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TAKING CHARGE OF OUR PAST: Standards & Guidelines for Consultant Archaeologists, an Anishinabek Nation Virtual Review



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STANDARDS & GUIDELINES REVIEW

Introduction

The Anishinabek Nation virtual gathering, “Taking Charge of Our Past, A Review of the Standards & Guidelines Submission” was held on March 22, 2022 over the Zoom platform. With the event attended by 26 policy technicians and archaeologists representing First Nations across the Anishinabek Nation, the topic of discussion was the draft commentary submission on the *Standards and Guidelines for Consultant Archaeologists (2011)* as prepared by Paul Racher of the Archaeological Research Associates drafted March, 2020.

The purpose of the session was to present the draft commentary to the audience, field questions and engage in productive discussion producing direction and opinions to strengthen the final submission resulting in the formation of recommendations for the draft commentary.

Key discussion themes focused on:

- Recognition of rights and sacred responsibilities of First Nations
- Inequities within the current archaeological assessment process and provincial policies;
- Adequate representation of First Nations within the archaeological sector including exploring further opportunities for First Nations to engage in the archaeological sector;
- Deficiencies of First Nation cultural and ideological affirmation within the Standards and Guidelines document;
- The need for working together through partnerships with advanced detailed information sharing; and
- First Nations assertion of jurisdiction over their cultural property and archaeology within their territories.

The resulting outcomes were of an overall directional nature for the Anishinabek Nation Political Secretariat.

ENGAGEMENT CONTEXT

Background

In 2020, the Anishinabek Nation contracted the Archaeological Research Associates (ARA) to conduct a review of the provincial policy paper, *Standards and Guidelines for Consultant Archaeologists (2011)* (Standards and Guidelines).

The motivation for undertaking this review was derived from previous engagements held within all four regions of the Anishinabek Nation where the objective was to garner input for development on a community consultation protocol template. These sessions began in January of 2019. As a part of this engagement, the Ontario Ministry of Heritage, Sport, Tourism and Culture Industries (MHSTCI) advised that it would be exploring an initiative to undertake a review to modernize the Standards and Guidelines. In order to allow Anishinabek First Nations advanced notice to begin planning for this review, a small portion of the agenda was designated to deliver an update and hold a brief discussion. This generated great interest among heritage policy technicians, Elders and leadership alike. The intention in 2020 was to complete the commentary submission with plans to hold an engagement session with key policy technicians to garner input. Following the development of the Standards and Guidelines commentary submission, the occurrence of the global COVID-19 Pandemic (Pandemic) created an environment that prevented First Nations from being adequately engaged on such initiatives. In order to obtain crucial community input, the ARA developed and published a questionnaire online designed to solicit this input. Again however, due to the Pandemic, the community response was lower than anticipated. In order for the submission to be an accurate reflection of the Anishinabek Nation, engagement was withheld until a more appropriate time.

DISCUSSION HIGHLIGHTS

Government Recognition of First Nation Rights to Cultural Property

Discussion was raised regarding the need for all levels of government to recognize the First Nation sacred responsibility to honor, protect and return their ancestors, sacred items and sacred sites. This responsibility is engrained within First Nation teachings and is apparent when a community undertakes to protect or return ancestors, sacred items or sacred sites to their home. These activities often rely a great deal on the advice of Elders, requiring ceremonies and the giving of one's self in a personal way, commonly resulting in a particularly emotionally draining experience. This is why First Nations do not see this as just an inherent right, but also a deeper obligation to those ancestors sometimes at great emotional consequence if they are unsuccessful. Failure could mean these ancestors return to a collection in holding within a facility where they may not be cared for in a traditional, respectful way.

