



## ASSOCIATION OF PROFESSIONAL ARCHAEOLOGISTS

*Working to Promote Professionalism in Ontario Archaeology*

APA Newsletter – December 30, 2017

New Series 2017:2

Newsletter Editor: J. Dillane

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## **Vice-President's Message, December, 2017**

To begin, I would like to thank the Executive members who have stayed the course as we make a major shift towards enhancing member services. The APA was created in the late 1980s to be a voice for change and to create a framework to protect our members. We have done, and continue to do, both of these things. The prime mover of archaeology in Ontario is MTCS and, while responding to their initiatives and changes is challenging, getting at the policy level before changes are made has proved difficult. Since 2011, there seems to have been a drastic reduction in meaningful consultation and more in the way of information sessions coming out of our provincial regulator. And this is a pattern repeated in other jurisdictions, such as British Columbia with its own APA. Members should keep in mind that we are here to help protect your rights. From time to time, investigations are launched to examine a member situation. These are intense examinations of process and fair treatment and we have had considerable success. In the past six months, as Vice President and after the sequential departure of three executive for divergent reasons, we have sought to refocus the APA on member services. Our accomplishments to date include setting up a twice a year AMS date award, one by lottery and one on merit, establishing two student bursaries to assist with archaeology education, one First Nation and one other, each for \$750, establishing a field director conference travel award twice a year for \$200 each time, instituting a new First Nation membership level - First Nation Consultation Staff which is the equivalent of an APA Professional archaeologist membership, appointing an Occasional Papers series editor and putting out the second in what is hopefully a long series of archaeological and First Nation contributions, hosting two workshops in the past year - one on historic artifacts and sites and one on the Duty to Consult (co-hosted with Curve Lake First Nation), responding to and alerting members to the MTCS release of project and personal data to third parties, and working to raise membership numbers so we can do more. Since 2009, APA membership has grown from 40 to 135 or about three and half times its former size. In 2018, coincident with our new fiscal year end and AGM date of April 7th, we are returning to the former APA tradition of hosting a one day symposium on topical events for archaeologists and First Nations. And who remembers our symposium on Artifacts Gathering Dust, back in the 2000s, before it became fashionable to examine the fate of collections. I am extremely pleased with our accomplishments as a group and if, at times, there is discord in our ranks, look at this as growing pains. Every single person who has served on the APA Executive has made a meaningful contribution to our profession and is to be thanked, whether it was two years or twenty years ago. I am looking forward to the further growth of this organization and to perhaps being able to greet you at our 2018 Symposium. Thank you for your support, it is appreciated!

Laurie Jackson

## **News and Updates:**

### *Changes to APA's AGM and Financial Year-End:*

APA's Board of Directors agreed last January that there are advantages to holding the AGM outside of field season by shifting it to late winter/early spring and to adjust APA's fiscal year end accordingly. The timing of a fall AGM was falling too often into conflict with the late-season peak for field assessments. A fiscal year-end of late February will capture a majority of the membership renewals that come in December and January, and would enable the officers and directors to prepare their reports in advance of the AGM.

Save the Date! APA's next AGM will be **April 7, 2018** and will be paired with a symposium or workshop.

The business meeting will include the announcement of the election results for members of the Board of Directors and voting on updates to the Constitution and By-Laws.

### *New Membership Category! First Nations Consultation Staff member*

In the spirit of a shared responsibility for the stewardship and understanding of Ontario's archaeological resources, APA has adopted the membership category of First Nation Consultation Staff; intended for full time First Nation employees working on archaeological materials, archaeological issues and/or liaison co-ordination for their Nation. Included in this category may be cultural archivists, administrators who work largely with archaeological projects or with training and co-ordinating First Nation archaeology liaisons. Membership documentation will consist of authentication of full time employment by an Ontario First Nation. The First Nation Consultation Staff member will be able to vote on any APA issues, and be eligible to serve on the Board of Directors.

### *\$Student Bursaries have arrived for APA's member\$*

University students struggle financially... we've all been there and, with the profession of archaeology not exactly being the most lucrative, many of us have been paying off student loans and debts well into our careers. APA is in a position to assist the next generation of CRM professionals and researchers, at least in a modest way. If you are in a position of teaching students or hiring seasonal students, do tell them about the benefits of becoming an APA member (read on...)

Two Student Bursaries have been created and will be awarded once per calendar year to two Student members in the amount of \$750 each. Each bursary would be the approximate amount of tuition for 1 single-semester course.

"The APA Indigenous Post-Secondary Student Bursary" and "The APA Post-Secondary Student Bursary"

- Deadline for Application: January 31<sup>st</sup>, 2018

- Value: \$750

- Eligibility: an APA Ontario Student member in good standing; a part-time or full-time undergraduate or graduate student who is currently enrolled in courses pertaining to the study of cultural resource management and which are relevant to the discipline of Archaeology/CRM

in Ontario and its closely related fields of knowledge (i.e. Indigenous studies, applied landscape GIS, etc); and (for the APA Indigenous Post-Secondary Student Bursary) an individual of First Nations, Métis or Inuit descent

Application requirements: submit a letter of interest on or before January 31<sup>st</sup> with the following information:

- (a) name (as used in their APA membership), permanent address and preferred address of correspondence (e.g. phone, email, mailing address);
- (b) name of institution attending, course of study, and specific courses already taken and currently enrolled in that are relevant to cultural resource management;
- (c) 500 - 1,000 words outlining the applicant's interests, experience (as a volunteer or paid employee) in Ontario archaeology and its related fields, plans (course of study, ideal employment stream) for the future, and affiliated First Nation, if applicable; and,
- (d) two brief recommendations\* from (i) a professor/TA and (ii) an employer/supervisor/Band employee, each to attest to the applicant's interests/knowledge/experience and future plans.

