

**Do as I Say, Not as I Do:
Aboriginal Engagement and Archaeology in Ontario**

By Michael B. Henry*

“...the goal of an emancipatory (social) science calls for us to abandon sterile word-games and concentrate on the business in hand, which is how to develop the most reliable and democratic ways of knowing, both in order to bridge the gap between ourselves and others, and to ensure that those who intervene in other people’s lives do so with the most benefit and the least harm.”

Ann Oakley.¹

Up To Here

First things first: I think it only fair that I advise the readers that I am not a lawyer. I am a consultant archaeologist licensed to conduct all forms of archaeological investigation throughout the geographic area of the province of Ontario. Naturally then, what follows is the result of my own experience with “consultation”. It suffers from the obvious flaw of all subjective points of view, in that it is contextually derived and tainted with personal perspective. There is no objectivity here. Nonetheless, I hope that some may find something of use in it. Any comments or advice on what follows would be most gratefully received.

Over the past decade, beginning in the late autumn of 1999, the archaeological consulting community of Ontario has been engaged in a process of redefining the conduct and practices of this industry. This process has included an investigation of the management and regulation of the industry by the Ministry of Culture (now Tourism and Culture) undertaken by the Red Tape Secretariat and followed by an Internal Audit of the Ministry of Culture. One result of these investigations was the establishment of the Customer Service Project. The Customer Service Project was designed to engage the community of consulting archaeologists in a process of redefining the management and conduct of the industry, with the aim of ensuring transparent and equitable practices for all stakeholders. As part of the Customer Service Project, the Technical Advisory Group was established. The Technical Advisory Group (TAG) was a smaller working group of consultants, academics, agency and Ministry of Culture archaeologists tasked with developing a detailed document of new standards and guidelines that would govern the practices of the industry. I was a participant in every stage of this process from the initial evidentiary submission to the Red Tape Secretariat up to and including the final meetings of the TAG and the Customer Service Project.

Following all of this work over these many years, I would have to say that the overriding impression I have, both for myself and from what I have heard from many members of the consulting community, is that the stated aims of this work have not been met and nobody is satisfied with the resulting Standards and Guidelines. In large measure, this dissatisfaction stems from how this project of revamping this industry was managed from the outset. Opinions and written submissions were solicited from all members of the consulting community and many people invested considerable amounts of time in crafting what they each felt were key points that must be addressed in any proposed reconsideration of how we conduct our work. However, the data that was collected was never openly discussed, nor were these points debated until after the draft of the proposed Standards and Guidelines were written. Whether the feedback from the community as a whole or from the members of the TAG had any real impact in how the final document was determined, we do not know. We do not know how the input was weighted or how it was determined which ideas would be adopted and which were not. Even if this process was nearly flawless in its operation, the lack of disclosure on how these decisions were made, and the limited community debate that was permitted, has left a bad taste in the mouths of many, perhaps most of all, the archaeologists that participated in the process.

When the first draft of the *Standards and Guidelines for Consultant Archaeologists* (S&G) was

released in 2006, it was written with a section prescribing how and when “Aboriginal Engagement” was to occur (hereinafter referred to as “Unit 6”). The manner in which Unit 6 was developed has led many to suspect that much the same approach was taken with the entire document and that the feedback sessions and requests for written submissions was to leave the impression of consultation where there was none, or rather none of consequence. This suspicion may be without merit, but it is not without cause. In September of 2006, the archaeological community met to discuss the newly released first draft of the S & G. Questions were asked about how the First Nations had participated in the composition of a document that addressed how consultants were to incorporate First Nation interests into their field work and reports. When the archaeologists discovered that the Aboriginal community had not participated in the development of this document, the Ontario Association of Professional Archaeologists called for a vote on Unit 6. The consultant archaeologists voted that this section should be excluded until appropriate First Nations participation in the process was completed. Since then, a second draft of the S&G (MCL 2009) has been released and Unit 6 has re-emerged, almost without change, as a Technical Bulletin. The Technical Bulletin was scheduled to be released with the final version of the S & G at the beginning of October 2010 for implementation on January 1st, 2011.