As a first step, government policy needs to demonstrate a willingness to explicitly acknowledge and honor this sacred responsibility. The ultimate goal of First Nations is the ownership and stewardship over their ancestors, sacred items and sacred sites. Due to various reasons, First Nations may experience great difficulty in achieving the established minimum requirements set out to receive and maintain these ancestors and sacred items. As a means to reconciliation, First Nations seek to work in partnership with government in order to acquire the capacity to meet these requirements and also effect appropriate change to policy, bringing about understanding and fairness to processes where communities express interest in returning and maintaining their cultural property. How rights are recognized is a crucial step forward in the working relationship with government.

Traditionally, First Nations kept ancestors, sacred items and sites “in situ”, ultimately meaning they were left in the care of their Mother Earth. Petroglyphs, for example, have existed long before the coming of Europeans, but only in recent history with the altering of the surrounding environment and efforts to have them protected by man-made structures have they begun to progressively and ceaselessly deteriorate. Traditionally, Elders maintain that First Nations have always honoured their ancestors and have never before been subjected to external standards of care.

Achieving Equity in Government Policy and Enforcing and Reconciling Law

Within the same discussion, concern was raised regarding policy inequity between First Nations with a historical right to their cultural property and archaeologists, those who discover the cultural property. Overall, First Nations feel like the rules for returning and holding ancestors and sacred items only apply to them. Archaeologists are able to circumvent these rules and regulations primarily through maintaining obscurity via their knowledge of the archaeological sector and its limitations. For archaeologists that are known to hold personal collections, the regulations should be held to an equally stringent standard with a mandatory effort to research and return these collections to their rightful homes.

Laws for the improper holding of archaeological items or for violating an archaeological site are not enforced. More effective methods of awareness and surveillance for violations should be implemented in addition to the progressive modernization of legislation to more explicitly apply to First Nation archaeology.

First Nation Development of Protocols and Laws

Many First Nations have already developed their own consultation and accommodation protocols concerning the discovery, protection and return of ancestors, sacred items and sacred sites, creating more efficient and organized processes. This First Nation assertion of jurisdiction should be encouraged by all levels of government. The enacting of provincially coinciding First Nations protocols and laws would only serve to strengthen the relationship and enforce a greater transparency and accountability within the archaeological sector. In order for this to happen, existing legislation would need to be modernized. This partnership between government and First Nations could lead to further engagement concerning the direction and initiatives undertaken by First Nations. With appropriate awareness delivered by a partnership, there is an opportunity to ethically strengthen the archaeology sector.

Early Engagement, First Nation Inclusion and the First Right of Opportunity

Consultation and inclusion is a key component to the First Nation-Government relationship in most circumstances. This can certainly be said for archaeology. First Nations often times feel like a checkbox or an afterthought in these processes. Early engagement is crucial. It stands to reason that First Nations, being the original inhabitants and living on Turtle Island (North America) for thousands of years, would have the greatest interest in the discipline of archaeology. What doesn't make sense is that there are often lenient or even casual consultation requirements concerning First Nations, often allowing for the proponent to determine methods of implementation, what is appropriate and when consultation has been achieved.

The capacity shortfall for First Nations goes further than a lack of manpower, facilities, technology or equipment. When there is no familiarity or academic expertise with the industry or no knowledge of what the potential impacts are of any particular agreement, an imbalance exists during consultation, leaving the First Nation open to being taken advantage of or otherwise agreeing to something they don't fully understand. It is crucial

to explicitly allow First Nations professional expertise in all engagements with proponents as a basic right.

First Nations need support to investigate land that they believe to have high potential as a sacred or burial site. They also need support to protect these areas, both through capacity resourcing and enabling “First Nation archaeology” legislation. Where land is being transferred which First Nations believe to hold high potential as a sacred site, First Nations should be given the “right of first opportunity” or bid to purchase. This may require an intervening process for First Nations.

First Nation Representation and Participation in the Archaeology Sector

In-depth discussion occurred following an inquiry as to the existence of a First Nation-specific inventory of archaeological resources. Such resources as archaeological and other expertise, archaeological monitors, archaeological training institutions, museums and repositories among other resources were discussed after it was determined that no known inventory existed.