\*Log on and visit the 'Student Bursaries' tab on the website to download the referee form. So the benefits of becoming an APA Student member are growing! In addition to the opportunities for bursaries, sign up for the Dig Connect/Job Bank notices, receive the association's newsletters, be eligible for the lower rates for APA workshops, continue to network with other members in the field and in related specialties, etc. There may even be opportunities for short-term contract work with APA as we continue to strive to increase services to all members, and gather and make available valuable information of interest to the members.

#### *WE HAVE A WINNER!*

Congratulations to Darci Clayton who won our first AMS Date Lottery. You can read all about Darci's Research below. Applications to APA's annual C14 Merit Award will be due during the winter -- keep an eye out for further details.

#### *New Assistance for APA's Field Director Members: Conference Travel Grant*

In time for the spring conference season, members in the Field Director category will be eligible to receive a grant -- irrespective of whether they may be presenting or simply attending a conference that will enhance their professional knowledge and networking. Two Conference Travel Grants will be awarded per calendar year, in the amount of \$250 each, to off-set the expenses to attend conferences/symposia of the APA or other archaeological organizations within Canada or abroad!

#### *Website Changes and Updates*

Dig Connect - A new service to connect members looking for work with potential employers has been operating successfully for several months now.

Awards Tabs - The Radiocarbon C14 Awards tab is up and running, to be followed by information on two new awards - an annual Student Bursary for two APA student members to

assist with tuition and related expenses (\$750 each) and a conference travel grant for two Field Director members (\$250 each).

Source Material and Indices - With the assistance of recently awarded APA student contracts, APA First Nation consultation contacts will be updated to provide a broader representation of Ontario First Nations, there will be a searchable index of APA Newsletters (1990-2018) and also of archaeological planning documents (such as Master Plans) completed for various municipalities.

Publications - This year we are on track with our goal of two Newsletter issues per year plus a revitalization of the APA Occasional Publications series, with our first contribution posted in November and appointment of Dr. Scott Hamilton as Editor of the Series. APA produced Reports are also included in the Publications tab.

## **Director and Committee Reports**

### **First Nations Liaison – Laura McCrae**

As of December 19, 2017 I have contacted 16 First Nations communities in Ontario for archaeology contact information. Two communities have responded with names, phone numbers and email addresses; Mohawks of the Bay of Quinte (Tyendinaga) and Aamjiwnaang First Nation (Sarnia). They look forward to being active participants in the consultation process and working in cooperation with Ontario archaeologists. My goal is to contact five or six First Nations communities per month and I anticipate receiving good and positive responses in the future.

### **Investigations Director and Newsletter Editor - Jeffrey Dillane**

The investigations file has been a quiet one this year, with no formal investigations being instigated by member in 2017. I am continuing to review our processes as I outlined in the December 2016 newsletter and the executive is considering a number of processes to assist our members in reporting of significant issues in the field including the damaging or destruction of archaeological sites.

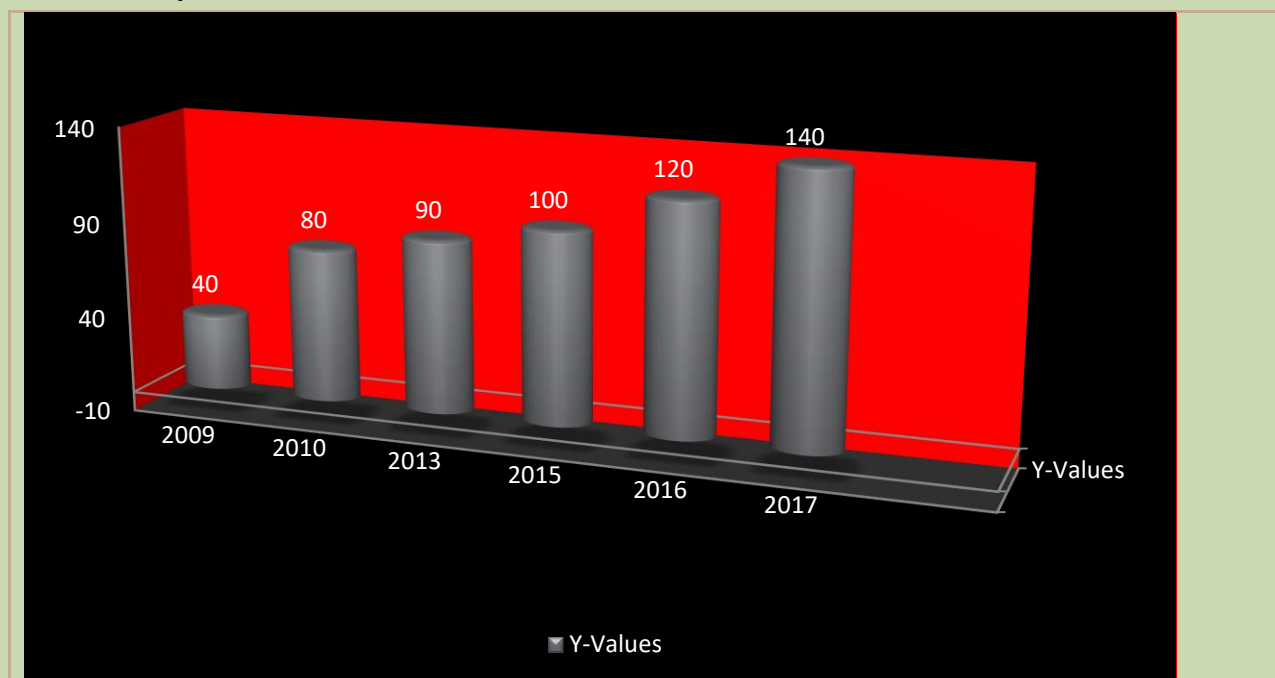
We are also continuing to look at ways to better communicate and disseminate information to our membership. We are very much aware of how pressed for time our members are, and very much appreciate those of you who take the time to read our updates and review our meeting minutes as they are posted. At the same time we know how easy it is for updates and newsletters to disappear into the abyss of email backlog. Our goal is therefore to get the information out to you in as efficient a manner possible while providing detailed minutes and articles that are relevant and of interest to you. The recent re-establishment of our occasional papers series, edited by Scott Hamilton is a really important step in getting such information

