



THE ASSOCIATION OF PROFESSIONAL ARCHAEOLOGISTS

P.O. Box 493 Port Hope, Ontario, L1A 3Z4

2008-01 Winter Edition

Webpage: www.apaontario.ca
WINTER EDITION

PRESIDENTS MESSAGE

With the rapid onset of warm weather most of our members are now in the field and doing what they do best. It was a long winter and gave time for the APA Executive to work on the issue of First Nations consultation. Our joint efforts with Six Nations in Brantford to work out a notification agreement were continued with more public meetings, allowing the two communities to get to know each other better. This joint effort, as reported elsewhere in this newsletter, led to a highly successful monitor training session. What this means is that there are now many more trained First Nations archaeological monitors to assist in projects where they are needed and that information about archaeology is feeding back into communities in a positive way. This is a slow road to First Nations communication and consultation but, we feel, is the best way to approach a sometimes daunting and growing responsibility to First Nations which we share as archaeologists. With major change in awareness of archaeology among First Nations and in how we, as professionals represent ourselves there are bound to be setbacks. As well as the very positive experience of getting to know First Nations communities better, some of us have now had first hand experience with some negative repercussions of this highly charged atmosphere, ranging from threats made by lawyers to the confusion of conflicting

claims by different individuals saying they represent single or and aggregate Nations. APA is trying to carve its own path through some of this confusion with emphasis on shared interests and voluntary assistance to the First Nations of Ontario. Responses so far have been remarkably good and we are optimistic about the future. In addition to Six Nations, APA has made initial contacts with the Association of Iroquois and Allied Indians (an organization of eight Nations) as well as the Williams Treaty 's six Nations. Over the coming years we hope to make significant inroads with the First Nations of Ontario and help archaeology become a source of pride to the Nations and to our fellow citizens.

Lawrence Jackson

NEWSLETTER EDITOR'S COMMENT

We finally had a real winter, one with lots of snow and good skiing! The paper work was piled up much like the snow. Apparently, spring has sprung....yes, I know that this is the winter edition, but there still are bits of remnant snow on the ground in southern Ontario and much more to the north and east.

This newsletter provides a much needed summary on the flurry (pun intended) of activity in both the Ontario archaeological world and the APA. February saw the third

roundtable being held; March had the Legal Contracts workshop, and April has seen the completion of a four day course for the training of Aboriginal monitors, plus a meeting between three APA Executive members and the Assistant Deputy Minister of the Ministry of Culture (MCL). Finally, the information letter from MCL...the one originally being drafted in mid-October, finally escaped the legal sector of MCL and was sent at the end of March! Yeah.

This year promises much work and challenges. There is another roundtable coming up, and more workshops. Please look at the web page for up-dates on events and news items.

Cheers
Jacquie

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ANNOUNCEMENTS

A members only section for the web page has been implemented, and for member access please contact one of the directors. Neal Ferris recently sent an e-mail with the username and access code for this section of the web page. If you did not receive this email, please contact the membership director to up-date your information.

NEWS

1) APA meets with the Assistant Deputy Minister Ministry of Culture (February) by Scarlett Janusas

Three members (Scarlett J., Neal F., and Laurie J.) of the APA executive attended a "meet and greet" with the Ministry of Culture's ADM, Steven Davidson, Richard Mortimer, Director of Programs, Neil Downs, Director of Cultural Programs, Michael Johnson, Manager of Land Use Planning and Approvals, and Jane Holland, Senior Policy Advisor.

Mr. Davidson outlined the changes in the Ministry, explaining that Neil Downs is now in charge of Cultural Programs. This includes grant programs, archaeology, the licencing program and review of reports. Michael Johnson is now in the Services Unit, which includes advisory services, land use planning approval agency for built, landscape and archaeology. They push for master plans, official plan statements and take on a strong advocacy role.

Jane Holland, in the policy branch, reviews both archaeological and First Nations issues in terms of 1) strategic policy and 2) cultural policy. This includes the standards and guidelines for archaeology. Her role is to influence other Ministry initiatives, *e.g.* the Ipperwash report, the Cemeteries Act, the Municipal Act, *etc.* Richard Mortimer is the director of Programs and Services. There is interaction between each of these four units, and a cross-over relationship.

