

## IMPLEMENTING DELGAMUUK'W

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### Biography of Eldon Yellowhorn *Heritage Consultant*

Eldon Yellowhorn is from the Peigan reserve in southern Alberta. He received his early education on the reserve, and then attended public school. He went on to the University of Calgary, where he majored in earth sciences and received his Bachelor of Science degree. Eldon followed this with an M.A. in archaeology at Simon Fraser University, where his thesis focused on archaeology on Indian lands. In 1995, he started working towards a PhD at McGill University. His dissertation is focusing on the application of traditional knowledge to archaeological research. Last year he was hired as a sessional instructor at SFU to teach First Nations Studies.

Good afternoon. I've got a few slides that I will use to help illustrate the talk that I'll be giving.

Well, I'm happy to share some information that I've gathered about the topic of archeology. First of all, archeology can be regarded as an instrument of society that allows us to achieve a desired objective. It can be regarded in the same way that we look at, perhaps, the legal profession or the teaching profession: they are just vehicles that bring us to the point to where we want to get to. It's a means to an end and provides us with methods with which we could study the past. And in this case, the past is represented by the archeological record which is comprised of objects, features and sites. Together they reveal the human presence on the landscape and antiquity. We cannot always know when we will encounter antiquities and we cannot anticipate where we will encounter them, but what we can do is to create management schemes about them when we do encounter them. Therefore, archeology simply gives us a method to systematically search the archeological record and, once we find antiquities, either through accidental discovery or through a deliberate survey, we must then devise management schemes specifically designed to deal with heritage sites.

In investigating the heritage of Native people, we look at objects and features and heritage management schemes -- and you've probably heard of these in terms of cultural resource management, heritage resource management, or archaeological resource management -- all of these are schemes that are designed specifically to provide some protection to heritage, once archeological sites are discovered. Protecting antiquities is regarded as both a social and cultural endeavour. They may not have any particular value to us in terms of monetary value, but they accumulate or they take on a certain inherent value because of their very nature and because of who owned them. Presently when we deal with antiquities in North America, we express it in either two models: there is, first, the resource model and the second is a property model. Both of these take on legal characteristics and the current regimes of land claims, and that is sort of what I am going to be looking at.

First of all, governments have been active in creating legislation that specifically address heritage management. Currently, in British Columbia, it is the Heritage Conservation Act, which was first enacted in 1977 and subsequently there have been several amendments to the Heritage Conservation Act. But it is this primary statutory creation that addresses the heritage in this province.

Now I would just like to give you, first of all, a little overview of the evolution of historical legislation for B.C. -- could you just put the first illustration on, the one that says I-1? This was a pre-confederation Indian Graves Ordinance Act. This was back in the time before British Columbia joined the Canadian federation and the governor often ruled by decree and creating ordinances as he saw fit. This is an example of where the government of the day tried to limit, somehow, the desecration that was occurring to Indian graves by the fact that collectors were starting to display a lot of curiosity about old Indian graves and the associated grave goods. They were also starting to develop an Indian art market and this sort of fit right into it. One of the interesting things about this is that, at this early stage, this was not a crime against Indians or a crime against the Indian community; instead, it was a crime against the Crown, because if you will notice it very explicitly states that everything associated with Indian graves, whether it was the human remains themselves or the associated objects, all of these were Crown property; they were dealt with as Crown property. My view, this stipulation there for punishment of hard labor, I don't know if that's really punishment for most archeologists since that's pretty much what we end up doing all summer. Subsequently, there were other Acts that overrode this Act when the province of British Columbia joined Canada. The first was an Act to Provide for the Preservation of Historic Objects, and this was enacted in 1925. While this one has its own little story behind it, why this law came into being, because this was sort of at the time when the potlatch trials were sort of in the news and it was high on the public agenda, so the provincial government had to pass some sort of Act in order to make statements about what was going to happen to objects like those which were confiscated in something like a potlatch trial, where you have to seize goods and, once you've seized those goods, then you have to try to make some sort of statement about how to manage them. The third one which was passed was the Archaeological and Historic Sites

Protection Act, and this was passed in 1960 and subsequently amended in 1972. Finally, the most comprehensive one, which was the Heritage Conservation Act, which is the one we are currently dealing with, was first enacted in 1977 and has continued to be amended at various points, right up into the 1990s. So these are at the provincial level.

At the federal level heritage legislation in Canada does not exist. There simply is no laws on the book that give us any guidance, so we pretty much have to look at existing statutes and see if you can interpret them in order to include archeology under its meaning. Of course, the only federal legislation that really deals specifically with Indians is the Indian Act. The Indian Act, which was originally passed in the mid-nineteenth century, has continued to exist even until today, and its most recent amendments were in 1985. I would just like to look at this -- put illustration two up there. The only section in the Indian Act which deals in any way with culture is that known as Section 91, which is entitled Trading with Indians. Again, when you look at Trading with Indians, when you look at the history of this particular section, it has a fairly interesting history because it originally came into the Indian Act when it was first passed in the mid-nineteenth century. There was a clause in there that was called "pawns for intoxicants," and it was, like, any Indian, say, who pawned something so they could get alcohol, the person who received the object could have it seized by the Crown, because the Crown held a monopoly on trading with Indians. And also when this particular portion of the Indian Act was amended -- again it was right after the potlatch trials here in B.C. -- in 1927, the Indian Act was amended and this section was attached to that "pawns for intoxicants" clause. Subsequently, when the Indian Act was modernized in 1951, all parts that dealt with "pawns for intoxicants" disappeared from the Indian Act, but this part stayed in there. Now if you look at them, it sort of gives you some idea about what was happening in society at the time when this part of the Indian Act was amended and added, because if you look at the all the objects that are being discussed -- the grave poles, totem poles -- they are all objects that are associated with West Coast groups and therefore, this again is, when you look at who couldn't do that, all of those people are in one way governments of the Crown: school teachers, Indian agents. So it's more or less a conflict of interest guideline. These are people who are prohibited from buying these objects from Indians because, again, the government holds that exclusive monopoly for trading with Indians.

Now let me return to the two problem paradigm for dealing with culture, either as property or as resource. These are driven by both ideological and legal reasons and I'll just deal with each of those in them. Dealing with culture as a resource is a model that has fitted most conveniently into the provincial government's mandate, because in the British North American Act, which was the original constitution of Canada, it sort of divided up what were the powers of the retained by the federal government and which powers would be delivered by the provincial government. Well, provincial governments got exclusive jurisdiction over natural resources. At that time heritage was not on anybody's mind, nobody was really giving attention to it. So the law fell silent on this point. Subsequently it has had to be interpreted so that culture can be included within this idea. We have come to the point where culture is now equated with anything like natural resources, like harvesting trees, or else mining minerals. By taking it into the resource paradigm, provincial governments could then make laws about it. I just have a personal trepidation because, when I deal with things in resource management, the alarm bells go off because in North America throughout history, resource management has always meant extracting or harvesting; it has never meant conservation or protection. So I am very, very alarmed or cautious about using the resource model for dealing with Indian heritage because it sort of gives the impression that at some point somebody is going to come along and harvest those.

I'd like to make this little point here, because our culture hasn't always been used in this resource model. It has only been 1960 when culture suddenly and explicitly became a resource. But I'd like to read this quote for you, because it is very telling about how we feel about resources. "Resources have always been important in the construction of individual and collective identities. The definition of resources is a culturally driven and culturally constrained process which also helps to define the social limits of action and experience. Political sovereignty and collective political identity have always relied on control of natural resources, such as minerals, forest, energy and wildlife." To this definition you can add culture, so that we could speak of cultural resources. Now the reasons I don't personally don't like this model -- can you put on illustration number three -- this is out of a journal called *Archeology* and if you could read that, "the harvest of skulls and bones." When we deal with archeology or culture as a resource, this is the type of scenario that we promote, and in this case it gives the impression that 3,000 years ago some Indians very conscientiously planted some seeds in these [?] roots, they germinated, and they started to grow and, 3,000 years later, presto, there were suddenly human remains and associated [fruniary?] objects, and now archeologists are the people who come along and harvest these resources. For this reason I am very cautious about wanting to use culture as a resource model.

Now I would like to -- could you put on page number four -- I would like to look at culture as a property model, and, again, this is driven by legal reasons of why do you deal with culture as a property as opposed to a resource? Well, because, again, it has legal ramifications. If it is dealt with at the federal level as a resource, then technically or constitutionally the

federal government is imposing itself on resources, which it's explicitly not supposed to do. So at the federal level we have to deal with culture as property because this is the only way in which the federal government can actually make laws about heritage. Also, this has some implications for the type of objects that are dealt with because some archeological objects are portable -- you can pick them out of the ground, you can deliver them -- so once they cross a boundary they can be treated as property, but within a province they are treated as a resource. Also, once they cross a provincial boundary or an international boundary, then the federal government can pass laws that deals specifically with this type of object. The second reason, or constraint, on this model is that some archeological features and sites are not portable; they only exist by virtue of where they are located in space. For example, a cooking pit which only exists because of the location it is, this cannot be transported either across boundaries or anywhere, so it cannot be dealt with as cultural property. So when we are dealing with cultural property, it has to be portable, it has to be able to travel across boundaries.

The only federal statute that deals explicitly with cultural property is the Cultural Property Export and Import Act, which was enacted in 1977. That's still the main statutory vehicle that the federal government uses to deal with antiquities. Now this is my personal preference -- could I get the last illustration on there? When we deal with cultural property we can look at it in an estate model. For example, when any individual for some unfortunate reason inherits an estate, that estate comes with a lot of property. Some of those properties are portable, some of them are real estate, so they can't move. While you could dispose of the property quite easily, but there are certain objects that sort of take on or accumulate a certain value not so much by what they are, but by who owned them. So that when you, say, got this estate from one of your relatives, you decide to hang on to something which became a keepsake because of that person. Then if you pass it on to a third person it accumulates even more inherent value, so that it becomes a family heirloom. When that person comes into possession of a family heirloom, there is nothing stopping that person from going out and selling that object, but there is an overriding moral clause that you might want to consider before you alienate those kinds of properties. Now the equivalent scheme would be the one of the left where you're dealing with culture as sort of an estate, or culture as a property. In this case you could then talk about two types of cultural properties: the portable cultural properties and the stationary ones. Then, of course, you could deal with the portable cultural property in a phrase or in a way that is known as "inalienable cultural property," because the inherent value cannot be expressed in monetary terms and it cannot be liquidated in the same way that we do any other properties that we might come into possession of.

So I will just close by saying that the two models that I have been talking about have been incorporated into land claim agreements already. Culture as a resource model has been adopted by the Yukon Indians in their umbrella final agreement, and the culture as property model has been used by the Inuit in Nunavut. So if you want to look at how both of these regimes operate, you can contrast and compare those to land claim agreement and how they deal with archeology. Thank you.