out and I encourage anyone who has been sitting on an article or report to dust it off and get in touch with Scott [shamilto@lakeheadu.ca](mailto:shamilto@lakeheadu.ca).

For my part, I am committed to producing a newsletter truly worth reading and I am excited to have so much material to present. As we go forward I would love to include work from our members related to their work and research in the field. I would particularly like to hear from our student members who have a unique perspective on the field of Ontario Archaeology whether it is cutting your teeth during your first field season or excavation, or your cutting edge thesis research for your Masters or PhD, our membership wants to hear about it. We will be sending a call-out to our student members in the coming weeks and look forward to hearing from you!

Finally I would like to thank Laurie Jackson for stepping up to take over the editing of the summer edition of the newsletter this year!

#### Membership – Keith Powers



*APA Membership Growth From 2009 to 2017 (Sources: APA Newsletters, Annual Meeting Notes and Current Membership Directory to December 12, 2017)*

Since 2009, APA membership has shown 250% growth. There have been no declines. Numbers today are 3.5 times what they were in 2009. There was a sharp increase in 2009 to 2010 and steady growth over the period 2011 to 2015 with a strong increase from 2015 to 2016 and

another strong increase from 2016 to 2017. Current membership is 140 members. Total membership in 2009 was 40.

The APA membership base is also becoming more diversified, with more small and medium size firms represented and a significant increase in First Nation members.

For more information on applying for APA membership please see our web page or contact Membership Director Keith Powers.

**Training and Education Committee – Julie Kapryka**

### **Curve Lake First Nation/Association of Professional Archaeologists Workshop: Duty to Consult and Williams Treaties**

On December 15<sup>th</sup> Curve Lake First Nation hosted a workshop in partnership with the Association of Professional Archaeologists. This workshop came together largely as a result of the confusion in the field with regard to “engagement” and the duty to consult. The workshop held at Curve Lake First Nation’s Community Centre included presentations by Michi Saagiig (Mississauga) Elder Gitiga Migizi, Senwung Luk –a lawyer from Olthuis, Kleer, and Townshend LLP, and Dave Mowat, a Michi Saagiig historian from Alderville First Nation. Approximately 30 participants, including professional archaeologists and Consultation Liaisons from Alderville First Nation, Hiawatha First Nation, Scugog Island First Nation, and Curve Lake First Nation, gathered in the spirit of trying to attain a more comprehensive understanding of roles and

responsibilities surrounding engagement and the duty to consult in archaeological contexts. The gathering was treated to a delicious lunch provided by the Grandfather’s Kitchen, a small Indigenous catering business located in the community.

Curve Lake First Nation Elder Gitiga Migizi (Doug Williams) opened the session with a beautiful smudge for all attendees, a prayer in the language, and some words of welcome to the territory of the Mississauga Anishinaabeg, in the lands of Treaty 20. Gitiga Migizi belongs to the Pike Clan



*Kaitlin Hill, Curve Lake First Nation Lands and Resources Consultation Officer, attends to the registration table.*



and he is a respected Knowledge Keeper and Elder of the Michi Saagiig (Mississauga Anishinaabe). He is a Pipe Carrier, a Sweat Lodge Keeper, and a ceremonial leader. He was raised by his grandparents and grew up on the land with the “Old Ones.” Gitiga Migizi is also a hunter, trapper, and fisherman. He is also fluent in Anishinaabemowin and is a respected storyteller. He is currently the Director of Studies for the Indigenous Studies PhD Program at Trent University.