The APA executive requested that communication from the Ministry be more

effective, and suggested that informal communication could be relayed to our membership. We applauded the achievements of the Ministry of Culture, and suggested that the APA could play an important role in bridging the gap between the Ministry and archaeologists. We asked the important question about the standard and guidelines, and their status. We were informed that they are still in draft stage and there was no time line for their release. We also asked if Unit 6 could be separated from the rest of the document. No clear answer was provided. There was also discussion about the APA taking on the role of mediation in disputes that the Ministry could not handle from a technical standpoint. This will be taken under advisement. This meeting was a positive first step in ensuring a role for the APA and its membership with the Ministry of Culture.

2) APA Legal Contract Workshop, Owen Sound, Ontario

by Scarlett Janusas

In mid-March, the APA hosted a successful workshop on Legal Contracts. Mr. Ted Stevens of the law firm, Middlebro and Stevens kindly presented at this workshop *pro bono*, which is one of the reasons we were able to keep the prices low. Mr. Stevens presented a generic legal agreement, and discussed the nuances required to put together a rock solid contract.

Highlights of the Workshop included:

- Each contract should have a recital (background information, describe who the consultant is and what needs to be carried out within the project). Within the recital, there should be a description of the land, what is going to be done, how it will be done, and when it will be done. You can add things to the

legal contract as schedules, for example, schedule A can be the work place, hereafter referred to as the “property”.

- Verbal agreements are not a good idea

- Have a person, not the company, sign the contract.

- Non-payment of any invoice when rendered will bear interest in the amount of 2% per month compounded monthly (then present the percentage per annum as well). If you just put per annum, this is not binding.

- There are two types of contracts: a set price; and time and material (not limited). Payment for the project should be established prior to the commencement of the project. Ultimately, payment will be conducted with what you are comfortable with in the billing process. Often, it is wise if there is a previous history of difficulty of collecting, to ask for the entire payment prior to the commencement of the project. Put the method of agreed payment into the contract.

- There is an important issue of delay by consultants to conduct the assessment because of inclement weather. There should be a clause in your contract something like, “...not responsible for delays caused by weather, riot, insurrection, acts of God, or other events beyond the control of the consultant.

- How can there be a guarantee a price on a proposal, especially if the client doesn't respond right away? In the contract, put a statement that the offer is good for 6 months from a certain date, and that the offer will be reviewed again after that date. If you are not going to arrange for the ploughing, ensure

that the client understands (in the contract) that they are responsible for arranging ploughing and the cost for that ploughing. Ensure within the contract that the ploughing will take prior to assessment and allow for adequate weathering. You can attach a map as a schedule to indicate which areas require ploughing. The contract should also deal with the aspect of delay. Many of us have had projects where we were told that ploughing had been done, and arrive with a crew ready to begin work, and find that the fields have not been ploughed. If there is a clause in the contract regarding delays caused by the failure of the company to conduct activities as per the contract, one can also add that there will be an additional charge applied.

■ Emails can form a contract – ensure you print them out.

■ If there are changes, write them out, *e.g.* we trust the foregoing is satisfactory, or, this will confirm our conversation.

■ Ask for a confirmation of receipt, assume nothing.

■ If a contract is in dispute, small claims court handles items \$10,000 and under. Above this amount, the dispute goes to Superior Court. If you win, opposition may not have to pay full amount.

■ The report belongs to the client. Make the client aware of this, and that when the report is filed, it becomes a public document.

■ Ensure that the client is aware that copies will be given to the Ministry of Culture.

■ If the Ministry of Culture requires additional work to be conducted upon receiving the

report, a new contract for such work must be renegotiated

■ If, when you are in the field, you have discovered that additional work has to be done, contact the client, write out how much it will cost and have the client sign the change. This becomes legally binding.

Mr. Stevens recommended that consultants write a contract with as much detail as possible, and then amend it to your specific needs. He recommended that consultants consult with their lawyers who could then massage the information into contract and legalese. If anyone would be interested in retaining the services of Mr. Stevens, he can be contacted at ejs@mslaw.ca

Some responses to the workshop:

"Outstanding, a must for anyone considering starting a consulting business or anyone who has been in business for years. We need more workshops like these because we all have the same problems and questions. We need to protect ourselves legally from situations we do have control over".

