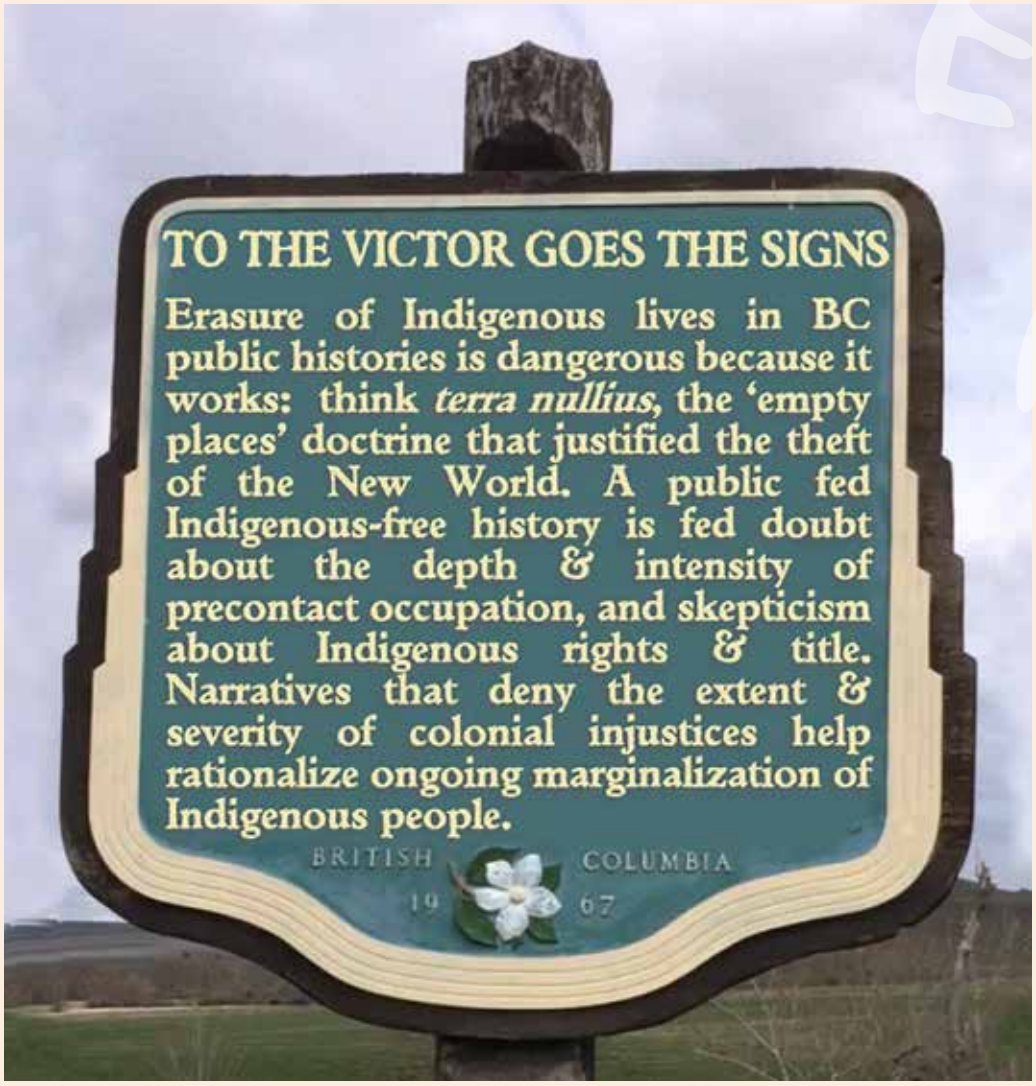
Recommendations for Decolonizing British Columbia's Heritage-Related Processes and Legislation



FIRST PEOPLES' CULTURAL COUNCIL

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DECEMBER 2020

ACKNOWLEDGEMENTS

We thank Karen Aird and Paulina Csiscai for the opportunity to develop this report and for their support in its completion. We are also grateful for assistance provided by Kelly Bannister, Catherine Carlson (Inlailawatash Ltd), Joanne Hammond, and Bert William. We thank Lauri Seidlitz for her careful copyediting.

The First Peoples' Cultural Council is grateful to have our home in the beautiful traditional unceded territory of the W̱SÁNEĆ Nation people, in the village of W̱JOŁEŁP. We have an additional satellite office at Tk'emlups within the traditional territory of the Secwepemc people. Our leadership and staff are honoured to travel, conduct our work and provide support throughout Indigenous homelands across what is now called British Columbia and beyond.

Cover: From Joanne Hammond's Decolonizing Roadside Signage series for "#rewriteBC on Twitter". Secwepemc pictograph for Chief.

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EXECUTIVE SUMMARY

This report was prepared at the request of the First Peoples' Heritage, Language and Culture Council to conduct directed research and analysis of the BC Heritage Branch's policies, programs, guidelines and laws. The goal is to aid with developing more inclusive, collaborative opportunities for Indigenous cultural heritage (ICH) management and stewardship in British Columbia. This report is the first phase in a multi-year effort to access and determine options for achieving equitable spaces and opportunities to recognize, include and revitalize ICH in British Columbia.

This report addresses three specific tasks:

1. To review and comment on the Heritage Branch's policies, programs, guidelines and laws represented in the 17 documents listed in Table 1;
2. To conduct generalized research[1] on good practices and approaches, initiatives, programs, policies and legislations that relate to ICH nationally and internationally; and
3. To summarize the research findings and develop a set of recommendations.

We discuss the pressing need to rethink ICH protection and management in settler countries such as Canada where the dominant portion of ICH places (including archaeological sites) is not ancestral to the dominant population. We discuss key terms and concepts, including "Indigenous cultural heritage," "heritage," "decolonization," and "indigenization." While oriented to the goal of decolonization, our report acknowledges such essential topics as ICH as a human right and a means of social justice, and ICH engagement as an expression of identity, history and well-being. We refer to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and Canada's Truth and Reconciliation Commission (TRC) Calls to Action in informing our assessment and recommendations.

We provide ten recommendations serving to advance the decolonization of processes and legislation affecting ICH:

1. Start by acknowledging that the cultural heritage of Indigenous peoples belongs to Indigenous peoples.
2. Apply the TRC's Call to Action 43 as it pertains to each of the policies reviewed.

1 Funding and the timing for this project didn't enable extensive and expanded research and discussion on good practices and approaches, initiatives, programs, policies and legislation that relate to ICH nationally and internationally. It is recommended that further study be planned to identify and better understand practical solutions.

3. Establish jurisdiction and statutory decision-making authority over ICH by Indigenous peoples.
4. Identify and eliminate any influence of colonial doctrines, including the Doctrine of Discovery and *terra nullius* on relations to ICH and elsewhere.
5. Establish and enhance relational versus transactional connections between governments based on Indigenous rights recognition, government-to-government and/or nation-to-nation foundations of equality, and through development and implementation of shared decision-making processes addressing ICH.
6. Apply holistic, integrated, fulsome and inclusive recognition of ICH, serving to broaden institutional attachments from the narrow focus on "archaeological" material culture currently common to the interpretation of the heritage legislation, such as the Heritage Conservation Act (HCA).
7. Incorporate wherever possible the five key points from "Why Intangible Heritage Matters" (Nicholas 2014, 2017a; also set out on p. 59 of this report).
8. Harmonize statutory and operational relations detachment between the provincial agencies such as the Archaeology and Heritage Branches of the Ministry of Forests, Lands, Natural Resources and Rural Development.
9. Harmonize relations between Canada and British Columbia in recognizing and addressing ICH to establish more cohesive, holistic and integrated approaches.
10. Ensure that Indigenous peoples have the resources needed to develop and administer their own cultural heritage laws / legal traditions, policies and practices; and to establish agreements that clarify relations with federal and provincial governments.

SCOPE AND STRUCTURE OF REPORT

This report was prepared at the request of the First Peoples' Heritage, Language and Culture Council to conduct directed research and analysis of the BC Heritage Branch's policies, programs, guidelines and laws. The goal is to aid with developing more inclusive, collaborative opportunities for ICH management and stewardship in British Columbia. This report is the first phase in a multi-phased, multi-year effort to access and determine options for achieving equitable spaces and opportunities to recognize, include and revitalize ICH in the province. Other phases may include, but are not limited to, a forum on ICH; one-on-one interviews with key experts; a province-wide ICH needs assessment; the gathering of empirical data, select projects and collaborations; and the determination of best practices in ICH stewardship. This report does not provide a critical review of the often complex and burdensome processes and procedures, challenging silos, lack of funding and systemic issues within the various British Columbian government ministries that deal with heritage. Although these issues are prevalent, overwhelming, and important for many people in British Columbia, they are internal government issues that are beyond the scope of this project.

This report addresses three specific tasks:

1. To review and comment on the Heritage Branch's policies, programs, guidelines and laws represented in the 17 documents listed in Table 1;
2. To conduct generalized research on good practices and approaches, initiatives, programs, policies and legislations that relate to ICH nationally and internationally; and[2]
3. To summarize the research findings and develop a set of recommendations.

We also include some relevant discussion on the pressing need to rethink ICH protection and management in settler countries such as Canada where the dominant portion of ICH places (including archaeological sites) is not ancestral to the dominant population. The result is that B.C.'s Indigenous peoples continue to have very limited input into decisions relating to their own ICH. Not only must that change to affect a more ethical, responsible and representative set of policies and practices, but the recommendations of UNDRIP and TRC's Calls to Action must be implemented. Thus, while oriented to the goal of decolonization, our report acknowledges such essential topics as ICH as a human right, social justice and ICH engagement as an expression of identity, history and well-being.

2 Funding and the timing for this project didn't enable extensive and expanded research and discussion on good practices and approaches, initiatives, programs, policies and legislation that relate to ICH nationally and internationally. It is recommended that further study be planned to better understand practical solutions.

Finally, we believe it essential to have some clarity in the terms central to this review. We therefore discuss key terms and concepts, including "Indigenous cultural heritage," "heritage," "decolonization" and "indigenization."

TABLE 1. LIST OF POLICIES, GUIDELINES AND OTHER MATERIALS REVIEWED.

1. Heritage Values Assessment Process
2. Standards and Guidelines for the Conservation of Historic Places (Cultural Landscapes section)
3. Historic Places Recognition Program – Summary
4. Statements of Significance (SoS) Guidelines
5. Heritage Branch Collections Management Policy (Draft)
6. Collections Management Policy – Fact Sheet and Handling Guidelines
7. Collection Digitization Standards
8. Policy Direction to Site Operators re: Indigenous cultural heritage
9. Guidelines for Natural Resource Project Proponents
10. Fossil Management Policy (Draft)
11. Fossil Management Principles
12. Fossil Management Framework
13. Fossil Impact Assessment Guidelines
14. Chance Find Protocol for Fossils
15. British Columbia's Geographical Naming Principles, Policy and Procedures
16. Local Government Act – Part 15, Heritage Conservation
17. Heritage Conservation Act (HCA)

Disclaimer: Examples of specific Indigenous peoples' perspectives included in this report are drawn from two documents[3] produced following engagement sessions with Indigenous people in British Columbia conducted by the BC Archaeology Branch from August 2018 to January 2019 concerning the respectful treatment of ancestral remains, one of which specifically addresses the S'ólh Téméxw Stewardship Alliance of Stó:lō First Nations. The Stó:lō Heritage Policy Manual was also drawn upon for some examples. The use of Stó:lō content is not intended to be representative of broader Indigenous peoples' perspectives, and is simply a result of being readily accessible and usable by the authors for illustrative purposes.

