

ARTICLE 33 - ARCHAEOLOGY

PART 1: DEFINITIONS AND INTERPRETATION

In this Article:

"archaeological site" means a site or work within the Nunavut Settlement Area of archaeological, ethnographical or historical importance, interest or significance or a place where an archaeological specimen is found, and includes explorers' cairns;

"archaeological specimen" means an object or specimen found in an archaeological site of archaeological, ethnological or historical importance, interest or significance and includes explorers' documents;

"areas administered by the Canadian Parks Service" means National Parks, National Marine Parks, National Historic Parks, Canadian Landmarks, and National Historic Sites administered by the Canadian Parks Service under the *Historic Sites and Monuments Act*

"Designated Agency" means the government agencies, and departments, or their successors, described in Schedule 33-1;

"long-term alienation" means:

- (a) any sale or gift, or
- (b) loan or other transfer of possession or rights to an archaeological specimen,
 - (i) for an indefinite duration, or
 - (ii) for a period, including any extension by way of renewal, for three years or longer

"private property" means moveable property to which a person can demonstrate ownership in law other than by discovery or through title to or interest in land;

"public records" means records held by any department or agency or public office of any level of government including records which were formerly held by any such department, agency or public office.

33.1.2

This Article shall apply to marine areas of the Nunavut Settlement Area.

PART 2: GENERAL PRINCIPLES

33.2.1

The archaeological record of the Inuit of the Nunavut Settlement Area is a record of Inuit use and occupancy of lands and resources through time. The evidence associated with their use and occupancy represents a cultural, historical and ethnographic heritage of Inuit society and, as such, Government recognizes that Inuit have a special relationship with such evidence,

which shall be expressed in terms of special rights and responsibilities.

33.2.2

The archaeological record of the Nunavut Settlement Area is of spiritual, cultural, religious and educational importance to Inuit. Accordingly, the identification, protection and conservation of archaeological sites and specimens and the interpretation of the archaeological record is of primary importance to Inuit and their involvement is both desirable and necessary.

33.2.3

Government responsibilities for the management and conservation of archaeological sites and specimens shall be balanced with Inuit responsibilities for the same.

33.2.4

There is an urgent need to establish facilities in the Nunavut Settlement Area for the conservation and management of a representative portion of the archaeological record. It is desirable that the proportion of the Nunavut Settlement Area archaeological record finding a permanent home in the Nunavut Settlement Area increase over time.

33.2.5

In recognition of the spiritual, cultural and religious importance of certain areas in the Nunavut Settlement Area to Inuit, Inuit have special rights and interests in these areas as defined by this Article.

PART 3: INUIT PARTICIPATION

33.3.1

The Trust shall be invited to participate in developing government policy and legislation on archaeology in the Nunavut Settlement Area.

PART 4: INUIT HERITAGE TRUST

33.4.1

The Tunngavik Federation of Nunavut or its successor, shall cause to be established by trust deed an Inuit Heritage Trust ("Trust") within one year of the date of ratification of the Agreement.

33.4.2

The Trust shall be subject to control by its trustees who shall be nominated by the DIO. The trustees collectively shall have an appropriate balance of cultural awareness and technical expertise.

33.4.3

The Trust shall assume increasing responsibilities for supporting, encouraging, and facilitating the conservation, maintenance, restoration and display of archaeological sites and specimens in the Nunavut Settlement Area, in addition to any other functions set out in the Agreement.

33.4.4

The terms of the Trust shall ensure the safekeeping and safe use of property entrusted to it.

33.4.5

The Designated Agency shall allow the Trust access to information in its possession regarding archaeological work in the Nunavut Settlement Area, subject to reasonable restrictions on access intended to safeguard the confidentiality of sensitive information.

PART 5: PERMIT SYSTEM

33.5.1

The legislation and policy referred to in Part 3 shall establish a permit system with respect to the protection, excavation and restoration, recording and reporting of archaeological sites. Appropriate sanctions against unauthorized disturbance of archaeological sites and specimens and unauthorized dealing in archaeological specimens shall be contained in appropriate legislation.

33.5.2

The legislation and policy referred to in Part 3 shall provide that a permit holder shall not survey, investigate, excavate or alter an archaeological site without the consent of the titleholder to the land. Such consent shall not be unreasonably withheld.

33.5.3

Upon receipt of any application for a permit for archaeological activity, including investigation of archaeological sites, or the removal of archaeological specimens, the Designated Agency shall, except in cases of emergency, forward a copy of such application forthwith to the Trust.

33.5.4

Upon receipt of the copy, the Trust shall have a reasonable number of calendar days, as determined by the Designated Agency in consultation with the Trust, to object to the application in writing.

33.5.5

If the Designated Agency is in receipt of such written objections within the specified number of calendar days, it shall:

- (a) withhold the issuance of any permit;
- (b) investigate the objections; and
- (c) provide the Trust with a copy of the report prepared on the basis of the investigation.

33.5.6

Where the objections referred to in Section 33.5.5 are reasonably founded on

- (a) inadequate efforts to secure Inuit participation and benefits or inadequate performance of commitments to provide such participation and benefits under permits issued at an earlier date, or

(b) disturbance of a site of Inuit religious or spiritual significance, as such significance is defined by the Trust in consultation with the Designated Agency, the Designated Agency shall reject the application for the permit.

33.5.7

The Designated Agency shall, upon reasonable request by the Trust, attach as a condition to the grant of a permit, a requirement that upon completion of each season's field work, the permit holder shall, to the extent practicable:

- (a) attend at a location identified by the Trust, in the community closest to the site, to explain and discuss the work carried out; and
- (b) provide an opportunity for residents of the community to examine any specimen removed from the site.

