

PROJECT FOR THE PROTECTION AND REPATRIATION OF
First Nation Cultural Heritage in Canada



'A'lhut tu tet Sulhween
"RESPECTING THE ANCESTORS":

Report of the Hul'qumi'num Heritage Law Case Study

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REPORT SUMMARY

As a case study of the *Project for the Repatriation and Protection of First Nation Cultural Heritage In Canada*, this report examines Central Coast Salish Hul'qumi'num customary laws about the protection of their archaeological heritage in British Columbia. The research is based primarily on interviews with Hul'qumi'num Elders and knowledgeable community members. The main research goals were to: 1) define Hul'qumi'num customary laws about their archaeological heritage; 2) identify perceived problems in respect for Hul'qumi'num heritage laws; and 3) recommend directions to reform Canadian law to address Hul'qumi'num interests in the protection of their archaeological heritage.

This report provides a narrative rather than an analysis of Hul'qumi'num Elders and community members' cultural perceptions, customary laws and concerns about the protection of their archaeological heritage. It reveals that protection of Hul'qumi'num people's archaeological heritage is integral to their distinctive cultural identity. Archaeological heritage is valued for its relation to 'people', rather than as 'objects' of material value. Archaeological sites are perceived not as abstract scientific resources, but as the 'cemeteries' of family Ancestors. From a Hul'qumi'num perspective, the Living have obligations to care for the remains of their deceased Ancestors, who remain fundamental figures within extended families. Disturbance of ancient human remains and their belongings are seen as disruptive to the continuity of relations between the Living and the Ancestors. The deceased remains and belongings are believed to possess powers dangerous to the Living, thus Hul'qumi'num culture maintains strict customary laws associated with the treatment of the deceased Ancestors and their belongings.

In this study, we interpret three primary customary laws that Hul'qumi'num people associate with the protection of their archaeological heritage: 1) Only persons with the inherited right and ritual knowledge may care for the remains of the deceased Ancestors and their belongings; 2) It is prohibited to physically disturb any land containing ancient human remains and their belongings; 3) It is prescribed that persons avoid physical contact with the spirits of the deceased, their skeletal remains, belongings, and burial grounds. These customary laws are based upon maintaining principles of respect and reciprocity of relations between the Living and the Ancestors. To contravene these customary laws and upset the balance between the Dead and the Living worlds is understood in Hul'qumi'num culture to bear mortal consequences for the Living, whether through retribution by poor fortune, illness, paralysis or death.

Today, Hul'qumi'num people have many concerns for the protection of their archaeological heritage, including increasing land development, lack of enforcement of provincial laws, lack of a meaningful role for their First Nation governments in provincial heritage management, the growth of the antiquities market, and the internal needs for youth education and community capacity. Most notably, however, there is a common perception among Hul'qumi'num people that the general public of British Columbia does not value their archaeological heritage as an important part of Canadian heritage. In defining Hul'qumi'num customary laws associated with their archaeological heritage and identifying preliminary legal options to address Hul'qumi'num interests, this case study offers directions for improving Canadian heritage laws. By expressing the words, perceptions and beliefs shared by Hul'qumi'num Elders and community members about their archaeological heritage, it is hoped that this report can provide greater public awareness of the need to recognize of Hul'qumi'num culture and history as an appreciated part of Canadian heritage.

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Financial support of this case study was jointly provided by SSHRC and HTG. Any errors in this report are the sole responsibility of the authors.

HUL'QUMI'NUM ELDERS AND COMMUNITY PARTICIPANTS



Ron Alphonse, b.1936
Cowichan Tribes



Amelia Bob, b.1924
Cowichan Tribes



Joey Caro, b.1952.
Cowichan Tribes.



Simon Charlie, b. 1918
Cowichan Tribes



Arvid Charlie, b.1942
Cowichan Tribes



Roy Edwards, b.1932
Chemainus First Nation



Florence Elliott, b.1932
Chemainus First Nation



Irene Harris, b.1927
Chemainus First Nation



George Harris, b.1945
Chemainus First Nation



Sylvia Harris, b.1945
Chemainus First Nation



Florence James, b.1947
Penelakut Tribe



Bernard Joe, b.1934
Cowichan Tribes

HUL'QUMI'NUM ELDERS AND COMMUNITY PARTICIPANTS (continued)



Mabel Mitchell, b.1939
Chemainus First Nation



Ross Modeste, b.1924
Cowichan Tribes



Sally Norris, b.1938
Lyackson First Nation



Chief Richard Thomas, b.1952
Lyackson First Nation



Ray Peter, b.1938
Chemainus First Nation



Ruby Peters, b.1932
Cowichan Tribes



Charles Seymour Jr., b.1972
Cowichan Tribes



Edward Seymour, b.1929
Chemainus First Nation



August Sylvester, b.1945
Penelakut Tribe



Abner Thorne, b. 1926
Halalt First Nation

'A'lhut Tu Tet Sulhween "RESPECTING THE ANCESTORS": Report of the Hul'qumi'num Heritage Law Case Study

1 INTRODUCTION

In this study, we explore Central Coast Salish Hul'qumi'num customary laws and concerns about the protection of their archaeological heritage in British Columbia. The protection of ancient sites, artifacts and ancient human remains is a key issue of cultural significance for Hul'qumi'num people. The urban, privatized nature of their traditional land base on southeastern Vancouver Island, the southern Gulf Islands and Lower Fraser River imposes increasing challenges upon Hul'qumi'num people to maintain their cultural connections to their ancestral lands. Located in a very rich region of archaeological heritage on the Pacific Northwest Coast, today the majority of recorded archaeological sites in Hul'qumi'num Territory are located on private property. The incremental destruction of this archaeological heritage by modern land development is a chronic problem that is recurrently witnessed by Hul'qumi'num people across the region. In listening to Hul'qumi'num Elders, it is common to hear them assert that this loss and disrespect of their archaeological heritage is contrary to many of their cultural teachings, their *smu'uy'ulh*, including the assertion of their inherent rights to ownership, jurisdiction and management over their archaeological heritage¹.

1.1 Purpose of this Study

In collaboration with the Hul'qumi'num Treaty Group, this case study for the *Project for the Repatriation and Protection of First Nation Cultural Heritage*² aspires to facilitate respect for and understanding of Hul'qumi'num concepts of cultural property and heritage laws, and to assist the Hul'qumi'num people in developing the necessary legal strategies and resources to be able to protect their archaeological heritage. Defining their customary laws related to the protection of their ancient heritage sites has been strongly recommended by Hul'qumi'num Elders to be a priority research subject for the Hul'qumi'num Treaty Group. To begin to address this issue, we designed this case study to see if Hul'qumi'num customary laws, traditions and rules about sacred and historical sites, artifacts and ancient human remains could be identified, recorded and interpreted to better communicate to government and the general public the importance of protecting these heritage places and objects for future generations.

¹ A glossary of Hul'qumi'num words used in this report is included in **Appendix D**.

² For more information on this Project see <http://www.law.ualberta.ca/research/aboriginalculturalheritage/>

Three main goals and questions are addressed in this case study. First, we attempt to understand Hul'qumi'num customary laws about their archaeological heritage: “Are there Hul'qumi'num teachings about the care, use, and protection of ancient heritage sites, artifacts and ancient human remains?” Secondly, we examine the nature of current problems expressed by Hul'qumi'num Elders: “Are Hul'qumi'num customary laws being respected? Can we identify some of the issues and circumstances that need to change?” Thirdly, we seek to understand how the legal environment can be transformed: “How can we better address Hul'qumi'num interests in their heritage sites in Canadian law?”

To date, little has been documented in written form about things sacred to Hul'qumi'num people. This strong concern for privacy is in keeping with Coast Salish tradition. However, it is recognized by many Hul'qumi'num Elders that their concerns for privacy can become problematic if it is assumed by the general public that since there is nothing in the written record, there is nothing of importance. As Arvid Charlie explained during our focus group session³:

There's nothing really written down about our sacred things, our sacred ways, sacred areas. We've been brought to question that, well, other people have said “Well you guys must have not very many important sites that's why it's not recorded.” You know when we're trying to look at some {...} or something about sacred sites. The answer from our home area is: those things that are really sacred, no one is allowed access to. We didn't share it. We don't share it with just anybody. It was good for that day, we kept our heritage, our culture, but today that almost works against us.

Due to the expressed concerns for privacy of information, we have been very careful in this study to take precautions against sharing any information that participants may deem culturally-sensitive⁴.

In this report, we summarize the results of this case study about Hul'qumi'num heritage laws based on the following information: 1) interviews of 22 Hul'qumi'num Elders and community members on their knowledge of and experience with ancient sites, artifacts and human remains; and 2) an Elders focus group session to help clarify our understandings of Hul'qumi'num teachings and concerns, and to explore ideas of how to better protect Hul'qumi'num interests in their archaeological heritage. Additional information and quotes are drawn from past HTG Elders Advisory Board meetings. This report also draws upon a literature review of previous historical records and ethnographic text from the turn of the century until today. The report is intended primarily

³ Hul'qumi'num Heritage Law Focus Group, facilitated by Eric McLay (7 July 2003), Ladysmith. Participants included Elders Arvid Charlie, Irene Harris, Bernard Joe and Ruby Peters, and researchers Kelly Bannister, Lea Joe, Eric McLay and Brian Thom. Transcription of audio recording was by Lea Joe.

⁴ See Chapter 2 Methodology.

as a narrative, rather than an analysis, of Hul'qumi'num teachings and concerns shared by the Elders and community members during this study.

1.2 Hul'qumi'num People, Lands and History

Our *snu'uy'ulh*, or Hul'qumi'num laws, dictate that we have an inalienable connection to one hundred percent of our traditional territory. They lay the foundation for how we must continue our obligations in our relationship with the World, which is connected to us through the First Ancestors. Respecting these obligations is integral to the Hul'qumi'num way of life.⁵

In the rainshadow of Vancouver Island on the Pacific Northwest Coast rests the cradle of Island Hul'qumi'num culture. Immersed in the archipelago of islands in the sheltered Strait of Georgia and the mountainous river valleys of southern eastern Vancouver Island and Lower Fraser Valley, Island Hul'qumi'num people occupy a central position in the Coast Salish World (see Map in **Appendix 1**). As speakers of a regional dialect of the Central Coast Salish language Halkomelem, Island Hul'qumi'num people are integrated within a broad sphere of cultural interaction and social relations that extend from eastern Vancouver Island to the Fraser Canyon in southwestern British Columbia.

Island Hul'qumi'num is used in this study to refer to all speakers of this Central Coast Salish language ranging from Saanich Inlet to Nanoose Bay on eastern Vancouver Island, whom collectively share a common language, culture and history. The terms *Hul'qumi'num* and *Hul'qumi'num Mustimuhw* (“The People”) more explicitly refer to the six closely-related First Nations who comprise the Hul'qumi'num Treaty Group, including the Chemainus First Nation, Cowichan Tribe, Halalt First Nation, Lake Cowichan First Nation, Lyackson First Nation and Penelakut Tribe.

In the rich oral traditions that have been carefully passed on by generations of Elders, Island Hul'qumi'num myth, history and customary law embed the ancestral relationships of Hul'qumi'num people to their territory from the beginning of Time:

At the start of the world, the First Ancestors dropped from the sky. These First Ancestors were powerful people. They cleared the world of dangerous creatures and settled the original villages throughout Hul'qumi'num territory. These ancestors were imbued with the powers of transformation. Humans could change to animals. Common things had

⁵ Quoted from the HTG website http://www.hulquminum.bc.ca/main_inside.html. Accessed November 2003.

uncommon powers. Then the Creator, *Xe'els* arrived. He went through the land making things as they are today. He transformed the First Ancestors to the deer, to the cedar tree, to the rocks which continue to be found in the land today.

He taught the Hul'qumi'num people about the respect and obligations that were required to live in the world. *Xe'els* transformations live on today in the animals and places in the landscapes, which carry the history of his work in their Hul'qumi'num names.

Hul'qumi'num Mustimuhw recognize the special connections we have to our territory and the resources in it, as we are all descended from those same First Ancestors. We are all related to the living things and places that were touched by the transformations of the Creator.

From these *times immemorial*, Hul'qumi'num Mustimuhw have owned our traditional territories. Hul'qumi'num place names blanket the land. Every bay, every peninsula, every rocky island, every bend in the rivers have Hul'qumi'num names which provide the keys to the extensive knowledge needed to harvest and steward the resources of the territory owned by Hul'qumi'num people. From our ancestral villages, Hul'qumi'num people made extensive use of our territories. The oral histories tell about the family-owned hunting territories and fishing grounds. They tell about the camas-root and berry grounds owned by certain families. They tell about the clam beds, hunting grounds, and fish weirs held in common for the community to use. Our aboriginal title to our territory has never been extinguished. The rights to harvest and be the stewards of these resources come from the obligations created by the Creator and will continue into the future.⁶

The ancient history of Island Hul'qumi'num culture is situated within the archaeological context of the **Gulf of Georgia region**, a culture area that encompasses the Strait of Georgia, northern Puget Sound and Lower Fraser River (Ames and Maschner 2000; Matson and Coupland 1995; Mitchell 1971; 1990). This archaeological region is contiguous to the extent of ethnographic Central Coast Salish and Northern Coast Salish cultures, where archaeologists have generally interpreted there has existed a continuity of Indigenous cultural development over the last 10,000 years. The Gulf of Georgia region was an early centre of social complexity on the Pacific Northwest Coast, where cultures developed institutionalized social hierarchies, monumental architecture and art, expansive trading networks and a diversified regional economy based on the exploitation of natural resources in the environment. Indicative of the regional intensity of pre-contact population and land use, over one thousand archaeological sites have been recorded in Hul'qumi'num territory on southeastern Vancouver Island and the southern Gulf Islands – one of the densest concentrations of archaeological sites known on the Pacific Northwest Coast. Approximately 90% of these recorded archaeological sites are classified as “shell middens”. Although commonly perceived as simply “refuse”, these archaeological sites represent places of past First Nation settlement activity. Formed by the built accumulation of stratified cultural deposits over thousands of years, shell midden sites represent some of the most complex archaeological sites to study in the world.

⁶Quoted from the HTG website http://www.hulquminum.bc.ca/main_inside.html. Accessed November 2003.

The history of the Hul'qumi'num people in the last two hundred years is marked by large-scale regional settlement change and cultural displacement. Prior to European contact in the late 18th-century, Coast Salish populations in the Strait of Georgia were dramatically affected by the introduction of smallpox epidemic, which several historians have argued reduced Coast Salish populations by up to 90% (Boyd 1999; Harris 1997). In the early to mid-nineteenth century, inter-regional conflict between the southern Kwakwak'wala against the Coast Salish resulted in the further abandonment of many Hul'qumi'num settlements. With the arrival of large numbers of British settlers by the late 1850's, colonial settlement began to broadly displace Hul'qumi'num people from their territory, which soon developed into contemporary conflict with settlers (Arnett 1999). In 1877, the Joint Reserve Commission established the reserve lands for Hul'qumi'num people, which opened the majority of their territory to colonial settlement. By the 1930's when anthropologists such as Homer Barnett and Diamond Jenness arrived to work among the Hul'qumi'num people, their relationship with their ancestral lands had been severely disrupted after a century of epidemic, conflict and colonialism. Archaeological research, First Nation oral history, and archival historical work continues to better explore and understand the richness of the ancient history of the Island Hul'qumi'num life in British Columbia.

Today, Hul'qumi'num people's cultural connections to their ancestral lands are increasingly threatened by private land development. Situated in a region of strong population growth in British Columbia, the protection of archaeological sites on private property is a chronic concern for Hul'qumi'num people. The majority of waterfront real estate in the region represents the location of ancient villages, traditional campgrounds, burial sites and resource-gathering locations. Archaeological artifacts and ancient human remains are often accidentally unearthed during construction projects for residential housing, road construction, and commercial and industrial land developments. Archaeological sites and their materials are subject to natural erosion from tides, waves and storms, which, in turn, cause threats by theft and damage by artifact collectors. It is estimated that many unrecorded archaeological sites exist on private property and are destroyed by unregulated land development, but remain unreported. The disturbance of these archaeological sites, their artifacts and their ancient human remains is a recurrent source of cultural conflict for Hul'qumi'num people in Canada.

1.3 The Hul'qumi'num Treaty Group⁷

⁷ Much of the information in this section is from Hul'qumi'num Treaty Group (2004). See also www.hulquminum.bc.ca

Established in 1993, the Hul'qumi'num Treaty Group represents six Central Coast Salish Hul'qumi'num-speaking First Nations on southeastern Vancouver Island and the southern Gulf Islands who are jointly negotiating a comprehensive treaty settlement with Canada and British Columbia in the B.C. Treaty Process. The Hul'qumi'num Treaty Group membership, including the Chemainus First Nation, Cowichan Tribes, Halalt First Nation, Lake Cowichan First Nation, Lyackson First Nation and Penelakut Tribe, together represent a combined membership of over 5900 First Nation persons in British Columbia. Like most First Nations in British Columbia, the Hul'qumi'num Treaty Group membership has never signed any treaty with the Crown. The Hul'qumi'num Treaty Group is currently at Stage 4 of the six-stage B.C. Treaty Process, which involves the negotiation of a comprehensive Agreement-in-Principle.

The Hul'qumi'num Treaty Group is governed by a Board of Directors currently composed of six Chiefs, one from each representative First Nation. Since restructuring its organization in 2001, the Hul'qumi'num Treaty Group is represented by one Chief Negotiator, Mr. Robert Morales of the Cowichan Tribes. A Negotiation Support Team of staff and consultants are responsible for preparing research and analyses on each substantive issue being negotiated at the treaty table. An Elders Advisory Board consisting of 30 to 40 Elders from all six communities meet once a month to consult with and offer guidance to the Chief Negotiator and Board of Directors on treaty-related issues. A Communication Team is responsible for internal community outreach and external public education about the Hul'qumi'num Treaty Group, substantive issues, and progress in treaty negotiations.

The Hul'qumi'num Treaty Group's *Statement of Intent Aboriginal Title Core Territory* encompasses a total of 334,000 hectares and includes much of mid-southeast Vancouver Island, the southern Gulf Islands, and the south arm of the Lower Fraser River in southwestern British Columbia. Today, only 1% of their traditional territory is protected as federal First Nation reserve land. A major challenge for the Hul'qumi'num Treaty Group table is the lack of Crown Land on southeastern Vancouver Island and southern Gulf Islands. Most treaties with Aboriginal groups in Canada are settled by converting Crown Land into Treaty Settlement Land. Whereas 95% of the land in British Columbia is owned by the Crown, only 16% of Hul'qumi'num Territory is held as Crown land. In 1884, Canada and British Columbia sold the entire southeastern coast of Vancouver Island to the Dunsmuir family in order to finance the construction of a railway on Vancouver Island. Today, due to the E&N Railway Grant, the majority of lands in Hul'qumi'num traditional territory are held as private fee simple land. Unless willing-seller land is available for land selection, private property is outside the present mandate of treaty negotiations for Canada and British Columbia. For this reason, the protection of Hul'qumi'num culture and heritage lies at

the heart of their treaty negotiations. Hul'qumi'num people aspire to maintain their historical and cultural connections to their traditional lands for their future generations.

The Hul'qumi'num Treaty Group is actively negotiating Agreement-in-Principle chapter language relating to Governance, Land, Culture and Heritage, Parks and Protected Areas, Fisheries, and Reconciliation. Upcoming Agreement-in-Principle chapters for the Hul'qumi'num Treaty Group table involve Forestry, Wildlife, Subsurface rights, Environmental assessment, Taxation and Economic issues. The Hul'qumi'num Treaty Group has tabled numerous Treaty-Related Measures (TRMs) to conduct specific projects to advance negotiations, and is currently completing TRM studies about Land Selection, Land Use, Governance, Language Revitalization, and Shellfish and Aquaculture. On-going research projects at the Hul'qumi'num Treaty Group office are the HTG Traditional Use Study and Place Names Mapping projects.

The location and population⁸ of Hul'qumi'num Treaty Group member communities are listed below:

Chemainus First Nation: Located approximately 30 km south of Nanaimo, on southern Vancouver Island. The largest community is on Chemainus Indian Reserve #13, on the point between Ladysmith Harbour and Stuart Channel (four reserves on 1,218.3 hectares). Number of band members: 1,035.

Cowichan Tribes: Located adjacent to Duncan and the municipality of North Cowichan, approximately 50 km northwest of Victoria on Vancouver Island (nine reserves on 2,389.1 hectares). Number of band members: 3,587.