3 Archaeology Branch Ancestral Remains Policy Review – Summary of Engagement Feedback, April 2019; and the BC Archaeology Branch's S'ólh Téméxw Stewardship Alliance (STSA) engagement session notes – HCA policy review, December 10, 2018. Chilliwack, British Columbia.

TERMINOLOGY

We distinguish between "archaeology"—how and what we learn about what happened in the past through a specific disciplinary practice—and "heritage"—the set of values given to objects, places and information derived by archaeology and other means. Archaeology emphasizes the tangible; heritage encompasses the tangible, intangible, cultural and natural.

In the context of the provincial system in British Columbia, "archaeology" has apparently taken root in the approach to administering the Heritage Conservation Act (HCA) by means of the Heritage and Archaeology Branch even though there is very limited reference to archaeology in the HCA, and where it would be more appropriate to administer the legislation soley through a "Heritage Branch." This exemplifies the institutionalization of terminology based on "archaeology" (narrower focus) versus "heritage" (broader focus), a point discussed in Part 1, The Nature of Indigenous Heritage.

We must also be aware that the words we use can cause concern or harm to descendant communities. For example, it makes a difference if we use the words "artifacts" versus "belongings" or "skeletal remains" versus "ancestor." This is also true of labelling important ICH sites by terms (or numbers) of convenience, rather than local or traditional names. Some also object to the terms "prehistory," "prehistoric," and "precontact," thinking these mean "before" or "without" history.[4]

The persistent use of some of these terms reveals unequal power dynamics between settlers and Indigenous peoples concerning the recognition and protection of ICH places. This is illustrated by the differential protection of places where human remains are found. In British Columbia, burial grounds dating before 1846[5] fall under the protection of the Heritage Conservation Act; those after that date are protected by the much stronger Cemeteries Act.

4 Such a meaning would indeed be objectionable, but that is a misunderstanding of the terms. In archaeology, "prehistory" refers to the study of places or time periods for which there are no contemporary written records.

5 This date reflects the start of British (and later Canadian) sovereignty over what is now British Columbia.

PART 1. THE NATURE OF INDIGENOUS HERITAGE

Stone T'xwelátse with Herb Joe (T'xwelátse) and his grandson Kurt Joe, circa 1991. (Photo courtesy of the Joe Family)

WHAT IS "HERITAGE"?

"Heritage" means different things to different people.[6] From a Western perspective, "heritage" is largely about things. In both common usage and heritage resource management, "cultural property" is usually viewed as having physical form. The emphasis on the tangible—on objects, structures and places—is understandable. Artifacts and archaeological sites are easily observed and measured and are used to identify and evaluate what is considered "significant," based upon scientific values. There may be some consideration of historical, religious and local values.

There have been recent efforts to expand the understanding and definition of heritage in British Columbia and Canada through various value-based and Indigenous co-designed approaches. This includes the two national engagement sessions on ICH held by Parks Canada and the Indigenous Heritage Circle in 2018 in Gatineau and Calgary, and the BC Heritage Branch's (*not* Archaeology Branch's) collaboration with the First Peoples' Cultural Council in 2019/20 for several ICH projects. These projects and efforts present an open and more inclusive approach to facilitating understanding and protection of heritage. Amongst Indigenous peoples, such as the Secwepemc in central B.C., there has been a movement to develop and implement an Indigenous-based research model and approach for conducting cultural heritage studies (also referred to as "traditional use studies"). This approach focuses on expanding the interpretation of heritage to include values associated with cultural landscapes and seasonal round activities. Overall, it has been successful integrating ICH values into planning with the direction of Secwepemc Knowledge Keepers.

INDIGENOUS CULTURAL HERITAGE

Indigenous values, beliefs and knowledge systems are often fundamentally different from that of the dominant population. Informed by the traditions and beliefs of Indigenous peoples in the Americas, Australia, Japan and elsewhere, a more inclusive definition of "heritage" would be "the objects, places, knowledge, customs, practices, stories, songs and designs, passed between generations, that define or contribute to a person's or group's identity, history, worldview and well-being." This view shifts the emphasis from the tangible to the intangible, and from things to relationships and responsibilities.

6 This section is based on Nicholas 2014, 2017a and b.

Enlarging the definition of ICH creates significant challenges for those responsible for identifying and protecting heritage objects, places and knowledge because of four factors (Nicholas 2014):

1. ICH is not just about things. Ancient objects are important expressions of history and may have great scientific importance. However, no artifact or archaeological site has *any* meaning without the intangible values given to it.
2. ICH isn't limited to "the past." For some Indigenous peoples, there is no division between the natural and supernatural realms. Notions of "past" and "present" may be folded together. This means that ancestral beings and other forces are part of *this* existence.
3. ICH is woven into the fabric of Indigenous societies. The words "cultural heritage" or "heritage" may even be absent in some Indigenous languages since what they represent is so much a part of people's lives.
4. ICH is best managed with or by the community. All peoples need to have access to, and be able to make decisions about, their own ICH in whatever form it exists. Too often the community is not a part of decisions made by state authorities. How can outsiders make decisions about someone else's ICH when they are unaware of, or don't understand, local values, needs and consequences?

Unfortunately, the continuing emphasis on material culture (i.e., things) skews our understanding of "heritage," or what should be preserved, and who makes that decision. This has had a significant impact upon Indigenous peoples worldwide, who continue to have limited control over their lands, and receive little benefit from research conducted on their cultural heritage. As a result, intangible expressions of ICH continue to receive only limited protection in settler countries where cultural heritage protection efforts are largely directed to the archaeological legacy of the Indigenous peoples.

It is difficult to find a direct translation for cultural heritage in Indigenous languages. The closest translations often relate to the sacred, or to knowing oneself. Indeed, this is evident in the statement of one Yukon Elder who, when asked to define heritage, said, "It is everything that makes us who we are."[7] Indigenous people understand, describe and integrate cultural heritage into their daily lives according to their perspectives, traditions and languages. Building on the general definition on the previous page, it is evident that ICH is an amalgam of ideas, experiences, worldviews, objects, forms of expression, practices, knowledge, spirituality, values, kinship ties, obligations and relationships with each other and with other-than-human beings, places and land.

7 Carcross-Tagish First Nation et al. 2016:37

Each of these concepts is inextricably interconnected, holds intrinsic value to the well-being of Indigenous people and affects all generations.[8] This definition flows from the expert advice of Indigenous Knowledge Keepers from across Canada at four national roundtables, two held with the national Indigenous Heritage Circle and two with Parks Canada and the Indigenous Heritage Circle.

INTANGIBLE HERITAGE IS LIVING HERITAGE

Cultural heritage is often understood through the connection to things tangible, whether it be objects such as tools or works of art that were part of people's daily life, their foods or dwellings, the places they traversed along trails or landscape features they encountered. But it is the intangible elements of heritage, such as songs, stories, dance, teachings, memories, knowledge and ceremonies—their "living heritage"—that give meaning to the tangible elements of heritage, convey their values, and connect countless generations.[9] For example, the ancient belongings (i.e., the "artifacts") found on a cultural landscape are connected to an oral history, legal traditions, specific land tenure and governance practices, traditional gathering places, knowledge, and much more.[10] The knowledge of this landscape, the objects, the traditions and the history of the people and the land is passed on and reproduced through the transmission of cultural knowledge. In other words, the cultural objects are tangible expressions of cultural heritage that cannot be fully understood apart from their intangible meanings. Moreover, Indigenous peoples cannot be understood outside the context of their living or intangible heritage.

Current heritage policies, programs, guidelines and laws across Canada focus on the recognition and protection of physical property—most often buildings, monuments and objects—and the scientific knowledge inherent in archaeological sites. Intangible heritage does not enjoy similar legal or policy protections, especially in the colonial context where responsibilities for culture, art and education are divided among so many jurisdictional and administrative silos (see Bell and Napoleon 2008; Nicholas 2017b).

8 For additional discussion on this, see the national Indigenous Heritage Circle website: **http://Indigenousheritage.ca** Also see resources available through the Intellectual Property Issues in Cultural Heritage (IPinCH) website **(www.sfu.ca/ipinch)**, including fact sheets, videos and much more.

9 The term "living heritage" is increasingly used by UNESCO, as in recent publications by the Secretariat of the 2003 Convention on Living Heritage and Indigenous Peoples (United Nations Educational, Scientific and Cultural Organization, 2019).

10 Traditional Knowledge is increasingly recognized as an accumulation of hundreds of generations of observation of the world (plants, animals, ecology) situated in an Indigenous worldview, "conveyed formally and informally among kin groups and communities through social encounters, oral traditions, ritual practices, and other activities. They include oral narratives that recount human histories, cosmological observations and modes of reckoning time, symbolic and decorative modes of communication, techniques for planting and harvesting, hunting and gathering skills, specialized understandings of local ecosystems, and the manufacture of specialized tools and technologies" (Bruchac 2014: 3814).

Values placed on tangible heritage by Indigenous peoples do not exist separately from the intangible meanings, practices and knowledge that inspired their manufacture; this is what gives heritage its value and motivates its protection. Given the centrality of intangible cultural heritage to Indigenous identities, health, language and ways of life, it is crucial that it be afforded appropriate recognition and protection. Protection could take the form of documentation or explicit promotion of the traditional heritage practices (e.g., storytelling, resource harvesting), including the modern forms they may take.

As of 2018, 178 countries have ratified the UNESCO *Convention for the Safeguarding of the Intangible Cultural Heritage,* which has been in force since 2006. Canada has not ratified this convention and has not introduced specific federal legislation regarding the protection of intangible cultural heritage. Yet what cultural heritage represents correlates directly and integrally with Indigenous beliefs, including the centrality of language, cultural practices and spiritual beliefs essential to individual and collective identity and well-being. Canada has agreed to implement the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), and now is the time to reflect on and reconsider the 2003 UNESCO *Convention for the Safeguarding of the*[11] *Intangible Cultural Heritage*.

ICH protection also requires that Indigenous and minority peoples have the ability to effectively control access to their ancestral sites. They must also benefit from research on their cultural heritage that is done by others. Professional associations, government agencies and international bodies are increasingly joining with universities and Indigenous organizations to develop solutions to these challenges. The United Nations has also set a broad mandate with the *Declaration on the Rights of Indigenous Peoples*.

There have been recent efforts by both the BC Heritage Branch[12] and the BC Archaeology Branch to build partnerships with Indigenous peoples. Such efforts are driven in large part by obligations to align with national and international policies, conventions and declarations, such as the province's *Draft Principles that Guide the Province of British Columbia's Relationship with Indigenous Peoples,* and the TRC's Calls to Action. These partnerships need to be more than merely trying new ways to integrate Indigenous participation into existing structures. They require an examination and sincere acknowledgment of Indigenous legal traditions and jurisdiction, and of the history of exclusion, disregard, neglect and, in some cases, violence in the disposition of ancestral remains, cultural objects and lands.

11 In 2016, Canada officially removed its objector status to the UNDRIP. Prior to removing this status, the former Justice Minister Jodi Wilson-Raybould called its adoption into Canadian law "unworkable" in a statement to the Assembly of First Nations. In Australia, Aboriginal people have raised concerns about its slow implementation.

12 The Heritage Branch is part of the provincial Ministry of Forests, Lands, Natural Resource Operations and Rural Development. This agency is often confused with Heritage BC, a provincial non-profit organization that provides grants and supports the work of heritage organizations and practitioners in B.C.

