exercise in complicating

matters for themselves and archaeologists. Instead, this situation represents an opportunity for the band council to exercise its authority in this sphere, since doing so will give them a clearer idea of what exists within their current boundaries, and what they can expect to encounter over any new lands that come under their control. This could be accomplished through such activities as impact assessments, site inventories, and traditional use surveys.

CONCLUSIONS

The Sechelt negotiated a form of self-government that removed them from the constraints of the *Indian Act*. Subsequently they began to act on their own behalf in areas of land and resource management. When the *Sechelt Act* came into being, archaeology was not on the public agenda; this has changed in the intervening years. Although heritage is not specifically mentioned in the *Sechelt Act*, it should not be viewed as an obstacle. Even if the act is silent on that issue, it is certainly possible to interpret existing clauses so as to address heritage and archaeology matters. The act also has significance when future events are considered because the Sechelt are now in the process of negotiating a land claim over their traditional territory; in all likelihood, any imperfections of earlier negotiations will rectified during this process. This has implications for archaeology since heritage issues are now on the public agenda and will be addressed, particularly now that the Sechelt are cognizant of agreements between governments and Aboriginal people in northern Canada. In addition, both the Yukon and Nunavut agreements will probably serve as prototypes for future settlements in British Columbia, especially those provisions that deal with archaeology. In any event, archaeologists will see more, not less, Native involvement in future archaeological management and research.

In the political realm, decolonization begins with recognizing indigenous governing systems as responsible entities that are capable of assuming independence (MacDonald 1990). Autonomy proceeds with the local population establishing its own agencies of government along with a social code that expresses the basic order. Internal affairs then become the responsibility of the regime, hopefully with the support of its constituents. Accepting that logic indicates that the Sechelt, like other Native people, have a certain obligation to assess their role in this process. They must demonstrate responsibility for tribal patrimony by defining their position on heritage matters and articulating their own system of management. This would be in keeping with the principles of self-determination and would reinforce the Sechelt role in defining Aboriginal government.

The first stage in reclaiming their past can start by providing archaeological cultures and sites with Sechelt tribal names. This would impress on students of archaeology that the objects of research are perceived as part of the ancestral heritage of contemporary Native peoples. Like other Native people, they will also have to grapple with the fact that cultures do change and that antiquity tends to obscure cultural identities (see Trigger, Foreword). Sites will be found that represent ancient times, and may not have historical or cultural analogs. Ancillary issues, although not trivial ones, will revolve around ownership and stewardship of such antiquities. Understanding them may require defining Aboriginal archaeology in terms that do not isolate the past as a purely antiquarian pursuit. It may become necessary to create a formula to ensure that research contributes to the immediate well-being of the community and the extant culture.

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Table 1: Selected Sections of The Sechelt Indian Band Self-Government Act (1986)

The House of Commons of Canada: 1st Session, 33rd Parliament, 33-34-35 Elizabeth II, 1984-85-86

Bill C-93, An Act relating to self-government for the Sechelt Indian Band

Preamble: WHEREAS Parliament and the government of Canada are committed to enabling Indian bands that wish to exercise self-government on lands set apart for those bands to do so;

AND WHEREAS the members of the *Indian Act* Sechelt band, in a referendum held March 15, 1986, approved of

a) the enactment of legislation substantially as set out in this Act for the purpose of enabling the Sechelt Band to exercise self-government over its lands, and

b) the transfer by Her Majesty in right of Canada to the Sechelt Indian Band of fee simple title in all Sechelt reserve lands, recognizing that the Sechelt Indian Band would assume complete responsibility in accordance with this Act for the management, administration and control of all Sechelt lands;

NOW, THEREFORE, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

1. This Act may be cited as the *Sechelt Indian Self-Government Act*.

3. For greater certainty, nothing in this Act shall be construed so as to abrogate or derogate from any existing aboriginal or treaty rights of the members of the Sechelt Indian Band, or any other aboriginal peoples of Canada, under section 35 of the *Constitution Act, 1982*.

4. The purposes of this Act are to enable the Sechelt Indian Band to exercise and maintain self-government on Sechelt lands and to obtain control over and the administration of the resources and services available to its members.

5. 1) The Sechelt Indian Band is hereby established to replace the *Indian Act* Sechelt band.

   2) The *Indian Act* Sechelt band ceases to exist, and all its rights, titles, interests, assets, obligations and liabilities, including those of its band council, vest in the Sechelt Indian Band established under subsection (1).

6. The Band is a legal entity and has, subject to this Act, the capacity, rights, powers and privileges of a natural person and, without restricting the generality of the foregoing, may

   a) enter into contracts or agreements;

   b) acquire and hold property or any interest therein, and sell or otherwise dispose of that property or interest;

   c) expend or invest moneys;

   d) borrow money;

   e) sue or be sued; and

   f) do such other things as are conducive to the exercise of its rights, powers and privileges

7. The power and duties of the Band shall be carried out in accordance with its constitution.

8. The Sechelt Indian Band Council shall be the governing body of the Band, and its members shall be elected in accordance with the constitution of the Band.