Halalt First Nation: Located near Crofton, approximately 55 km northwest of Victoria on Vancouver Island (two reserves on 165.8 hectares). Number of band members: 187.

Lake Cowichan First Nation: Located on the north shore of Cowichan Lake, approximately 80 km northwest of Victoria, on Vancouver Island (one reserve on 18.3 hectares). Number of band members: 15.

Lyackson First Nation: Located on Valdes Island, off the east Coast of Vancouver Island, approximately 70 km north of Victoria (three reserves on 744.6 hectares). Number of band members: 168.

Penelakut Tribe: The main community is Kuper Island Indian Reserve #7, on Kuper Island, off the east coast of Vancouver Island, approximately 60 km north of Victoria (four reserves on 635.7 hectares). Number of band members: 759.

⁸ Populations listed are based on Indian and Northern Affairs Canada, 2001.

2 CASE STUDY METHODOLOGY

2.1 Methods and Approach

Preliminary discussions about this case study took place among the authors over several weeks in late 2002 and early 2003. After much thought, a decision was made to focus the study on archaeology, specifically ancient heritage sites, artifacts, and ancestral remains. This focus reflected both the interest and concerns expressed by Hul'qumi'num Elders on this topic and the research priorities of the Hul'qumi'num Treaty Group.

The proposal for the case study was approved by all six chiefs of the Hul'qumi'num Treaty Group. A general set of questions was developed by the case study authors to be used in community interviews. Research methodology and the question set were modified from a template provided by Catherine Bell,⁹ University of Alberta, and approved by the research ethics committees at the University of Victoria, Simon Fraser University, and the University of Alberta. Data for the case study were gathered through: (1) a review of literature, community laws and community archival material relating to cultural heritage protection mechanisms; (2) interviews with Elders and knowledgeable community members on these topics; and (3) an Elders focus group.

A list of potential participants for interviews (mainly Elders) was created by Hul'qumi'num Treaty Group staff members Brian Thom, Eric McLay, Joey Caro and Percy Louie. The list was compiled from community members with whom the staff had worked on these issues and who were knowledgeable about the topic. The potential participant list included representation from each of the six Hul'qumi'num First Nations. Each potential participant was first approached in person by Lea Joe, the project assistant, to request their participation in the study. Interview times were scheduled by follow-up visits or phone calls for all those who were interested.

In total, 22 people agreed to be interviewed. Twenty participants were above the age of 55 and two were slightly older than 30. There were 14 men, and 8 women. The participants are registered under the following tribes: Cowichan, Chemainus, Penelakut, and Lyackson and Halalt. Lake Cowichan could not be included in this study as their Elders were unfortunately either not available or did not express a clear interest in participating.

⁹ Professor Catherine Bell is one of the Principle Investigators of the *Project for Protection and Repatriation of First Nation Cultural Heritage in Canada*, of which this case study is a part.

Nevertheless, as all Hul'qumi'num people are strongly interconnected by family ties throughout the region, band affiliation does not necessarily reflect where one is from or what one knows.

Interviews took place between February and June 2003. In accordance with university and Hul'qumi'num Treaty Group policies, consent forms (one from UVic and one from HTG) were signed by each participant during the interview to indicate in writing that informed consent was given. The question set was given to participants in advance of the interview. Topics for the questions included teachings about, experiences with, and protection of Hul'qumi'num cultural heritage, as follows:

- 1) What has been your experience with ancient sites and remains?
- 2) Have you received any teachings from your parents or Elders about ancient sites, artifacts or human remains?
- 3) Are there ways that people care for and protect ancient sites? Can you give us an example?
- 4) People often find old stone tools or ancient objects walking along the beach or digging in their backyards. Are there teachings about caring for and handling these ancient objects?
- 5) There are many old unmarked burial grounds in the territory. Are there teachings about caring for the dead?
- 6) If people in different communities disagree about who should care for these burial sites and human remains and how it should be done, are there ways that people agree to resolve their disagreement?
- 7) Have you, or members of your community, ever been involved in protecting an ancient site or burial ground from threat? Can you tell us about your experiences?
- 8) What do you think are some of the problems you face from either outside or within the community in protecting ancient sites, artifacts and human remains?
- 9) What role do think that the Hul'qumi'num people should have in owning, protecting and controlling ancient sites, artifacts and human remains in their Traditional Territory?
- 10) What rights of the Hul'qumi'num people concerning ancient sites and remains do you think need to be recognized by British Columbian or Canadian law?
- 11) Many people in British Columbia do not share the idea that ancient heritage sites and remains are important to protect. Many sites have been destroyed because people are either unaware or do not value this heritage. If you had a chance to respond to such opinions, how would you explain why these places are so important? Why do we need to respect them?

Interviews were semi-formal, using the question set only as a general guide. Interviews were influenced by cultural interpretations of the questions asked and also by the topics that participants felt were important to the understanding and protection of their cultural heritage. The interviews were conducted at

the convenience of each participant in terms of time, location, duration, structure, and setting. Interviews typically lasted between 1.5 and 3 hours. More than half of the participants preferred to conduct the interview at their residence or workplace, normally in the kitchen or living room. Most interviews were with a single individual at a time, but two interviews were conducted with two participants at a time, according to their preference. Some participants were interviewed on more than one occasion, at their request. Sometimes a family member(s) was present, but not involved in the actual interview. Kelly Bannister participated in five of the interviews while Lea Joe participated in every interview. The majority of interviews were open-ended, with the participants (particularly the Elders) offering information in the order they chose and steering the direction of the interview. A few participants chose to follow the questions, as this made it easier to collect their thoughts and ideas. Participants were given an honorarium in appreciation for their time and a small gift as a token of appreciation for their hospitality to the interviewers.

During interviews, participants were asked to share their knowledge about the topic and interviewers tried not to interrupt except for clarification, to comment if it seemed appropriate, or to probe further on a topic. The interviewers emphasised that only information that could be made public should be shared. Participants shared what they wanted to share in a form and at a level that they felt comfortable with. Some information on the topics discussed is held by individuals or families and considered inappropriate to share outside these traditional channels, so interviewers respected the level at which participants were comfortable in sharing. Participants spoke mainly in English, but many also used Hul'qumi'num words and phrases.

All but two interviews were audio tape recorded using a Sony digital minidisc recorder. The tape recorder was stopped whenever requested by the participant, for example, if it was necessary to share confidential information to provide the interviewers with context. As already indicated, such information was not noted or included in the study. Minidisc recordings were transferred in duplicate to cassette tapes. In two interviews, hand-written notes were made instead of audiotape recordings. Cassette tapes were transcribed into Microsoft Word documents by Heather McCuaig, University of Alberta, or Lea Joe, HTG. All transcripts were subsequently edited for accuracy by Lea Joe, who worked with the participants to represent Hul'qumi'num words and phrases, as well as local place names, as correctly as possible.

When it was not possible to accurately translate Hul'qumi'num words or phrases into English, the bracketed phrase “[speaking Hul'qumi'num]” was indicated in the transcripts. Complete accuracy would

have required translation by an expert Hul'qumi'num language speaker, which was not possible for this study, due to time and budgetary constraints.

Six participants were invited to participate in a four-hour focus group in early July 2003 to further explore and clarify information from the interviews. Four of the six participants were able to attend the focus group session. The focus group session was audiotape recorded. Audiotapes were transcribed by Lea Joe, with assistance from participants for transcribing Hul'qumi'num words, phrases, and place names. Focus group participants were given an honorarium in appreciation for their time.

Data from this case study are stored with the Hul'qumi'num Treaty Group. Copies are also kept by Kelly Bannister (case study leader) at the University of Victoria and Catherine Bell (principle investigator) at the University of Alberta until completion of the project. Tapes and transcripts are clearly marked as requiring permission of the authors of the case study and the Hul'qumi'num Treaty Group to use the information for purposes other than education, community, or academic research. All tapes and transcripts indicate that the material is copyrighted (joint copyright by HTG and case study authors), can only be used for personal review, community or academic research, and is not intended for advertising, publication, litigation, or other uses. Project partners understand that this is the intended use of the information, but may not prevent use for other purposes beyond anyone's control once the information is made public.

Except for the project assistant, all personnel time for this case study was generously contributed in-kind by the respective institution of the case study author (i.e., HTG, UVic, and SFU). The Hul'qumi'num Treaty Group provided matching funds for the project assistant. Hul'qumi'num Treaty Group researchers were Eric McLay (Archaeological consultant) and Brian Thom (Senior Negotiations Support). Lea Joe (a member of the Cowichan Tribes with a B.A. in Native Studies) was project assistant. Kelly Bannister (POLIS Project on Ecological Governance/School of Environmental Studies, University of Victoria) led the case study and George Nicholas (Simon Fraser University/Secwepemc Education Institute Archaeology Program) was an advisor.

2.2 List of Participants and Interview Information

The following Elders and community members (listed in alphabetical order) participated in interviews and the focus group.

Participant	Interview Dates and Location
Ronald Alphonse (Cowichan Tribes)	May 15, 2003; Ladysmith, B.C
Amelia Bob (Cowichan Tribes)	June 4, 2003; Duncan, B.C.
Joey Caro (Cowichan Tribes; HTG Research Director)	October 28, 2003; Ladysmith, B.C.
Charlie (Arvid) Charlie (Cowichan Tribes)	April 28, 2003; Duncan, B.C.
Simon Charlie (Cowichan Tribes)	May 14, 2003; Duncan, B.C.
Roy Edwards (Chemainus First Nation)	May 13, 2003; Ladysmith, B.C.
Florence Elliot (Cowichan Tribes)	May 1, 2003; Duncan, B.C.
Bernard Joe (Cowichan Tribes)	April 30, 2003; Duncan, B.C.
Irene Harris (Chemainus First Nation)	April 14, 2003; Ladysmith, B.C.
Sylvia Harris (Chemainus First Nation)	July 3, 2003; Ladysmith, B.C.
George Harris (Chemainus First Nation)	July 3, 2003; Ladysmith, B.C.
Florence James (Penelakut Tribe)	April 28, 2003; Kuper Island, B.C.
Mabel Mitchell (Chemainus First Nation)	May 13, 2003; Ladysmith, B.C.
Ross Modeste (Cowichan Tribes)	May 7, 2003; Duncan, B.C.
Sally Norris (Lyackson First Nation)	April 24, 2003; Nanaimo, B.C.
Ray Peter (Cowichan Tribes)	May 1, 2003; Duncan, B.C.
Ruby Peters (Cowichan Tribes)	April 30, 2003; Duncan B.C.
Edward Seymour (Chemainus First Nation)	April 23, 2003; Ladysmith, B.C.
William (Charles) Seymour, Jr. (Cowichan Tribes)	May 4, 2003; Ladysmith, B.C.
August Sylvester (Penelakut Tribe)	April 22, June 30, 2003; Kuper Island, B.C.
Richard Thomas (Lyackson First Nation)	May 30, 2003; Ladysmith, B.C.
Abner Thorne (Halalt First Nation)	May 26, 2003; Ladysmith, B.C.

2.3 Reflections of a Community Researcher

The project research assistant, Lea Joe, had a unique perspective on this case study as she was the only Hul'qumi'num person involved as a researcher. Lea was asked to reflect on her experience as a community member involved in the study, both in reviewing the literature and in interviewing her own Elders. The following is based on Lea's thoughts and observations on the interviews and the project in general¹⁰.

Talking with the Elders was an invaluable and interesting experience for Lea, and the interview process resulted in mixed feelings and interpretations. She notes:

A common feeling between Elders is a sense of discomfort. Elders tend to feel uncomfortable around modern technology with which they are not familiar. For example, the appearance of a minidisc recorder tends to hinder the information. Quite frequently, the Elders shared more before and after the recorder was turned on.

As well, a few Elders showed signs of shyness, claiming their information was not important enough. Or they also claimed to have known very little.

Lea found that some of the Elders did not share as much as they could because they felt "their information was too sacred". She notes:

Following Hul'qumi'num protocol, sacred information can be an inherited privilege that remains within families and certain individuals. Since this sacredness is a gift from the ancestors, some people fear it will be lost or taken once it is shared.

Nonetheless, the Elders were appreciative and happy enough to share as much as they could. They were grateful that a serious topic such as heritage law was an active interest in their community. In addition, they were glad to have a visitor in their home, as most Hul'qumi'num people are.

Preventing the desecration of gravesites is a common concern for many Elders. Thus, they were glad to have participated in preventing such disrespectful occurrences. Respect for the ancestors, ancestral remains, and belongings is a common trait shared by many.

Some Elders also were concerned about the publication of this project's findings. Although participants were encouraged to only provide shareable information, they were nonetheless concerned about publicizing the teachings, customs, and other knowledge. As well, many Elders inquired about storage and access to their information, knowing that a representative from the Hul'qumi'num Treaty Group had evidently allowed the interview to take place. Lea notes that part of this concern seemed to be about what the 'white man' was going to do with the information once it left their presence. In response, she explained to participants the significance of this project at the treaty table, the projected impact at an international level, and the potential for amendments to provincial and federal laws to better reflect Hul'qumi'num needs.

¹⁰ Lea Joe, 2003-4, unpublished field notes, Hul'qumi'num Heritage Law case study.

Reading the ethnographic literature was the most difficult part of the project for Lea, as indicated in the following:

I appreciate learning my history and culture, but reading it from an outsider's perspective is not the most favorable option. I'd much rather go to the direct sources (Elders) rather than the ethnographic notes of an outsider. As well, I worried if the information they [the Elders] gave was accurate and true. Nonetheless, I found the information interesting; it was amusing how accurate and detailed some of the information was, particularly concerning rituals and practices.

Thus, I greatly appreciated sitting with every participant, who shared sacred information. They had something different to offer to this project. Learning traditional teachings on such a sensitive subject was an invaluable experience. As well, the participants were all so grateful; they were glad that a member of their community was genuinely interested, concerned, and actively helping to deal with this subject.

Lea concludes with a poignant message about the current state of cultural knowledge in Hul'qumi'num communities and the implications of this case study:

As a member of the six communities that contains many knowledgeable and wise Elders, I'm grateful to have visited each and every one of the Elders and community members. Listening to the teachings and customs enabled me to perceive life in the day of our people a long time ago. Feeling sad and happy at the same time, I wish we could all live by our teachings and culture pure as it was long ago. Having strict teachers to enforce our teachings and customs would be beneficial to our culture. However, we've resulted to gripping the remnants and memories of our traditions as much as we can to pass on to future generations. This project helps in such a process.

3 EMERGENT THEMES FROM INTERVIEWS

To introduce the Hul'qumi'num teachings, laws and beliefs concerning their archaeological heritage that were shared in our study, we first present one Hul'qumi'num Elder's narrative of her personal experience with ancient sites and remains. In the following excerpt, Ruby Peters recounts her visit to the archaeological excavations at the Somenos Creek¹¹ site (DeRw-018) in October 1994 when a team of university researchers were conducting large-scale excavations at the Somenos Creek site in advance of a residential subdivision development. At the time of her visit, archaeologists had uncovered a large burial feature containing three individuals, including an elaborately adorned child burial. In listening to her speak of this event, several major themes concerning how Hul'qumi'num Elders understand and relate to their archaeological heritage are revealed.

Question: What has been your experience with ancient sites and remains?

Ruby Peters¹²: Some people don't take it serious about human bones. But it's serious. It's really serious. I saw one dig over at Somenos Creek, over here in Duncan. And they had open, open graveyards. And they called, called us over there. And I was at the head of the three open graves. And being a *thi'tha'* [Hul'qumi'num word for medium or clairvoyant], I can hear them [the spirits], eh. I can hear them and when I got there, the man was really, really angry because of the disturbance that was going on because they were, they were studying their bones. What was that, two thousand years old? And they had the open grave. And he was really angry and he was just growling. He was really, really mad. And I, I just, I just spoke to it and trying to calm that man down. And he wouldn't. He was just so angry. I went to the next one and it was the wife and she was crying. She was crying. So I was just talking to, talking to her in my mind, telling her what was going on. And I went to the next one, there was a little, it was a child and that child was just crying and scared. He kept saying 'I'm scared, I'm scared' in Indian. Yeah. Just think, this was about six years ago. Eight years ago. And I was still talking to them and praying, standing over those three open graves. And for me that was about fifteen feet, twenty feet away from us and her daughter just went paralyzed. Just then, she went paralyzed. And she came running to me and she says 'Ruby, Ruby, hurry up. Come and help your niece. Come and help your niece.' So I followed her. I was crying, a lot of it was the ones I was looking at. I just finished wiping my face and [her mother] got there and she called me. I went to her daughter and it was the right side that was going to paralyze. She couldn't move it. Just couldn't move it anymore. And she said 'Aunty, it just started with my wrist, now it's up to my shoulder.' And I mean just kept saying 'Do something. Do something.' I said 'Have you got any *tumulh* [red ochre]?' Nobody had any *tumulh*. Nobody had anything. So I just prayed. Prayed with my, prayed over my hands and started saying what I had to say, the words I always use and I brushed her off. And telling them to let, let her go. That she's there, she's just ah, she, that she was just there helping. Talking to, talking to the spirit in Indian. But her arm, she was able to move it after. She was able to move it after. But it, when that happened to her, it was the angry one that, that wouldn't listen to me. That was the one that did that. And I didn't get through to him that, that they were just there to help and work.

¹¹ The Hul'qumi'num locations and archaeological sites referred to in this report are indicated on the map in **Appendix B** and described in **Appendix C**.

¹² Interview of Ruby Peters by Lea Joe (30 April 2003) Duncan, B.C.

This Hul'qumi'num Elder's experience visiting the archaeological excavation is based upon a cultural world view that fundamentally differs from a mainstream Canadian perspective. As described in the above passage, archaeology is perceived less as a valuable scientific pursuit to learn about the past, than as a socially destructive activity that can cause harm for people in the present. The disturbance of the ancient burial ground at Somenos Creek is believed by Ruby Peters to have not only offended and disrupted relations with the deceased, but resulted in physical danger for the living. Only by the Elder conversing with the deceased and using her ritual knowledge could balance between relations be partially restored. Her story teaches us how Hul'qumi'num people value their archaeological heritage for its social significance. It instructs us how important it is for Hul'qumi'num customary laws and practices to be respected today. Four key themes are introduced in the above passage:

- 1) There is a perception within Hul'qumi'num culture that their archaeological heritage embodies the physical remains and belongings of their Ancestors, whose spirits are believed to remain part of this world. This is important because in many non-Western cultures, there is no separation between the “real” and “supernatural realms,” or between past and present.
- 2) Hul'qumi'num persons have social obligations to undertake the stewardship of their Ancestral family remains for the maintenance of reciprocal relations between the Living and the Spirit World.
- 3) Hul'qumi'num culture maintains strict customary laws, inherited social roles, behaviours and ceremonial practices to control supernatural power and mediate physical contact with the Spirit World, which is inherently potent and dangerous to the Living.
- 4) Hul'qumi'num Elders perceive problems in upholding their teachings and customary laws about their heritage today due to factors that arise both externally and within the community.

The remainder of this chapter explores these emergent themes in interviews with Hul'qumi'num Elders.

3.1 Ancient Sites

What teachings do the Hul'qumi'num Elders share about their ancient sites and remains? To answer this question, it may be valuable to first consider what Hul'qumi'num people define as their archaeological heritage.

Arvid Charlie¹³: Teachings about ancient sites...what's an ancient site? An ancient site could be an old village, the *s-hiilthun* which is your midden. Midden, I guess is an early way of saying where you put your garbage, your shells. Your day it wasn't garbage like it is today, it was shells and bones over time that accumulates. That's an ancient site. It could be also important areas such as where *Stutson* landed or *Siyalutsu* or *Swutun*.

Roy Edwards¹⁴: I was asking what a 'midden' was. He told me that it's when they find clamshells and the bones of the things that they used to eat a long time ago. I said, "That sounds like a grave". They shouldn't call them middens. That's what we call *shmuqwela*. That's the real word for grave. I don't like how they call them middens.

Arvid Charlie: When their new sites are a few years old they're called heritage. Our sites have been here thousands of years. Their sites, if they're old, may be a hundred and fifty years. They say it's old, but to us that was yesterday. Our ancient sites – since time immemorial. They value their places that have a few years old. To us, our old, much older sites are very important to us. Many of these places have our old people buried in them. So it's not only a heritage site, it's a graveyard. So when I say why not, to me that means a lot. If they can have important places that are only few years old, why not? Why can't we say our places are important to us? Because they are our culture, our heritage. It's about our past and it's our future.