In British Columbia, the HCA, which is under the umbrella of the Archaeology Branch, automatically protects sites dated pre-1846, but that protection is limited and could include the excavation and removal of cultural objects as part of the protection measures. In addition to that, the Heritage Branch could designate post-1846 sites for protection. The last provincial designation was the McAbee Fossil Bed in 2011.[13] Of particular concern is the lack of legislation or other legal mechanisms for safeguarding ICH as living heritage and that promote its protection and recognition as vital to Indigenous futures.

More generally, heritage-related policies, programs, guidelines and laws continue to offer inadequate protection of Indigenous interests. Among the greatest concerns that Indigenous people have are threats to sacred sites, cemeteries and other places of spiritual or historical significance.[14] Part of the problem is that some culturally significant places may be unfamiliar to outsiders, such as where ancestors were transformed into rock and still reside. Likewise, for some cultural heritage holders, physical expressions of ICH may be less important than their intangible aspects. And in some cases, "the heritage value of an object is not necessarily related to its age, rarity, or uniqueness, but determined largely on the basis of connection to community" (Carcross-Tagish First Nation et al. 2016).

The materials and locations being discussed in the policies and legislation reviewed below retain meaning, importance, power and sacredness in the present for the descendants and relatives of those who created them (Atalay 2006).

WHAT DOES "DECOLONIZING" REALLY MEAN?

In this age of reconciliation, "decolonization" and "indigenization" have become increasingly common in public discourse, but not always used accurately or with full understanding. The terms refer to very different things, albeit with some resonance between them.

To take just one set of definitions provided on the BCcampus Open Education website [15]:

> "Indigenization is a process of naturalizing Indigenous knowledge systems and making them evident to transform spaces, places, and hearts."
>
> "Decolonization refers to the process of deconstructing colonial ideologies of the superiority and privilege of Western thought and approaches."
> From *Pulling Together: A Guide for Curriculum Developers*

13 There is currently a pilot project with the Stó:lō Nation to test Section 4 Agreements under the HCA as a protective measure for archaeological sites in B.C.

14 This is exemplified by the Grace Islet controversy in which a developer was allowed to start building a house on a recorded burial island. Fierce opposition from First Nations and their allies resulted in construction being stopped and the islet purchased as a nature reserve (Nicholas et al. 2015). Other cases are identified in Part 3 of this report.

15 BCcampus Open Education website: **https://opentextbc.ca/indigenizationcurriculumdevelopers/chapter/indigenization-decolonization-and-reconciliation/**

Efforts to indigenize public spaces such as parks, or school curricula (from grade school to university) are both widespread and common in British Columbia today. Many such initiatives have been prompted by the TRC's findings, and by national and local initiatives to acknowledge First Nations, Inuit and Métis peoples. The simple acknowledgement of being on Indigenous ancestral land at the start of many events is another expression of this, but there still remains a disconnect between the acknowledgement and the dark and complex history of disenfranchisement. A form of indigenization is also evident with the development of Indigenous archaeology in the late 1980s, which has made archaeology more representative and relevant to Indigenous peoples (Nicholas 2008).

Decolonization is *very* different from indigenization. It requires a significant, if not radical rethinking of relationships and changes in structural authority, process and procedures. It is thus very difficult to accomplish because it requires those holding power to relinquish at least some of it.

Decolonization employs established or emerging methods and strategies that seek to shift the power structure, restore ICH sovereignty and otherwise upset the colonialist status quo. These measures include, but are not limited to, community based participatory action research; ICH management practices; community-initiated and led projects (vs. collaborative or participatory ones); embodied practice and storywork; restorative justice and social justice, and more. These, in turn, require new modes of research ethics and the application of free, prior and informed consent. Such requirements have significant implications in the context of ICH preservation and research, particularly in the context of sacred places and burial grounds, oral histories and Indigenous knowledge, and individual or group identity, worldview, history, and well-being.

Problematic too is the failure by state authorities to recognize that while Indigenous peoples have an idea of shared pasts, often that is not a past shared by the totality of the group, as each group might have clans or family groups that have different pasts worth saving. This is evident in public comments by private landowners who may find themselves financially responsible when archaeological sites on their property are impacted by development, or by those who dismiss recognition of Indigenous interests as political correctness (e.g., Widdowson and Howard, 2008). At the same time, the concept of "heritage management" may be foreign or even repugnant to Indigenous peoples. But the most pressing concern is that Indigenous heritage protection remains very much in state control. How can outsiders make decisions about someone else's heritage when they are unaware of or don't understand local values, needs and consequences? (Nicholas 2017a).

Recognizing these conditions and challenges sets the stage for our review of the 15 heritage policies and two pieces of legislation. Our task is not to "indigenize" them but to indicate how and why they need to be modified to acknowledge and aid in the decolonizing process. However, this exercise will be for nought if those who employ these policies continue to interpret and apply them in ways that retain the colonial status quo. For this reason, we provide a series of recommendations in Part 3 of this report.

Photo by Alycia Aird.

PART 2. REVIEW OF POLICIES, PROGRAMS, GUIDELINES, AND OTHER MATERIALS

Bert William, Bonaparte Indian Band, at Three Sisters Rockshelter, Ashcroft, British Columbia (Photo by G. Nicholas)

READER'S GUIDE

For each document reviewed, a brief summary is provided, followed by analysis and considerations and then a list of pertinent articles or provisions of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the Truth and Reconciliation Committee's (TRC) recommendations.

1. HERITAGE VALUES ASSESSMENT PROCESS (2018)

DOCUMENT SUMMARY

The BC Heritage Branch has proposed a heritage values assessment process that focuses on community engagement and understanding of community heritage values (both Indigenous and non-Indigenous) to ensure cultural and built heritage resources are understood and respected by tailoring to each group or community involved. The document describes the process, including who is involved, how it can be adjusted to meet the needs of different communities/ heritage resources, the various ways in which a community can be included and consulted, the development of conservation strategies (resulting from community consultation) and reporting that follows—including the principle that ownership of the report is that of the community or group whose heritage values it articulates. The document also discusses the reasoning behind this process along with its outcomes and benefits, which place high value on the strengthening of relationships.

ANALYSIS AND CONSIDERATIONS

The processes described in this document include many collaborative efforts and an appreciation for a broader understanding of heritage values than seen in past documents aimed at defining heritage. The appreciation that heritage may be tangible or intangible and significant for past, present and future generations is more inclusive, particularly when dealing with ICH resources.

By allowing community members and members of the public to participate in the process to such an extent, there is a greater opportunity for important aspects of heritage to be protected. Understanding an Indigenous place absolutely requires Indigenous knowledge. Colonial views of heritage and history differ vastly. Where colonial understandings of heritage are typically concerned with physical, tangible aspects that are visible, documented or "proven" in some capacity, ICH is far more complex and often more intangible, encompassing ideas, experiences, worldviews, objects, forms of expressions, practices, knowledge, spirituality, kinship ties, places and land valued by Indigenous peoples.

There is acknowledgment that some Indigenous (and non-Indigenous) communities may feel apprehensive about allowing government agencies to collect information about their cultural and built heritage resources. As a result, the Heritage Branch has in the past left information collected with participants or used privacy protocols and information sharing agreements. However, something worth noting is that some Indigenous knowledge is secret or sacred. It

cannot be shared with those outside of the community, nor may all possess or be authorized to share that knowledge, even with other community members. The knowledge behind what makes something valuable in terms of ICH may be considered both protected and confidential (Schaepe et al. 2019). Therefore, even when working closely with a community, the cultural heritage expert or professional may be an inappropriate holder of that information. This further amplifies the need for direct control or at least shared decision making.

A cultural heritage conservation expert or professional—a required component of the heritage values assessment (HVA) team—may be acceptable for non-Indigenous sites. However, for a more complete and accurate understanding of public heritage, there must be respect of differing worldviews, customs and beliefs that affect values and understanding of place. This respect should acknowledge the need for consensus-based processes that equalize relations of power and allow for the distribution of authority, when appropriate.

As discussed in Part 1, decolonization entails more than collaborative or participatory involvement. It requires ICH management practices and community-initiated and led projects.

PERTINENT UNDRIP ARTICLES

Article 3. Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 8.1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.

Article 8.2. States shall provide effective mechanisms for prevention of, and redress for:

> **(a)** Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
>
> **(b)** Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
>
> **(c)** Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
>
> **(d)** Any form of forced assimilation or integration [emphasis added];
>
> **(e)** Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

Article 11.1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

Article 11.2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with Indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 15.1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.

Article 31.1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, Traditional Knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge and traditional cultural expressions.

31.2. In conjunction with Indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

PERTINENT TRC CALLS TO ACTION

79. We call upon the federal government, in collaboration with Survivors, Aboriginal organizations and the arts community, to develop a reconciliation framework for Canadian heritage and commemoration. This would include, but not be limited to:

> **i.** Amending the Historic Sites and Monuments Act to include First Nations, Inuit and Métis representation on the Historic Sites and Monuments Board of Canada and its Secretariat.
>
> **ii.** Revising the policies, criteria, and practices of the National Program of Historical Commemoration to integrate Indigenous history, heritage values and memory practices into Canada's national heritage and history.

2. STANDARDS AND GUIDELINES FOR THE CONSERVATION OF HISTORIC PLACES: CULTURAL LANDSCAPES (2010)

DOCUMENT SUMMARY

The guidelines define a "cultural landscape" as "any geographical area that has been modified, influenced or given special cultural meaning by people, and that has been formally recognized for its heritage value." It acknowledges that the resulting forms may be simple or complex, but a common language and approach has been developed for their conservation.

"Heritage districts" are described as cultural landscapes that are also "a place comprising a group of buildings, structures, landscapes and/or archaeological sites and their spatial relationships where built forms are often the major defining features and where the collective identity has heritage value for a community, province, territory or the nation".

ANALYSIS AND CONSIDERATIONS

The Guidelines for Cultural Landscapes are divided into 11 subsections:

1. Evidence of Land Use
2. Evidence of Traditional Practices
3. Land Patterns
4. Spatial Organization
5. Visual Relationship
6. Circulation
7. Ecological Features
8. Vegetation
9. Landforms
10. Water Features
11. Built Features

To date, such a framework favours built heritage[16] and a very compartmentalized view of human/land relationships. It fails to fully appreciate a holistic approach or a multi-layered view of ICH that includes ideas, experiences, worldviews, objects, forms of expressions, practices, knowledge,

16 This is also reflected in the Hague Convention for the Protection of Cultural Property (1954). http://portal.unesco.org/en/ev.php-URL_ID=13637&URL_DO=DO_TOPIC&URL_SECTION=201.html

spirituality, kinship ties, places and land valued by Indigenous peoples. Indigenous realities link living, tangible, natural and cultural aspects of heritage (Aird et. al 2019).

Ancestral lands of Indigenous peoples produce and maintain living heritage values and practices; in essence, the land itself is transformed through human activities. Such landscapes, called "cultural landscapes", are reflections of the living heritage created and nurtured there through practice, in the ways that people care for, protect, travel across, harvest, pray, teach and learn on the land. Cultural landscapes are recognized under the 1972 World Heritage Convention as "combined works of nature and man," and are eligible for inclusion on the World Heritage List.[17] One of the tidiest definitions of an ICH and cultural landscape is "an idea embedded in a place or the spirit of place."[18] This definition conveys the critical importance of human experience and imaginings of a place, rather than its physical condition or age. While the emphasis is on the heritage values and practices, the place itself also matters.