9. The Band shall act through the Council in exercising its powers and carrying out its duties and functions.

10. 1) The constitution of the Band shall be in writing and may

    a) establish the composition of the Council, the term of office and tenure of its members and procedures relating to the election of Council members;

b) establish the procedures or processes to be followed by the Council in exercising the Band's powers and carrying out its duties;

c) provide for a system of financial accountability of the Council to the members of the Band, including audit arrangement and the publication of financial reports;

d) include a membership code for the Band;

e) establish rules and procedures relating to the holding of referenda referred to in section 12 or subsection 21(3) or provided for in the constitution of the Band;

f) establish rules and procedures to be followed in respect of disposition of rights and interest in Sechelt lands;

g) set out specific legislative powers of the Council selected from among the general classes of matters set out in section 14; and

h) provide for any other matters relating to the government of the Band, its members or Sechelt lands.

2) A membership code established in the constitution of the Band shall respect rights to membership in the *Indian Act* Sechelt band acquired under the *Indian Act* immediately prior to the establishment of that code.

11. 1) The Governor in Council may, on the advice of the Minister, by order, declare that the council of the Band is in force, if

a) the constitution includes or provides for the matters set out in paragraphs 10(1)(a) to (f);

b) the constitution has the support of the majority of the electors of the *Indian Act* Sechelt band or of the Sechelt Indian Band; and

c) the Governor in Council approves the constitution.

2) The support of a majority of the electors of the *Indian Act* Sechelt band or of the Sechelt Indian Band shall, for the purposes of this section, be established by a referendum held in accordance with the *Indian Referendum Regulations*.

12. The Governor in Council may, on the advice of the Minister, by order, declare in force an amendment to the constitution of the Band, if the amendment has been approved in a referendum held in accordance with the constitution of the Band and the Governor in Council approves the amendment.

13. The Minister shall cause to be published in the *Canada Gazette* the constitution or any amendment thereto forthwith on issuing an order declaring the constitution or amendment in force under this Act.

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

a) access to and residence on Sechelt lands;

b) zoning and land use planning in respect of Sechelt lands;

c) expropriation, for community purposes, of interests in Sechelt lands by the Band;

d) the use, construction, maintenance, repair and demolition of buildings and structures on Sechelt lands;

e) taxation, for local purposes, of interests in Sechelt lands, and of occupants and tenants of Sechelt lands in respect of their interests in those lands, including assessment, collection and enforcement procedures and appeals relating thereto;

f) the administration and management of property belonging to the Band;

g) education of Band members on Sechelt lands;

h) social and welfare services with respect to Band members, including, without restricting the generality of the foregoing, the custody and placement of children of Band members;

i) health services on Sechelt lands;

j) the preservation and management of natural resources on Sechelt lands;

k) the preservation, protection and management of fur-bearing animals, fish and game on Sechelt lands;

l) public order and safety on Sechelt lands;

m) the constuction, maintenance and management of roads and the regulation of traffic on Sechelt lands;

n) the operation of businesses, professions and trades on Sechelt lands;

o) the prohibition of the sale, barter, supply, manufacture or possession of intoxicants on Sechelt lands and any exceptions to a prohibition of possession;

p) subject to subsection (2), the imposition on summary conviction of fines or imprisonment for the contravention of any law made by the Band government;

q) the devolution, by testate or intestate succession, of real property of Band members on Sechelt lands and personal property of Band members on Sechelt lands and personal property of Band members ordinarily resident on Sechelt lands;

r) financial administration of the Band;

s) the conduct of Band elections and referenda;

t) the creation of administrative bodies and agencies to assist in the administration of the affairs of the Band; and

u) matters related to the good government of the Band, its members or Sechelt lands.

2) A law made in respect of the class of matters set out in paragraph (1)(p) may specify a maximum fine or a maximum term of imprisonment or both, but the maximum fine may not exceed two thousand dollars and the maximum term of imprisonment may not exceed six months.

3) For greater certainty, the Council has the power to adopt any laws of British Columbia as its own law if it is authorized by the constitution to make laws in relation to the subject-matter of those laws.

4) A law made by the Council may require the holding of a licence or permit and may provide for the issuance thereof and fees therefor.

35. 1) Subject to section 36, the *Indian Act* applies, with such modifications as the circumstances require, in respect of the Band, its members, the Council and Sechelt lands except to the extent that the *Indian Act* is inconsistent with this Act, the constitution of the Band or a law of the Band.

36. The Governor in Council may, on the advice of the Minister, by order declare that the *Indian Act* or any provision thereof does not apply to

a) the Band or its members, or

b) any portion of Sechelt lands,

and may, on the advice of the Minister, by order revoke any such order.