As clearly illustrated by Hul'qumi'num Elders, archaeological heritage holds enduring significance for their cultural identity. Their heritage sites are broadly defined – ancient sites are perceived as both the tangible remains of their ancestral village settlements and cemeteries, as well as the more intangible heritage sites where the mythic First Ancestors fell from the Sky. There are no distinctions made between archaeological and historical sites, or between historic and mythic (but real) places on the landscape. As Arvid Charlie asserts, these ancestral places are an important part of Hul'qumi'num cultural identity, "they are our culture, our heritage. It's about our past and it's our future".

To many Hul'qumi'num people it appears that there should not be a conceptual difference made between archaeological sites (of any type) and cemeteries, a point that has significant implications and is discussed at length in this report. Ancient burial sites, historical graveyards, human remains and funerary artifacts dominate the discussion of all Hul'qumi'num Elders interviewed in this study. In fact, the subject of burials dominates discussions of heritage issues, almost to the exclusion of all other types of archaeological features. If other site types are mentioned during the interviews, it is usually only as an indirect reference to these sites' importance as burial locations. This point was made most clearly by the Elders during the Focus Group. When directly questioned about any teachings concerning other types of ancient sites, such as rock art, the Elders momentarily paused before resuming discussion about burials. In this sense, while Hul'qumi'num Elders broadly define what

¹³ Interview of Arvid Charlie by Kelly Bannister and Lea Joe (28 April 2003) Duncan, B.C.

¹⁴ Interview of Roy Edwards by Lea Joe (13 May 2003) Ladysmith, B.C.

are their ancient sites, the breadth of what is *valued* about their archaeological heritage is perhaps more restricted. Hul'qumi'num Elders principally direct their interests toward their ancestral burial sites.

The use of archaeological terms that disassociate the human element from these heritage sites is considered especially inappropriate. For example, the application of the general term “shell midden” to their ancient villages and cemeteries is regarded as disrespectful, particularly in its connotation to household refuse. As Roy states, “They shouldn't call them middens. That's what we call *shmuqwela*. That's the real word for grave”. This may reveal a basic difference between Hul'qumi'num and mainstream Canadian perceptions of their archaeological heritage. As the direct descendants of this archaeological heritage, Hul'qumi'num Elders view their archaeological sites *as* cemeteries, and reject the use of abstract, general terms that take away from a genuine appreciation of their human history. Instead, Hul'qumi'num Elders openly commemorate their ancient heritage sites as the monuments of their Ancestors.

3.2 Hul'qumi'num Teachings About Ancient Sites and Remains

Two founding ‘principles’ that establish Hul'qumi'num customary laws about their heritage can be interpreted from our interviews with Hul'qumi'num participants: 1) a principle of *respect* and 2) a principle of *reciprocity*. We first examine these principles before turning to Hul'qumi'num customary laws and practices about their heritage.

3.2.1 Principle of Respect: Places and Belongings of the Ancestors

If there is one central principle that underlies the basis for all discussion about archaeological heritage by our Hul'qumi'num Elders and participants, it is that the ancestors and their ancestral places must be respected.

Charles Seymour¹⁵: Have I received any teachings from my parents or Elders? Yes. I've always been told to be, to be careful and be mindful our, of our Ancestors. You always pay respect. It's like when you visit, visit a gravesite, you have to carry yourself in a certain way... You always have to have a prayer in your heart and *tsiit sulhween* [thank ancestors] I guess thank them and in a very respectful way. I guess with that all just go in the teachings.

Mabel Mitchell¹⁶: And that was all the teachings our people had was to really respect the deceased ones.

Richard Thomas¹⁷: As for our teachings, I guess the only teachings that I can speak about are learning from experience with attending funerals, caring for the dead, it's out of respect. And that, I guess that's

¹⁵ Interview of Charles Seymour by Lea Joe (4 May 2003) Ladysmith, B.C.

¹⁶ Interview of Mabel Mitchell by Lea Joe (13 May 2003) Ladysmith, B.C.

¹⁷ Interview of Richard Thomas by Lea Joe (30 May 2003) Ladysmith, B.C.

the only teachings that I can reflect that way. Just respect for our relatives who have gone before us and who have made a path for us in our lives.

George Harris¹⁸: There are very many ancient sites that should be treated with respect. And I think that our non-First Nations people should also treat our ancient sites and human remains with the same kind of respect that they would want their Ancestors and human remains to be respected.

Ross Modeste¹⁹: These [ancient] sites were held very sacred, probably more so than our present cemeteries.

It is evident that the Hul'qumi'num Elders primarily value their archaeological heritage sites and artifacts not as objects or “things” of importance in themselves, but because they embody inherent social values that connect “people” — specifically themselves and their ancestral relations. Respect for ones’ forebears is deep-rooted in Coast Salish culture. In their broad social networks based on kinship, knowledge of family history and respect for family relations are essential for maintaining status and social influence. Kinship relations not only are recognized to extend across broad geographic regions, but across generations over time. It may be argued that Hul'qumi'num people today treat their archaeological heritage as a natural extension of their system of kinship and customary laws about inherited property and mortuary practices.

The Hul'qumi'num Elders’ belief that their ancestors continue to maintain ownership of their cultural property is most clearly expressed in the discussion of artifacts:

Florence James²⁰: Ancient objects, when we’re finding them, in a way, we cherish it. The people cherish it because it belonged to our Ancestors, ancient objects. We don’t touch it when it’s from a graveyard. We don’t touch it when it’s in the casket or the little homes [above-ground grave houses] that I remember. We don’t touch that. That belongs to them. And we’re forbidden to touch it. But when we find, like lately, the odd time, people finds it. And we cherish it as long as it’s not in the graveyard.

Sylvia Harris²¹: With regard to teachings or caring for them, all of these belongings, they belong to individuals. And just you know like you know take yourself for example. You know, you’re wearing a necklace and probably have earrings and stuff like that you know that has some of your essence on there you know to be part of you. What we were told is that person still knows it’s theirs. Like if a person finds whatever, like I was talking about that carving, you find something and what if that spirit is like, you know, that’s mine.

Mabel Mitchell: We were taught not to take anything from a grave. Even now, you don’t do that. You respect the deceased because if you take something from there, something bad will happen to you and bringing something home from, from a dead person, they’ll always follow what they own and they’ll

¹⁸ Interview of George Harris by Lea Joe (3 July 2003) Ladysmith, B.C.

¹⁹ Interview of Ross Modeste by Lea Joe (7 May 2003) Duncan, B.C.

²⁰ Interview of Florence James by Kelly Bannister and Lea Joe (28 April 2003) Kuper Island, B.C.

²¹ Interview of Sylvia Harris by Lea Joe (3 July 2003) Ladysmith, B.C.

want it back. And, and that's when you'll get haunted. And you won't have no rest. You'll be bothered all the time until you return that.

Sally Norris²²: It's not a treasure. It's people's belongings, belonging to that person...if they're digging and they, they have to know it's a grave. But they keep on you know, like they found a treasure and, and that really just scared me and you know, break my heart, you know. How, why did they do that? You know, when they start breaking up the area to find more treasures, which is, wasn't a treasure at all. It was, it belonged to that person or people.

Abner Thorne²³: People often find old stone tools or ancient objects walking along the beach or digging in their backyards. Are there teachings about caring for or handling these? Well, again, it's from the ancient times. And do I say it's mine? Some people say I found it. It's mine. And well, like, let's use the name, we'll say it for example, eh. Some people say my Indian name is mine. It belongs to me. And teaching is it's the other way. It's I belong to the name. That's not mine alone, my name, [*Hul'qumi'num* name of person] is not mine alone, anybody in my family or from that ancestry can take that name. They belong to the name also. So any artifact, I say it belongs to the old, ancient times.

According to Hul'qumi'num Elders, artifacts today remain the possession of the Ancestor who originally made or used it — “it belongs to individuals” or “belonging to that person”. Florence James makes an important distinction, however, between artifacts that are found in burials and artifacts that are found outside of burials. Artifacts found in graves are recognized to have been deliberately placed there for the deceased and are not meant for the possession of the living, “That belongs to them. And we're forbidden to touch it”. Artifacts that are not burial-related, she suggests, are cherished “because it belonged to our Ancestors”. Abner Thorne compares the ownership of such artifacts today to the ethics of holding an ancestral “name”. Like a name, an artifact is not something that an individual owns, but is a family-owned inherited property that the holder must honour in good conduct and pass along to the care of their descendants.

3.2.2 Principle of Reciprocity: A Fiduciary Trust between the Living and the Ancestors

Hul'qumi'num culture continues to maintain strong customary laws concerning the dead, which profoundly influence their experience of their archaeological heritage. Proper respect and care of the deceased traditionally are family obligations in Central Coast Salish society. The many social and ceremonial responsibilities associated with a death in the family do not end with the event of burial, but persist through the living for generations.

Ross Modeste: These burial sites were a family responsibility to see that, to protect them, to keep people away from them.

²² Interview of Sally Norris by Kelly Bannister and Lea Joe (24 April 2003) Nanaimo, B.C.

²³ Interview of Abner Thorne by Lea Joe (26 May 2003) Ladysmith, B.C.

Charles Seymour: As it's been told to me, you know, like if you were the family member, it's up to you to take care of your family member. And then that goes back as far as possible. I mean, today we take care of the graves.

August Sylvester²⁴: Our people used to look after our own dead, look after our own dead people. Those were things that were handed down from family to family.

Sylvia Harris: We're always taught to be respectful. For remains, there's all of that teaching with regard to the afterlife, the spirits. And that's why it's, that's why we're always taught to be careful and beware. How we take care of our dead, you know, the process we go through with regard to the preparation, the four days, how we put our people to rest and all of that, you know that, that all has a meaning. How we believe in an afterlife and how we take care of our loved ones, even after they're long gone.

There is an underlying fiduciary trust that Hul'qumi'num Elders teach — they are socially bound to care for the deceased. It is the responsibility of the family to ensure that their deceased are afforded a proper funeral, their burial site and physical remains are respected, and the needs of their spirits are tended to through the appropriate mortuary rituals. The dead are dependent upon living family members to fulfill their needs, such as food, their belongings and respect (Amoss 1978:75). Families who neglect their deceased are morally denounced by other families and the deceased themselves (Barnett 1955:221). Improper care of the family deceased becomes a community concern. Any offence to the dead, whether through neglect or impropriety, is regarded as dangerous not only for their own family members, but for the entire community.

This fiduciary trust between the living and the deceased, however, is 'reciprocal' in nature, i.e., there exists some mutual exchange of beneficial relations that is not based solely on mortal fear. This principle of reciprocity that exists between the living and the deceased is exemplified in the following passage that describes one Hul'qumi'num Elder's teachings based on his experience of discovering human remains in a historical graveyard:

Arvid Charlie: I was carrying posts, we were fencing a graveyard, an old graveyard that used to have huts. So it was cleared, brushed out and we were supplying the fence materials. So we were packing it across, right across the graveyard from that top side where the tractor was with all the posts. And I seen what I thought was a bone when I was carrying this post. On the way back up I looked at it and it was a, looked like part of a skull. That was my first experience with something like that. And I told the guys 'I know what it is. It looks like part of a skull.' So several trips later, we're carrying the posts back and forth, carrying one at a time, I seen what looked like part of a jaw. So I gently lifted it up and it was a lower jaw. So there was two pieces; part of a skull, part of a jaw. So I just put them together and that night I asked an elder 'What should I do with it? What should we do with it?' He asked me what I had done with it and I told him its, its laying there on the ground. He says 'Well, you found it. You should tend to it right away. First thing in the morning, you be there and you look after it.' So the next morning, I took a friend with me and we went and looked at it and buried it. I go visit it once in a while. I was

²⁴ Interview of August Sylvester by Kelly Bannister and Lea Joe (30 June 2003) Kuper Island, B.C.

there a week ago just to visit. I don't know who it was. Part of that was, was said to me was 'Don't be afraid of it. You'll look after it. One day it may look after you somehow.' But having said that, this other one's also very important which is almost opposite. If a person is afraid, they shouldn't be there. Meaning for their own safety, they should avoid these kinds of places or situations. And I really, really believe that.

As a person with a responsibility to work in the graveyard, Arvid Charlie's discovery of the exposed human remains established that he was personally responsible to take care of the deceased, even though he acknowledged, "I don't know who it was". Although it is understood that they may not be actually related by kinship, the Hul'qumi'num Elder reburied the deceased's remains not only out of a principle of respect, but on the assumption that there may be some beneficial reason to develop personal relationships with the deceased. As Arvid Charlie states, "Don't be afraid of it. You'll look after it. One day it may look after you somehow".

Bernard Joe²⁵: Like I was saying about that, when you're down the river that you always hear them [spirits] on the canoes, how they used to, traveled. You could hear them coming, you could see them. A lot of our young fellas have experienced that, if they're use the river. It happened since I was a young fella that they're always around. That you're not supposed to be scared or, our people always, our parents used to just tell us not to get, not to be scared. That they're looking after us. And you have to thank them for being there.

As these accounts indicate, the fiduciary trust of persons to care for and respect the deceased is not based solely upon the fear of harm against the living, but is understood to be advantageous to foster relations that can potentially gain the deceased supernatural protection, knowledge and advice (Amoss 1978:73-77). Thus, while the dead are understood to possess dangerous non-human powers that may be used capriciously against the living, persons who earn their confidence may receive their favour and spirit guidance.

In summary, Hul'qumi'num people's fiduciary trust to their Ancestors establishes reciprocal social relationships between the living and the dead that persist over many generations "even after they're long gone". This relationship with the dead strongly affects Hul'qumi'num customary laws associated with their archaeological heritage.

3.3 Ways That People Care For and Protect Ancient Sites

In our investigation of Hul'qumi'num teachings about their heritage, we interpret three principal customary laws: 1) Law of an inherited right to care for the dead; 2) Law of non-disturbance; and 3) Law of avoidance.

²⁵ Interview of Bernard Joe by Lea Joe (30 April 2003) Duncan, B.C.

3.3.1 Law of Inherited Right to Care for the Dead

There exist stringent customary laws concerning the inheritance of family knowledge, rights and property in Coast Salish culture. The care of the dead is strictly observed in Hul'qumi'num culture as an important inherited family right. It is customary that only certain families possess the responsibility to handle the remains of the dead and mediate with the non-human spirit world.

Based on this customary law, a select number of persons receive intensive education and training from Elders to earn this inherited ritual knowledge within families. As Ruby Peters notes of her inherited role as a *thi'tha'*, the private knowledge needed to undertake her position is kept confidential property, which is passed on according to strict rules of descent and is never shared with others.

Ruby Peters: I'm a *thi'tha'*. I look after the people. I do a lot of spiritual work and the things that belong to use, my family, it goes only from mother to daughter, or father to the children and it doesn't go outside. It stays that way. And it's handed down like that and it's never written. I've been asked so many times to have it written...But my answer is "No. I will not share what belongs to my family, not even for recording, not even for a video". Not to the public because that's the way it is with our family. It's never shared...It belongs to the family and it's passed on that way. All the laws that go with it will be given to them; the words, that will be given to them. It will not go outside the family, not to the media, not to anyone outside the family. But directly, it's been like that from the beginning of time, from the First. My, the name *Hwuneem* was one of the First Ones that dropped [from the sky] and that's where that came from. And it's going to stay that way. I'm giving it directly to my children. So, it's true. It's not written. It's not shared, but it does exist. The most sacred, the words, the prayers, everything that goes with it is very important; to the prayers that go along with the things that we do is not shared with anyone.

Ruby Peters: My mother said 'Don't ever say anything to your sister. How I taught her is how she's going to pass it down to her family. How I taught you, the way I do things, is how you're going to pass it down to your family.' And that was, that's important. So I have to teach all my children the things that my mother taught me. How she did it. The things she said when she works. So that's how they have to know and that's the way it has to be. So, they, they have been learning for the rattler, for the masks, for the knives and the work for the sharp things, for the water, for the hair, combing of the hair...And they're still learning. They're still learning. They're learning but they have to learn personally.

Persons acknowledged to possess these inherited rights and ritual knowledge may be hired by other families to help them perform their recurrent obligations to attend to the needs of their deceased.

Ray Peter²⁶: Before white man law, we took care of our own dead. There, there were specialties. Someone would prepare the body for burial, the same as a mortician, I guess. But we didn't stuff them with any of the things they do today. There was special people, they still have them today, special people that dig the graves. We're no longer allowed to take care of our own dead [due to provincial regulations].

²⁶ Interview of Ray Peter by Lea Joe (1 May 2003) Duncan, B.C.

August Sylvester: Our people used to look after our own dead, look after our own dead people. Those were things that were handed down from family to family, just like medicine people. You only teach your grandchildren, you don't teach you[r] children. As it gets handed down, it skips one generation at a time. So always teach the, either a girl or a boy, teaching medicines or teaching how to look after dead people.

Ross Modeste: Families knew who the remains were and they'd tell the family and they'd go up there and make repairs. And maybe even move them. And even up today in modern times, there have been cases where the certain ones who have this job of burial and removing of remains and praying to them, they would be called upon to dig them up and move them and rebury them.

Irene Harris²⁷: When we first moved there...that was nothing but burial sites there. And we'd, when we put the waterline and water in and sewer line and everything, they were finding. But we had asked two elders to lead us in the way of protecting it. So they followed the line and they just kind of used, just wrapped them up in blankets and then they brought them up. That's one thing I didn't go, where they brought them. But we trusted these two elderly guys you know.

Florence James: Certain time my grandfather, my late grandmother, she was hired to take care of the remains. When the person became deceased, she had the job of bathing them and dressing them and having them ready. And my late grandfather, he used to make the caskets. So that had to have a prayers and he made it out of, all I can remember seeing was little strips of wood. He made it out of cedar. As you know, cedar keeps well. Even if you put it in the ground, it keeps. And so our people, from what I saw as a little child, and he always had the certain bows of a tree and he'd go there and he'd bless the casket and line it and then place the, the body in there. And then my grandmother would bathe them, dress them and, and that was her, her job. And she was a very strong-willed person. She knew the tradition really well. So that was her job. That's what I remember. And I was with her since I was nine months old, as a little girl...So all the teachings, if it was for the sites and remains, that's how it was taught to us.

In traditional Coast Salish mortuary tradition²⁸, there existed a complex of professional ritual specialists who were hired to perform specific ceremonial roles in the care of the deceased. At the death of a family member, Hul'qumi'num families would arrange to hire these professional specialists from outside of their immediate family, including morticians who would wash and prepare the corpse, coffin makers who would construct the cedar box or casket, ceremonial dancers who would lead the funerary procession with their cleansing rattles and prayers, pall bearers to carry the coffin to the burial site, and ceremonial mourners to lament the deceased. A public memorial was held several years after death at which time specialists who handled the deceased were hired by families to disinter and re-wrap the blankets of the deceased before re-interring them and putting them to final rest. For many years after the funeral and memorial ceremonies, *thi'tha'* or persons who had the ability to converse with the deceased, were hired by families to conduct burning ceremonials to ritually feed the spirits of the dead. These specialists were professionally engaged to ensure that the appropriate ceremonial practices

²⁷ Interview of Irene Harris by Kelly Bannister and Lea Joe (14 April 2003) Ladysmith, B.C.

²⁸ For a general discussion of Coast Salish Hul'qumi'num mortuary traditions see Barnett (1935), Curtis (1911-14), Hill-Tout (1907), Jenness (1934-35), and Lane (1953).

would prepare the deceased for their final place of rest. These persons with the inherited family right were trained to ensure that no harm came to the living as a result of any contact with the deceased.

The role of many of these specialists who possess inherited family rights appears to have greatly diminished in historical times. With the introduction of Christianity, provincial cemetery legislation, and the funeral home industry, many of these ceremonial roles have been abandoned, outlawed, or transformed. New inherited roles, however, have also been created. Perhaps the most important of these new roles in reference to archaeological heritage is the position of the grave digger. Since the early abandonment of above-ground interment for the Christian practice of below-ground burial, grave diggers have arose to a prominent position in Hul'qumi'num mortuary life. This ceremonial role most likely was originally filled by family members who already had the inherited right to physically handle deceased remains, such as morticians or specialists who traditionally re-wrapped the disinterred remains.

Today, Hul'qumi'num Elders maintain that it is these ritual specialists who are responsible for the handling of any ancient human remains disturbed by natural erosion, land development, or archaeological excavation. The disturbance or removal of any ancient human remains without the appropriate guidance of these ritual specialists is considered against Hul'qumi'num customary law, which recognizes Hul'qumi'num peoples' primary authority to care for the dead as an inherited family right.

3.3.2 Law of Non-Disturbance

How are the principles of respect and reciprocity practiced by Hul'qumi'num people in relation to their archaeological heritage? The foremost customary law is that these ancient sites and remains should not be physically disturbed under inappropriate circumstances.