Lawyer, Senwung Luk, then took the podium with a presentation entitled: *Archaeology and Consultation: Strange Encounters, or Reconciliation?* Senwung offered an agenda that outlined the following queries: What is consultation? How does consultation fit in with archaeology? And, how can we avoid conflict? He began by outlining the nuts and bolts of the process of the duty to consult, its origin, and how it has affected how governments interact with Indigenous communities. He clarified who has to consult and accommodate and explained when this duty arises. Senwung spoke about the ‘spectrum’ of the duty to consult, the role of the courts, and how and what makes the process deficient. He then entered into a discussion about how archaeology fits in to all of this.

The legal terrain about whether Indigenous rights to archaeology are recognized in Canadian law is unclear. Although International Law through UNDRIP is clear about Indigenous rights in archaeology, the reality of the situation in Ontario is far from these ideals. Senwung pointed out that some of the decision-making processes about land use and archaeology in Ontario are opaque and this legal uncertainty makes for difficult relationships. He explained that the fundamental assumption of land use law in English Canada is that absent government intervention, the landowner gets to decide what happens to the land and that the fundamental assumption of DTCA law is that the Crown is the ultimate decision-maker regarding what happens to the land. Each of these, he stated, are deeply colonial assumptions. He offered an alternative to this way of thinking: consent. Consent “cuts out the middleman” which is essentially the Crown. Senwung referred to TRC Call to Action #92:

92. We call upon the corporate sector in Canada to adopt the United Nations Declaration on the Rights of Indigenous Peoples as a reconciliation framework and to apply its principles, norms, and standards to corporate policy and core operational activities involving Indigenous peoples and their lands and resources. This would include, but not be limited to, the following:

- i. Commit to meaningful consultation, building respectful relationships, and obtaining the free, prior, and informed consent of Indigenous peoples before proceeding with economic development projects.



Senwung advanced the idea that if developers work with Indigenous communities to obtain consent regarding how cultural heritage concerns will be mitigated throughout and after a project, then there is no need for involvement from the Crown. He pointed out that in his legal practice this has been the normal course for how developers and First Nations have been able to handle the issue of archaeology.

Senwung concluded that it will be the coming legislative clarity that will help to define the roles and responsibilities of archaeologists and First Nations with regard to cultural resource management in Ontario. UNDRIP is making its way into Canadian law and this is a golden opportunity for Ontario to catch up with the rest of the world in recognizing Indigenous rights to archaeology. The reform should provide clarity on: 1) How archaeology fits in to land use planning approvals, 2) An approval process for archaeological field work, 3) The inclusion of Indigenous peoples in archaeological research processes, and 4) Ownership and control of artifacts by Indigenous peoples.

After a social lunch, the gathering was honoured to receive a visit from the Chief of Curve Lake, Chief Phyllis Williams. She welcomed and addressed the participants. She reminded archaeologists of the calls to action of the TRC and how the changing nature of relationships between the Crown and Indigenous peoples in the province will affect and define the duty to consult in the future. Chief Williams pointed out the importance of cultural resources to her peoples and how the work of archaeologists has a profound effect upon these values. She highlighted the absolute concern that she and her people hold for the burials of their ancestors. The issues surrounding the disturbance of Indigenous burial sites and the inadequacies of the current policy that regulate these processes is alarming and was flagged as an area of high importance needing immediate attention. Chief Williams also underscored the need to question the current *Planning Act* that states municipalities must only engage with a First Nation if a development is occurring within 1 km of Reserve lands – and she appealed to the workshop participants to seek ways to address and change this disrespectful clause. The Chief concluded by thanking everyone for attending and offered the reminder that we are in times of reconciliation, and this means turning words into action.

The afternoon activities then proceeded and the gathering engaged in an interactive discussion with questions and answers being posed and offered from a variety of participants. The general sense from the ensuing dialogue was that currently, in Ontario archaeology, the climate with regard to roles and responsibilities surrounding the duty to consult, engagement, and approval authorities is in need of definition and clarity; the policies, regulations, and legislation that currently “guide” the processes of archaeology and cultural heritage management in Ontario are extremely vague and unclear thus, ironically actually lack the very guidance they were created to provide (I.E. *Standards and Guidelines for Consultant Archaeologists 2011*; *Ontario Heritage Act 1990*). This situation causes confusion and uncertainty and is not conducive to

good relationship building between Indigenous communities and professional archaeologists. However, as Senwung Luk reminded the workshop participants, the eventual implementation of UNDRIP will ultimately change the process of archaeology in Ontario, so in the meantime, why not start working towards a process that envisions consent as a primary methodology; prepare and seek consent from Indigenous communities. Don't wait for the government to determine how to apply UNDRIP to archaeology in Ontario, do it yourselves. Next steps would be the "how?" – How do we engage in free, prior, and informed consent in consultant archaeology?

Dave Mowat, Michi Saagiig historian from Alderville First Nation, made a presentation on the history of treaty making with his peoples, and specifically how the treaties affected Michi Saagiig (Mississauga Anishinaabe) lands, waters, foods, and ways of life. He explained to the gathering how his ancestors would have never agreed to give up the right to hunt and fish, that this would be synonymous with giving up the right to live; simply ridiculous. However, that is how the colonial governments of the day interpreted the Williams Treaties and as a result the Michi Saagiig suffered greatly.