"Good Legal Contract session, would encourage further ones. Incorporation into other venues/conferences might make them more highly attended. Yahoo groups might provide a good forum for APA exchange/discussion groups."

"Excellent session. I found, surprisingly, that I wasn't doing as badly as I thought but I will definitely use lots of today's information. How about a similar session on accounting /bookkeeping again."

**3) Third Archaeology Roundtable
Five Oaks Conference Centre, Paris,
Ontario February 16th, 2008**

The third roundtable was well attended, with about 50 people in attendance. The meeting was held by the Six Nations Ecocentre with support from the APA. The Ministry of Culture provided some funding.

The second roundtable minutes were read by Peter Timmins, and then discussion ensued about the revised draft “Notification Agreement” and/or “Authorization form. Discussion centred around who is to authorize the work. Was it to be confederacy or council or both. At the time of the third roundtable, this had not been decided upon.

The question of graves was again raised, and concern was expressed by one Six Nation’s person about previous track records of archaeologists and wanted to know about development in the Brantford area and about taking Aboriginal customs about burials seriously, and who to contact. There followed statements concerning land rights and that archaeologists were being equated with developers.

The archaeologists attempted to explain our situation, but the person who raised the issue left prior to the response’s completion. Laurie J. raised the question as to how many of the Six Nation’s people feel so strongly against archaeology?

This led to a discussion about awareness of what archaeology actually is, and the need for outreach programmes and cultural awareness training for archaeologists.

The discussion then swung back to the notification process and standards of

archaeology, when it asked whether the United Church could put pressure on the government about standardizing practices and having a nationwide notification system, instead of a piece-meal approach.

The form was then discussed as to what were its aims and goals? Also asked were how does the form feed into monitoring, and what its role in advising stakeholders? Would anyone be turned down, and would the form then be voluntary or mandatory? The purpose was stated that its role was to inform Six Nations about the archaeology being conducted within the Haldimand Tract, and then the decisions concerning it lay with Six Nations.

Michael Johnson from the Ministry of Culture noted the similarity of this notification form to the Contract Information Form. He noted that this form ultimately informs Six Nations where and when the work is being done, but not its contents nor conclusions. The reports based on the work are technical and reviewed by the Ministry’s archaeologists. Michael hoped it would also encourage the sharing of information between archaeologists and Aboriginal communities.

The “who” issues the notification form was discussed and it clearly stated that it was felt that it had to come from Six Nations and not a municipality or the Ministry. It was hoped that it would be jointly managed by Six Nations council and confederacy.

It was suggested by an Aboriginal member that a few things should be added to the form for clarity of working in the Haldimand Tract:

1) Archaeologists would follow Aboriginal guidelines, and stop entirely if/when a grave was encountered and immediately inform Six Nations;

2) Define what happens once something of significance is encountered (the definite of significant would need to be stated explicitly);

3) The archaeologist's signature on the form would bind him/her to the Six Nation's protocol and respect for Six Nations, and if protocol is not followed then their permit would be lost.

As well, it was suggested that while the Ministry's Standards and Guidelines should be followed, the Aboriginal member would like that Six Nation's guidelines would take precedent over MCL's.

The discussion turned to development and how archaeology fits into this process. The notification of the archaeology was stated to be only a small piece of the whole land development issue, and that using archaeological notification forms would help fight against developers.

After lunch, more refinements were suggested for the form. These discussions focussed on a number of aspects. Indicate the state or states of the property (disturbed in specific areas, not in others; its potential *etc.*). The municipalities informing developers not only about the archaeology, but consulting with Aboriginal communities. As well as linking the form with municipal file numbers so Six Nations could easily reference the work with specific files.

It was then raised that the notification system would create a large amount of paper work and ensuing administration. The question of fees

was raised, and if this notification system could be linked with the Grand River Notification Agreement (*ie* for development)?

The monitor issue was then raised. A monitor (Owen Greene) was asked to comment about the situation to-date.

Owen's comments included:

1) that the role of a monitor is to be a liaison between Haudenosaunee and archaeologists, and keeps a dialogue open between the different levels of archaeologist (*ie.* field director/project manager), and the Haudenosaunee;

2) Education is a major key. Such that there is a need for more education and resources on Six Nations in order to train Aboriginal monitors. As well as there is a need for more education for landowners so that they are not afraid of monitors. Finally, there is a need for more education for Aboriginal people in general about archaeology;

3) caution archaeologists not to separate the ancestors into different groups - they are all one people;

4) monitors need to know both their own cultural resources and archaeology;

5) monitors are representatives and shouldn't be threatening;

6) currently there are maybe 5 or 6 qualified monitors at Six Nations, and maybe another 5 who are field crew who could become monitors.