Abner Thorne: Are there ways people protect?... Well it's like is said, they didn't disturb them. They, it was a burial site, like a white mans graveyard. That's the way they look at it you know. That's, that it wasn't to be bothered. And I guess I went through that in a way. It's disdainful to see that like that instance of skeletal remains being brought out in the open to people.

Arvid Charlie: You don't go digging them up, such as developments or things like that, dig them up today. The worst scenario example would be...where the city of Blaine [Washington State] hired a contractor to go in and dug a big hole about eighteen feet deep by about a hundred and eighty feet square, approximately. It was all midden. Many, many remains, skeletal remains and artifacts was in there... There's one that's ongoing right now and that's at...South Pender Island. I went there on one of the investigation trips. And we did see some bones. And we were informed that there was a bone or bones sent somewhere and it was identified as human. And we also did see many artifacts there and we were walking around. And that's ongoing right now and negotiations are being done. We have concerns that the haste to look after it then we have many things overlooked. Another example can be right here at

home, at Somenos Creek, where the developer dug up a bunch of, bunch of our ancestors. Those were put back but now the guy wants to do some more development there. And that, that's ongoing. So for us, *hwulmulh* we do our best not to disturb them. When you cause disturbance, you really bring bad things upon yourself or your family. People responsible, things can happen to them or maybe to one of their loved ones. I need to take it one further. Even if you're not part of the people that wrecked the site, knowing about it makes you responsible to do something about it.

Hul'qumi'num Elders “do [their] best not to disturb” their deceased family members. This customary law of non-disturbance may be seen as parallel to professional archaeological ethics of site conservation. However, the cultural values behind these complementary ethics fundamentally differ. For archaeologists, these places are valued as non-renewable cultural resources that represent important sources of information to learn about the past. It is understood that once an archaeological site is disturbed, the information needed to learn about the past is irreplaceably destroyed. For this reason, professional ethics dictate that archaeologists minimize their destruction of sites for the benefit of future generations. From a Hul'qumi'num perspective, however, these ancient sites are valued as powerful ancestral places that must be protected out of respect for past generations. Such places were considered *xe'xe*, sacred and spiritually potent. The disturbance of these ancestral places are argued to have mortal consequences for the living. As already noted by Ruby Peters in the introduction to this section, the archaeological excavations at Somenos Creek are believed to have resulted in violence by the deceased against the living. The paralysis in the arm of her niece was allegedly caused by an angered spirit who had been disturbed. Out of respect and fear of reprisal, Hul'qumi'num customary law instructs persons not to disturb their ancient sites.

There are, however, traditional Hul'qumi'num mortuary practices that do intentionally disturb and even remove remains of the dead under culturally-appropriate circumstances. For example, the ceremonial disinterment and re-dressing of deceased family members remains during a memorial is an ancient Coast Salish mortuary practice that persisted until historical times. Similarly, there are current practices that exist in Hul'qumi'num culture to ceremonially remove human remains that are unalterably threatened by disturbance, such as natural erosion. If ancient human remains are disturbed or removed from a burial site, Hul'qumi'num ethics maintain that these human remains need to be ceremonially reburied in the same location in order to look after their social relations and enforce customary law.

Arvid Charlie: When they are disturbed, you need to *alhut* [respect them]. You need to look after whatever's been dug up and preferably put it back in the same spot or vicinity. Sometimes it gets impossible to put them back but every effort has to be made to get them back into the same area.

Bernard Joe: Well, I'll begin by my experience with the remains...As a young fella, my dad used to dig. And find bones in the {...} and as soon as he found that, I used to help him. As soon as we found it, we'd wrap it with blanket and rebury it. Almost at the place not too far from where we find them. And he's

always told me if we, when we do that, we have to say a prayer. In our own way and he always told me maybe some of our people didn't know our prayers. At that time. So we just said what we, a few prayers for them. It was just like, more like "*alhut*" in a way. That's why we wrapped them in the blankets... Down here by the rivers there's, every winter there's, the river gets big and the bones start to show up again. Always about three or four we'd have to move. We don't have an answer for, some say we should put some piles of rocks or protect it from caving in again. But when we, when we find remains, we usually put them in a, wrap them up, put them in box and then the, we use our traditional ways. Which is the "*shulmuhwtsus*", it's a rattle. That's what we always use when we, when we move them.

Arvid Charlie: If they've been washed into the river or to the beach, you need to *alhut* - look after them somehow. If the bank is eroding further back, then you need to remove what's in the bank and find a safe place to, to rebury them. We have at least two places where the river, riverbank is eroding. And the remains been exposed. We've been taking those remains out of the ground, pick up what's exposed, dig back a little ways, take the remains out of the ground and then rebury them...at a set aside place for doing that.

Irene Harris: When we first moved there that was nothing but burial sites there. And we'd, when we put the waterline and water in and sewer line and everything, they were finding. But we had asked two elders to lead us in the way of protecting it. So they followed the line and they just kind of used, just wrapped them up in blankets and then they brought them up. That's one thing I didn't go, where they brought them. But we trusted these two elderly guys you know. And then on a certain day, they took them up to the cemetery and they buried them.

Roy Edwards: The only time they moved a grave is when the Catholic people came and said, "you can't bury when its not blessed". That's the only time when they would move a grave.

Ross Modeste: And if any site was seen where maybe bears got at them and ripped them apart, the families knew who the remains were and they'd tell the family and they'd go up there and make repairs. And maybe even move them. And even up to today, in modern times, there have been cases where the certain ones who have this job of burial and removing of remains and praying to them, they would be called upon to dig them up and move them and rebury them.

The Hul'qumi'num phrase, *alhut* (to respect/to take care of), expresses the intention behind the Coast Salish practice of caring for disturbed ancient human remains. The removal of human remains to a separate location is permitted only under a restricted set of circumstances, such as their protection of burial sites threatened by natural erosion, flooding or other natural occurrence. With the advent of Christianity in the mid-to-late 19th century, many former burial sites were removed and buried within consecrated ground in village cemeteries. The removal of entire cemeteries to new village locations have been historically documented under such culturally-appropriate circumstances (Kennedy 2000:60). However, it is important to state that the regulations that allow the intentional disturbance of human remains from their original burial location are not intended to be disrespectful to the dead. Nor is it the intention of the Hul'qumi'num Elders to disturb remains under circumstances that are advantageous or profitable for the living.

3.3.3 Law of Avoidance

As a precaution against contact with the dead, Hul'qumi'num Elders maintain strict laws to prohibit access to ancient burial grounds, human remains and funerary artifacts. In particular, persons who are considered *xe'xe* (spiritually potent/vulnerable), such as children and women (especially pregnant women), were specifically instructed to physically avoid visiting burial places or come into contact with any human remains.

Ray Peter: What they call sacred sites, ancient sites, well, they call them sacred, where you might find remains. We were just, we were never allowed to go around them, anywhere near any sacred sites, ancient sites.

Florence James: At one time, when I was a little girl, they bulldozed the road through there cause they talked them into making a road. So that's recently, I was probably about just going into school age, Grade One. And they ploughed the road wide there and all the remains came out of the ground. And there was a little white picket fence around it at my time. And we never walked near it or go into it at any time. We never did. And that's what they taught us. And a certain time of the day, we had to be in because of it. So like, four or five o'clock is the latest they'd ever allow us to be out because you weren't to be out when the spirits are moving about. That's what they called it... That was my mom's grandfather lived at the point. And so anybody that was deceased were placed in those little homes made of cedar. And they shut the door and we were forbidden to go there. But I was a little girl and I didn't listen all the time so I'd sneak there and I'd try to look. And they weren't always close together so I'd go there and I tried to peek. But I couldn't see anything. But there, they were sitting, they were supposed to be sitting, holding their knee. And that's how they were placed, sitting up, not laying down, but sitting up, waiting for their, their next steps in the afterlife. And so, and they were fully dressed peoples. And, and every once in a while, they would go there and clean everything. And I just remember those little homes. And there, there are other places but I don't know them... I don't try to go looking.

Sylvia Harris: Well, my mom was still around when you were younger, we were always, it was always taboo. It was always scary to come across human remains. And when, when we were younger and mom was still here, we got asked to go and help with a reburial. And she was, she advised us not to because she said that you have to be really strong to deal with that. And it's, she just thought that it was, you have to be very careful when you're dealing with human remains.

Ross Modeste: And it was in our culture, held very sacred and it was taboo to go to these sites without a reason. So children would be told of this, to keep away from them... And these sites were held very sacred, probably more so than our present cemeteries because today we know where these cemeteries are. We know where our loved ones are buried.

Irene Harris: But in the certain day, they, they wouldn't bring the remains into a house or anywhere. They just had a little building where they kept it.

A marked separation is maintained between the space of the living and the deceased. The dead and their belongings are not allowed within the houses of the living, and the living are forbidden to trespass upon

the resting place of the dead. This separation is extended to encompass the funerary artifacts and belongings of the deceased.

Ron Alphonse²⁹: I don't think our own people kept such things in their house. Because there are teachings that you can't hold on to those in the house because of the children there. Just either brought way up in the mountain and hidden there or just put with the deceased. So with these things, there a *snuhyulh* about just as much respect for the deceased.

Abner Thorne: Artifacts, these are in burial sites from what I learned, our people...or most of the Hul'qumi'num people, didn't bury their people, eh. They put them in huts, little huts. So and they had poles or a pole on their [side of the] hut and they hung their belongings on that, whether it be hunting implements and others... So what was hung on the, it was has his, eh. The dead person's. So when the white people come, they collectors I guess took that away. So this is a no-no for us to, to take and to keep it.

Arvid Charlie: [Finding artifacts] walking along the beach may be different than digging in another place. So also along the beach I'd add along the river, erosion. You definitely can't leave it there or somebody else is going to come up and pick them up. Some of them were lost by the previous owner but some of them were buried along with the owner at the gravesite. So from what I'm told, if it's a known gravesite, you put it back somewhere there where it won't be eroded again.

August Sylvester: Those things, they should be returned back to the people that where they were buried or where they were dug up. Our way is to rebury everything that was picked up there. It's not to keep and show off in a museum. And those people must've wanted it is why it's buried with them.

The spiritual pollution from visiting a burial ground or making physical contact with the deceased's remains or belongings is understood to be life-threatening for the persons involved. The power of death is believed to have such potency that even indirect contact with the deceased can be fatal. For this reason, there are many restrictions on behavior associated with funerals and the persons who conduct this work with the dead. Persons who work with the dead have the inherited right and ritual knowledge to protect themselves. The ceremonial use of the pigment *tumulh* (red ochre) is commonly used by such persons for its protective qualities to guard against supernatural power. However, even with their ritual knowledge it is understood that it may be still dangerous for these persons to spread any lingering spiritual contagion to children, family members and those around them. Thus, all who come in direct contact with the dead are segregated from the living for a period of days to spiritually cleanse themselves.

Arvid Charlie: Our weak people don't go to the graveyard. But also the other way around, if I go ...[*speaking Hul'qumi'num*] or graveyard or the wake, I shouldn't go visit somebody, whether it's a child or an older person for a certain amount of time. I think that needs to be mentioned a lot of times now,

²⁹ Interview of Ron Alphonse by Lea Joe (15 May 2003) Ladysmith, B.C.

because many of our children today not only children, they come straight from a funeral and they go visit their elder and that elder is not well.

Bernard Joe: When you're a digger, you're not allowed to go near your kids. You have to rinse yourself off; you still can't touch your kids.... Lots of restrictions on whatever you do.

Irene Harris: There was like a warning, like what I was telling you in the first place, that if you have children not to get involved in it, you know, because you are protecting your children. And so many of the people that were working on the pipeline were told if they found any remains that you had to stay away, not to [get] near because it's for the protection of your children. And if your wife was pregnant, that was the most important part of it that you... So the longest you ever kept remains was four days and then they were buried. And then after that, the one to do the burial of the remains. I used to wonder why because my grandfather was one of them. He'd be gone for four days. When I did try to ask, he wouldn't answer me. It was quite a while later and then he told me. He says 'When you work with human remains, you have to sacrifice four days and be able to stay away from your family.'

Irene Harris: When like if my late husband was working on the pipeline and stuff, [he had] to bath for four days, four days you have to keep bath, bathing in cold water, wash your face and all that. And don't go close to your children. You know and that was the real, real tough law because children used to ask, "Why can't dad come?" Why can't dad come and eat with us?" You know, that was the rule of law that we had to respect to the deceased person.

The Hul'qumi'num customary law to respect the space of the dead affects peoples' daily schedule. Not only are persons limited in access to burial grounds, but important restrictions exist on the time of the day when certain activities can be performed.

Florence James: My grandfather used to tell us stories about it and you respect that remains of your family and other families. Don't walk around there in the, after the mid afternoon, that's when they asked us not to be inside the cemetery sites, nowadays.

Amelia Bob³⁰: So, old people used to start talking to the kids as soon as they're, you know, can, can talk or can listen to you, tell them what's right and what's wrong. My grandfather used to tell us 'You don't go walking around at night time. It's no-no time for people to be out in the night time.' And he used to say just people that kill stays out in the night time he used to tell us. [Laughs]. That's when me and my late brother were kids. Yeah, he said when you go out at night time, if you want to be out at night time, you're looking for trouble. You will find trouble if you stay out at night. That's why you have to just stay home where it's safe. There's a lot of things he used to tell us. He used to make my brother sit on this side and me on this side when he's talking with us... There's all kinds of things he used to tell us, different things. He used to tell my brother not to be ever out at night time when he was growing up. Another thing when the kids are small yet, he says the people that are in spirit, they start coming out at knowing it's starting the late afternoon. And he used to tell the kids during that time, you bring them in and let them be out of the peoples way that are you know going by, walking or that people that you don't see. But I think that's true because there has been so many of this you know people getting sick and the doctor can't see what it is. They don't understand and that's that you know. So I think it's very true what the old people used to say a long time ago.

³⁰ Interview of Amelia Bob by Lea Joe (4 June 2003) Duncan, B.C.

August Sylvester: We don't, we don't move our dead, dead people at night. We only move them in the daytime. The reason is they travel from three o'clock until six in the morning. We're not supposed to move our dead people at that time, from three o'clock in the day until six in the morning. That would be like taking their body away and moving it somewhere. Then they have to come back and then they have to look for the body, where did their body go? Things like that we don't do. You've got to respect our people. That's why they say you make sure you bury your, your dead before twelve o'clock because they're still home. Now it's [burials] getting later and later all the time. Before it used to be at daylight, when the first daylight comes, they're just getting home to that body. We don't do that anymore. We tried and it's just stall, stall, later and later. We've got to try and get them while they're home. Later and later, you don't know. You might miss, they're already gone and then you bury them and they don't know where they're at. That's why we've got laws for burial and looking after our people. The thing that made me talk about that was that I heard that they moved the body from one place to another after dark. That's not the way it's done. They had a viewing at one place and then they moved the body to another after. And I, then people from Duncan phoned me, and said 'They're going to move a body after dark' cause I said 'No, you can't do that. If you do that, that person is going to wander because you've moved them before they're back'. You've got to wait until daylight or you should've done that before twelve o'clock in the day cause they're still home at that time. I'm using that as an example. You can't be doing things like that. That's against the law, our Indian law... And I was telling them 'You tell them they can't move him because he's not there right now and if they move him, he's going to be wandering'. He says oh, he calls me cousin, 'I can't do that cause they're, they'll chew me out' he says. I said 'Well, better to be chewed out than have, have a ghost in your area that's going to be wandering'. Could hurt people...it's things like that that get our people in trouble. The more we don't know about our culture, the worse off we're going to get.

According to Hul'qumi'num customary law, it is considered dangerous for the living to be outside at night. It is believed that at dusk with the setting of the sun, the curtain between the spirit world is drawn open and the spirits of the deceased cross over into the world of living. Out of loneliness for their family, the spirits of the deceased are known to follow persons home at night, where they can cause soul loss, ill health, even death among the living. Pregnant woman and children were especially instructed to be inside "after the mid-afternoon". The exact time of the curfew is debated; some Elders say the dead rise after 3 o'clock in the afternoon, others say 5 or 6 o'clock in the evening. In the past, the movement of the sun was probably used as the standard measure of time to observe time restrictions over the changing seasons. With the rising of the sun, however, it was all agreed that it was safe for the living to venture outdoors while the deceased returned to their rest in the spirit world.

Although the customary law of avoidance instructs people to generally avoid burial sites, there does exist certain times of the year for people to communally visit burial grounds. The most important of these traditions were times of the year when family ceremonies were conducted for the remembrance of their deceased ancestors.

Florence James: But in my times, they had a short time when they wanted to visit and clean. A certain time of year in the spring when everything is growing, they'd clean it. The whole family's could get together and clean it and then have lunch together in one of the homes, you know. And that's, was getting together time.

Mabel Mitchell: So this is what I learned from my ancestors, like my grandmother and my dad, was to go there at least once a year and clear the graveyards out and to burn food. So that was something all our people did. Sometimes, everybody that had loved ones there would go there and clean the graveyard out, all work together....

Irene Harris: The way, the way that things go and the way that, you know and at certain times of the year, they used to have elders, all the elders used to get together and they would be burning food for the whole village. And at that time, the children were invited to go because they said that's the only time you give the, your deceased people a feast, that they want to see your, your family too. So all the children were there when they had that feast.

Arvid Charlie: To us, our young ones are always important, whether they're alive or whether they're deceased. Maybe one that goes to show it is how we burn food every now and then. Someday, there'd be a, my family doesn't do it every year because our teaching for that is they're just starting their journey and they're called back again for another feast. They can't, can't get to where they're supposed to be going.

At least once a year extended families are described to gather together to weed and clean their burial grounds and share a meal with their deceased family in their remembrance. On these commemorative occasions, all persons are invited to their family burial ground, including woman and children. A *thi'tha'* was hired by the family to perform a "burning ceremony", a feast held in honour of their deceased family members, where food was ritually burned to feed the spirits of the dead. On this day, the customary law of avoidance that separates the dead and the living is removed. These annual events are valued as social occasions, as well as opportunities for instruction of the young in traditional ways, when all members of a family's extended relations, living and deceased, are reunited to honour their kin.

3.3.4 Summary of Emergent Themes

In summary, there are strict Hul'qumi'num principles and customary laws that Hul'qumi'num Elders apply to the protection of their archaeological heritage. These principles and laws are based on traditional beliefs and customary laws that deal with kinship, particularly property rights and mortuary practices.

Hul'qumi'num people socially value their archaeological heritage as monuments of their ancestors. They perceive little distinction between their archaeological heritage sites and their historical cemeteries. For Hul'qumi'num Elders, their archaeological sites *are* cemeteries. Consequently, it is believed that their archaeological heritage consists of cultural property that is owned by their Ancestors themselves.

Hul'qumi'num people are obligated to maintain their fiduciary trust to care for their Ancestors, who are dependent upon the living for their spiritual needs. It is a family obligation in principle to have jurisdiction and management over their deceased's burial site and cultural property, especially the care of

their ancestral human remains. Access to cemeteries and ancestral remains, however, are restricted by Hul'qumi'num customary laws. Professional ritual specialists from only certain families possess the inherited right to care for the dead.

Any physical disturbance to cemeteries and human remains is strictly prohibited. There do exist regulations to remove and rebury disturbed human remains under a restricted set of culturally-appropriate circumstances with the ceremonial guidance of ritual specialists. In general, however, it is prohibited to access cemeteries or physically contact human remains.

A marked separation is maintained between the space of the living and the dead. There are ceremonial occasions, nevertheless, when this customary law is suspended. During memorials and burning ceremonies, families reunite to tend to their cemeteries, feast and honour their ancestral dead. The spiritual potency of death was so powerful that to violate these customary laws about ancient sites and remains is mortal for the living. Any offence to the spirits of the deceased could be punished by illness, paralysis or even death for not only to the offender but for other members in the community.

4 EMERGENT PROBLEMS IN RESPECTING HUL'QUMI'NUM TEACHINGS

An important goal of this Hul'qumi'num heritage law study is to identify current problems that Hul'qumi'num people regard in the observance of their teachings about their heritage. To this end, we asked the question “*What do you think are some of the problems that Hul'qumi'num people face in protecting ancient sites, artifacts, and human remains?*” In the following section, we examine four themes that emerged from participant responses: 1) public attitudes about First Nations heritage; 2) politics of land; 3) provincial heritage legislation and management; and 4) research, collection and repatriation of archaeological materials. We examine these themes, both outside and within the Hul'qumi'num community.

4.1 Problems Outside the Community

4.1.1 Public Attitudes: Upholding a Principle of Respect

How Hul'qumi'num people perceive public attitudes towards the protection of their archaeological heritage is a primary theme within this study. Hul'qumi'num people essentially feel that their Aboriginal heritage is not publicly valued in British Columbia — that it is not respected as a part of Canadian heritage. In the following excerpt, Hul'qumi'num Elder August Sylvester describes his experience assisting at a disturbed archaeological site. Here, he relays a sentiment that is commonly expressed by many property developers in British Columbia.

August Sylvester: I went down there and there's a white man building a home and the people are wondering how to do it... That was a proper burial site until the white people started building there... It must've been a lot of people there. Must've been a big reserve. How the Indians moved away or lost that park, I don't know. But there is homes there and they're building swimming pools and they're finding artifacts and bones. And they waited a long time before they told anyone that there was a lot of artifacts and bones there. And the guy was just mad because they were there. He was mad because his work got stopped. And he wasn't allowed to go on and build his swimming pool or his basement home. He said that he's losing money. That was his exact words: “I'm losing money”. I just told them people nobody told him to build it there. Nobody told him to buy there because that's Indian land.

There is a general perception among Hul'qumi'num participants in the study that the general public lacks cultural sensitivity towards First Nation heritage values. This view contrasts with recent public opinion surveys that indicate that there does exist strong support of both heritage conservation and Aboriginal

involvement in archaeology among the general public within British Columbia and across Canada (Pokotylo 2002; Pokotylo and Guppy 1999). In Hul'qumi'num peoples' experience, however, many archaeological sites in the region are frequently disturbed by unregulated land development. As expressed in the above example, the fact that so many incidents go unreported is believed to arise from a common public attitude that the protection of Aboriginal heritage sites is an unjustified financial burden or constraint upon private property. It is perceived that the general public views archaeological heritage primarily in terms of negative economic cost, rather than positive social benefits. These perceived different values are a source of contention for Hul'qumi'num people, who make a public appeal to respect the graves of their Ancestors.

Simon Charlie³¹: You know, if we go to the white man's graveyards, they wouldn't like it. And I don't know why they think that our burial sites is nothing to them.

Arvid Charlie: To us it's always hard to understand how the non-Natives, their graves there, their graveyards are protected but when it comes to ours, it doesn't seem to mean a thing. They can bulldoze it, cart the remains away. To us, our young ones are always important, whether they're alive or whether they're deceased.

George Harris: I think one of the things that come to mind when you take a look at ancient sites and burial sites is that how would the ordinary Canadian or British Columbian feel if we went to their cemetery and dug up their Ancestors? I think that it's an insult in my opinion for people not to, not to respect our ancient sites and human remains.

Ron Alphonse: As for the general public not understanding when we talk about our ancestral remains or our sacred sites, I spoke about this on the radio. And I compared it with people going to Ross Bay and digging it up and how would the public feel about that? And the bottom line is that even though we're different, different nationalities than the people down in Victoria, they share the same concerns when you know people talk about their Ancestors who are buried in that cemetery. They are very concerned and they don't want people going in there and doing damage and desecration. So, it's just that they need to understand that you know that's how we are and that's how we've always been. And it's unfortunate that there are people out there who have no conscience at all and just do the damage and removing articles. And sometimes it's done for money and no respect at all. I think that you know this is something that you know I'm learning about and I will certainly be, you know, passing on what I've learned and will learn to my children and my grandchildren so that this is something that you know that I'm going to deal with and then you know there's no other issue after that. It's something that you know our children and grandchildren need to know. Especially when it comes to you know when they get older and they'll be able to realize that areas of concern that we're dealing with now with our ancestral remains. You know it's going to be more knowledge for our younger people to be aware of where our Ancestors are laid to rest and knowing that they are part of our family tree. And that's where a lot of the, I think a lot of the respect comes from.

Sylvia Harris: Through the interview, we've been mentioning the importance of burial sites and what not. And for us it's important for all of those reasons but another reasoning for us now in this day and age is for the history to place the number of years we have been here for as a First Nation, as a people. I mean you know the *hwunitums* should respect that. They have their little buildings out there that they have

³¹ Interview of Simon Charlie by Lea Joe (14 May 2003) Duncan, B.C.

heritage sites and heritage buildings and all of that and they, they go to great extents to refurbish like say heritage building... So why can't the governments do the same for our people? For our heritage sites and our burial grounds and all of that?

Ross Modeste: I think it, first off is respect of oneself, respect of ones family. And we put the problem on the other foot of these non-Native people and say to them, alright, would you do that to your grandmother's grave? Would you do that to your mother's grave? And I'm sure we'd get some response.

With the cultural perception of archaeological sites as cemeteries, Hul'qumi'num Elders take great offence to physical disturbance of their ancient sites and burial grounds. There is a common rhetoric used to morally express this point to the outside community: "Wouldn't you take offence to the unearthing of your grandparents?" As Ron Alphonse suggests, although we may be from many different cultures, we generally "share the same concerns when ... people talk about their Ancestors who are buried in that cemetery". Their appeal to public morality, to humanity, is an attempt to achieve some basic level of cross-cultural understanding. Although the persons may not be aware of why Hul'qumi'num people culturally value their archaeological heritage as they do, it is believed that the public will respond to the assertion that the disturbance of remains is morally offensive to living people. The essence of the message is that Hul'qumi'num people deserve equal human rights in the protection of their cultural identity and heritage values in Canada.

The fact that most British Columbians do not share First Nations' cultural and historical connection to this land is believed to contribute to perceived cultural differences in attitude toward the protection of archaeological heritage in British Columbia.

Joey Caro³²: I see other people that come to this land—I see Scottish people, or German people, or French people or people from other lands—they come here and they don't have that timeless connection to these lands. If you were to go to their countries you would see or experience their connection to their timeless attachment with their culture, or what have you. But they come here, and their history starts here about 200 years ago. And so they don't have that long, time-immemorial kind of connection that we have here.

Hul'qumi'num people express a strong attachment to their archaeological heritage as part of their cultural identity. From this basis, public attitudes toward their archaeological heritage are often personalized by Hul'qumi'num people in the same manner as how they see themselves treated as Aboriginal people in Canada. In the narratives of many Hul'qumi'num Elders, the lack of respect they perceive for their

³² Interview of Joey Caro by Lea Joe and Eric McLay (28 October 2003) Ladysmith, B.C.

archaeological heritage is directly linked to colonialism and public contempt for their peoples' Aboriginal title to their traditional lands.

4.1.2 Politics of Land: Preserving Ancestral Relations on the Landscape

Hul'qumi'num people's perspectives on archaeology are deeply embedded within the modern politics of land in British Columbia. For the Hul'qumi'num First Nations, their Aboriginal title has remained an unresolved issue since the establishment of British colonial interests on Vancouver Island. Today, Hul'qumi'num traditional territory on southeastern Vancouver Island and the southern Gulf Islands is located in one of the most privatized, developed regions in British Columbia. Approximately 85% of land in the Hul'qumi'num Treaty Group's *Statement of Intent Aboriginal Title Core Territory* is held as private fee simple land.

The issue of private property is a significant challenge for Hul'qumi'num people to maintain their cultural relationship with their ancestral lands. As presented in the introduction, 80% of the 1000 recorded archaeological sites are located on private fee simple land in Hul'qumi'num traditional territory. Even though there exists strong heritage laws to protect these archaeological sites on private property in British Columbia, the disturbance of these sites by unregulated land development is a recurrent problem that Hul'qumi'num people deal with on a regular basis. Many Hul'qumi'num Elders resent the destruction of their archaeological heritage by increasing land-use development, which they view as the continuation of colonial policy to break their people's cultural connection to their traditional lands. This perspective is pointedly articulated by Hul'qumi'num Elder Roy Edwards³³:

Roy Edwards: Our people have been moved aside. Rich people are coming in and are moving our people to one side. And that shovel full of dirt is too much for the white people. The Indians shouldn't have that, just a little shovel full of dirt. They are taking acres of land belonging to our Indian people. It's getting to our grave sites. They're moving our old people. It's what the rich white people are doing. Our old people have their graves here and there, wherever they lived and now that's too much for the white man. They got to move that grave, take it out and put it in the museum. That's what they did to us, the example is right there. They moved us away from the land where our old people used to live and put us in a little bit of dirt. And today when you look around that's still too much for the white people. Where we live we are pushing each other trying to find a place. We can't even farm like the way our old people used to, we can't even have a garden where we can grow our berries and things like that. We have to go to a food market to buy what we need, we can't go down to the beach and dig clams, or go and fish anymore. *Si'em nu' Siye'ye* ["Respected Ones"] everyday you hear our people being shoved aside. What little we have is too much and right across the country from this coast to the other side are white people and yet

³³Transcript from HTG Elders Advisory Board Meeting (24 July 2003), Ladysmith, B.C. with guest, Ms. Justine Batten, Director, Archaeology and Registries Branch, Ministry of Sustainable Resource Management.

what little we have is too much for the white man. And here we are begging, explaining ourselves that this is our country, this is where our old people live and even that they are shoveling our old people's graves aside. They want to move them out of there to build a big apartment. It hurts when you listen and see what's taking place... I think those gravesites should be fixed right where they are as a marker just like Craig Bay, they fenced that historical graveyard, and you can't touch it anymore... We don't have very much land and it's up to you to understand that. *Si'em nu' siye'ye Huy tseep q'a*. ["Thank You, Respected Ones"]

The unresolved nature of First Nation land issues in British Columbia accentuates archaeological concerns. In the above Hul'qumi'num Elder's perspective, a direct link is perceived between the unearthed graves of his Ancestors and the displaced living conditions of Hul'qumi'num people today. The external pressures upon their traditional lands and resources by outsiders are so relentless, he states, that not only are his people's lands and livelihoods devastated, but that "It's getting to our grave sites". Roy Edwards often states, "Burial sites are our fence posts". In the past, he explains, Hul'qumi'num people regarded burial sites as respected landmarks that document a people's claim to settle their land where there were no physical borders.

In 1994, Island Hul'qumi'num customary laws about their archaeological heritage came into direct conflict with provincial politics during the notorious land-use conflict at Craig Bay, near Parksville³⁴. The archaeological excavation of 147 burials to make way for a condominium development at Craig Bay incited a blockade of the construction project by the Elders of the Sna-naw-as First Nation (formerly Nanoose Indian Band) and neighbouring Island Hul'qumi'num-speaking communities. The ensuing lawsuit by the Sna-naw-as First Nation argued that this ancient burial ground should not be considered an "archaeological site" as provincially regulated under the B.C. *Heritage Conservation Act* (1979), but protected as a "cemetery" under the *Cemetery and Funeral Services Act* (1989). It was publicly reported that the Crown lawyer argued that if this court case by the Nanoose First Nation was successful, it would stop all development in British Columbia³⁵. Ultimately, the court decided that the ancient burial site was considered "too old" to be legally defined as a cemetery. To resolve the political situation, British Columbia purchased the archaeological site as parkland. This land-use conflict is a well-publicized example of the politics of archaeology and private property among Island Hul'qumi'num-speaking people in British Columbia.

³⁴ Nanoose Indian Band v. British Columbia [1995] (B.C.J. 2680). Unreported, Victoria Registry 94-3420, 14 November 1994 (B.C.S.C.); Nanoose Indian Band v. British Columbia (1995) 57 B.C.A.C. 117, 24 March 1995 (B.C.C.A.); Nanoose Indian Band v. British Columbia [1995] (B.C.J.3059). Unreported, Victoria Registry 94-3420, 28 June 1995 (B.C.S.C.). For a summary, see Hoffman (1999).

³⁵ Victoria Times-Colonist, November 2, 1994.

Under Hul'qumi'num customary law, land development by private property owners is not recognized as a culturally-appropriate circumstance to remove and rebury ancient human remains. This interpretation of law is expressed in the following excerpt wherein Hul'qumi'num Elder Ruby Peters describes her involvement with the recent large-scale destruction of an archaeological site and burial ground by a luxury resort development at Bedwell Harbour, South Pender Island³⁶.

Ruby Peters: The one on Pender Island. They were asking us what they were going to do. And I said, "You can't move it because that's where our native people were. And you can't move it to anywhere, it has to be reburied close to where, close to the same location". So they were talking about having a reburial close to the same area. But I don't know where they're going to do it. Because if it's moved it's losing our identity; losing our people, our Ancestors being there. Because that's the original ground. So I think it's very important not to move it.

Destruction by modern land use development contravenes customary law regarding the disturbance of archaeological heritage. It is recognized that the clearance of archaeological sites to make way for property development is not conducted to help the deceased, but often in spite, apathy or ignorance of their presence. This activity is not perceived as contributing towards reinforcing Hul'qumi'num social relations and cultural traditions, but as reducing their ancestral connections to their traditional lands and diminishing their cultural identity. In such circumstances, Hul'qumi'num Elders insist upon the respectful reburial of ancient human remains and funerary artifacts to uphold their principles and customary laws about their heritage. However, there is a great concern among Hul'qumi'num Elders that their custom of reburial to respect their Ancestors will be misinterpreted or taken advantage of by outsiders for profit.

Arvid Charlie: We're kind of in a dilemma here. In moving remains, one for sure is erosion. Areas, such as tennis courts, where it's eroding. Other similar places would be by the river or by the sea. They need to be *alhut* [respected], moved somewhere. We have to be really careful on solid ground. If we start moving them, it won't take long for developers to find out that we're doing that. Then they'll say it, "Well you guys moved your ancestors [from] our place here, we're going to do the same and also move [y]our ancestors". So it's a real danger in moving ones that aren't in danger of erosion. There may be certain instances where, I don't want to say this but there may be certain instances where we need to be moved.... So we have done it in the past. But I fear if we keep doing that, the developers would use that against us³⁷.

Hul'qumi'num Elders fear that continuing to bend their customary law to permit the removal and reburial of ancient human remains threatened by development projects will eventually undermine their own laws

³⁶ The official geographical place-name for the DeRt-004 site is Egeria Bay, South Pender Island. Poet's Cove at Bedwell Harbour Ltd. is the corporate name of the luxury resort development. Since the site's destruction, people have been referring to the location as 'Poet's Cove'.

³⁷ Arvid Charlie noted that his statement can be applied to land developers both on reserve and private property in Hul'qumi'num territory (pers. comm. with Eric McLay, December 2003).

against disturbance and, ultimately, leave these sites vulnerable to exploitation by developers. In the past, the desecration of human remains was considered by Coast Salish people to be so vehemently immoral and dangerous to ones' mortality that the disturbance of burial sites rarely occurred. Since contact with outsiders who do not share this belief system, however, Hul'qumi'num people have had no foundation to enforce their customary law by deference to supernatural moral authority.

The frustration about lack of enforcement of customary laws to protect their burial sites against the actions of outsiders is perhaps one reason why archaeological sites have become notorious sites of land-use conflict and court action for Hul'qumi'num-speaking peoples. Behind these limitations of customary law, however, lie political relations that restrict Hul'qumi'num people's power to influence land development and maintain their cultural connection to their traditional lands.

4.1.3 Provincial Law and Management: Appropriating Inherited Rights

In the absence of power to enforce customary law, Hul'qumi'num people largely rely upon existing provincial heritage legislation and heritage management programs to assert their interests over their archaeological heritage. In contradiction to their perceptions of public attitudes about Aboriginal heritage, it is recognized that the provincial government does have a strong legislative interest in the protection of their archaeological sites. At least in theory, the B.C. *Heritage Conservation Act* (1996)³⁸ is one of the strongest heritage laws in North America. As currently regulated by the Archaeology and Registries Branch, Ministry of Sustainable Resource Management, this heritage law provides automatic protection for all archaeological sites pre-dating A.D. 1846 across the province, whether or not the site is recorded in the provincial registry. Penalties for intentional violation of this law extend up to \$50,000 for individuals and two years incarceration, to up to \$1,000,000 dollars and two years incarceration for corporation executive officers. Despite the recognition of this strong legislative protection, Hul'qumi'num people are critical of provincial legislation and its government regulation, which in their experience does not address many of their First Nation interests or integrate their customary laws about heritage.

George Harris: We follow what we call our *snu'uyulh*—teachings that tells us not to do these things to other people, peoples' human remains, their ancestors that have gone before us. Their ancestors, the non-First Nations ancestors, they have what they call their *snu'uyulh*. It's written in law, Canadian law and British Columbian law. They call it the *Heritage [Conservation] Act* for one example. *The Cemeteries Act* for another example that tells them that they have rules that they have to follow with regard to those things and I think that, that our *snu'uyulh*, our rules should be respected every bit as much as any other rules that are set by the governments of Canada and British Columbia.

³⁸ Heritage Conservation Act [RSBC 1996] c.187

Ray Harris: You know, we don't even have a say on any of our rights and burial sites and grounds unless all of a sudden it comes to be known through the government. The government declares it sacred. I mean what do they know about sacred, you know. To them, it's a sacred site only because they can go and study you know, remains.

As highlighted in the court cases for *Nanose v. British Columbia*, there is a perceived discrimination in the treatment of Aboriginal human remains under different provincial legislation in British Columbia. Specifically, the *Cemeteries and Funeral Services Act (1996)* regulates the treatment and disposition of modern and historical human remains, while the B.C. *Heritage Conservation Act (1996)* sets out regulations for the study and protection of archaeological (primarily ancient Aboriginal) human remains. Viewed as "archaeological sites", ancient burial sites appear to receive less public respect than historical burial sites defined as "cemeteries". Although the *Cemeteries and Funeral Services Act (1996)* does state provisions for the exhumation of graves, the scientific study of human remains from cemeteries to make way for development is a rare occurrence due to the high public respect for these consecrated grounds.

As Robert Morales, Chief Negotiator for the Hul'qumi'num Treaty Group, has pointed out, the *Cemeteries Act* also sets out regulations for publicly-acceptable behavior at cemeteries that parallel Hul'qumi'num principles of respect for their ancient burial sites. For example, under the *Cemeteries Act* (Part 3: Section 113), "A person must not, on land that comprises a cemetery, mausoleum, columbarium or crematorium, (a) play at any game or sport unless authorized by an operator, (b) discharge firearms other than at a military funeral, (c) drive a motorized device of any kind over lawns, gardens or flower beds unless authorized by an operator, or (d) deposit any rubbish or offensive matter or thing". These provisions are not only stated out of respect for the deceased, but also out of sympathy for the feelings of living family members. Again, the issue is a perceived lack of public respect for Aboriginal heritage values. This seems to underlie legislation that sets out different expectations and sets of public behaviour for the treatment of Aboriginal versus non-Aboriginal human remains. The apparent lack of cultural distinction between ancient and historical sites by Hul'qumi'num people may contribute to this perceived discrimination.

Hul'qumi'num people have also criticized the lack of enforcement of the B.C. *Heritage Conservation Act (1996)* as related to conservation of their archaeological heritage.

Charles Seymour: We need more than the *Heritage [Conservation] Act* because people have ways around it. I mean, if, how does it go? If you want to work in a known area, you can still get a permit. Even if the site's older than that magic date of eighteen hundred and something. People are still allowed permits [for archaeology] so, so there's a flaw in the *Heritage [Conservation] Act*.

Ross Modeste: There are laws to protect these [sites/artifacts] and yet they're not very – there's hardly any teeth to that law because a lot of these non-Native people get away with what they've done. They say 'oh well, it's too late' or 'after fifty years it's now become a museum piece'. They put a time limit, fifty years and, and you know our time is forever.

Arvid Charlie: Today the B.C. law by itself is very weak, meaning nobody's been charged to the fullest extent. Part of that, there's laws that protect non-First Nation cemeteries but when it comes to today's developers, they don't seem to want to know or understand — can't be bothered with it.

George Harris: You know the concern we have for the need to protect our ancient sites, artifacts and especially human remains. I think that there's laws in place now that are supposed to protect heritage conservation and protect those sites, artifacts and human remains. And I think that there's no enforcement, no monitoring. That's a big problem and basically the bottom line is I don't think the governments really care. They close a blind eye when there's progress in their mind, that's ultimately important for the almighty dollar. Got to keep developing the land. So I think that's a big problem. And it kind of goes back to lack of respect for our ancient sites, our human remains and artifacts.... And when I see things that are contrary to, to what say *The Heritage [Conservation] Act* and destruction of our sites that means they're not following their own *snu'uylh*.

The main purpose of the B.C. *Heritage Conservation Act* (1996) is to protect archaeological sites from the impacts of modern land development. In practice, however, Hul'qumi'num people are of the opinion that the intent of the provincial government is to alleviate archaeological constraints on land developers. The provincial process that allows land developers to conduct the large-scale removal of archaeological resources from their properties, in particular, is criticized by Hul'qumi'num people as against their customary laws to not disturb and avoid these ancient places. Similar to Hul'qumi'num customary laws that permit the disturbance of sites under certain culturally-appropriate conditions, the B.C. *Heritage Conservation Act* (1996) allows for the alteration of archaeological sites under a permit system, as regulated by the Archaeology Branch. Due to its restricted mandate and government funding, however, the Archaeology Branch has a limited capacity to monitor violations of the *Act*. It is known that few violations of the *Act* have ever been successfully prosecuted under British Columbia's heritage laws. The perceived lack of political will to enforce the heritage law is a source of frustration to Hul'qumi'num people, who rely on the provincial government to provide protection for their archaeological heritage against threats of modern land development.

A critical issue raised in this study is the lack of an effective role for First Nations in the provincial management of their archaeological heritage. Currently, First Nations in British Columbia are delegated only a minor consultation role in the provincial heritage management process. A majority of the case study participants argued that Hul'qumi'num people should be recognized as the moral and legal

authority to protect their own archaeological heritage, as an Aboriginal right under future self-government.

George Harris: I think that First Nations have to be recognized in terms of by the province and the federal government [to] have authority and jurisdiction and management over ancient sites so that we can protect them.

Abner Thorne: I think the law is there already regarding our burial sites and relics. So I think the Hul'qumi'num people should be recognized by the British and Canadian law as being coexistent with Canada and British Columbia. If they coexist and recognize that and if they're not going to, Canada and British Columbia don't really follow their law, then at least recognize our Hul'qumi'num people some way as stewards of our burial sites, if they're not going to be real stewards of our burial sites.

Arvid Charlie: We need to take a leading role in that. The two governments won't hand it to us and we don't say nothing about it. We have to take a lead role and say we will be part of that protecting and controlling these sites.

Charles Seymour: I think that we should have full...full ownership, full rights to protect and control artifacts because it is up to us to protect. Protect our loved ones who are buried. Our loved ones and their artifacts, the things that they took with them.

Hul'qumi'num people perceive that the provincial government has effectively appropriated their inherent rights to manage their Aboriginal heritage. Under the current management regime, Hul'qumi'num people are allowed only nominal authority over the stewardship of their ancient sites and ancestral remains. The lack of a meaningful decision-making role in this process is seen to undermine Hul'qumi'num traditional authority over their own Aboriginal heritage to uphold their fiduciary trust to care for their Ancestors.

4.1.4 Research, Collection and Repatriation of Archaeological Materials

The Hul'qumi'num participants that were interviewed made very few references to archaeologists and the study of their archaeological heritage. This is despite a long history of archaeological research in the region, including many recent collaborative archaeological research excavations and regional surveys with several Hul'qumi'num First Nations. Archaeologists have often been criticized by Indigenous groups for appropriating their cultural heritage for various purposes. Perhaps the Hul'qumi'num community does not consider the many university researchers who work with the Hul'qumi'num community to protect their heritage and attempt to learn about their culture in a respectful manner a current source of concern. However, strong criticism is directed to those archaeologists whom are perceived to work against the interests of the Hul'qumi'num community. Whether merited or not, the practices of archaeologists who work in the professional consulting industry are often criticized for facilitating the provincial process that permits property owners to develop atop their archaeological heritage sites.

Joey Caro: We're concerned about archaeologists operating in our territory, as well as other First Nations' territories, archaeologists who are lacking in the kind of ethics we require. We see instances, over and over again, of consultants being employed who are not looking for evidence of First Nations' use and occupation but are looking for evidence of a pay cheque.

The perception is that many archaeological consultants have a conflict of interest between their business and the conservation of First Nations' archaeological heritage. Their business interest to minimize financial costs to their clientele is seen to lead to minimal standards of archaeological research and conservation. In fact, some Hul'qumi'num people question whether the nature of the archaeological consulting industry itself is beneficial to First Nations interests in the stewardship of their archaeological heritage in British Columbia.

Artifact collectors, looters and many non-professionals who value archaeological materials for their own personal benefit and profit are recognized. While the extent of the antiquities market in this region is believed to be relatively small compared to other areas of North America, many collectors in the area have large private artifact collections that include ancient human remains. The sale of these archaeological artifacts in local antique stores, flea markets and, most recently, through internet auction sites is of great concern to Hul'qumi'num people.

Irene Harris: There was a store in Ladysmith. They used to have it advertised that, if the Natives didn't have money, bring their artifacts there and we'll give you five dollars, two dollars. That was all they were, they'd give them, then when they closed that store, they say artifacts was just full of stuff in their basement that they hid it all the way. One lady told me, she says "you know all those artifacts went to Italy and Germany". They got a lot of money for it. They didn't sell it around here. They sold it somewhere else. It's the very few things that you see in our museums now that are not, not valuable... It should have been given back.

Charles Seymour: There are huge private collections of [human] remains and artifacts and they actually don't go that cheap. Because there was a skull that we had to go and get. From Vancouver somewhere. This person had this human skull on their mantle and they had a candle on top of the skull. So he just let the candle melt on top of this. And it was you know, one of our ancestors and some non-native at that party said to that other non-Native person, "You better seriously think about returning that". You know, that's pretty disrespectful and they have quite a bit of insight. They offered the advice if you don't have any problems right now, you will have problems in the future if you don't get this taken care of...". So that skull actually was returned. And re-interred.

Arvid Charlie: Artifacts, that's a big one today. Many of our artifacts are showing up by erosion, whether it's a flat surface erosion, objects coming up. Whether it's beach erosion, river erosion and it's hard to tell for some of them whether they were just lost or whether they're part of a burial. I know that some say leave them where they are. I do need to say this really today much of that is impossible to leave there. If we don't, we don't look after it, somebody else will go pick it up and we won't know where it's gone; somebody's private collection or sold on the market.

Abner Thorne: And there's been extraordinary things that have been found by white people. It, it's been described to me... I don't know who found it but it's been sold I imagine to a collector and we'll never

know what it is. And the people that want to study our culture will never see it. So things like this have been lost.

The collection and sale of archaeological materials by private collectors is viewed as a collective loss for Hul'qumi'num culture. The issue of private collections is closely associated with other challenges faced by Hul'qumi'num people regarding the conservation of their archaeological heritage on private property. A greater number of artifacts exists in private collections within Hul'qumi'num traditional territory than in museum collections across Canada. The commodification of artifacts (i.e., as objects of private collection and sale) is against Hul'qumi'num beliefs that these belongings still remain in the ownership of their Ancestors, and by association remain the cultural property and responsibility of Hul'qumi'num people. If these artifacts were funerary inclusions, the collection of these artifacts would also be against customary laws of avoidance. As Arvid Charlie states, although customary law suggests that any found artifacts should remain where found, "today much of that is impossible to leave there" due to the threat posed by collectors.

The public collection and exhibition of artifacts by museums is a particular source of concern for many Hul'qumi'num participants in the study.

Ron Alphonse: There may be artifacts in Victoria in the museum, which shouldn't be there. They could have come from gravesites too and moved to the museum...I guess there's this mentality of just to showpiece something from the past and they're curious because they want to look at it. But with us, we have more respect for deceased. We don't make a display of what they owned or wore or used, I guess.

Ray Peter: I think that, you know, mention a little bit about problems facing from the outside world. Teachings and values of different cultures vary greatly you know, other cultures unfortunately they don't pay attention. And especially for the Hul'qumi'num or any *hwulmuhw*, the burial sites, sacred sites, objects or whatever. You know, it's not sacred to them, sacred to us and it's only for a show-and-tell purposes, like take their museums.

Mabel Mitchell: People often find old stone tools and ancient objects when they walk along the beach or are digging in their backyards. This shows that our people were here a long time ago and they, they made their own tools from rocks and other hard objects. And bow and arrows and, like the arrowheads, we find a lot of arrowheads along our beaches because of the wars they used to have. Against the northern people. You find a lot of arrowheads and that. And that was from the war days. And the tools we find stuff they like they used for hammers and. And, and even bowls where they crush things. And, and this is all things that our people used a long time ago. They made their own tools from whatever they could find. That was, that they can use to make hammers and things. Even axes and knives. And, I, we usually if, if we find something, we usually take it home and we leave it outside for four days. You're not allowed to take it into the house right away. Or else you'll be bothered by, you know, other spirits. So you leave it outside for four days and before you bring it in, you just give a prayer and a thank you and let them know what you're going to use it for and before you bring it into the house.

Abner Thorne: I found arrowheads and bone needles were, like found in place where they're excavating for homes, given to me. But didn't become mine so I left it at the Band Office, arrowhead and that needle. So they put it in a showcase. So it's there for the people to see it... So that's what, you show respect. To take it and sell it, I find that distasteful.

Ross Modeste: Some of these were used for hunting so that was for primarily survival. And protection of one self from enemies. So these things that they used to, for protecting themselves from the enemies would, would be held in high regard and placed in an area where it would not be lost. And arrowheads. Stone hammers, and this sort of thing that it could be placed in an area where it was not used as a toy for the children but as a memento of our people of the past. Today people sell them to museums or collectors and god knows what these people do with them. They put them out in display and that is not the feeling of our people to put our, our sacred history on display. Certain things, fine, but not some of the things that help our survival.

The public display of Hul'qumi'num artifacts is criticized by many Elders for contravening customary laws of avoidance concerning the belongings of their Ancestors. As Ray Peter states, "we have more respect for deceased. We don't make a display of what they owned or wore or used". However, others do express interest in the collection and display of artifacts that are not funerary-related. As Ross Modeste explains, "It's not the feeling of our people to put our, our sacred history on display. Certain things, fine, but not some of the things that help our survival". The display of non-funerary artifacts for public education is encouraged by Abner Thorne to show respect for Hul'qumi'num culture, "So it's there for the people to see it". Similarly, the repatriation of museum artifacts is a topic frequently mentioned by many Hul'qumi'num participants.

4.2 Problems Within the Hul'qumi'num Community

Although the majority of problems expressed during our interviews with Hul'qumi'num participants were identified as external to the community, two serious issues of concern within the Hul'qumi'num community were indicated: 1) youth education; and 2) community capacity.

4.2.1 Youth Education

A lament expressed by many of the Hul'qumi'num Elders is that the youth in their community do not show respect for their traditional culture. While recognizing that the values of this new generation are rapidly changing, a deep disappointment is expressed that young people are not more knowledgeable or involved in learning about their own culture.

Florence James: I think it's today that we have so many young people that really don't know anything about you know, our values. Our, our way of living, like when we were older. There's not a lot of respect anymore from the young people.

Amelia Bob: They don't understand and that's that you know. So I think it's very true what the old people used to say a long time ago. But when you talk to the young people and try to tell them, they laugh at you.

These broad concerns about the education of Hul'qumi'num youth extend across the range of their traditional culture, most notably in the practices of their winter spirit dance ceremonies. There are specific concerns, however, that Hul'qumi'num Elders relate about educating their youth to respect customary laws about their heritage, particularly in reaction to the existence of artifact collectors among this generation.

Abner Thorne: That's what I say of some people of our younger generations do that, become pothunters. So this is the teachings or the respect of people. Some people say they are bothered by things and maybe because of some of the things they do they get bothered by this. But that's, that's the relics and artifacts that it puts them useful for teaching our people and if you know what that's [if they find] the extraordinary relics then yes to, to be studied. Yes, okay for our younger people to know what it's all about.

Charles Seymour: There are pothunters, pothunters within our community and the non-native community who dig through these sites and look for artifacts and even remains, to sell... That is the only threat because how do you, how do you make your own people aware? I'm leaning into the language again but with, with lack of language, there's no real, real teachings passed down effectively enough. People aren't aware of the consequences of their actions. So that's why that pothunter threat exists. There's lack of teachings and awareness.

August Sylvester: And our people, they can't, can't do stuff like that; go in a graveyard and grab something and take it away. That's asking for trouble. We shouldn't have people going around looking for artifacts where they know there is a burial site. Those are hard things to teach our own people cause these are our own people that go along the beach picking up the old beads, trade beads. They have a hard time with them. I don't say anything because they're smart children. They went through school already and you can't tell them old things like this. It's too, they've got parents that should tell them, educate them on the Indian ways. We can't, I don't, well the old teaching is you don't teach somebody else's children your way.

Although the scale and frequency of artifact collecting among youth within the Hul'qumi'num community is unknown, this is a concern expressed by Hul'qumi'num Elders from several different communities. The education of youth about their culture and heritage is an important issue that needs to be urgently addressed by the Hul'qumi'num community for reasons beyond just upholding customary laws about the protection of their archaeological heritage. However, educational programs about archaeology may inspire youth to develop interest and respect for their traditional culture.

Presently, there are few educational opportunities for youth to experience learning about their culture history and archaeology in Hul'qumi'num communities. It may be that artifact collecting among youth is a misguided, but well-meaning, attempt for young people to experience a real interest in discovering and learning about their traditional culture and heritage.

4.2.2 Community Capacity

A second important heritage issue identified by Hul'qumi'num participants is the current inability of communities to protect their archaeological heritage. The expressed concerns involve the need for greater community cooperation and the need for Hul'qumi'num community facilities and institutions.

Florence James: For everybody, not just you know, not just for me, me, me. And that goes for everything you know. Like not just, not just the burial sites or whatever but everything that we do was a community effort. And I think that Hul'qumi'num people again I think that we should have a central location to deal with protecting and controlling sites and artifacts in our area. I think that that should be a shared area.

Mabel Mitchell: I think our Hul'qumi'num people should be more involved. A lot of people complain and they know what's going on but they never get involved. They're afraid of being involved in protecting our sites and protecting our lands and our artifacts. And it makes it difficult you know, just for a, a small group to go when there are so many of us here that should be all working together And, but when you get, try and organize something like that, only a few people show up. Not everybody wants to be involved and yet it's usually the ones that complain the most at home that are the ones that don't want to be involved. And uh, like even our graveyard over here, just the other road, that's really overgrown. A lot of people don't even know that there's a graveyard there. Nobody's ever gone to see it. And it's, it's a shame that, we have such you know, a large amount of modern tools now and yet, our graveyards are being really neglected.

Ray Peter: Well, the Hul'qumi'num people, not only Hul'qumi'num people but, the *hwulmuhw* people, like right here on the island, they got to learn to get together, protecting these... Working together with as one. You know, but it has to start in our own backyard.

Richard Thomas: I think some of the problems faced outside or within our communities in protecting sites, artifacts and human remains is that you know with, with artifacts, the way we are situated now, we don't have a place to bring, we don't have our own museum I guess to... or not a museum but a place to hold artifacts and remains until they are dealt with.

Sylvia Harris: With respect to the artifacts, we've reburied artifacts. And I sometimes think that maybe we should have our like different nations have their own museums. I sometimes think that with respect to that that we should do that. That way it's like a learning process for not only our students and our younger people but for the non-First Nations also.

George Harris: I think that out of respect for our Ancestors and I believe that [artifacts] shouldn't leave our territory. They should remain in our territory. That's where I think we need to make a museum so that people can, can observe and look at them so that they can be used for learning purposes for our, all of us; not just young people but for all of us.

Participants expressed a current lack of community cultural organizations and institutions for Hul'qumi'num people to take a greater role in the protection and management of their archaeological heritage. While Hul'qumi'num people are deeply interconnected by their shared family relations, religious practices, history and cultural traditions, the Hul'qumi'num Treaty Group is the only non-governmental organization that is a common to all six member First Nations. There is an expressed interest to develop greater community organization between Hul'qumi'num people to effectively establish their interests over their cultural heritage. In particular, it is understood that the development of a museum institution would assist in the repatriation of museum artifacts to the Hul'qumi'num community and act as a central storage facility to keep their archaeological materials within their territory. Importantly, there is an interest in the development of a Hul'qumi'num museum institution as an avenue to provide greater opportunities for public education about their culture and heritage to youth, community members, neighbouring First Nation communities and the general public at large.

4.3 Resolving Disagreements Between Different Communities

The issue of shared territory between First Nation groups is a popular public concern about treaty negotiations and First Nation consultation in British Columbia. The shared territory between the six communities who are members of the Hul'qumi'num Treaty Group is recognized as so extensive that they have united under one treaty organization. A more complex political issue for the Hul'qumi'num Treaty Group is their shared territory with other First Nation groups. The Hul'qumi'num Treaty Group's *Statement of Intent Aboriginal Title Core Territory (Appendix A)*, for example, is shared with at least ten different First Nations from three major language groups. Although there are many social and economic ties between these First Nation communities, there exist few official government agreements or community protocols to negotiate issues in these areas. We asked Hul'qumi'num participants the following question, to understand whether there are teachings about how people traditionally resolve disagreements about who should take care of any disturbed archaeological sites or ancient human remains between other communities in their shared territory: *"If people in different First Nation communities disagree about who should care for these burial sites and human remains and how it should be done, are there ways that people agree to resolve their disagreement?"*

Responses indicated an agreement among all Hul'qumi'num participants that their principle of respect for their common Ancestors takes precedence over any modern political concerns.

Roy Edwards: The old people said, when you see remains, honour it, “*’ethu ‘i’ch mustimuhw*” [“Take care of each other”]. If you take care of them, they’ll help you. You help them, they help you later on. They will thank you for the little bit of respect you showed them. Help each other, never argue. If you argue, you never know, it might be your children they will take it out on. Always be careful, help each other. Honour and respect.

Ron Alphonse: Never really heard about these agreements between the different bands or about burial sites. I think we all pull together in that regard, what the respect for those deceased.

Abner Thorne: The main thing is it should be done regardless of disagreement. They’ve got to come to a conclusion that it should be done. There’s some pettiness that creeps in too. And that has to be dealt with or disregarded, you have to discern what is sincere or is it pettiness that’s creeping in? So if that discussion is allowed it’s taken care of then. But regardless, I think that the respect has to be shown for the dead people.

Joey Caro: We’re really careful about not turning our Ancestors into political footballs. We feel that we have to take care of them first, give them the respect they deserve, do the right thing with them first.

Richard Thomas: As for the different communities disagreeing about whose burial sites are whose, I know that I’ve heard from our elders that we shouldn’t be concerned about whose, whose ancestral remains they are but we have to show the respect that our Ancestors deserve. And I guess by just having discussions and agreeing that you know there’s work that needs to be done and get the work done and then probably by the time the work is done that any disagreements would be hashed out by then and ceremonies would just strengthen the communities

George Harris: I think that there are certain areas where there will be disagreements about burial sites and human remains. And I really feel that there’s a good willingness to resolve the issue has to come from the leadership and the families, community members. They have to make a commitment to resolve the issue and the best way for that to happen is to rely on our teachings, the teachings coming from our ancestors about how we care for each other in the living. And that how we have a common concern to care for all our ancestors and our burial sites, human remains. And that I believe that if there’s an impasse that at least we can maybe agree on someone who could handle it for both parties, handle the human remains or agree on a plan to deal with burial sites.

Sylvia Harris: Every community, every family has their own teachings more or less and how they deal with things. But I think within our own people, we generally have respect for one another. The way we were taught by my mom, with respect to how we deal with burnings or helping people and each family that does the burnings has their own ways of how they, how they do things. And we’re always, we were always taught to be respectful of that and not to step on any toes per se with regard to procedures and what not. Because that’s their own, that’s their own particular family trait. And so I think our people are, our First Nations people are generally like that.

There is an expressed ideal by Hul’qumi’num people that communities should put away their own interests that concern taking care of any disturbed ancient human remains to “show the respect that the Ancestors deserve”. The policy of Hul’qumi’num people is to provide recognition of their neighbours’ legitimate interests in respecting their common Ancestors. The resolution of shared interests in the

management of archaeological issues is to be negotiated through the mutual recognition of family relations and social ties between their communities.

Arvid Charlie: I know we run into problems today about not recognizing each other and having used certain territories or areas. Part of that probably could be addressed by knowing our ancestry lines. Some of us have far reaching roots...So we all traced our kinship, our genealogy, all of us. I believe there to be less, less of that, I don't know what you call it, animosity or not getting along

Ross Modeste: Yes, usually in the past, people knew who resided in that area and that could be people from various villages. In the past, there was no Indian Act; there was no reserve, as we see it today. So people in community A and community B knew who these people were and they would come together and discuss it and maybe a sacred ritual was put on. Then they decided who would look after it. We, usually done through a sacred ritual.

Florence James: For the other remains that you find in different places, I would say you know, to mark it and leave it there. And we, we know all our family's traveled together and went from island to island for their foods. We were all Cowichan peoples at one time; we didn't have differences in community. Everybody loved and cared for one another. And that's a teaching. We don't make each other different cause our bloodline and we're families are made up of all different family. You know, make up the tree and every branch comes, doesn't come from one place. So the people always knew each other and knew their family tree in the oral history. And they'll tell each other I'm related to you by your mother or your aunt or your mom's sister. And they know that. It's not written down. And so it's in the memory of the people. And everyone didn't make each other community different; they were all one peoples. Today we use '*Nutsa maat*' and nobody's, it, that represents one thought, that word. And so *nutsa maat* were not one thought but they were all different, separated communities on reserves and everyone's learned to, oh, your from there, you can't come here and you can't do this and say that and it never used to be like that. And so that's why they had that word [*nutsa maat*]. Lots of meaning, one and you know peoples thinking all the same. Thinking all the same. See? *Nutsa maat*. And when they're all thinking different and not thinking along and the outside characters used to be called extended families. Now, it's not known. Everybody's seem to be uh, divide and conquers what's being used. You conquered within your own peoples. And yet my grandfather, he had family from Cowichan, they had longhouse there and they had family in Saanich, they had family, his in-laws, the wife was from Nanaimo and the man came from here that made my great grandmother and so that's the way our family tree is made up. Both by that family, immediate family, community, extended family, extended community. See?

Hul'qumi'num Elders offer several examples of neighbouring First Nation communities working together to resolve their interests in their archaeological heritage. These examples include the 1995 reburial of ancient human remains from the Craig Bay archaeological site by the Nanoose First Nation, and the more recent museum repatriation of human remains for the Snuneymuxw First Nation in 2002.

Bernard Joe: I know when the Nanoose had theirs and then they hired everybody. They hired all the diggers, right from Saanich, Esquimalt, Mill Bay, Cowichan, Kuper, Westholme, Shell Beach and Chemainus Bay. We're all involved in that. They had two diggers for each community. I think that was nice that, having it that way.

Ray Peter: What they did was [in Nanaimo] was they didn't know where these people were from or who they were, if they were Hul'qumi'num people or what. So they had, because of the three Nations on our

island, they went and they got the sacred ones from Nuuchah-nulth and Kwakwakawala'wakw and they went down there and each of them did prayers in their own language cause they didn't know who our dead was. And when they did that, they had a food burning, offerings of food and that's what they did. They had the three Nations of our island, our island only, do it in their own languages. Cause they didn't know where the bones [were from], you know. And that was to respect other Nations.

These two accounts provide successful examples of First Nation communities recognizing their shared family relations that connect them to their archaeological heritage. The examples acknowledge that the significance of archaeological heritage for Hul'qumi'num people is based on its value of re-establishing social relationships between people, both past and present. As demonstrated in the recent incident on South Pender Island, however, disagreements do exist between neighbouring communities about the protection of their archaeological heritage and mutual respect for each others' interests is not always shown. Thus, the teachings of the Hul'qumi'num Elders to respect their neighbour's interests may be considered an ideal.

4.4 Summary of Emergent Problems

Hul'qumi'num people express deep concerns over their inability to maintain their customary principles and laws to protect their archaeological heritage. Hul'qumi'num people believe that there exists little local public respect for their heritage and assert that their heritage values deserve equal public commemoration in British Columbia. Modern politics of land represent a significant challenge for Hul'qumi'num people to maintain their historical connections to their lands, most notably the protection of archaeological sites located on private property. It is argued that their customary laws to rightfully manage their Aboriginal heritage are undermined by the provincial government and the heritage resource management industry. Although external community issues are the primary focus of expressed concerns, there do exist important heritage issues within the Hul'qumi'num community that need to be addressed, particularly the education of youth to encourage greater interest in maintaining traditional culture and heritage and the development of community capacity. In summary, Hul'qumi'num people require assistance to develop a strategic plan, including legal avenues, to achieve their community interests in their asserting ownership, jurisdiction and management of their archaeological heritage across their traditional lands.

5 STRATEGIC LEGAL DIRECTIONS FOR RESPECTING HUL'QUMI'NUM HERITAGE LAWS

Guided by the principles and teachings of Hul'qumi'num Elders concerning their archaeological heritage, we next examine potential legal directions for how Hul'qumi'num people can achieve their interests in the protection of their Aboriginal heritage in British Columbia and Canada. There are three main interests that can be identified through discussions with Hul'qumi'num Elders concerning the protection of their heritage: ownership, jurisdiction and management. In this chapter, we explore legal strategies to balance these Hul'qumi'num interests with provincial and federal laws, according to the following areas: 1) treaty negotiations; 2) amendments to current legislation; 3) definitions of Aboriginal rights in court; and 4) development of new Canadian legislation.

5.1 Treaty Negotiations

Treaty negotiations in British Columbia likely hold the greatest potential for achieving a just and equitable reconciliation between First Nations' heritage laws and the interests of the Canadian state. With the signing of the Nisga'a Final Agreement in 1998 (Canada, British Columbia, Nisga'a Nation, 1998), British Columbia and Canada officially recognized that the Nisga'a Nation has control over their archaeological heritage sites and materials on Nisga'a Lands, and initiated a process to begin repatriating Nisga'a artifacts from Canadian museums. The Nisga'a Final Agreement has become a template for many other First Nations to follow under the concurrent B.C. Treaty Process, as evident by several recent draft Agreement-in-Principle's in 2003³⁹.

Due to the urban, privatized nature of Hul'qumi'num traditional territory in British Columbia, however, the Nisga'a Final Agreement may not be an effective model to protect Hul'qumi'num cultural interests in their traditional lands. Located in a remote area of northern British Columbia, the Nisga'a Nation negotiated a large percentage of their traditional territory based on the transfer of Crown Land. Comparably, the Nisga'a Land settlement at 199,200 hectares is two-thirds the size of the entire Hul'qumi'num Treaty Group's *Statement of Intent Aboriginal Title Core Territory*. With only 15% of Hul'qumi'num traditional territory remaining as Crown land, a land-based settlement is a limited treaty option to resolve Hul'qumi'num long-term interests in protecting their heritage sites in their traditional territory, where 80% of recorded archaeological sites are

³⁹ The draft Agreement-in-Principle's used at the time of writing were the Snuneymuxw First Nation, Tsawwassen First Nation, Sliammon First Nation, and Maa-Nulth. All are publicly available on the Indian and Northern Affairs Canada website at http://www.ainc-inac.gc.ca/pr/agr/index_e.html. Last Accessed April 2004.

located on high-priced, private real estate. For this reason, defining a regional role for Hul'qumi'num people in the ownership, jurisdiction and management of their archaeological heritage outside future treaty settlement land may be a key negotiation issue for the Hul'qumi'num Treaty Group in the B.C. Treaty Process.

5.1.1 Ownership of Archaeological Sites as Treaty Settlement Land

Securing ownership of land in treaty may be the most direct legal mechanism to protect archaeological heritage sites for the benefit of Hul'qumi'num people. As stated in the UNESCO report on the *Protection of the Heritage of Indigenous Peoples* (Daetz 1995:9):

The discovery, use and teaching of indigenous peoples' knowledge, arts and cultures is inextricably connected with the traditional lands and territories of each people. Control over traditional territories and resources is essential to the continued transmission of indigenous peoples' heritage to future generations, and its full protection.

The Royal Commission on Aboriginal Peoples (1996)⁴⁰ specifically advocates for the repatriation of heritage sites on private lands to Aboriginal people:

In the case of heritage sites on private land, the Federal government negotiates with landowners to acknowledge Aboriginal jurisdiction and rights of access or to purchase these sites if there is a willing seller, so that they can be turned over to the appropriate Aboriginal government.

Due to the scale of privatization within Hul'qumi'num traditional territory, however, there are significant challenges to regain Aboriginal ownership of traditional lands in treaty. Over 1,000 pre-contact archaeological sites have been recorded in Hul'qumi'num traditional territory. There is estimated to be an equal number of archaeological sites in the region that have yet to be recorded. On private fee simple land, there are approximately 650 district lots (not including subdivision lots) that are known to contain archaeological sites in the region. The majority of these district lots are waterfront real estate held by residential homeowners. The ownership of all archaeological sites, even if available as willing-seller lands, would be a prohibitively expensive, highly unrealistic, expectation for treaty settlement.

If willing-seller land is an option for consideration, the Hul'qumi'num Treaty Group will need to make strategic decisions concerning their priorities for treaty land selection. Due to high real estate values on southeastern Vancouver Island and the southern Gulf Islands, treaty land selection decisions will need to

⁴⁰ Royal Commission on Aboriginal Peoples, Volume 2, Part 2, Appendix A, Recommendation 2.4.59.

justly balance economic, social and cultural needs for the benefit of future generations. Measures of cultural significance may have to be developed to determine heritage sites of national importance for Hul'qumi'num people. This decision-making process may involve expensive, time-consuming survey projects to ground-truth heritage places to ascertain their site location, condition and property status. In summary, treaty land selection is evaluated to be an expensive and impractical strategy to protect archaeological sites.

A longer-term commitment to purchase heritage sites on willing-seller land in the post-treaty era may be a more realistic strategy to regain ownership of Hul'qumi'num heritage sites. Additionally, treaty options other than ownership of land may offer more effective methods to resolve Hul'qumi'num interests in the protection of their archaeological heritage.

5.1.2 Ownership of Artifacts and Ancient Human Remains as Cultural Property

If Hul'qumi'num people cannot own all the lands where archaeological sites are found, an alternative option is to define in treaty that Hul'qumi'num people have ownership of all archaeological artifacts and ancient human remains located in their traditional territory. Based on Hul'qumi'num principles, archaeological materials are believed to remain as belongings of the Ancestors. As cultural property that was made and used by their Ancestors, it can be argued on moral grounds that archaeological artifacts are a form of inheritance — a patrimony — that belongs to modern Aboriginal people. Similarly, Hul'qumi'num principles declare that Hul'qumi'num families have a fiduciary trust obligation to make decisions over the remains of their deceased Ancestors, in contrast to private property owners. Therefore, Hul'qumi'num ownership over archaeological artifacts and ancient human remains in treaty may provide a powerful tool to protect their interests in their archaeological heritage throughout their territory.

5.1.3 Devolvement of Provincial Jurisdiction in Hul'qumi'num Traditional Territory

Following the Nisga'a Final Agreement (1998) and recent draft Agreements-in-Principles in the B.C. Treaty Process, the proposed scope of First Nation governance grants many jurisdictional rights over treaty settlement land, including heritage conservation. Specifically, the Nisga'a Final Agreement (1998) states:

Nisga'a Government will develop processes to manage heritage sites on Nisga'a Lands in order to preserve the heritage values associated with those sites from proposed land and resource activities that may affect those sites (Chapter 17:36, pp. 228).

In the post-treaty era, Hul'qumi'num people will likely have the exclusive right to develop their own laws to protect their archaeological sites and materials located on Hul'qumi'num lands. This jurisdictional right may provide the ideal method to respect traditional Hul'qumi'num heritage laws for the future. Importantly, Hul'qumi'num jurisdiction would fill the current gap in the protection of archaeological sites on reserve lands due to the absence of federal heritage legislation in Canada.

Outside of treaty settlement land, however, the Nisga'a Final Agreement clearly recognizes the authority of British Columbia to maintain provincial heritage legislation and manage First Nation archaeological sites:

British Columbia will develop or continue processes to manage heritage sites in order to preserve the heritage values associated with those sites from proposed land and resource activities that may affect those sites (Chapter 17:37, pp.229).

Although this agreement may be an effective resolution for the Nisga'a Nation, the application of this agreement in Hul'qumi'num traditional territory would permanently maintain the *status quo* whereby Hul'qumi'num people continue to possess limited decision-making authority to protect their archaeological heritage sites outside their reserve lands. If their treaty settlement land base is limited to Crown land and selected willing-seller lands, the Hul'qumi'num Treaty Group may have an interest to negotiate more meaningful regional jurisdictional authority over the protection of their archaeological sites off treaty settlement land.

Under Canada's *Constitution Act* (1982), the Provinces are responsible for the management of lands and resources in Canada, including the protection of archaeological and historical resources, as recently reaffirmed by the Supreme Court of Canada under *Kitkaka v. Regina* (2001). B.C's *Heritage Conservation Act* (1996) is considered one of the most powerful heritage legislations in North America. In theory, this *Act* provides strong protection for archaeological sites located on Crown and private lands across the province and stipulating substantial penalties for purposeful infractions. As previously noted, in practice, however, the degree of protection to sites that the *Act* offers is severely hampered by limited staffing at the Archaeology Branch, by major loopholes in the Municipalities Act⁴¹, and by lack of enforcement. First Nations are presently afforded only a nominal consultation role in the regulation of this legislation.

⁴¹ Local Government Act. RSBC 1996, Chapter 323; Heritage Conservation Act RSBC 1996, Chapter 187.

While it is understood that British Columbia must retain its authority to maintain provincial legislation on provincial lands, for reasons of public accountability, government jurisdiction may involve the delegation of its authority to the Hul'qumi'num Treaty Group within Hul'qumi'num traditional territory. This delegated authority to regulate archaeological heritage may be developed directly in treaty language, or through the negotiation of co-management side agreements prior to treaty settlement.

The treaty process provides a practical avenue for the Province to devolve heritage resource management responsibilities, while reconciling and constructively building more effective community-based regional stewardship with Hul'qumi'num people. Such delegation of authority to First Nations is envisioned in Section 4 of the B.C. *Heritage Conservation Act* (1996):

The Province may enter into a formal agreement with a First Nation with respect of the conservation and protection of heritage sites and heritage objects that represent the cultural heritage of the aboriginal people that are represented by that First Nation.

The Hul'qumi'num Treaty Group's negotiation of a Section 4-like agreement as an Interim Measure in the B.C. Treaty Process would be a practical solution to address Hul'qumi'num interests in its archaeological heritage outside of treaty settlement land. However, a Section 4 agreement has never been implemented with any First Nation group in British Columbia. It is suggested that most First Nation organizations do not yet have the current capacity to undertake these provincial responsibilities, nor the economic basis to finance any heritage resource management programs. Canada and British Columbia may encourage the development of such infrastructure in the Hul'qumi'num Treaty Group through treaty-related measures to realize these heritage management goals prior to treaty settlement.

5.1.4 Stewardship and Management

Increasing local jurisdiction of archaeological resources to Hul'qumi'num people through the treaty process could provide a more effective heritage resource management regime in the region. Today, the Archaeology and Registries Services Branch of the Ministry of Sustainable Resource Management is a small, centralized management agency based in Victoria. The Archaeology Branch has a very limited mandate to manage archaeological sites; the agency is strictly responsible for regulating the permitting system and site registry under the B.C. *Heritage Conservation Act* (1996).

The proposed delegation of provincial authority to Hul'qumi'num government would not necessarily involve the wholesale restructuring of the provincial system, but could be a decentralized co-management

arrangement specific to Hul'qumi'num traditional territory. Delegated authority would be largely restricted to issues pertaining to the co-management of a provincial permitting system, guidelines and protocols for any proposed archaeological research and resource management concerning Hul'qumi'num heritage sites in the region. Promoting the Hul'qumi'num Treaty Group's involvement in the local administration of the regional district's heritage resources would provide a strong political will to deliver sustainable management services, and increase the capacity of the Ministry to fulfill its conservation mandate.

To provide local stewardship, the Hul'qumi'num Treaty Group would necessarily build cooperative alliances and collaborations with other local organizations, including municipal and regional district governments, universities, neighbouring First Nations, and the general public. A broadened mandate would fulfill the need for increased heritage management at a local, practical scale, including monitoring and enforcement of heritage legislation, heritage site management planning and conservation, and public education. The construction of museum facilities by Hul'qumi'num people would provide local resources to house any cultural artifacts.

The establishment of regional archaeological inventory programs led by First Nation organizations as treaty-related measures could address critical gaps in heritage site inventory information, while developing the mutual capacity to more efficiently negotiate heritage issues at the treaty table. In the interest of laying the foundation for the responsible conservation of Aboriginal heritage resources in post-treaty British Columbia, negotiations at the treaty table concerning heritage management issues may involve: a) identification of heritage lands and resources for protection; b) selection of heritage lands for treaty settlement acquisition; c) involvement of First Nations in heritage resource management; d) development of economic, educational and cultural opportunities for First Nations; and e) public awareness of the importance of heritage conservation in British Columbia.

The long-term benefit of these inventory programs would be to develop a more comprehensive, accurate provincial database at no cost to private property owners. The achievement of meaningful Hul'qumi'num involvement in heritage resource management is not only to reconcile Hul'qumi'num interests in their archaeological heritage, but to reduce land-use conflicts, reinforce the historical connection of Hul'qumi'num people across their traditional territory, and realize the long-term conservation of heritage sites.

While there are many reasons to ensure that Hul'qumi'num interests in their archaeological heritage are included in treaty, the most important of these reasons is that these treaty rights will provide legal protection under Canada's *Constitution Act* (1982). The permanence of this constitutional protection contrasts with any protection afforded by federal and provincial government legislation, which cannot be binding on any succeeding government.

5.2 Amending Existing Legislation

The main existing provincial heritage legislations that may be amended to address Hul'qumi'num interests in their archaeological heritage are the B.C. *Heritage Conservation Act* (1996) and *Cemeteries and Funerals Act* (1996).

5.2.1 Amending the B.C. *Heritage Conservation Act* (1996)

In 2002, the British Columbian government announced in Cabinet that amendments to the B.C. *Heritage Conservation Act* (1996) were pending. These proposed amendments by the new provincial government were intended to alleviate “archaeological pressures” on private property owners⁴². A discussion paper by Lepofsky (2002) was circulated among the heritage community in British Columbia. It outlined some of the general interests in proposing these amendments, including placing recorded archaeological sites on land titles, providing tax incentives for heritage conservation on private property, and affording protection for heritage sites based on a significance rating. Few of the proposed amendments offer to address any First Nation interests in/concerns about their archaeological heritage. In contrast, the Section 4 agreements with First Nations clause is intended to be removed from the legislation as it is stated to be outside the province's mandate. However, amendments to the B.C. *Heritage Conservation Act* (1996) are presently delayed until 2005. The Hul'qumi'num Treaty Group has an opportunity to lobby for the inclusion of amendments in new heritage legislation that may help address their heritage interests, including the ownership of archaeological materials and ancient human remains, and a revision of a workable co-management clause.

⁴² Province of British Columbia 2nd Session, 37th Parliament, July 2001. Debates of the Legislative Assembly (Hansard) pp. 504-505.

5.2.2 Ownership of Archaeological Artifacts and Ancient Human Remains

The B.C. *Heritage Conservation Act* (1996) is silent on the issue of ownership of archaeological materials. Under Section 13, however, it is a violation under the *Act* to collect archaeological materials from an archaeological site without a permit. Under permit, according to provincial policy, any collected archaeological materials must be placed in a designated repository. The *Act* creates a subtle way of controlling the collection of archaeological materials, without making any statements concerning legal ownership.

This silence on ownership is reportedly due to the expressed concerns of First Nations in the development of the *Act* in the early 1990s⁴³. Regarded as their own cultural property, First Nations protested the inclusion of language that indicated Crown ownership over their archaeological heritage. However, the silence of the *Act* has created a legal void in the ownership of archaeological artifacts in British Columbia. Although it may be prohibited to collect artifacts from archaeological sites, it is not illegal to own or to commercially sell artifacts in the province. There is a relatively small, but active commercial trade in artifacts in British Columbia. Commercial interests in archaeological artifacts are made at the expense of the conservation of heritage sites, which are intentionally destroyed by private artifact collectors for their own profit.

The silence on the ownership of ancient human remains is more purposeful. Under common law, in principle the human body is considered *res nullius*, the “property of no one”. Although the ownership of human bones may not be part of British common law, it may be argued that Hul'qumi'num principles on the fiduciary trust of next of kin grant property rights for the possession of ancient human remains to Hul'qumi'num people for purposes of reburial. Similarly, legislation in the United States, such as the *Native American Graves and Repatriation Act* (NAGPRA)⁴⁴ and *Charrier v. Bell*⁴⁵ clearly state that Native Americans have legal property rights over their ancestral human remains.

In proposed amendments to the B.C. *Heritage Conservation Act* (1996), provisions stating First Nations' ownership of archaeological materials and ancestral human remains would be important measures to reconcile Hul'qumi'num interests with British Columbia's heritage legislation outside of treaty.

⁴³ Letter from Minister Stan Hagen letter to Robert Morales, HTG Negotiator, received July 12, 2002.

⁴⁴ NAGPRA 1990 104 STAT. 3048 PUBLIC LAW 101-601 Nov.16, 1990.