Dave also offered insight into the historical relationships between the Michi Saagiig and the early colonial governments. He pointed out that if you dig deeper into the archives of history there is revealed a very dark side to how the early provincial governments interacted with Indigenous peoples. The provision of alcohol to communities was part of the strategy of the government's procedure of the day when discussing how to "deal" with the Indigenous peoples who lived upon the lands they wished to possess. This demonstrates the deplorable attitude of disrespect that the early Canadian and provincial governments held towards Indigenous peoples. This attitude provided the framework upon which policy and treaties were made by representatives of the Crown.

The presentation also included details about specific treaties that were signed with the Mississauga Anishinaabe from pre-confederation to the 1923 Williams Treaties and the lands they describe. Dave explained how devastating it was for the Mississauga people when they were driven off their lands and how their lands were brutally diminished in size. This is an ongoing concern for the Michi Saagiig as their homelands are under constant threat of destruction through processes of development projects. Dave concluded that although governments talk a good talk about reconciliation, until the Aboriginal and Treaty rights of Indigenous peoples are respected and recognized in legislation and policy, reconciliation is just a word.

Elder Gitiga Migizi rounded off the workshop with some final comments. He alluded to the fact that archaeology in Ontario still remains extremely exclusionary, particularly to the history of his peoples. The archaeological narrative in Ontario does not tend to include the oral traditions of the Michi Saagiig in its interpretation of the past. Elder Gitiga Migizi referred to the TRC and

specifically to its call to include Indigenous Knowledges and oral histories in wider contexts, especially in the interpretation of history and of the ancient past in these lands. He cautioned the archaeologists in the crowd that they be mindful of the histories they write into their archaeological reports that include details of his peoples, which in many cases are erroneous and misrepresentative and sometimes non-existent. Gitiga Migizi has concerns about these misinterpretations as they end up registered in a database housed by the MTCS, thus appearing to present official factual information. This has serious implications for his peoples' cultural heritage and legacy.



*Michi Saagiig Elder Gitiga Migizi addresses the workshop participants.*

Gitiga Migizi explained that the history that his elders taught him included stories about a people long ago coming into Michi Saagiig territory looking to set up a corn economy. Wampum was created and exchanged, a treaty made, and ceremony marked the occasion: pipes were smoked, gifts were given and received, and roles and responsibilities within the new agreement were outlined and honoured. And a relationship based in trust and mutual respect was fostered between the Michi Saagiig and the people who later became known as the Huron/Wendat. Yearly ceremonies marked the revisiting of the wampum and the relationship and responsibilities. It was clearly understood in the making of this agreement that the corn-growing newcomers were visitors upon these territories and that they were given permission to occupy the lands by the peoples who already lived here. It had been a symbiotic relationship in many ways that was ultimately destroyed through forces of colonization and warfare. Although this is a little known history, it has been passed down through generations of Anishinaabe peoples. Reconciliation in archaeology means including Indigenous oral histories and knowledges in the interpretation of the past in Ontario.

Gitiga Migizi closed off the workshop by bringing the gathering to stand in a circle, with a beautiful prayer in Anishinaabemowin, and a traditional send off. The collaborative workshop was a successful event that highlighted the potential of relationship building between First Nations and archaeologists and the critical concept of working within spaces of consent in cultural resource management. UNDRIP will soon be implemented and ultimately Indigenous rights to archaeological materials and sites will be formally recognized. Big changes are looming

in archaeological practice in Ontario; the hope is that they will be positive and authentic thus upholding the true meaning of reconciliation. Time will tell.

#### Acknowledgements:

Gchi miigwech to Elder Gitiga Migizi, Chief Phyllis Williams, Dave Mowat, and Senwung Luk for their valuable contributions to this workshop. A heartfelt thank you goes out to APA collaborators, Executive members Lawrence Jackson and Cathy Crinnion for their great efforts in organizing this event and their ongoing dedication to building and maintaining strong mutually beneficial relationships with Indigenous communities. Thank you to Curve Lake First Nation for hosting this collaborative event.



*APA members Margaret and Rudy Fecteau generously set up their display on paleo-botany at the workshop*



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## **Featured Research by Radio-Carbon Lottery Winner Darci Clayon**

While working as a Cultural Resource Management (CRM) Field Archaeologist in Ontario and researching as an Anthropology Master's student at Trent University, I have acquired a respect for the subtle information that lithic artifacts can tell us. Often, lithic artifacts are the only items found on pre-contact sites in Ontario, and we must rely on the information that they provide.

Anyone who has worked as a Field Archaeologist in Ontario knows the excitement of finding a projectile point in their screen! These diagnostic artifacts can be useful for dating the site being excavated, however, there is so much more information that can be obtained from projectile point styles than simply a date range, and this research path is not often followed, especially in Cultural Resource Management.

Projectile point styles are commonly organized into typologies, with a greater focus on the central tendencies, or assumed perfected form of those types. While this focus allows for a systematic categorization method, it can only provide a limited amount of information on cultural change through time and space (Eerkens and Lipo 2007). Binford (1972:88) aptly illustrates this with the analogy of “the ordering of forms of life, the end products of evolution,



by Linnaeus, did not describe or define the process of organic evolution.” Studying the variation of projectile point shapes and raw materials through time can provide insight into social networks, cultural evolution, and adaptive strategies, that descriptive typologies cannot.