33.5.8

Notwithstanding Section 33.5.6, where the application before the Designated Agency is associated with a proposed land use requiring a land use permit, the Designated Agency may, instead of rejecting the application, issue a permit with terms and conditions that adequately deal with the reasonably founded objections.

33.5.9

The legislation and policy referred to in Part 3 shall provide that every permit holder shall submit a report to the Designated Agency and the Trust. Upon reasonable request, the Agency shall provide the Trust with an Inuktitut summary of the report.

33.5.10

The Designated Agency shall make available Inuktitut translations of its publications that are aimed at informing the Canadian public about archaeology in the Nunavut Settlement Area.

33.5.11

Except where a permit specifically requires a permit holder to leave a specimen in situ for purposes of scientific or historic interest, all specimens collected by a permit holder shall be submitted to the Designated Agency or the Trust at a place and time specified by the permit.

33.5.12

Where an application is made for a land use permit in the Nunavut Settlement Area, and there are reasonable grounds to believe there could be sites of archaeological importance on the lands affected, no land use permit shall be issued without the written consent of the Designated Agency. Such consent shall not be unreasonably withheld.

33.5.13

Each land use permit referred to in Section 33.5.12 shall specify the plans and methods of archaeological site protection and restoration to be followed by the permit holder, and any other conditions the Designated Agency may deem fit.

PART 6: EMPLOYMENT AND CONTRACTING

33.6.1

Where any agency of the Government intends to contract for carrying out of archaeological work in the Nunavut Settlement Area, the agency shall:

- (a) give preferential treatment to qualified Inuit contractors where the agency proposes to tender such contract; and
- (b) ensure that all contractors give preferential treatment to qualified Inuit.

33.6.2

Any archaeological programs in the Nunavut Settlement Area that are administered by Government shall conform, at a minimum, to the employment and training provisions set out in Article 23.

PART 7: TITLE IN SPECIMENS

33.7.1

Government and the Trust shall jointly own all archaeological specimens that are found within the Nunavut Settlement Area and that are not:

- (a) public records;
- (b) the private property of any person; or
- (c) within areas administered by the Canadian Parks Service.

33.7.2

Specimens found within areas of the Nunavut Settlement Area administered by the Canadian Parks Service shall be managed in accordance with the provisions of the Agreement.

33.7.3

Any disturbance or disposition of specimens shall be managed in accordance with this Article.

33.7.4

The Designated Agency and the Trust must jointly consent, in writing, prior to any long-term alienation of any archaeological specimen found in the Nunavut Settlement Area.

33.7.5

Where the Designated Agency and the Trust cannot reach an agreement on a proposal for a long-term alienation, as outlined in Section 33.7.4, the matter shall be referred for resolution by arbitration under Article 38 by the Designated Agency or the Trust. In arriving at a decision, an arbitration panel shall take into account the overall intent of the Agreement, the provisions of this Article, and any other relevant consideration.

33.7.6

The Trust shall determine the disposition of all specimens found on Inuit Owned Lands.

33.7.7

Designated Agencies shall determine the disposition of all specimens found in the Nunavut Settlement Area other than on Inuit Owned Lands subject to the rights of the Trust to acquire possession as set out in this Article.

33.7.8

Public records wherever they are found shall be owned and managed by the government by which they were created or held.

PART 8: USE OF ARCHAEOLOGICAL SPECIMENS

33.8.1

The Designated Agency shall endeavor at all times to dispose of a maximum number of specimens to institutions in the Nunavut Settlement Area such as the Trust.

33.8.2

The Trust may request possession of any specimens found within the Nunavut Settlement Area or from any federal or territorial government agency, including the Canadian Museum of Civilization, and any territorial archaeological agency. Such requests shall not be refused by the agency unless:

- (a) the Trust is unable to maintain the specimen without risk;
- (b) the Trust is unable to provide access to the specimen commensurate with scientific or public interests;
- (c) the agency is unable to give up possession because of some term or condition of its original acquisition from a non-governmental source;
- (d) the Canadian Museum of Civilization, the National Archives of Canada, the Canadian Parks Service or a territorial government agency currently requires the specimen,
 - (i) for its own active display or research, or
 - (ii) on account of the unique characteristics of the specimen;
- (e) the condition of the specimen prohibits its movement; or
- (f) the specimen has previously been made available to, and is in the possession of, a party other than a federal or territorial government agency.

33.8.3

Where the agency referred to in Section 33.8.2 complies with a request by the Trust, the agency may attach any terms and conditions consistent with professional and institutional practice, including terms or conditions dealing with duration or termination of possession.

33.8.4

Where the Trust requests possession of a specimen mentioned in Section 33.8.2, but such specimen is currently on loan to a party other than a federal or territorial government agency, the Trust shall have priority over all other persons to obtain possession of the said specimen, subject to compliance with any conditions outlined in Sections 33.8.2 and 33.8.3.

33.8.5

A Designated Agency may request possession of any specimen in the possession of the Trust and the Trust may grant possession on a basis to be negotiated between the Designated Agency and the Trust.

PART 9: PLACE NAMES

33.9.1

The Inuit of the Nunavut Settlement Area have traditionally referred to various locations, geographic features and landmarks by their traditional Inuit place names. The official names of such places shall be reviewed by the Trust and may be changed to traditional Inuit place names in accordance with the process described in Section 33.9.2.

33.9.2

The process for review of place names within the Nunavut Settlement Area shall be comparable to that set out in the Territorial Government Directive 17.03 on *Geographical And Community Names*, dated May 28, 1990, subject to the requirement that the Trust be consulted on any place name decisions.