As one example, Stó:lō community members described genetic physical response to an area without conscious memory, meaning they themselves are not even always aware of why an area has spiritual significance.[19] How do to these guidelines help to protect places like this? Nations' participation are required for how sites are recorded on the ground and what protections are afforded. Within these standards and guidelines, it is important to note the contrary and divisive role that "evidence" currently has in respect to ICH, not just relative to the spiritual significance, but also to court cases like the Ktunaxa's efforts to stop development of Qat'muk (Where Grizzly Bear Spirit Resides).[20] Although the Ktunaxa's efforts to stop development and protect this sacred cultural landscape was initially unsuccessful in court, they recently received approval from Environment and Climate Change Canada for funding to develop an Indigenous Protected and Conservation Area, up to 211,045 ha, in the Qat'muk area of the central Purcell mountain range, west of Invermere, British Columbia.

Indigenous people's participation is required for how sites are recorded on the ground and what protections are afforded. This needs to happen on a case-by-case basis, in accordance to each Indigenous nation's unique understanding of cultural heritage.

17 United Nations Educational, Scientific and Cultural Organization (1992)
18 Smith (2010).
19 Archaeology Branch / STSA engagement session notes, December 2018.
20 In November 2017, the Supreme Court of Canada ruled against the Ktunaxa Nation's efforts to prevent a ski resort being developed in this area of spiritual importance. The court concluded that "the charter protects the freedom to worship, but does not protect the spiritual focal point of worship."

There is an opportunity to modify or re-draft these guidelines, through a shared decision-making process that would incorporate ICH values and processes. Although the recognition and protection of cultural landscapes through legislation, standards and guidelines are a practical step in the protection of ICH, the process for redrafting the current cultural landscape standards and guidelines will require an innovative approach with Indigenous peoples that infuses the tangible and intangible heritage value of landscapes with cultural histories, practices and meanings.[21]

PERTINENT UNDRIP ARTICLES

Article 11.1. Indigenous peoples have the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

Article 11.2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with Indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 12.1. Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

Article 15.1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.

Article 26.3. States shall give legal recognition and protection to these lands, territories and resources (traditionally owned, occupied or otherwise used or acquired). Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the Indigenous peoples concerned.

21 United Nations Educational, Scientific and Cultural Organization, n.d.

3. HISTORIC PLACES RECOGNITION PROGRAM – SUMMARY (2019)

DOCUMENT SUMMARY

This document summarizes the provincial Historic Places Recognition Program that is intended to identify and celebrate historic places for diverse heritage values with a goal "to tell a more complete story of the people, places and events that have contributed to the development of British Columbia." The completed projects listed include the Francophone Historic Places Recognition Project, the South Asian Canadian Historic Places Recognition Project, the Japanese Canadian Historic Places Recognition Project, and the Chinese Canadian Historic Recognition Project.

ANALYSIS AND CONSIDERATIONS

The stated focus of the program is building relationships with the communities listed and revealing how they have contributed to the evolution of British Columbia. As noted, "Heritage recognition can be a strong tool to reconcile historical injustices and different, often opposed, community values leading to stronger, more resilient communities." What is not acknowledged is Indigenous peoples as rights holders, recognizing them as the original occupiers of the territory. There should also be consideration of how their relationships with these communities developed.

In the program summary, Indigenous peoples are only mentioned in the description of the three phases in Phase III – Announcements and Wrap Up. There is no mention of their input or consideration at any other phase of the program.

In order to truly "tell a more complete story of the people, places and events that have contributed to the development of British Columbia"—the intended outcome of the project—there is a need to move away from the colonial settler perspective of history and to contextualize history in the proper way. The Doctrine of Discovery must be removed as the basis for historicizing relationships. An example specific to British Columbia would be changing the narrative of the province as a colony, as when in 1858 Governor Douglas declared it to be a "wild and vacant land."

This needs to be entirely turned around. The millennia-long occupation and use of land of indigenous people should be the fundamental context and starting point for historic places recognition. Current definitions of heritage are exclusive and the result of forced colonialization and assimilation of Indigenous peoples within a colonial society. Colonial legislation and

policies such as the Civilization Act, the Indian Act, forced assimilation and implementation of the Doctrine of Discovery were all intended to diminish or destroy Indigenous ways of life and cultural heritage. Public heritage under these colonial mechanisms became isolated and exclusive (Schaepe 2018).

The Two Row Belt, a long, beaded belt of white wampum with two parallel lines along its length is a Haudenosaunee representation of distinct identities of two peoples (European colonizers and Haudenosaunee) and a mutual engagement to coexist in peace without interference in the affairs of the other. The lines symbolize a separate but equal relationship based on the mutual benefit and respect for each party's inherent freedom, each travelling along its own self-determined path (Hill 1995, as cited in Parmenter). While sound in practice, the current standard between the State and Indigenous peoples is a failed form of this model.

Moving forward, perhaps the adoption of a new "three-row" model for public and private heritage is best, in which there is a recognition and equalization of power between colonial-founded government and Indigenous peoples with unique rights who are still free to maintain differing worldviews, customs and beliefs, but with a third row that represents collaborative management and shared decision-making over the use and management of land and resources. This would help to equalize power relations with a central row representing a place that is consensus-based.This would support the development of a truly "public heritage" of shared, cross-cultural recognition within and between Indigenous and settler communities adding substantial new meaning and perspective (Schaepe 2018).

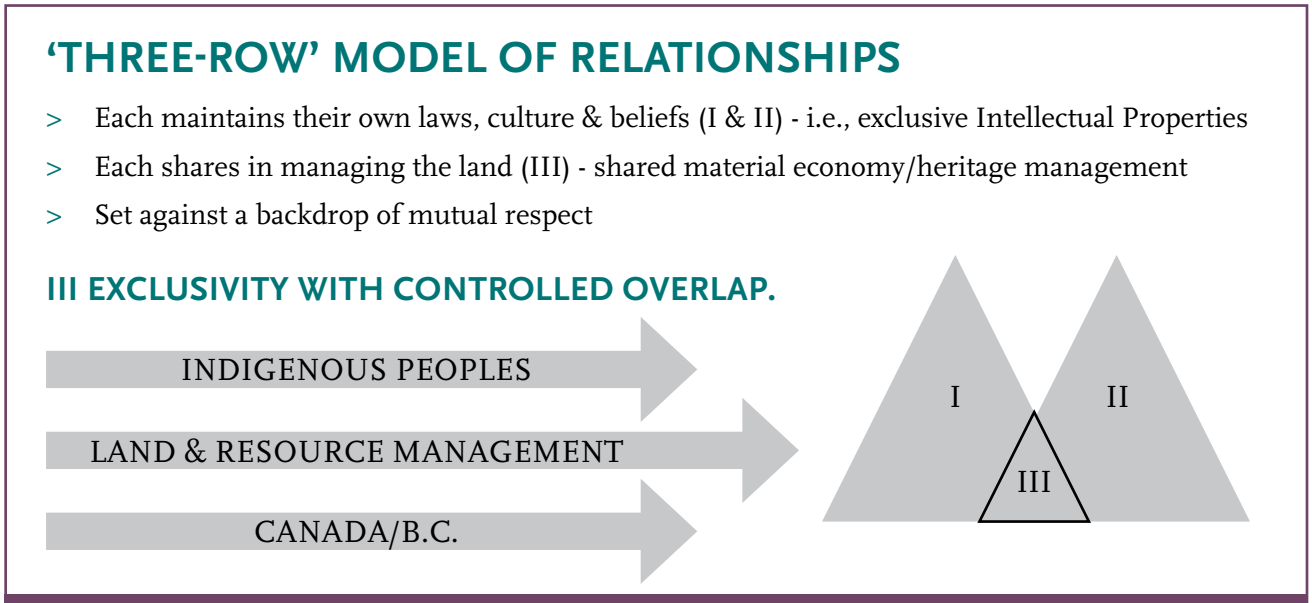


Figure 1. A proposed new 'Three Row' model of relationships—exclusivity with controlled overlap. Adapted from Schaepe (2018).

PERTINENT UNDRIP ARTICLES

Preamble. Affirming that Indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such.

Affirming also that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind.

Article 15.1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.

Article 15.2. States shall take effective measures, in consultation and cooperation with the Indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among Indigenous peoples and all other segments of society.

PERTINENT TRC CALLS TO ACTION

79. We call upon the federal government, in collaboration with Survivors, Aboriginal organizations and the arts community, to develop a reconciliation framework for Canadian heritage and commemoration. This would include, but not be limited to:

> **i.** Amending the Historic Sites and Monuments Act to include First Nations, Inuit and Métis representation on the Historic Sites and Monuments Board of Canada and its Secretariat.
>
> **ii.** Revising the policies, criteria, and practices of the National Program of Historical Commemoration to integrate Indigenous history, heritage values and memory practices into Canada's national heritage and history. Document Summary

The document is a guide for researching, writing and editing SoS to promote a standard in British Columbia. These are meant for properties identified as having a heritage character to satisfy the Local Government Act. They indicate why the property was included in the community register and why they have heritage value/character.

4. STATEMENTS OF SIGNIFICANCE (SOS) GUIDELINES (MAY 2012)

DOCUMENT SUMMARY

The document is a guide for researching, writing and editing SoS to promote a standard in British Columbia. These are meant for properties identified as having a heritage character to satisfy the Local Government Act. They indicate why the property was included in the community register and why they have heritage value/character.

ANALYSIS AND CONSIDERATIONS

The approach here is very Eurocentric. There have been small allowances for Indigenous perspectives throughout, but the guidelines stem from a colonial worldview rather than one written from an Indigenous perspective. Our recommendation is that it may be useful to have an Indigenous cultural expert participate in the writing of SoS or a separate guideline completely for Indigenous historic sites that could be processed by Indigenous peoples if desired. There are significant challenges faced in incorporating Indigenous worldviews within cultural heritage management and decision-making processes that are housed strictly within the Province fall short.

The notion of "significance" is problematic both in terms of how it is defined/applied and by whom. In the context of cultural heritage protection and management, it has most often been defined on the basis of scientific or historical values, with some recognition or accommodation of religious or local values (Hardesty and Little 2009). The fundamental flaw with using assessments of "significance" as an approach to values-based management is that the values that have been most often defined are more often those that are given more weight in "Western" cultures (historical, aesthetic, scientific) than those that might be given more weight in Indigenous cultures (spiritual, community). There is also an issue of contrasting worldviews and perceptions. Furthermore, the term "significance" suggests that one item/place/belief is of more importance than another. For many Indigenous peoples, ICH is linked to collective ownership and is land based. There is concern that outsiders assigning a value may be problematic in relation to this collective ownership. Resulting issues could lessen the protection and importance of a cultural heritage place, item, tradition and belief.

In the guidelines, it is up to the local government to determine what their community heritage values are, and the SoS must fit within local definitions and assessments. The description of

historic places fails to accurately describe Indigenous concepts of cultural heritage, and thus, does not recognize the cultural heritage value of Indigenous places to their full extent.

The current understanding of "public" heritage is unbalanced, based on the division of power within our society, with more weight and importance placed on non-indigenous, Western or Euro-centric heritage. Often there is an distancing of ICH from the general public and, as a result, less recognition of its importance (Schaepe 2018). Indigenous and colonial concepts of knowledge differ vastly and trying to force Indigenous worldviews and concepts of cultural heritage into non-Indigenous policies is not practical or effective.

PERTINENT UNDRIP ARTICLES

Article 11.1 Indigenous peoples have the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

Article 11.2 States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with Indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 12.1 Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

Article 13.1 Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.

Article 13.2 States shall take effective measures to ensure that this right is protected and also to ensure that Indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

Article 15.1 Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.

Article 15.2 States shall take effective measures, in consultation and cooperation with the Indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among Indigenous peoples and all other segments of society.