An inventory of this nature is important for two main reasons. Firstly, it is important to have a support network for communities involved in archaeological initiatives or processes. The shared knowledge approach appears to work best for Anishinabek Nation communities. Expertise in archaeology is sporadic, where some communities excel, others are largely inexperienced. The shared knowledge approach also serves to gain consensus among nations for a more organized, unified approach to solutions conception. Secondly, it is also important to take inventory in preparation for re-examination of the archaeological sector for modernization. In order for First Nations to know what they need, they will need to know what they already have.

It was noted that having a “critical mass” of Indigenous people is important to engender change such as a shift in mentality. The more involved First Nations get within the archaeology sector, the more they will understand and be able to make educated decisions. Additionally, with more First Nations employed in archaeology, the sector becomes more accepting and compassionate while gaining an understanding of the plight of Indigenous people as working relationships develop.

Deficiencies of First Nation Cultural and Ideological Affirmation

The current processes outlined by the provincial Standards and Guidelines do not include any Indigenous values, scope of work or ceremonial protocols that go along with repatriation. These need to be referenced as the authority for doing business within a particular territory. The acknowledgement and inclusion of language and ceremony need to become the norm for these kinds of governing policy documents. The acknowledgement of these would demonstrate crucial respect as the traditional ways for Indigenous people to teach and learn. This traditional knowledge has much to offer and its inclusion has the potential to generate more than just curiosity among non-Indigenous people, it may bring about a greater understanding and perhaps lead to a genuine respect for a culture that they will work with and abide by within their territory. Indigenous perspectives, language/terminology and ceremonial protocols and spiritual practices need to be included within the revised Standards and Guidelines document.

DISCUSSION CONCLUSIONS

Conclusions on Perspectives

The discussion seemed to be leaning towards overarching initiatives, with the implication that there should be an undertaking to essentially inventory the First Nation archaeology sector within Ontario. This may be in preparation for larger initiatives down the road such as development of Anishinabek Nation institutions and organizations similar to the Ontario Archaeological Society or the Archaeological Research Associates with an Indigenous focus.

The rationale was more of a nationhood or rights-based approach, rather than a policy approach. The general feeling was that the best way for First Nations to assert jurisdiction was to develop their own protocols and laws rather than work within existing provincial policy. Nevertheless, relationships between First Nations, industry and government partners are essential to affect lasting and meaningful change.

The more prominent questions to consider are: What are the rights of First Nations people concerning heritage and archaeology? How do we implement these rights? What things are needed in order to make this happen? What are the obstacles? What does the current system lack?

The undertone throughout the discussion was that the 'colonial' system currently in use will never achieve true harmony with First Nations people and thus will never adequately represent them. External factors and pressures such as that of the economy and progressive development will always play a significant role in prioritization and decision-making. As a result, the best way forward was thought to be the assertion of the right to self-determination through the creation of First Nation-specific processes, protocols and laws.

COMMENTARY RECOMMENDATIONS

Standards and Guidelines Recommendations Summary

The recommendations resulting from the discussion that have been applied to the draft commentary are:

1. That the duty to consult and accommodate and/or free, prior, and informed consent be integrated into heritage management.
2. That Indigenous heritage be managed by Indigenous communities.
3. That the financial burden of any system to manage impacts to Indigenous heritage must not be borne by First Nations and Indigenous communities.

The application of the duty to consult and accommodate within the archaeological discovery process has been debated at great length over the years. First Nations maintain the right to be notified during stage 2 if not sooner, in the process. Currently, First Nations are notified at stages 3 or 4 of the process. It is important to explore what the implications and impacts are of having First Nations notified at these stages. A less quantifiable implication, but impactful nonetheless is that First Nations feel they are being engaged as an afterthought or checkbox and not a true partner. This greatly diminishes the trust and hinders the working relationship between Indigenous and non-Indigenous when working to protect or return sacred sites, ancestors or sacred items, an undertaking that, by itself is emotionally draining as it is considered a sacred obligation by First Nation people.