*Visible morphological and raw material variation within the Brewerton projectile point type (Middle Archaic Period).*

My Master's thesis research at Trent University aims to follow this path by analyzing the variation of projectile point morphology and raw materials used over the span of 7000 years (Middle Archaic [~6000 B.P.] to the Late Woodland [~500 B.P.]) in the Kawartha Lakes and Trent River Valley region of south-central Ontario. While it is clear that projectile point morphology and raw material type use changed through time, the influences behind those changes are still very unclear. Environmental stresses are often hypothesized to be a main influence of projectile point morphology and raw material use (Collard et al. 2013; Binford 1973; Nelson 1991), however, recent research into sociopolitical aspects of material culture suggests that cultural interaction and trade alliances between certain groups may have also been an important influence (White 2012; Cook and Lovis 2014; Neiman 1995).

My analysis will focus on identifying statistical morphological patterns from a sample of 200-300 projectile points from south-central Ontario to determine what may have influenced the variation that we see in projectile points from this region over time. The goal of this research is to link morphological and raw material variability patterns to possible environmental influences or cultural interaction influences throughout these different time periods.

In a region like Ontario where lithics are commonly the only artifacts found on a site, it is important to ascertain as much information from these artifacts as possible. Simply categorizing projectile points into descriptive typologies is not enough. The substantial amount of variation that can be seen both within and between different types is begging to be analyzed. Examining and interpreting the influences on this variation is an important step in continuing to develop and consolidate the accuracy of the lithic typologies that we currently use.

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## **Addressing some Truth in Ontario Archaeology Needed Prior to Engaging in Reconciliation.**

*Paper originally presented at the OAS Symposium on November 17<sup>th</sup> in Brantford as part of the Nations United Panel*

By Julie Kapryka

Lands and Resources Consultation Officer, Curve Lake First Nation

Aaniin, Sago,

Miigwech, Niaweh for inviting Curve Lake First Nation to speak today on this panel. My name is Julie Kapryka and I work as a Lands Resources Consultation Officer for Curve Lake First Nation. I have been asked by Chief Williams to attend this panel today, in her absence, and I am grateful and honoured to do so.

First of all I would like to acknowledge the hard work and dedication of the OAS to address the calls to action of the TRC and to engage in relationship building and the creation of partnership agreements with several First Nations' organizations. This is a step in the right direction and shows the commitment of this organization to facilitating the return of Indigenous peoples' cultural heritage to their rightful caretakers and of protecting sacred sites, burials, and cultural landscapes.

I would also like to take this opportunity to thank the OAS for their commitment to support Curve Lake First Nation's efforts to develop, build, maintain and operate a "cultural repository" on Curve Lake lands. We are encouraged and empowered by your generosity to advocate for our community regarding this project. Miigwech and we look forward to this new relationship.

I have had the opportunity to participate in a wide range of activities within the context of archaeology and Indigenous rights for the last 15 years. I have heard extensively from both Indigenous peoples and from non-Indigenous archaeologists over many years regarding the state of affairs in the profession – and the issues have remained consistent.

In terms of the broader archaeological challenges that Curve Lake First Nation faces, they are part and parcel of the challenges that currently exist in the provincial arena as a whole. It is hoped that the outcomes of this symposium will see the OAS and the wider archaeological community alongside Indigenous nations successfully addressing these challenges.

I would like to take a few moments to point out some critical challenges that require urgent attention:

## 1) The duty to consult in archaeology and the confusion with “engagement.”

First, I must express a fundamental concept – and that is: The duty to consult in archaeology is non-existent. Let’s be clear on that. There exists huge confusion in the profession of archaeology regarding this concept. However, there not need be. It is simple – the duty to consult does not exist in archaeology.

Archaeologists are currently required to “engage” with First Nations at a Stage 3 of an archaeological assessment under the terms and conditions of their licenses. This is not part of the duty to consult – although many people think that it is.

In the notable 2004 *Haida* case, the Supreme Court confirmed that it is the Crown who owes the duty to consult and accommodate Aboriginal peoples; not industry or third parties. The Crown can, however, delegate parts of the process to other groups such as industry (this happens with companies like Enbridge, OPG and other large conglomerates). But, the Crown cannot ‘delegate away’ the duty. **The duty to consult and accommodate rests with the Crown itself.**

Archaeologists are certainly NOT delegated by the Crown to do this and as such, there is no duty to consult happening when archaeologists are “engaging” with First Nations. Furthermore, clients and proponents are not responsible for the Duty to Consult unless they are the government themselves. And even if the Crown delegated parts of the process to proponents (and the key here is delegated parts – a formal letter – agreement), the Crown is still responsible for the duty to consult and accommodate. The duty to consult occurs on a nation to nation basis - period. Not an archaeologist to First Nation and not a client to a First Nation. This duty lies with the Crown and we should be turning our attention towards the MTCS.

Most if not all of the archaeologists that I have spoken to and worked with believe that on some level they are in fact “doing” some form of duty to consult. I reiterate, archaeologists cannot be responsible for the duty to consult.

So where is the Ministry (MTCS) in all of this? They are, after all, both the regulatory body in this regard and, they are the representative of the Crown in archaeology. Why does the MTCS not engage in the duty to consult regarding archaeological endeavours?