PERTINENT TRC CALLS TO ACTION

79. We call upon the federal government, in collaboration with Survivors, Aboriginal organizations and the arts community, to develop a reconciliation framework for Canadian heritage and commemoration. This would include, but not be limited to:

i. Amending the Historic Sites and Monuments Act to include First Nations, Inuit and Métis representation on the Historic Sites and Monuments Board of Canada and its Secretariat.

ii. Revising the policies, criteria and practices of the National Program of Historical Commemoration to integrate Indigenous history, cultural heritage values and memory practices into Canada's national heritage and history.

5. HERITAGE BRANCH COLLECTIONS MANAGEMENT POLICY (DRAFT) (JANUARY 17, 2019)

DOCUMENT SUMMARY

The Collections Management Policy describes procedures relating to the heritage artifact collections of British Columbia's Provincial Heritage Properties and applies to the site managers at each property. It includes information on acquisitions, records management, incoming and outgoing loans, insurance and appraisal, visual records, conservation of collections, security of collections, access, deaccessioning, legal and ethical issues, and repatriation of Indigenous cultural materials.

ANALYSIS AND CONSIDERATIONS

For the most part, the policy makes little mention of Indigenous peoples or their involvement other than Visual Records Authority 5.1.9: "The authority to display visual records of Indigenous Cultural Material (including archival records, films and photographs that depict Indigenous people or aspects of their culture) should rest with the relevant Indigenous councils. Memoranda of Understanding should be established between Site Managers and Indigenous councils regarding displaying visual records of Indigenous Cultural Material."

Section 9, Access to Collections, 9.2.3, discusses the need for consultation with representatives of the appropriate cultural or religious group for access to sacred and ceremonial belongings.

The section Repatriation and Indigenous Cultural Material states that the "Heritage Branch will actively engage in collaborative relationships with First Nations to cooperatively manage the care, custody, documentation and interpretation of Indigenous Cultural Materials on a case-by-case basis." However, the wording implies that it is the Province, not Indigenous peoples, that owns these materials until proven otherwise. For example:

> **14.1.2.** "There is no necessity for the Sites to hold Indigenous Material when a more *appropriate authority* has specific interest in taking on that Material."

What qualifies an "appropriate authority" and who decides this? The policy should clearly articulate what is meant by "appropriate authority." Otherwise, it may be perceived as an example of an assumed state ownership.

14.2.4. "Repatriation requests should show sufficient evidence or other information demonstrating that the Indigenous Cultural Material originated in, or is directly connected to, the Indigenous community and/or government making the request."

With this statement, the policy places the onus on Indigenous peoples to demonstrate ownership of cultural material, and the decision rests in the hands of the Province. Also unclear is what constitutes "evidence," and who decides that.

This policy presents an opportunity to support the rights of Indigenous peoples and their ability to care for their own ancestral belongings. In order to do so, the policy must support Indigenous peoples in deciding what is best for their cultural heritage and move away from colonial perspectives on cultural heritage management. Accordingly, the policy should either delegate authority to Indigenous peoples or provide a process that outlines shared decision-making with them. Although collaboration isn't a substitute for direct control, and shared decision-making is still not full control, these are necessary to achieve at least collaborative consultation.

Many shared decision-making (SDM) models are derived from the health care field and are based on the premise that there is equal power between all parties involved. Decisions are made through a shared process, and no one has more authority than another. It is not consultation or joint management. The process involves providing capacity for all parties to participate from pre-planning stages to the achievement of outcomes. There are several models in British Columbia of shared decision-making between the province and the Haida, Tahltan, Sts'ailes, Taku River Tlingit, and Gitxsan (Gitanyow) First Nations.[22] Each of these SDM models are based on agreed upon processes between the Indigenous Nation and B.C. However, it is not certain how truly shared the decision-making is, and there is no analysis of the outcomes and experiences during the process development.

In addition, there are intellectual property issues to consider relating to collections management. These may relate to items from archaeological or historic contexts, as well as the media by with they are conveyed, such as photographs, audio- and video-recordings. Other issues pertain to information derived from or shared through new technologies (e.g., three-dimensional copying of belongings or digital access to images and information).[23]

Collections managers must be prepared to properly care for Indigenous materials and information in their care. Working with community members, they may discover that Indigenous methods are the most appropriate way to curate, care for and transfer heritage items and information. Or they may participate in negotiations concerning rights to control access to archives and collections; to control circulation of images and information; to commercially use

22 See https://fnbc.info/blogs/judith-sayers/shared-decision-makingsdm-models-bc-are-they-really-shared
23 See Lison 2017; Nicholas and Hollowell 2007.

images and designs; or to have a voice in representation or interpretation of one's past. New research policies and protocols are needed that acknowledge and respond to these and other challenges (Nicholas 2012; Riley 2004; and others).

Stó:lō members explain that the treatment of items or belongings associated with ancestral remains needs to be same as the ancestral remains themselves.

Reference is made to UNDRIP Article 11.1 in the Policy, but Article 11.2 is left out, which discusses the "redress through effective mechanisms." Perhaps there is an attempt at this in the Policy with the inclusion of a section on repatriation, but there still seems to be a large amount of effort required on the part of interested Indigenous peoples, and the decision still rests in the hands of the Province. This approach continues to incorporate a colonial view that non-Indigenous peoples are more capable of deciding what's best for Indigenous peoples and their culture.

PERTINENT UNDRIP ARTICLES

Article 11.2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with Indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

PERTINENT TRC CALLS TO ACTION

67. We call upon the federal government to provide funding to the Canadian Museums Association to undertake, in collaboration with Aboriginal peoples, a national review of museum policies and best practices to determine the level of compliance with the United Nations Declaration on the Rights of Indigenous Peoples and to make recommendations.

79. We call upon the federal government, in collaboration with Survivors, Aboriginal organizations and the arts community, to develop a reconciliation framework for Canadian heritage and commemoration. This would include, but not be limited to:

i. Amending the Historic Sites and Monuments Act to include First Nations, Inuit and Métis representation on the Historic Sites and Monuments Board of Canada and its Secretariat.

ii. Revising the policies, criteria, and practices of the National Program of Historical Commemoration to integrate Indigenous history, heritage values and memory practices into Canada's national heritage and history.

6. COLLECTIONS MANAGEMENT POLICY – FACT SHEET AND HANDLING GUIDELINES (APRIL 10, 2018)

DOCUMENT SUMMARY

The policy outlines handling procedures for the provincial artifact collection. It also identifies who is responsible for different aspects of artifact management (e.g., the site manager handles conservation, exhibition and storage, while decisions about accessioning, altering or deaccessioning rest with the ministry).

ANALYSIS AND CONSIDERATIONS

As with many of the policies overviewed, there is a strong emphasis on ownership on the part of the Province and government control over any processes concerning belongings or items of historic value. Accessioning and deaccessioning plans, for example, are recommended to the Heritage Branch by a Collections Management Committee (which includes the site manager, a representative of the ministry and a third party recommended by the site manager and approved by the ministry representative). While it is possible that the third party be Indigenous, it is not a requirement, despite belongings potentially being Indigenous belongings.

No section of the policy lists any requirement for consultation and/or engagement with Indigenous peoples who may have an interest in or relationship with collection items, even when it comes to moving or photographing belongings or other materials, or the use of photographs. These decisions are managed and authorized by the site manager.

Another consideration regarding archaeological and historic sites, and belongings from them, is that regardless of whether or not these are specifically Indigenous belongings, most of the sites themselves occupy lands traditionally and historically used by one or more Indigenous peoples, evident by archaeological works, and by the oral histories and Traditional Knowledge associated with such places. Even after settlers established towns and these "historic places," Indigenous peoples also inhabited them and/or interacted with settlers on various levels. Acknowledging these as shared cultural heritage sites requires that more rights given to Indigenous peoples in terms of their representation in policies concerning British Columbia-based heritage sites and collections.

Many of the points raised in the review of Heritage Branch Collections Management Policy (Draft), Document 5, also pertain here.

PERTINENT UNDRIP ARTICLES

Article 11.1. Indigenous peoples have the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

Article 11.2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with Indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 12.1. Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

Article 31.1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions. There should be more than just engagement in these policies. They should clearly give control where appropriate to associated Indigenous peoples and how Indigenous rights are to be exercised needs to be included in the policy. For example, artifacts belonging to First Nations cannot be handled, moved, or photographed without a First Nations representative or a cultural advisor selected by the First Nation present or consulted in advance.

Article 26.1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

PERTINENT TRC CALLS TO ACTION

79. We call upon the federal government, in collaboration with Survivors, Aboriginal organizations and the arts community, to develop a reconciliation framework for Canadian heritage and commemoration. This would include, but not be limited to:

i. Amending the Historic Sites and Monuments Act to include First Nations, Inuit and Métis representation on the Historic Sites and Monuments Board of Canada and its Secretariat.

ii. Revising the policies, criteria, and practices of the National Program of Historical Commemoration to integrate Indigenous history, heritage values and memory practices into Canada's national heritage and history.

7. COLLECTION DIGITIZATION STANDARDS (OCTOBER 8, 2018)

DOCUMENT SUMMARY

This document provides guidelines for standardizing the photography and digitization process of the collections from provincial heritage properties. It is mostly taken from "Digitization Standards for the Canadian Museum of Civilization Corporation" (2006). It is difficult to determine what percentage of these collections may be Indigenous belongings.

ANALYSIS AND CONSIDERATIONS

While the properties are considered property of the Province, each is situated within and on traditional Indigenous ancestral lands, and the Heritage Branch acknowledges in other policies (which discuss repatriation) that collections may include Indigenous peoples' cultural property. In the handling guidelines, there needs to be more acknowledgement of this and a clear indication of the need to consult in some way. Minimally, this should include a provision requiring the need to arrange an ICH advisor from the relevant area, who must be present and/or provide advice and consent.

As with the Collections Management Policy, these guidelines fail to address the need for shared decision-making or complete delegation of authority when the collection is Indigenous in nature.

The guidelines use a very academic approach, viewing belongings as objects without incorporating Indigenous views that may see the belongings as living or ancestral belongings that deserve specific/special care and handling.

There are also issues of copyright regarding photographs (digital or film). Who actually holds the copyright to photographs: the photographer? an employer? a tribal authority? The copyright of photographs taken of a site or of belongings, including those in museum collections, is generally owned or held by the photographer or by the museum or other organization they are working for. This is because ownership is vested in the individual who physically exerted the labour to take the photograph. However, if the photos were taken by an employee while on the job, unless previously negotiated in the terms of employment, the copyright will usually belong to the employer (Nicholas and Hollowell 2007).

Additional issues to be addressed include the publication of photographs. For ICH objects, what rights may Indigenous peoples have over what happens to their cultural patrimony, particularly with items of spiritual importance (e.g., carved stone figurines that may be considered living beings [Campion et al. 2012])?

PERTINENT UNDRIP ARTICLES

Article 11.1. Indigenous peoples have the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

Article 11.2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with Indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 31.1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, Traditional Knowledge and traditional cultural expressions.

Article 31.2. In conjunction with Indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

8. POLICY DIRECTION TO SITE OPERATORS RE: INDIGENOUS CULTURAL HERITAGE (2018/2019)

DOCUMENT SUMMARY

This policy direction was included in letters sent to provincial heritage property site operators and concerns Indigenous cultural values. As part of the reconciliation process and adopting and implementing the UNDRIP and TRC Calls to Action, it encourages site operators to engage with Indigenous peoples in thinking about the cultural significance of the archaeological and/or historic site and to incorporate the ICH values and information, along with that of any other associated cultural groups, in presenting the site to visitors.