Paul General pointed out that one of what he saw as a long term goal, was to develop a relationship whereby monitors would not

have to be on every project with every company.

Holly Martelle then made a few comments from their company's experience with the use of monitors:

1) monitors need field experience, a few university courses, the ability to report back to the confederacy and have input in the field, and regular wages;

2) there are practicalities to consider, such as health and safety, and the monitor needs to be part of the team and act accordingly;

3) Six Nations needs to help organize the role of monitoring & the payment source needs to be decided beforehand in order to avoid conflict of loyalties.

Discussion then turned to what sort of training should occur (see below).

Someone then brought the roundtable back to the notification agreement, and stated that the process would have to be voluntary unless MCL made it a licensing requirement. MCL would not be legally able to do so due to "human rights" issues.

It was then raised by an MCL person if having monitors would constitute "consultation", and at what level would monitors be required – only Stage 3 and 4, or 2 as well? They saw monitoring as a matter of awareness and understanding, not to catch bad archaeology.

It was agreed to form a working committee on putting together a monitor training programme for April for this year's field season (see results below). This could then possibly be applied to a five year goal of full training, with the potential for implementation beyond Six Nations.

The meeting then concluded.

4) Archaeological Monitor/Liaison Training Workshop

by Peter Timmins

The first Archaeological Monitor/Liaison Training workshop conducted by the Ontario Association of Professional Archaeologists and the Six Nations Eco-Centre was completed between April 2nd and 6th, 2008.

The four day course was attended by 12 Six Nations students who received instruction in a wide variety of topics ranging from archaeological field methods to archaeological ethics. The course was taught by 13 archaeologists (mostly APA members) who volunteered their time and expertise to make the event a success. Six Nations members provided instruction on cultural sensitivity and the development of a protocol for archaeological monitor/liaisons. Financial support was provided by the Ministry of Culture and the Ministry of Aboriginal Affairs.

The purpose of the APA/Six Nations Archaeological Monitor/Liaison program is to increase the number of Six Nations people qualified to work as archaeological monitor/liaisons, to improve communication between archaeologists and the Six Nations/Haudenosaunee, and to improve quality assurance in Ontario CRM archaeology. It is the intent of the program that Six Nations monitor/liaisons will work alongside archaeological crews operating within the Haldimand Tract and will conduct regular excavation activities in addition to their monitor/liaison duties. While using a monitor/liaison is voluntary at this time, the Eco-Centre would like to see their use become standard practice for archaeological projects within the Haldimand Tract.

Archaeologists wishing to hire a Six Nations monitor/liaison should contact the Six Nations Eco-Centre for referrals at 519-445-0330.

Many of the students who received training in the course require archaeological field experience before they will be able to work in a full monitor/liaison capacity. To this end, they are also available to work as field technicians for archaeologists operating within (or beyond) the Haldimand Tract. Interested employers should contact the Six Nations Eco-Centre.

For additional information about the APA/Six Nations Archaeological Monitor/Liaison Training program, please contact either:

Peter Timmins (APA) 519-661-2111 ext. 85097

or

Paul General (Six Nations Eco-Centre) at 519-445-0330.

CONFERENCES

DIG Conference

Developing International Geoarchaeology
McMaster University, Hamilton, Ontario
May 25th to May 29th, 2008
contact: Lisa Sonnenburg 905 525-1940 x20115
www.developinginternationalgeoarchaeology.org

CAA Conference

Canadian Archaeological Association
Trent University, Peterborough, Ontario
May 8th to May 11th, 2008
www.tuarc.trentu.ca/caa/en-1.html

Final Comment:

In keeping with the situation of environmental concern, I put the following question to the members. Would people like to receive the newsletter in electronic form, rather than in paper form? If you would like to continue receiving the newsletter in paper form, please let me know at jacque.fisher@sympatico.ca and I will continue to send the newsletters in this format. Otherwise, I will send them in electronic form.

Jacque

Free Space to Make Notes: