

HERITAGE RIGHTS AND INDIGENOUS INVOLVEMENT



Should heritage be considered an Indigenous right? This is an important question, and its answer has implications on the way that business is conducted around the world. Because potash mining in Saskatchewan is world class, the way in which heritage is handled should be carefully considered. With the emergence of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), there is increasing global awareness of Indigenous rights in relation to heritage. Specifically, Article 11, No. 1 of UNDRIP discusses “the right to maintain, protect and develop the past, present and future manifestations of their [Indigenous] cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature”. If heritage is considered an Indigenous right, the next logical assumption would be that there should be Indigenous involvement and

engagement in regards to the protection and management of their own heritage resources.

A problem, however, arises when global awareness and provincial legislation/regulation do not coincide. Unlike other countries, such as the United States where heritage falls under the jurisdiction of the federal government, there is no overarching federal legislation that looks after heritage resources in Canada. Our heritage resources fall within the jurisdiction of provinces and territories. This lack of centralized heritage legislation creates a patchwork of rules and requirements throughout Canada, and while some predominant themes can be seen in legislation/regulation, the legislative/regulatory requirements for Indigenous involvement and engagement in heritage in each province and territory are quite different. Some provinces and territories, notably the Government of

Northwest Territories, Yukon, Nunavut, and portions of Newfoundland and Labrador (i.e., Nunatsiavuk) have strong requirements for Indigenous involvement regarding protecting and managing their own heritage resources; however, at present there are no such requirements for Indigenous involvement found in The Heritage Property Act (1980), the governing legislation concerning heritage resources in Saskatchewan.

While Indigenous involvement and engagement regarding heritage resources is not yet a requirement in Saskatchewan, it is evident through news outlets and social media (both globally and locally) that engaging with and involving Indigenous communities may not only be the right thing to do, but also makes good business sense. It is easy to see instances in the news where Indigenous communities have clashed with industry over their heritage (e.g., Red Pheasant vs. RM Winslow;

Wet’suwet’en vs. LNG Canada; Puutu Kuntli and Pinikura vs. mining; Standing Rock vs. DAP). These clashes result in costly project delays and lowered public and investor confidence. Clashes such as these can be effectively avoided by involving and engaging Indigenous people with the management and protection of their own heritage resources.

On the other hand, some projects in Saskatchewan have reached above the minimal requirements and have worked towards involving and engaging Indigenous people. Below are some recent examples from the heritage division at Canada North Environmental Services, a 100 per cent Indigenous-owned firm based out of Saskatchewan.

A heritage resources impact assessment (HRIA) was completed for major pipeline construction and remediation projects in Saskatchewan and Manitoba where numerous archaeological sites were identified along and adjacent to the proposed pipeline routes. Indigenous crew members aided in archaeological mitigation/excavation, as well as construction monitoring. During construction, Indigenous monitors helped the archaeologist identify heritage resources, such as hearth features and artefacts in areas of high archaeological potential. These efforts resulted in the identification and collection of hundreds of artefacts, including a large amount of bone, fragmented bison skulls, and stone tools/artefacts. Some of the finds are likely 2,000 years old. The sheer number of sites and types of artefacts discovered during the heritage monitoring was remarkable, and the dig would not have been as successful without the help of Indigenous assistants/monitors. In fact, many of the newly discovered archaeological sites were the result of artefacts identified by Indigenous community monitors in areas where sites were not expected. Community members also helped by advising the archaeologists on culturally appropriate protocol for handling some of the artefacts.

Another project located near Cowan Lake, Saskatchewan involved two archaeologists working closely with an Indigenous

monitor. Stone artefacts were discovered during the archaeological survey by the archaeologists and Indigenous monitor. In general, artefacts are usually collected and taken back to laboratories where they can be analyzed and recorded in detail. In this case, at the request of local Indigenous elders, archaeologists were able to conduct their necessary artefact analyses in the field and then respectfully rebury the artefacts with tobacco, following the cultural protocol suggested by the elders. These respectful and culturally appropriate actions would not have occurred without the guidance of the on-site Indigenous monitor.

Archaeological projects can also be community led. An Indigenous community in northern Saskatchewan took the initiative to conduct its own archaeological research project ahead of potential development with the intention of locating and protecting a special site. This project was a collaboration between elders and community who drew upon traditional Indigenous knowledge and between archaeologists who drew upon scientific archaeological methods. The community led the project while the archeologist

provided support by offering specialized and scientific expertise. Projects like this can provide a framework for future studies, and furthermore, they can help protect special and significant sites from inadvertent disturbance.

Changes to federal heritage legislation are currently being addressed. Bill C-15, the United Nations Declaration on the Rights of Indigenous Peoples Act was introduced by the Canadian Government on December 3, 2020. When passed by parliament, the federal government will be required to take all of the measures necessary to ensure that legislation is consistent with the declaration. While engagement and involvement with Indigenous communities regarding heritage projects may not be a requirement in Saskatchewan at this time, it is likely that the above Canadian act (when passed), and public/Indigenous opinion of this matter, will induce a change in legislation or regulation that will require Indigenous involvement with heritage in Saskatchewan. Heritage should be considered an Indigenous right, and Indigenous involvement in their own heritage benefits all involved and should be a consideration when planning projects. ●