ANALYSIS AND CONSIDERATIONS

While acknowledging the need to incorporate Indigenous views and UNDRIP and TRC Calls to Action, the wording inadequately expresses the need for shared decision-making. For example, the phrase "I encourage you to engage Indigenous peoples" does not necessarily indicate that this is an essential process, nor does it define the level of engagement (i.e., the outcome must be agreed upon).

Clearly defining which UNDRIP articles and TRC Calls to Action are relevant, and how they are to be adopted would help to ensure that this policy direction is more than lip service.

PERTINENT UNDRIP ARTICLES

Article 11.1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

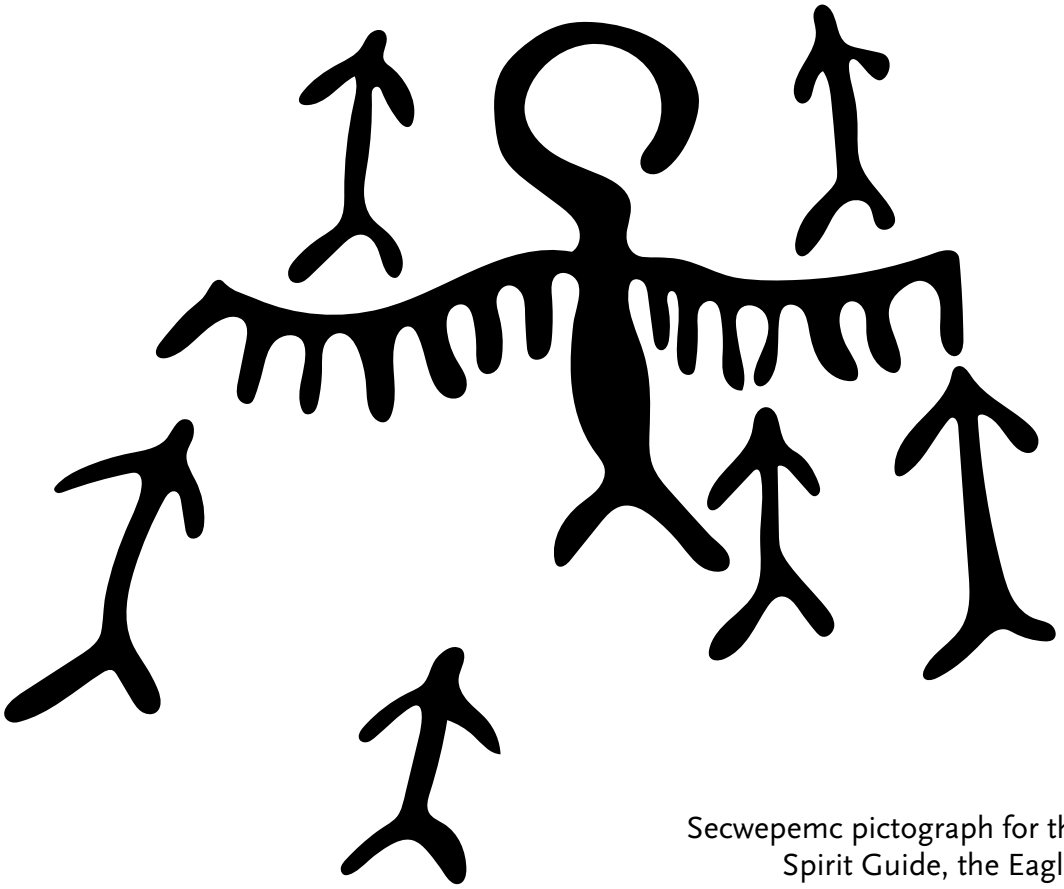
Article 11.2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with Indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 15.1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.

Article 15.2. States shall take effective measures, in consultation and cooperation with the Indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among Indigenous peoples and all other segments of society.

Article 31.1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, Traditional Knowledge and traditional cultural expressions.

Article 31.2. In conjunction with Indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.



Secwepemc pictograph for the Family Spirit Guide, the Eagle.

9. GUIDELINES FOR NATURAL RESOURCE PROJECT PROPONENTS (AUGUST 2015)

DOCUMENT SUMMARY

These guidelines instruct natural resource project proponents on what their obligations are relative to historic places. It details the Heritage Branch's role in working with various agencies, branches of government and project proponents to find ways of mitigating impacts on post-1846 historic places (formally recognized and not yet formally recognized) and other heritage resources that may exist in areas of interest.

ANALYSIS AND CONSIDERATIONS

The BC Register of Historic Places lists sites and objects protected under the Heritage Conservation Act and those formally recognized by local governments under the heritage conservation provisions of the Local Government Act or Vancouver Charter. Unfortunately, that legislation can exclude Indigenous concepts of cultural heritage and fail to recognize living heritage. The lack of explicit recognition and protection of ICH, as defined by Indigenous peoples, through policy and legislation and the protocols and legal traditions associated with ICH has been a barrier to Indigenous peoples' efforts to safeguard their heritage. As a result, many significant ICH sites in the province have not yet been afforded the same acknowledgement as settler heritage sites. Furthermore, because most non-Indigenous people are unaware of the distinct nature of ICH values, they default to Western heritage concerns and measures of significance.

The guideline makes reference to the need to contact Indigenous communities for additional information. However, the wording is often poor: "proponents *should* contact…" rather than "proponents *must* contact…" [emphasis added].

Likewise, in another example describing best practices is this statement: "First Nation communities should be asked for input and, where possible, their recommendations should be accommodated by the proponent." Again, the language implies that the authority of the First Nation is not equal to that of the BC Heritage Branch or Province.

PERTINENT UNDRIP ARTICLES

Article 11.1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

Article 11.2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with Indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 12.1. Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

Article 26.1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

Article 31.1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, Traditional Knowledge and traditional cultural expressions.

Article 31.2. In conjunction with Indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

10. FOSSIL MANAGEMENT POLICY (DRAFT) (JULY 2018)

DOCUMENT SUMMARY

This policy applies to the protection, management and use of all Crown-owned fossils and fossil sites, whether on Crown or private land. It is intended to guide public officials who are involved in making decisions about protection, management and use of fossils and fossil sites, as well as to guide natural resource proponents.

ANALYSIS AND CONSIDERATIONS

Fossils on Crown land are considered property of the government of Canada; those on private land are property of the Province of British Columbia if the rights have not previously been conveyed to the landowner. However, if we consider that Crown land is unceded land, then Crown fossil ownership should be contested. This is further discussed below.

The policy's order of priority for fossil management is science, natural heritage, education and, finally, commercial use. When deciding whether to protect a fossil site (4.1 Site and Specimen Protection), a paleontological assessment is required to evaluate the importance of the fossil resource. Within the guidelines for assessing significance of fossil sites, Indigenous peoples are considered only along with other stakeholders and local amateur fossil collectors. There is not a great deal of consideration as to how the fossils may be important aspects of ICH. Nonetheless, many Indigenous North Americans do have interest in fossils (e.g., Mayor 2007), and fossils are sometimes found in archaeological sites. Also, many Indigenous peoples do not recognize the neat separation of the cultural and natural realms that dominates Western thinking. Fossils may have increased importance attributed to them by Indigenous peoples and in determining their importance, consultation with Indigenous experts can help provide clarification

Section 4.3: Managing Access to Fossils describes the Provincial approval required to collect, excavate and/or remove fossils from Crown land: "Any required consultation with First Nations will be carried out as part of the Crown land application process." This limits Indigenous Peoples' role in the conservation of cultural/natural heritage to input via engagement/ consultation. There is no recognition of ICH or other policies that may exist and apply. Input from local cultural experts would be valuable, and decision-making should be shared.

In British Columbia, large sections of Crown land are unceded, meaning that Aboriginal title has not been surrendered or acquired by the Crown. In Tsilhqot'in Nation v. British Columbia (2014), the Supreme Court recognized that "Aboriginal title confers ownership rights similar to those

associated with fee simple, including: the right to decide how the land will be used; the right of enjoyment and occupancy of the land; the right to possess the land; the right to the economic benefits of the land; and the right to proactively use and manage the land."[24]

Deciding how the land will be used and managing the land should include managing resources. There should be shared decision-making when it comes to these resources, if not delegation of authority to Indigenous peoples with a claim to title.

PERTINENT UNDRIP ARTICLES

Article 11.1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

Article 11.2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with Indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 31.1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, Traditional Knowledge and traditional cultural expressions.

Article 31.2. In conjunction with Indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

Note: These considerations, as well as the relevant UNDRIP articles, can be applied to the Fossil Management Framework.

24 Tsilhqot'in Nation v. British Columbia, 2014 SCC 44, para. 73

11. FOSSIL MANAGEMENT PRINCIPLES (JANUARY 2004) AND 12. FOSSIL MANAGEMENT FRAMEWORK (JANUARY 2017)

Note: Since the Fossil Management Principles are included within the Fossil Management Framework, the two documents are reviewed jointly.

DOCUMENT SUMMARY

The Fossil Management Principles were approved by the Deputy Ministers' Committee on Environment and Resource Development in 2004.

The Fossil Management Framework is a plan governing site and specimen protection, impact prevention and access management. It manages data and is supported by the Compliance and Enforcement Branch to ensure adherence to laws, designations and tenure requirements associated with fossils. The Fossil Management Framework is guided by the Fossil Management Principles.

ANALYSIS AND CONSIDERATIONS

As previously addressed, if Crown land is understood as unceded land, then fossils found within the traditional territory of Indigenous Nations could more accurately be considered their property, not that of the Crown. However, as in many of the other policies reviewed, Indigenous peoples' role in the conservation and management of fossils is currently limited to input via engagement/consultation, and Indigenous peoples are included as one group of stakeholders amongst others.

One repeated shortcoming is the failure to adopt an Indigenous perspective or to acknowledge that there may be unique and varying understandings of fossils and their cultural heritage value to different "publics" (Schaepe 2018). Decolonizing these principles requires inclusiveness and broadening public heritage across cultural paradigms, and institutional controls that incorporate Indigenous perspectives. This cannot be done without divesting, delegating or at least sharing authority with Indigenous communities.

PERTINENT UNDRIP ARTICLES

Article 11.1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

Article 11.2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with Indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 31.1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, Traditional Knowledge and traditional cultural expressions.

Article 31.2. In conjunction with Indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

13. FOSSIL IMPACT ASSESSMENT GUIDELINES (MAY 2018)

DOCUMENT SUMMARY

This document guides the assessment of fossil resources so the Province can make appropriate decisions about the disposition of land. Guidelines identify processes for proponents planning developments that may impact fossil resources and describes necessary steps to mitigate impacts on fossil resources.

ANALYSIS AND CONSIDERATIONS

The Province is the decision maker according to these guidelines. This document should include Indigenous decision-making and local consultation with, for example, a cultural heritage expert. There should be recognition of any Indigenous policies and there should be Indigenous consent.

*See Analysis and Considerations in Fossil Management Policy (Draft).

PERTINENT UNDRIP ARTICLES

Article 11.1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

Article 11.2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with Indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 31.1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, Traditional Knowledge and traditional cultural expressions.

Article 31.2. In conjunction with Indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

14. CHANCE FIND PROTOCOL FOR FOSSILS (JULY 2018)

DOCUMENT SUMMARY

The protocol discusses the importance of fossils in understanding B.C.'s history and geology and describes ownership as being that of the Crown and Province. Fossils are administered under the Land Act by the Heritage Branch. Developers are asked to report any fossils unearthed on their site to the Heritage Branch, Royal BC Museum, local museum, local palaeontological society, or appropriate staff at the nearest university or college.

ANALYSIS AND CONSIDERATIONS

Local Indigenous peoples are not listed as an option to whom one could report fossil discoveries. There is also no acknowledgement of their rights to unceded, traditional lands on which these fossils may be discovered.

Other limitations of and concerns about this protocol are provided in our analysis of Fossil Management Policy (see p. 44).

PERTINENT UNDRIP ARTICLES

Article 11.1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

Article 11.2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with Indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 31.1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, Traditional Knowledge and traditional cultural expressions.

Article 31.2. In conjunction with Indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

15. BRITISH COLUMBIA'S GEOGRAPHICAL NAMING PRINCIPLES, POLICY AND PROCEDURES (JANUARY 2000)

DOCUMENT SUMMARY

This document describes the process for submitting a name for an unnamed geographical feature or for renaming an already named one. The responsibility of naming rests with the Ministry of Forests, Lands, Natural Resource Operations and Rural Development, whose minister delegates the responsibility to the Geographical Names Office.

ANALYSIS AND CONSIDERATIONS

The only real engagement or consultation that is described in the document comes in the section Investigation of Geographical Names Proposals:

> The investigation of each proposal will include gathering comments on the suitability and probable degree of acceptance and usage of the proposed name from persons familiar with the area, and will include comments from *some or all* of these groups: local and regional government personnel; Indian Band Councils, Tribal Chiefs, or their spokespersons; local historians and historical societies; outdoors club members; park superintendents and staff; forestry recreation officers; Conservation Officer staff; search & rescue personnel; etc. *[emphasis added]*

There is no acknowledgement here of Indigenous peoples as rights holders unless specifically on Treaty Land. Only if the geographical features are on First Nation Treaty Settlement Land will requests be referred to that Indigenous people's administrative council for approval. If outside of Treaty Settlement Land, then Indigenous peoples are only given the same consideration as other stakeholders. The policy also fails to acknowledge Indigenous peoples as rights holders except in specific reference to Treaty Land.

Since Crown land is unceded land, direct Indigenous peoples involvement should occur where there is a vested interest by affected communities. This policy should support relationship building with Indigenous peoples at a local level with shared decision-making, collaboration and recognition of authority. The right to participate in decision-making is viewed as deriving from the right to self-determination, which is considered the founding principle of Indigenous peoples' rights and the central guiding principle of UNDRIP (Clavero 2005). Self-determination gives Indigenous peoples the right to autonomy in matters relating to internal and local affairs,

and if this is to be respected, they should be included in decisions related to their traditional, unceded territory.

Using Indigenous languages to name geographic features asserts and affirms continued Indigenous presence on the land and promotes the use of Indigenous languages. Additionally, Indigenous place names can be imbued with Indigenous knowledge and perspectives, integrating people, geography and material culture (Schaepe 2018).

PERTINENT UNDRIP ARTICLES

Article 3. Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4. Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Article 13.1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.

Article 13.2. States shall take effective measures to ensure that this right is protected and also to ensure that Indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

Article 15.1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.

Article 25. Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Article 26.1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

Article 31.1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, Traditional Knowledge and traditional cultural expressions.

PERTINENT TRC CALLS TO ACTION

13. We call upon the federal government to acknowledge that Aboriginal rights include Aboriginal language rights.

16. LOCAL GOVERNMENT ACT – PART 15, HERITAGE CONSERVATION (SEPTEMBER 25, 2019)

DOCUMENT SUMMARY

The Local Government Act is intended to provide a legal framework and foundation for local governments to deal with interests and needs of their communities. It provides local governments with powers, duties and functions necessary to fulfill their purposes, and the flexibility to respond to different needs and changes within their communities. Part 15, Heritage Conservation specifically addresses issues surrounding heritage, including designation procedures, recognition of heritage value, impact assessments, protection of sites, alteration procedures and remedies and offences.

ANALYSIS AND CONSIDERATIONS

This section of the Local Government Act (LGA) employs concepts of heritage and history from a Eurocentric perspective, one that excludes Indigenous concepts. It fails to recognize or acknowledge the intangible and/or living elementsof culture (songs, stories, oral histories, languages, dance, etc.) that are all essential elements of ICH. The result is that ICH places are not afforded the protection that settler heritage sites benefit from.

There must be a challenge to colonial influence by making space for Indigenous perspectives. Indigenous peoples have inherent rights to govern themselves in relation to matters that are internal to their communities; integral to their unique cultures, identities, traditions, languages and institutions; and with respect to their special relationship to the land (National 2019).

Revising the LGA is an opportunity to include shared decision-making, collaboration, delegation of authority and recognition of Indigenous policy. Effective and respectful local governance in British Columbia requires relationship building with Indigenous peoples at a local level and must include Indigenous cultural experts.

There is also an urgent need to align provincial acts and policies with local heritage acts and policies. The Crown only deals with Crown land. While the Local Government Act applies to private property, it defers to the Province and Crown in these situations. There thus needs to be clarity in the relationship between Crown land and fee-simple properties and the provincial and local policies and legislation that govern them. It is the responsibilities of the various governments to align their efforts and to ensure a cohesive and clear approach to dealing with

all land matters. The failure to define these authorities and work with Indigenous peoples as the rightful landowners leaves a significant gap in the system.

Expropriation powers under the LGA could be used to protect ICH sites, as could such options as restrictive covenants or easements. Attaching those to land titles could limit use or extend access to cultural heritage sites for cultural practicioners.

PERTINENT UNDRIP ARTICLES

Article 5. Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Article 31.1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, Traditional Knowledge and traditional cultural expressions.

Article 31.2. In conjunction with Indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

17. HERITAGE CONSERVATION ACT (OCTOBER 30, 2019)

DOCUMENT SUMMARY

The Archaeology Branch is the primary agency responsible for recording and making decisions about the management of heritage sites in the province. This responsibility, to provide protective measures and monitoring of the HCA, can be shared with the Heritage Branch for provincial historic sites (post-1846).

This legislation is intended to encourage and facilitate the protection and conservation of heritage property in British Columbia. It covers authority, designation, permitting, administration and enforcement, and other aspects concerning heritage in the province.

ANALYSIS AND CONSIDERATIONS

As of December 14, 2018, the BC Archaeological Site Inventory included 43,121 archaeological sites, including standard site types, along with culturally modified trees, pre-contact trails and other traditional use sites, such as clam gardens. It does not include heritage places that are post-1846 or are considered living with no physical evidence.

The Archaeology Branch keeps individual site records for recorded heritage sites but has not conducted a comprehensive investigation of the state of all archaeological sites and historic places in the province. Furthermore, the Archaeology Branch does not have a province-wide mandate to support the ongoing monitoring and caretaking of documented archaeological sites protected under the HCA. The "Warden program", annual reports on projects in the province, and the Archaeological Sites Advisory Board were past attempts at addressing the issue of monitoring and caretaking.[25] However, as of now the Archaeology Branch relies on updates from other government agencies, consultants and the informed public for monitoring, compliance and enforcement.

Several Indigenous peoples have expressed concerns about key terms in the HCA being undefined, leaving room for differences in interpretation and challenges in enforcement. For example, the HCA prohibits actions that damage, desecrate or alter a burial place without a permit, but the term "desecrate" is not defined. As a result, actions on a burial place that could be considered desecration may not be addressed due to lack of clarity as to whether a contravention

25 Starting in the 1970s and ending sometime in the 1980s, the Province funded a "Warden program" where local amateurs would keep an eye on archaeological site disturbances and destruction and report back to the provincial archaeologist. The Archaeology Branch also published an annual report on projects in the province. Up until the 1990s, an Archaeological Sites Advisory Board made of academics, First Nations and government advised the Archaeology Branch (Catherine Carlson, personal communication 2020).

has occurred. For example, as occurred at the ancestral burial ground on Grace Islet in 2014, where despite there being 16 burial cairns, the property owner was allowed to begin construction of a home until it was stopped as a result of protests by local First Nations and their allies (Nicholas et al. 2015). Other undefined terms include "ancestral remains," "burial place," and "scientific/cultural/archaeological significance/value" (Archaeology 2019).

There have also been concerns expressed that the HCA does not necessarily provide the required level of protection. For example, a remote burial cave might be protected from development, but the protection does not prohibit entry into the cave by the public. Furthermore, some sites (e.g., those that date post-1846, those on federal land) receive no protection. Other significant sites, such as cremation sites, may not contain physical remains and therefore are not protected (Archaeology 2019).

Most worrisome is that the HCA and related permits do not contain provisions regarding cultural components associated with working with ancestral remains. Cultural and ceremonial work related to the recovery and reburial of ancestral remains is significant, and Indigenous peoples should not be required to bear this cost when the disturbance is a result of development(Archaeology 2019).

The absence of living cultural heritage sites on the provincial registry, the arbitrary timeframe within which places or artifacts are considered for inclusion and the lack of meaningful Indigenous participation in the administration of the HCA are significant shortcomings of provincial heritage policy.

PERTINENT UNDRIP ARTICLES

Article 11.1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

Article 11.2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with Indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 15.1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.

Article 15.2. States shall take effective measures, in consultation and cooperation with the Indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among Indigenous peoples and all other segments of society.

Article 31.1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, Traditional Knowledge and traditional cultural expressions.

Article 31.2. In conjunction with Indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

PART 3. A PRAGMATIC APPROACH TO DECOLONIZING HERITAGE POLICIES

Grace Islet, B.C., 2014, includes a registered archaeological site and burial ground on which the property owner was allowed to begin construction of a home until stopped by protests by local First Nations and their allies. (Photo by Kelly Bannister)

WE'RE NOT POSTCOLONIAL YET

The Heritage Conservation Act is the centerpiece of heritage protection legislation, but it is subject to divergent interpretations, and when cultural heritage sites require protection, the mode of preservation may still be inadequate or even irresponsible. The government and its representatives ultimately decide what constitutes acceptable mitigation when avoidance of "significant" heritage properties is not possible. When the majority of cultural heritage sites are those of Indigenous peoples, it is no surprise that preservation practices are often more contentious than congruent (Table 2).

TABLE 2. EXAMPLES OF PROBLEMATIC HERITAGE MANAGEMENT CASES IN BRITISH COLUMBIA.

Craig Bay, Nanoose (1994)
"Poets Cove," South Pender Island (2003)
Walker's Hook, Salt Spring Island (2004)
c̓əsna?əm (2012)
Grace Islet, Southern Gulf Islands (2013)
Winona Road Burial Mounds, Chilliwack Valley (2014-)
Lightning Rock, Abbotsford (2015)
Cawston Burials (2016)
Wet'suwet'en Territory (2019–)

In the case of the Grace Islet development, the property owner had satisfied all requirements of heritage legislation, despite 16 burial cairns that remained on the land. That alone speaks to some fundamental problems with how that legislation is acted on. Although construction was eventually stopped, it is greatly disturbing that such a mitigation plan was even considered acceptable in the first place (Nicholas et al. 2015). Was harm done in the Grace Islet case? If so, to whom? And were those harms acknowledged and recompensed? Based on the terms of the Province's purchase of the property in early 2015,[26] it was judged that harm had been done to the

26 The purchase followed extensive and prolonged protests by First Nations groups and their supporters, and efforts of environmentalists. What was very disappointing was that the primary rationale for the purchase was the unique ecological setting of the islet, not the burial ground (Nicholas et al. 2015). The Province transferred title to the Nature Conservancy of Canada. In addition to actions taken by First Nations, concerned citizens and others, the Intellectual Property Issues in Cultural Heritage (IPinCH) project made an intervention in 2014 by creating the *"Declaration on the Safeguarding of Indigenous Ancestral Burial Grounds as Sacred Places and Cultural Landscapes."*

landowner. The province of British Columbia paid him $5.45 million, of which $840,000 was for the property itself, and $4.6 million for "losses suffered."

How do we move forward together and work in a good way to ensure more respectful, more effective ways of protecting ICH?

Recently, dialogues have been taking place around the world that have begun to critique the colonial lens that heritage has long been viewed through (Lydon and Rizvi 2010; and others). A counter-discourse to Western ways and colonial and imperialist practices of the past is being created in many places—a discourse that is "with, for and by" Indigenous peoples (Nicholas and Andrews 1997). Updating policies and legislation to incorporate Indigenous worldviews and knowledge is not only an integral aspect of the reconciliation process in Canada, but also part of a greater process of global decolonization, and of greater equity, representation and respect in protecting everyone's heritage.

The task we face in working towards this goal is enormous. Fully recognizing, respecting and protecting ICH is more than an issue of academic interest. It is bound up with challenging questions about consent, sovereignty and jurisdiction; about social justice and human rights; and about how all descendant groups can most effectively control access to, and benefit from, their heritage. UNDRIP offers hope, but there is substantial uncertainty as to if, when, and how its provisions will be implemented.

The starting point for change is to acknowledge that access to, protection of and benefits from one's own heritage need to be recognized as basic human rights. Cultural heritage is integral to other human rights, including freedom of expression; freedom of thought, conscience and religion; and economics rights. Being denied one's cultural heritage is harmful to individuals and groups, and the appropriation and commodification of Indigenous peoples' knowledge and the denigration or destruction of their heritage sites constitute a type of violence that exacerbates the existing social, economic, spiritual and health challenges faced by contemporary First Nations, Inuit and Métis in Canada (Nicholas and Smith 2020). What can be done with, by and for Indigenous peoples to give them increased control and support in reclaiming *their* heritage and traditional practices?

First, acknowledging that Western ways of knowing are not superior and can be improved upon is an important part of this work. However, the intent is not to completely destroy one power structure and replace it with another, Indigenous-centered one. What is instead needed is a more pragmatic approach, one that blends and applies Indigenous and Western methods, theories and practices to policies and legislation for the benefit of different publics, and different conceptions of heritage. We must collectively acknowledge that Indigenous ways of viewing the past, history and heritage are legitimate ways of seeing, and not marginal in their applicability (Atalay 2013: 300).

Second, it is important to remember that the "colonial past is not distinct from today's realities [27]and practices, as the precedents that were set continue to define structures for cultural heritage management practices and have powerful continuing implications for Indigenous peoples in North America and elsewhere precisely because they disrupted the self-determination and sovereignty of Indigenous populations with respect to their abilities to govern and practice their own traditional forms of cultural resource management" (Atalay: 282).

Finally, public heritage requires shared, cross-cultural recognition of meaning within and between Indigenous and settler communities and can be achieved through collaborative management and shared decision making. One way forward for this and all the policies reviewed in this document is to adopt the "three-row" model for public and private heritage, as described in the analysis of the Historic Places Recognition Program – Summary. This calls for a distribution of authorities to create consensus-based, rather than democratic, processes, and to equalize power relations with a central row representing a place "with" each other; not "over," "through," "around," or "against" the other (Schaepe 2018).

SMALL AND BIG STEPS AHEAD OF US

If Indigenous peoples are denied direct and meaningful ways of engaging in decision-making concerning their cultural heritage, then cultural heritage management policies are ineffective at best, and harmful at worst. Beginning to recognize and include ICH in the story of B.C. requires, but is not limited to, the following steps:

- Acknowledging and recognizing Indigenous peoples as the stewards of their heritage and removing any delineation of 1846 as a date that determines what is archaeological and historic.
- Breaking down the silos between various government departments that deal with ICH, including the Archaeology Branch and the Heritage Branch.
- Conducting an internal audit of the various government ministries that deal with culture, arts and heritage to better understand the barriers and opportunities.
- Funding a long-term needs assessment and report card on Indigenous heritage to better understand policy, funding and capacity gaps.
- Funding research on all forms of cultural heritage to document how it impacts health and wellness.
- Revising heritage laws and policies so that their language is not exclusionary and is open to Indigenous concepts of heritage recognition and protection, and living heritage.

27 Indeed, 2020 saw the intersection of long-simmering concerns of minority peoples emerge in the "Black Lives Matter, "#Me Too," and "Nothing About Us Without Us" movements.

- Introducing new legislation establishing B.C.'s legal responsibility to support ICH with guaranteed funding sufficient to successfully implement and maintain heritage revitalization initiatives. Such funding must be protected from shifting political priorities.
- Funding the research and articulation of Indigenous legal traditions related to cultural heritage and the development of Indigenous laws and policies.
- Ensuring that professional organizations working in cultural heritage management have policies that recognize Indigenous peoples as the owners/stewards, protectors and decision-makers of their cultural heritage.
- Formalizing initiatives to inventory ICH facing imminent threats related to climate change (e.g., heritage at risk of damage or destruction due to flooding, erosion, fires, temperature change) and to plan responses.
- Conducting a risk assessment based on Indigenous value systems and developing a comprehensive, long-term collaborative strategy to manage and monitor the effects of climate change on ICH led by a committee of experts including Indigenous Knowledge Keepers, Indigenous leaders, Indigenous organizations and governments, scientists and environmental groups/people.
- Conducting research about how Indigenous peoples coped with major environmental changes in the past and how this might help Indigenous communities and their neighbours plan climate change responses today.
- Developing federal and provincial policies that include Indigenous communities in funding cycles for heritage infrastructure and program support.
- Reintroducing Indigenous cultural practices into protected areas.
- Integrating ICH management with protected areas management.
- Developing new, integrated approaches to the establishment and management of protected areas.
- Developing and supporting community-based monitoring and enforcement programs, such as territorial patrols, to ensure the protection of recognized ICH sites and values.

PART 4. RECOMMENDATIONS

Chief Dalton Silver at Lightning Rock, Abbotsford, British Columbia The Vancouver Sun / Photo: Jason Payne

WORKING TOGETHER IN A GOOD WAY

The following ten points represent key recommendations drawn from the discussions, examination of legislation and policy, and analyses included in the body of this work. Many of these recommendations also reflect recommendations set out in the FPCC Policy Paper on Recognizing and Including Indigenous Cultural Heritage in B.C. For more information see: http://www.fpcc.ca/files/PDF/Heritage/FPCC-ICH-Policy-Paper-190918-WEB.pdf.

In our opinion, adoption of the following key recommendations would help decolonize government legislation and process affecting ICH in British Columbia and throughout Canada:

1. **Start by acknowledging that the cultural heritage of Indigenous peoples belongs to Indigenous peoples.** Without exaggeration, 99.9% of archaeological sites in B.C., extending back in time more than 10,000 years, are those of Indigenous peoples. Yet Indigenous peoples have had little say in or control over decisions made concerning their study, preservation or destruction.
2. **Apply Call to Action 43 from the TRC as it pertains to each of the policies reviewed:**

   > **43.** We call upon federal, provincial, territorial, and municipal governments to fully adopt and implement the United Nations Declaration on the Rights of Indigenous Peoples.

3. **Establish jurisdiction and statutory decision-making authority over ICH by Indigenous peoples.** This requires decentralizing power and developing or activating mechanisms for extending authority to Indigenous peoples. Shared decision-making processes and relations should be established in support of Indigenous peoples' management of their own cultural heritage. B.C.'s current Bill C-41 / Declaration on the Rights of Indigenous Peoples Act (DRIPA) provides a mechanism for developing such legal mechanisms, processes and relationships. Provincial legislation needs to be amended to include UNDRIP, as is being planned for currently by British Columbia and the First Nations Leadership Council via an Action Plan. ICH management should be included as a priority item in B.C.'s DRIPA action plan.
4. **Identify and eliminate any influence of colonial doctrines, including the Doctrine of Discovery and terra nullius, on ICH and more generally.**
5. **Establish and enhance relational versus transactional connections between governments based on Indigenous rights recognition, government-to-government and/or nation-to-nation foundations of equality, and through development and implementation of shared decision-making processes addressing ICH.** This requires displacing the current standards

of engagement/consultation/accommodation based on unilateral government decision making and strength of claim assessments, and replacing them with new standards as set out in point 3 above.

6. **Apply holistic, integrated, fulsome and inclusive recognition of ICH, serving to broaden institutional attachments from the narrow focus on "archaeological" material culture currently common in the interpretation of the heritage legislation such as the Heritage Conservation Act.**
7. **In addressing Recommendation 6, recognize five key points from "Why Intangible Heritage Matters" (Nicholas 2014):**

    i) Heritage protection and management remain focused on the tangible;

    ii) however, no object or place has meaning without the intangible values ascribed;

    iii) For Indigenous peoples, the tangible and intangible are often indivisible, which has substantial implications for heritage protection;

    iv) A double standard exists regarding how Indigenous intangible heritage, including Traditional Knowledge, and Western Science are valued or treated.[28]

    v) Efforts to decolonize heritage research and to implement such developments as the UNDRIP will continue to fail if intangible heritage is ignored.

8. **Harmonize statutory and operational relations between provincial agencies such as the Archaeology and Heritage Branches of the Ministry of Forests, Lands, Natural Resources and Rural Development.** This requires better communication and strengthened relations between provincial agencies dealing with ICH, including the Ministry of Indigenous Relations and Reconciliation as a key facilitator of relations.
9. **Harmonize relations between Canada and British Columbia in recognizing and addressing ICH to establish a more cohesive, holistic and integrated approach.**
10. **Ensure that Indigenous peoples have the resources needed to develop and administer their own cultural heritage laws, policies and practices. Establish agreements that clarify relations with and between federal and provincial governments.**

28 See Nicholas (2018) for examination of how Traditional Knowledge supplements Western Science, and Nicholas (2019) on the double standard that exists.

RETURNING TO A PRAGMATIC APPROACH

Decolonization is as much a process as it is a goal; as much a political act as one of renewal and revitalization. It is also a reassertion of Indigenous identity and intent in moving towards a desired but still-elusive postcolonial world. The recommendations we put forward will help address the needs and concerns that Indigenous peoples have about their heritage, while also working to change fundamentally how their heritage is protected and by whom. These goals will most effectively be achieved when we work together.

We urge careful consideration of the recommendations provided above, but acknolwdge that a pragmatic approach to decolonization requires: 1) honest and sustained dialogue between all involved parties; 2) a recognition that each community, band, or nation has had a different history of engagement with settlers and governments; 3) an acceptance that "heritage" means different things to different peoples, and that outsiders are not the best qualified to determine what is proper care for their in/tangible heritage items and places, or their signifcance; 4) effective and bi-directional translation of the values, goals, perspectives, methods and research ethics necessary to heritage protection and preservation; and 5) patience for engaging in difficult conversations and a willingness respect cultural differences without the excuse of "political correctness."

Finally, we belive in small steps taking us great distances. Some of the steps outlined in this report are easy, others require considerable time and effort. Whatever the pace, each step will move us forward in a good way.

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RECOMMENDED ADDITIONAL RESOURCES

WEBSITES

Intellectual Property Issues in Cultural Heritage (IPinCH) Project
www.sfu.ca/ipinch

Local Contexts
https://localcontexts.org

Mukurtu
http://www.mukurtuarchive.org

Plateau Peoples' Web Portal
https://plateauportal.libraries.wsu.edu

PUBLICATIONS

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