Part of the challenge, I believe, is that the MTCS does not define itself as an approval authority and this stance shields it from obvious responsibilities. MTCS representatives explain that they are mostly a Ministry that “gives advice” thus advising other ministries and various proponents on archaeological issues. Yet they regulate and control the entire process of archaeology in this province and they are also a licensing body.

Other ministries are the approval authorities for development projects. While this may be the case, how can housing and municipal affairs inform archaeological processes? They are not an expert authority on heritage and culture. The Ministry with the expertise and knowledge regarding archaeology and heritage, the Ministry that regulates archaeology in this province, and the one acting like the authority in archaeology and heritage issues, actually has no authority.

In any case, the duty to consult in archaeology rests with the Crown, and in this context it has got to be with the MTCS. However, right now, there is no duty to consult in archaeology and this needs to be addressed.

The situation on the ground has left both First Nations and archaeologists in a confused and unbalanced state which is threatening to sour already working relationships.

It is duly time to call on the Ministry to acknowledge its authority and uphold its responsibilities to the duty to consult.

*Solution: Archaeological Assessment Act – would require duty to consult.*

## **2) Aboriginal rights to cultural heritage and “ownership” of collections.**

Do First Nations have a right to the cultural material produced by their own ancestors?

Is there an Aboriginal right as defined in the Constitution being impacted or potentially could be impacted in the course of archaeological endeavours?

One would think so. But that is not the case. First Nations do not own, control, or have easy access to any of the material culture created by their ancestors. Seemingly First Nations have no rights at all to cultural heritage in Ontario.

The material collections that are uncovered through the process of archaeology in Ontario are held “in trust”, mostly by archaeologists, for all the people of Ontario. Archaeologists in Ontario house most of these artifacts in their basements, rooms in their houses, in garages, or large storage facilities, and at their own expense.

So who actually has the rights to these collections? Who owns the artifacts?

The Ontario Heritage Act is silent on the issue of ownership. The MTCS has no clear definitions. It seems like this is a big mystery to many people.

Rather than couching this obvious Aboriginal right in an “ownership” context, it should be framed in terms of **responsibilities** and we should be asking instead: “Who holds the

responsibility to care for the material collections that are clearly of Indigenous origin? Who holds the responsibility to speak on behalf of the archaeological evidence, the artifacts and site features, all indicative of Indigenous heritage? The answer here is obvious. But it is not so in current contexts.

Apparently, if challenged in a court of law, under common law it may be that the land owner actually has title to artifacts found on their property. This is interesting because in essence it means that Indigenous peoples do not have rights to their own material culture (artifacts) in any way AT ALL – because even Reserve lands after all are Crown land.

Certainly it can be easily argued that First Nations had prior title to these lands ---all of these lands – including the artifacts that exist in the stratigraphy of that prior layer of historical and scientific truth. Thus, the evidence clearly indicates that First Nations have title to all pre-contact collections in Ontario based upon prior title to all of these lands.

Yet First Nations do not possess control of the material collections, the thousands of artifacts that are excavated from archaeological sites all over Ontario every year.

And this comes right back to: Aboriginal rights to cultural heritage and the duty to consult in this province. Even despite **Sections 11 and 12 of UNDRIP that state Indigenous peoples have the right to archaeological sites and ancestral remains**, and the TRC's 94 recommendations and calls to action, and the Ipperwash recommendations, not to mention the recommendations in the 1996 Royal Commission on Aboriginal Peoples (RCAP) under the current framework in Ontario, it appears that cultural heritage is not considered an Aboriginal right. And thus the government can argue that there exists no duty to consult because there is no Aboriginal right being impacted.

An Aboriginal right is defined as:

*“Aboriginal rights are collective rights. For an activity to be an Aboriginal right, it must be an element of a practice, custom or tradition which is integral to the distinctive culture of the Aboriginal community claiming the right.*

*For First Nations and Inuit communities, the activity must have existed at the time of first contact with Europeans.”*

Herein lies the issue:

Indigenous peoples did not do archaeology pre-contact, they did not engage in these practices. Digging up old habitation sites and disturbing burial grounds was not part of Indigenous ways of life. Artifacts, per say, did not exist: you either used something or it was discarded, it was not

dug up later to be placed in a building or someone's collection to be looked at. Items were/are meant to be used and cared for.

So because Indigenous peoples did not dig up their ancestral sites or store vast collections of artifacts as "a way of life" there appears to be no Aboriginal right present in the way in which the government chooses to define it.

I would argue that actually, in fact, archaeology itself in the form of the artifacts lying in matrixes of strata are themselves overwhelming evidence **of land use**.

If Aboriginal rights are defined by land use and activities on the land – the archaeological record in Ontario is the ultimate expression of evidence of land use – and on continuums that span thousands of years. The material culture itself is indicative of presence and activities upon the land.

Clearly the archaeological record in Ontario is of mostly an Indigenous past. The artifact collections recovered from sites across the province should be in the hands of the descendants of those who created them.

Again, this lack of a duty to consult in archaeology is directly related to issues surrounding collections management in Ontario.