Given the number of interests and cultures involved, it is unlikely that one way or one solution will work for all. The “one size fits all” philosophy that seems to guide the actions of bureaucracies seems unlikely to succeed. Although there is a great deal of discussion on this issue, we have initiated a dialogue without the presence of those whose interests the process is meant to address. So, we have today a situation where bureaucrats, archaeologists, planners, lawyers and developers are developing ways and means of consulting First Nations without ever troubling ourselves to ask the most qualified persons how it is they wish to be included. We should not be surprised to find that once the experts are done designing this process that it fails to deliver the promised results when people with their own intentions and objectives are added to the formula.

The implementation of the Technical Bulletin on Aboriginal Engagement by the Ministry of Tourism and Culture will make the dialogue between consultant archaeologists and First Nations a statutory obligation and a condition of holding a professional archaeological licence. This means that with respect to heritage matters, the consultant archaeologist is responsible to ensure that those First Nation groups with an interest are “engaged” in a dialogue and that their stated interests and concerns are addressed. On the surface this would appear to be a meaningful step toward mitigating the rise in militancy and hostility amongst First Nations in Ontario, since most unrest has been centred on heritage issues regarding ancestral sites and burial grounds. It also eliminates input into the consultation process from the project proponents and the municipal planning authority.

Who Cares?

The specific First Nations who seem to have an interest in any given situation depends upon the moment of time selected to form the basis of interpreting relationships among the various parties and from what perspective this historical snapshot is viewed. The peoples and cultures involved were never rigidly defined. Their locations and boundaries of their territories changed over time, as did the number of people, the ethnic composition, their technology and modes of life. This is equally true of European history. Therefore, to speak of traditional territory implies a selective ordering of the past, the imposition of a rigid geopolitical scheme that was largely absent. But we have imposed this order on Europe as well. We have reified the modern geopolitical landscape into some sort of extemporal fossil into which all of history must be force-fitted. Most people are not aware that most of the “Old Countries” are in fact, at least as organized states popularly known today, quite new; many younger than Canada. Consider that defining the precise ethnic composition of Canada would be immediately limited in its accuracy to the date of the data used, how the data was collected and the manner in which it was synthesized. All of which have built in flaws inherent in method. This form of analysis is further complicated by definitions of ethnicity and who imposes the definition. Is it meaningful to speak of Canada’s cultural composition with reference to time periods when Canada did not exist?

Under the *Indian Act*, the federal government defines who can and who cannot claim status as an Indian. This is a most peculiar and absurd arrangement. Establishing a blood quotient as a means of measuring eligibility in these Nations is not how Nations have traditionally defined themselves, whether you are considering European or Aboriginal Nations. We reserve the right to select people we will include as citizens of Canada from among those who wish to become Canadians. Historically, the First Nations operated much the same way. In the past, like Canada and most other nation states today, you were automatically a citizen if you were born within that Nation. Traditionally, as now, membership implies expected patterns of behavior and conformity to the laws, duties and obligations that citizenship implies. Also, then as now, punishments within the community, or exile from it, were methods employed by the Nation to deal with those who failed to meet the requirements of citizenship or who violated the commonly understood code of conduct.

The people of Wendake, Quebec are descendants of the Huron Confederacy that once occupied the southern Georgian Bay area. Obviously then, they would have an interest in projects which might have an impact on ancestral sites such as ossuaries or villages that were once occupied by their ancestors. However, the people of Wendake are not the only descendants. There are three other communities today that have claims of equal legitimacy as descendant band communities. Among these is the Anderdon Wyandot Nation of Michigan. The Anderdon Wyandot Nation formerly had reserve lands along the Detroit River in Ontario. The Crown took these lands from them during the 18th and 19th centuries. They were the last independent Huron Nation to reside in Ontario. If we look at the treaties surrendering lands to the south and west of London, Ontario, we will find that this Nation was one of the signatory First Nations groups. They are the only Huron descent group with land claims filed in the province of Ontario. And yet, because Wendake is the only Huron descent group with a recognized band council within the geographic limits of Canada, it is asserted by some that only they have any legal basis to claim any rights over Huron heritage matters. Wendake, by contrast, has no land claims or Treaty Rights within the province of Ontario.

Adding to the complexity of this matter, there are yet other Huron descendants resident in Ontario. It is estimated that approximately 300 are members of the Six Nations of the Grand River. Their ancestors had joined this other Iroquoian confederacy when the Huron Confederacy disbanded in 1649. Is it not a self-evident truism to assert they also have an interest, and therefore a right to speak, on matters that affect Huron ancestral sites? What of the number of Huron-Wendat descendants who are not part of any of these formally constituted communities? Many Huron descendants have moved back to their traditional homeland to be near their ancestral sites to watch over and protect them. Have these people not demonstrated, perhaps more so than the above-noted communities, their personal interest and commitment to issues that affect their heritage? If then, one chooses to speak only with the band council of Wendake, it is likely to earn the enmity of all these other groups, many of whom have been very active in taking action to safeguard heritage sites.

There are other factors which further complicate this situation. The geographic areas of historical occupation of the Huron were previously occupied by other First Nations groups, and following the departure of the Huron were occupied anew by yet other First Nations. Who then has an interest when it comes to matters of heritage and ancestral sites? My view is that the current occupants with Treaty or Aboriginal rights, as defined under the Constitution, have an interest to the extent that, at a minimum, traditional protocol between nations demands that they be informed of the interest of the historically related groups. Further, any such groups wishing to assert an interest over their ancestral sites must at least have consent of the current occupants to do so. The implied understanding then is that the resident Nations do not surrender their legitimate claims to territory or to rights by allowing the exercise of interests on the part of other First Nations with respect to ancestral sites. I think a clear distinction can and must be made with respect to heritage versus territory, hunting and fishing rights, or other cultural activities associated with existing occupations. In this way it is hoped that emerging conflicts between Nations or interested parties can be avoided.

Now What?

Unfortunately, the ignorance of many First Nations communities regarding the land-development process and nearly all disciplines in the development and land-use planning sectors concerning the culture of First Nations makes them prime targets for certain experts who are prepared to exploit the ignorance of all for their own gains. The only remedy is education. In the meantime, be sure that you get at least one second opinion.

I do not feel that I can, as one voice, offer my personal impressions of what properly constitutes best practices. I do not have the information needed to speak for everyone. What I propose instead, is to offer propositions on how I think we can work together to develop policies that will hopefully satisfy everyone involved. That way even if we cannot currently say what would constitute best practices, we will at least be able to work toward the evolution of these ideas. In reality, it is doubtful that we will ever have a final document in this regard. It would probably be more harmful than anything if we pretended we could.

Most conflict has been about archaeological sites, particularly burial grounds. Archaeological research that deals with Aboriginal occupation and land-use must have imbedded within it an ongoing dialogue between Aboriginal peoples and those who conduct this research. The aim here is the democratization of the process of archaeological investigation. Aboriginal involvement will necessarily impact all aspects of archaeological research including background research, survey methods, test excavations, site mitigation through excavation and/or avoidance, artifact analysis, interpretation of results, and determinations of significance. The object of this process is not to exclude the input of any Aboriginal peoples or of any researchers but, to derive mutually beneficial feedback that will ultimately inform the aims and methodologies employed in any undertaking to bring maximum benefit to practitioners, Aboriginal populations, and the general public.

This then leads to the question: How do we develop the most reliable and democratic ways of knowing? Specifically, how do we develop ways of knowing how to both bridge the gap between the archaeological community and Ontario's Aboriginal peoples, and to ensure that those who conduct this research do so in a manner that results in the greatest benefit and the least harm? The means that we need to establish must be meticulous, systematic, transparent and sensitive methods of documenting the archaeological resources of Ontario that do not merely satisfy the experts' needs. These means must also undertake the much more generous task of making the discipline of archaeology one that is informed by and which informs the descendant populations of the societies it seeks to study.

In order for us to develop a meaningful set of best practices, we must ensure that we are engaged in an informed discussion. This will impose obligations upon the archaeological and Aboriginal communities to enter into a process of mutual education to ensure that the perspectives of both are understood and a foundation is established to explore opportunities to enhance Ontario archaeology in a collaborative effort. The Ontario Association of Professional Archaeologists (APA) has conducted archaeology liaison training at Six Nations of the Grand River for that community and at Scugog for the Williams Treaty Bands. This very successful program needs to be expanded, ideally in partnership with the provincial and federal governments.

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1 Oakley, Ann. Experiments in Knowing: Gender and Method in the Social Sciences. New York: The New Press, 2000, p. 3.

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