*The solution: Indigenous Museums/Repositories on Indigenous lands, in Indigenous communities –owned, operated and managed by First Nations.*

### **3) Access to archaeological information**

There is something called the Ontario Archaeological Sites Database. It holds all registered archaeological sites in Ontario. The MTCS controls and maintains this database. If a First Nation would like to find out where archaeological sites are located within their traditional territories they can only do so if they sign a contract with the MTCS.

Section 2, clause 2.1 reads: *The First Nation shall not use the data provided by the Ministry other than researching past use of the land.*

The question must be asked: Why should any First Nation need to enter into a contract with the Ministry when seeking information about their own ancestral sites, on their own traditional territories? And why should restrictions ever be put on First Nations with regards to how they use this data?

This then begs the question: Under what authority? Under what regulation can the MTCS keep this information from First Nations? Why is cultural information being kept from First Nations?

*-not sure about the solution here*

#### **4) Burials**

The responsibility for burials lies within the Ministry of Government and Consumer Services. To even say that sounds disturbing and it is symptomatic of the larger issues of how Indigenous burials have been treated and continue to be treated under current legislation.

There are so many issues with respect to how Indigenous burial sites are disturbed, destroyed, and disrespected, too many to discuss here and now. However, the issue of timing must be addressed and could be easily ameliorated.

A major concern that must be highlighted is the length of time it takes for the Registrar of Cemeteries to make a declaration of an Aboriginal burial site while waiting for the MTCS to review the Stage 3 burial report. The issue here is this: There is no legislated requirement to file burial reports with MTCS as a component of a human burials Investigation, only with Cemeteries Branch.

Review of a Stage 3 Burials Investigation Report by MTCS should not take precedence over acceptance of an Investigation Report by the Registrar for the purpose of issuing a Declaration (declaring an Aboriginal Burial site). The law in Ontario is clear that burials investigations are the mandate of the Registrar and delays caused by MTCS reviews, which can take years, should not be part of this process.

For some reason the Cemeteries Registrar defers to the MTCS in this process and what this amounts to is the ancestors' remains waiting in limbo, sometimes unearthed and in holding, for years, while the MTCS reviews burial investigation reports (which is not required under the Cemeteries Act).

So how can we address this?

Several years ago, the Association of Professional Archaeologists (APA) recognized this issue, among others, and in an investigative report on the Allandale site produced a list of recommendations for "the Streamlining of Provincial Government Handling of Burials Situations." It is a comprehensive list of recommendations. It provides some clear direction on how to restructure the current system into a more expedient process. It seems it was simply shelved by the MTCS.

The APA hit the nail on the head with the following suggestion: There should be a provincial review of the appropriateness of leaving such a sensitive issue as human burials and especially First Nation burials, in an unclear jurisdictional state between two provincial ministries – there seems to be an incomplete understanding of actual burials regulations between the two Ministries. Reporting to the MTCS should not delay this process and should have no bearing on the Investigation Report that archaeologists complete for the Registrar to make a Declaration.

Another way to address the current challenges and inadequate process would be to make another Registrar of Cemeteries. Why not create an Indigenous Burials Registrar? There should be another Cemeteries Registrar who works only with Indigenous burial sites. It seems very disrespectful and counter intuitive to have non-indigenous bureaucrats who have little experience with Indigenous worldviews, lifeways and perspectives surrounding death and burials, in charge of them all?

*Solution: Provincial Review of current situation and creation of Indigenous Burials Registrar*

## **Conclusion**

In conclusion, it is obvious to me that First Nations and Ontario archaeologists want to work together and are truly willing to walk that path, here – now. There exist some barriers, however, that are contradicting the process and making it more difficult. If we follow the trail, all roads lead back to the Ministry and its abject avoidance of its responsibilities in how it regulates archaeology in Ontario.

Clearly First Nations have a right to their cultural heritage, and archaeologists clearly understand this. It is time that the MTCS recognized this and stepped up to its duty to consult and accommodate First Nations.

First Nations and archaeologists working together stand to be a powerful force in reminding the Ministry of their duty. A positive, powerful collective that holds the Ministry to account and in the process helps guide the development of new policies and legislation that will transform the way archaeology and cultural heritage management occurs in Ontario.

This is critically important because right now archaeologists hold most of the artifacts of history, and this means that archaeologists also hold the narrative of Ontario archaeological history and how the story of the past is told. This is where new partnerships and new relationships between First Nations and archaeologists can move into the ACTION that has been called for by the TRC and UNDRIP. As the narrative of history is being reshaped and retold in education systems across the country, reconciliation in archaeology will also require the re-telling of the story, a re-telling of the archaeological record. It will require a re-balancing of the narrative and an honest, open, truthful collaboration between First Nations and archaeologists.

Reconciliation in archaeology will also require the transformation of methodologies in archaeological practice and the acknowledgement and inclusion of Indigenous Knowledges in the analysis and interpretation of data. There is much work to be done and there is much that has been said. To quote Chief Phyllis Williams: “Everything looks great on paper, for sure, but where is the action?”



The word now I am starting to hear is: Reconcili – ACTION. There must be action to back the promises.

The theme of this Symposium speaks of hope in action, and it is our hope that First Nations and archaeologists in Ontario can truly work in partnership and in doing so, transform the practice and discipline of cultural heritage management into an equitable, inclusive and reciprocal interaction.

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