⁴⁵ *Charrier vs. Bell*, 547 F.Supp 580. 1982 U.S.Dist. LEXIS 14866.

5.2.3 First Nations Delegated Authority/Co-Management Clause

Section 4 of the B.C. *Heritage Conservation Act* (1996) created expectations for First Nations in British Columbia to more directly participate in the management of their Aboriginal heritage. The lack of any signed agreement with First Nations under Section 4 is a testament to the failure of the provincial government to negotiate a meaningful role for First Nations in land-use decisions and heritage resource management in British Columbia. With the proposed removal of Section 4 from legislation in the upcoming amendments to the B.C. *Heritage Conservation Act* (1996), there exists an opportunity for British Columbia to jointly develop new, workable language with First Nations to co-manage archaeological heritage for mutual benefit.

If co-management solutions with First Nations can be effectively developed through amendments to provincial heritage legislation, these provisions may greatly advance treaty negotiations concerning the protection of archaeological heritage at the Hul'qumi'num Treaty Group table.

5.2.4 Amending the *Cemeteries and Funeral Services Act* (1996)

According to Hul'qumi'num principles, archaeological sites are considered the “cemeteries” of their Ancestors. Several Hul'qumi'num Elders have stated that, just as provincial law instructs for respectful behavior in modern and historical cemeteries, so should Hul'qumi'num archaeological sites be afforded the same consideration. As the definition of a “cemetery” under the B.C. *Cemeteries and Funeral Services Act* (1996)⁴⁶ does not encompass archaeological burial sites, it may be valuable to consider either broadening the definition or developing new language to address this interest under provincial cemetery legislation.

In the province of Ontario, for example, First Nation concerns over their archaeological burial sites have created amendments to their provincial *Cemeteries Act* (1990)⁴⁷ to include the definition of unapproved Aboriginal peoples burial locations, defined as land set aside with the apparent intention of interring therein, in accordance with cultural affinities, human remains and containing remains identified as those of persons who were one of the Aboriginal peoples of Canada⁴⁸. The discovery of ancient human remains and grave goods at archaeological sites are administered under the *Cemeteries Act* (1990), rather than the

⁴⁶ Cemetery and Funeral Services Act, RSBC 1996, c. 45.

⁴⁷ Cemeteries Act R.S.O. 1990, c.C.3.

⁴⁸ Cemeteries Act R.S.O. 1990, c. C.4, s. 71 (4).

Ontario *Heritage Act* (1990)⁴⁹, which regulates provincial archaeological matters. In cases where an archaeological site is determined by the Registrar of Cemeteries to be an unapproved Aboriginal peoples cemetery, the landowner and local First Nations (as official representatives for the deceased) enter into negotiations concerning a site disposition agreement. If an agreement cannot be resolved between the parties, an arbitrated disposition is concluded. The inclusion of archaeological burial sites under the Ontario *Cemeteries Act* (1990) provides some measure to officially support First Nations interests in the respectful recovery of their ancestral human remains and grave goods disturbed by property development projects without the interference of archaeologists. The adoption of similar language by amendments to the B.C. *Cemeteries and Funeral Services Act* (1996) would largely alleviate Hul'qumi'num Elders' perceived differences in the legislative protection for their ancient burial sites (Ferris 2003)

5.3 Developing New Canadian Legislation

To address the lack of participation Aboriginal peoples have in the protection of their heritage across Canada, the Royal Commission on Aboriginal Peoples (1996) makes recommendations for governments to officially recognize Aboriginal peoples' rights in heritage legislation. Specifically, the Report (1996: Vol. 2: 4:58-59) states:

Federal, provincial and territorial governments enact legislation to establish a process aimed at recognizing:

- a) Aboriginal peoples as the owners of cultural sites, archaeological resources, religious, and spiritual objects and sacred and burial sites located in their traditional territories;
- b) Aboriginal people as having sole jurisdiction over sacred, ceremonial, spiritual and burial sites in their territories, whether located on unoccupied Crown land or on occupied Crown lands (such as forest tenures or parks);
- c) Aboriginal people as having at least shared jurisdiction over all other sites (such as historical camps or villages, fur trading posts or fishing stations); and
- d) Aboriginal people as being entitled to issue permits and levy (or share in) the fees charged for access to, or use of, such sites
- e) In case of heritage sites located on private land, the federal government negotiate with landowners to acknowledge aboriginal jurisdiction and rights of access or to purchase these sites if there is a willing seller, so that they can be turned over to the appropriate Aboriginal government.

⁴⁹ Ontario Heritage Act, R.S.O. 1990, c. 0.18.

Primarily due to the constitutional division of powers, the Canadian government has never enacted any comprehensive heritage conservation legislation (see Burley 1994). The consequence of this federal-provincial arrangement is that there currently exists no heritage legislation to protect archaeological sites on federal Indian reserve lands in Canada. This lack of federal responsibility has created an unacceptable double-standard, where Aboriginal heritage sites on reserve lands are afforded less protection than heritage sites located on private or provincial lands.

The proposed Canadian *Historic Places Act* is the first federal heritage legislation in Canadian history⁵⁰. How this new legislation will address the interests of First Nations concerning their archaeological heritage on reserve lands has yet to be publicly addressed. However, it is hoped that the recommendations of the Royal Commission on Aboriginal Peoples (1996) will provide a source of inspiration to officially recognize First Nations' legal authority over the protection of their archaeological heritage in Canada.

5.4 Defining Aboriginal Rights in Court

Several unsuccessful attempts by First Nations in British Columbia over the last decade have challenged provincial authority over the jurisdiction and management of archaeological sites. Notably, *Nanoose v. British Columbia* challenged the province's excavation of archaeological burial site under the B.C. *Heritage Conservation Act* (1977)⁵¹ with the argument that the ancient site represented a cemetery under the *Cemeteries and Funeral Services Act* (1989). More recently, *Kitkatla v. Regina* argued that archaeological sites are a matter "at the core of Indianness" and should fall under the federal government's fiduciary duty to Aboriginal peoples under the *Indian Act* (1995)⁵², rather than as a land issue of the provincial government.⁵³ Both of these unsuccessful court cases have attempted to undermine provincial authority over archaeological heritage by challenging government legislation. If successful, it is arguable either one of these court cases would likely have provided any greater benefits to Aboriginal people or ensured increased protection for their archaeological heritage in British Columbia. Indeed, if *Kitkatla v. Regina* had been successful in its arguments, it would have created a legal void in the protection of archaeological heritage across British Columbia, as Canada does not currently possess any national heritage legislation.

⁵⁰ For information on this proposed *Act* see http://www.pc.gc.ca/progs/plp-hpp/plp-hpp1_E.asp Accessed 1 May 2004.

⁵¹ *Heritage Conservation Act* (1977), last amended in 1996.

⁵² *Indian Act*, R.S. 1985, c.1-5.

⁵³ *Kitkatla v. British Columbia* [2000] B.C.J. No.86; See also *Kitkatla v. British Columbia* [1998] B.C.J. No.2440; *Kitkatla v. British Columbia* [1998] B.C.J. No.3041; *Kitkatla v. British Columbia* [1999] B.C.J. No.177.

For a new direction to assert First Nation interests in the protection of their archaeological heritage in British Columbia, defining the Aboriginal rights to protect their archaeological heritage as cultural property may provide a more constructive and successful avenue for legal pursuit. Based on Hul'qumi'num customary law, *do Hul'qumi'num people have an Aboriginal right over the ownership, jurisdiction and management of their archaeological sites, artifacts and ancient human remains as their cultural property?* Moreover, *do Hul'qumi'num people have an Aboriginal right to protect their Dead against physical disturbance? Are these Aboriginal rights integral to the distinctiveness of Hul'qumi'num culture?* To move the positions of treaty tables and develop new heritage legislation in British Columbia and Canada to benefit First Nation interests, establishing Aboriginal rights to possession and custody over their archaeological heritage in court may provide the necessary tools for lasting social change.

6 CONCLUSION

Cultural conflict between the protection of archaeological heritage sites and the pressures of modern land development is an increasingly chronic issue for Hul'qumi'num people in southwestern British Columbia. Over the last 150 years, Hul'qumi'num people have been afforded little political voice in face of the colonization and alienation of their ancestral lands and resources. In the last decade, the emergent capacity of Hul'qumi'num people to assert their Aboriginal rights and cultural interests on the land has brought greater public attention to their interests in archaeology. Through the B.C. Treaty Process, Hul'qumi'num people have declared their interests in constitutional recognition of their Aboriginal rights to the ownership, jurisdiction and management of their archaeological heritage. Many critics in British Columbia, however, cynically dismiss such First Nations' interests in archaeology as just another 'political tool' to halt land development and leverage greater amounts of land and resources at the negotiation table with government.

Through this case study, we have listened to Hul'qumi'num Elders and community members speak of their cultural perceptions, customary laws and concerns about the protection of their archaeological heritage. While underlying and unresolved issues of Aboriginal title heighten cultural conflicts, it is clear that Hul'qumi'num people's deep-rooted cultural interests in their protection of their archaeological heritage are integral to their distinctive cultural identity.

Hul'qumi'num people socially value their archaeological heritage for their relation to 'people', rather than as 'objects' of material value in themselves. Archaeological sites are perceived not as abstract scientific resources, but as the 'cemeteries' of their family Ancestors, their '*Sulhween*'. From a Hul'qumi'num perspective, the Living having inherent social obligations to care for the remains of their deceased Ancestors, whom remain fundamental figures within extended families. The disturbance of ancient human remains and their belongings are perceived to disrupt the continuity of relations between the Living and the Ancestors. The deceased Ancestors, their remains and belongings are considered *xe'xe* "sacred / spiritually-potent", possessing non-human powers dangerous to the Living. For this reason, Hul'qumi'num culture maintains strict customary laws associated with the treatment of the deceased Ancestors and their belongings.

In this study, we interpret three primary customary laws that Hul'qumi'num people associate with the protection of their archaeological heritage:

- 1) It is decreed that only persons with the inherited right and ritual knowledge may care for the remains of the deceased Ancestors and their belongings;
- 2) It is prohibited for persons to physically disturb any land containing ancient human remains and their belongings;
- 3) It is prescribed that persons avoid physical contact with the spirits of the deceased, their skeletal remains, belongings, and burial grounds.

These customary laws are based upon maintaining principles of respect and reciprocity of relations between the Living and the Ancestors. To contravene these customary laws and upset the balance between the Dead and the Living worlds is understood in Hul'qumi'num culture to bear mortal consequences for the Living, whether through retribution by poor fortune, illness, paralysis or death.

Today, Hul'qumi'num people have many concerns for the protection of their archaeological heritage, including increasing land development, lack of enforcement of provincial laws, lack of a meaningful role for their First Nation governments in provincial heritage management, the growth of the antiquities market, and the internal needs for youth education and community capacity. Most notably, however, there is a common perception among Hul'qumi'num people that the general public of British Columbia does not value their archaeological heritage as an important part of Canadian heritage.

In this case study, we hope that by defining Hul'qumi'num customary laws associated with their archaeological heritage and by identifying preliminary legal options to address their interests, we can begin to provide legal scholars and researchers with the necessary directions to begin to improve Canadian heritage laws. Further, we hope that in expressing the words, perceptions and beliefs shared by Hul'qumi'num Elders and community members about their archaeological heritage, we can begin to improve the relationship of Hul'qumi'num people with others in British Columbia by providing greater public awareness of the need to recognize their culture and history as an appreciated part of our national heritage.

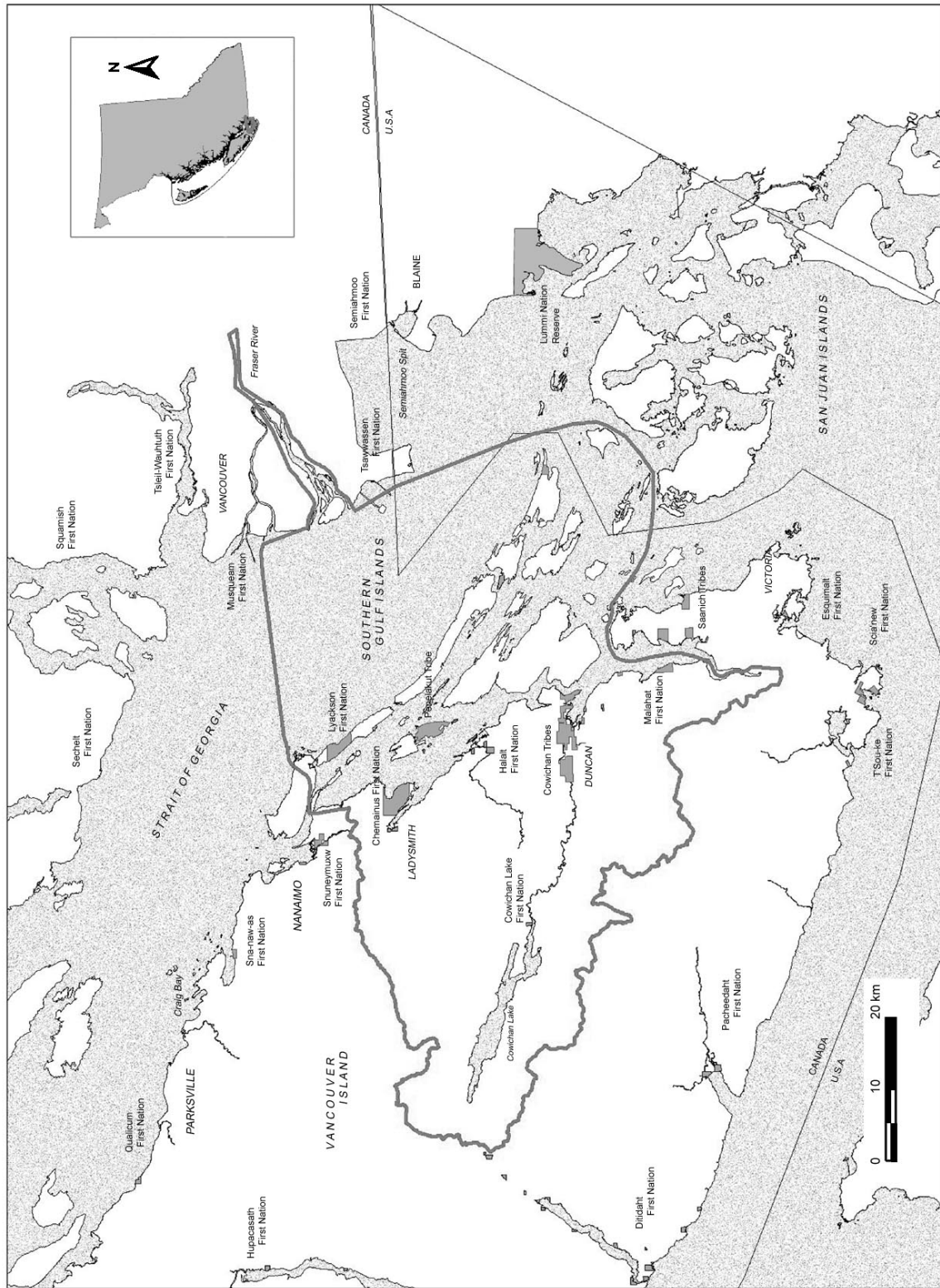
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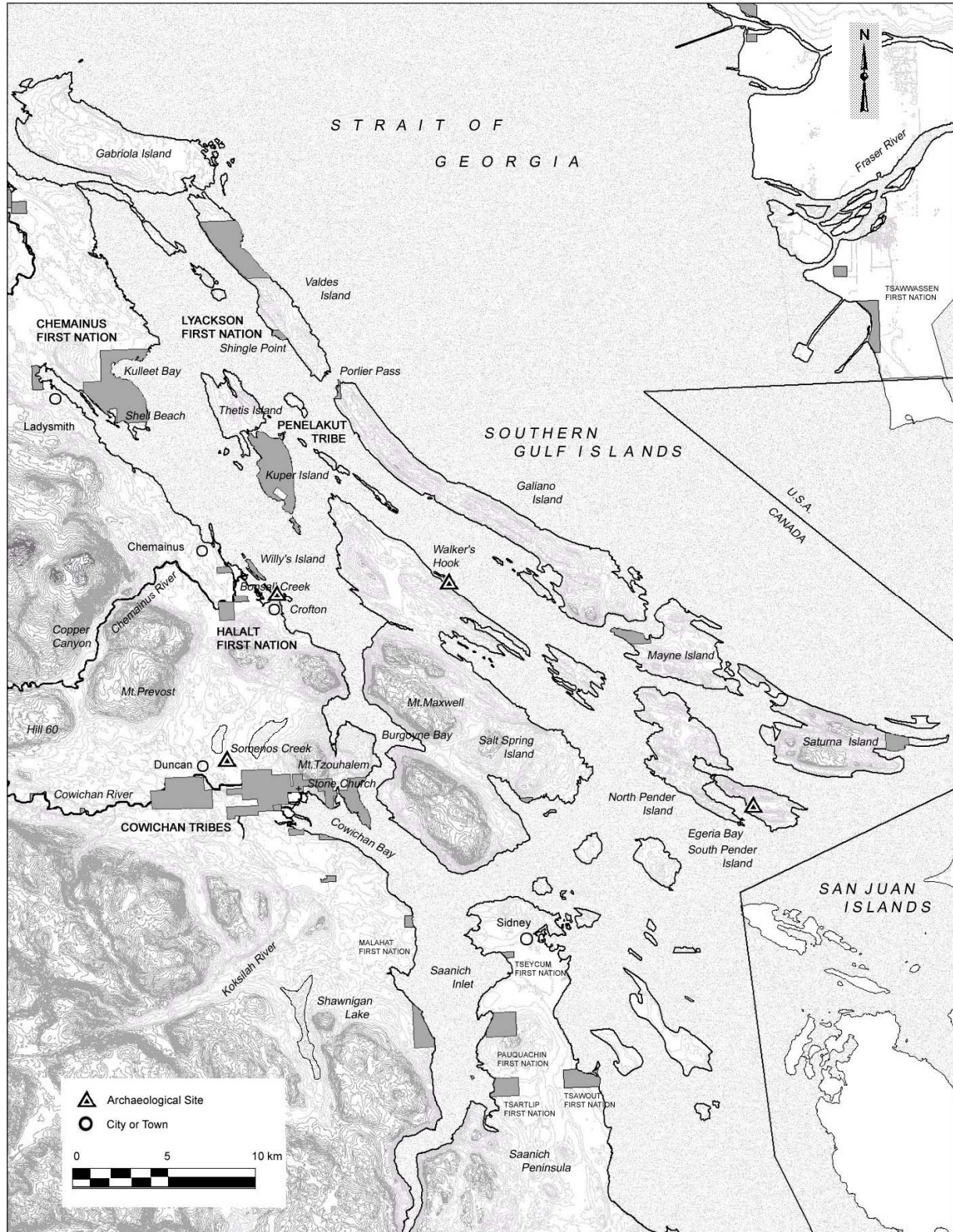
Appendix A:

Map of Hul'qumi'num Treaty Group's *Statement of Intent* Aboriginal Title Core Territory



Appendix B:

Map of Hul'qumi'num Places and Archaeological Sites



Appendix C:

Glossary of Hul'qumi'num Locations

*Note: An asterisk * indicates the locations labeled on the map in Appendix A and B.*

Baynes Bay

A bay on Porlier Pass on the northwest point of Galiano Island, Penelakut I.R.9. Hul'qumi'num historical village of *Xi(x)nupsem*.

Blaine

City in Washington State, U.S.A., just south of Canadian border within the traditional territory of the Central Coast Salish Lummi Nation and Semiahmoo First Nation. In 2000, municipal development in Blaine destroyed a large portion of an archaeological shell midden site at Semiahmoo Spit. Ancient human remains and artifacts are still being recovered by the Lummi Nation with the assistance of neighbouring First Nations, including Hul'qumi'num Elders.

Bonsall Creek*

A creek entering the Chemainus River estuary, near Crofton, Vancouver Island. Location of Penelakut I.R.6, Hul'qumi'num village of *Hwts'usi'*.

Burgoyne Bay*

A large bay below Mt. Maxwell Provincial Park on the southwestern coast of Salt Spring Island. Hul'qumi'num place-name *Xwaaqwum*.

Clemclem

Hul'qumi'num village of *Lhumlumuluts*, Cowichan I.R.1, Koksilah River

Comiakem Hill

Hul'qumi'num village of *Qw'um'yequn*, Cowichan I.R.1, Cowichan River (see also Stone Church).

Copper Canyon*

Canyon on the Chemainus River, near Westholme. An important wilderness spirit location and modern traditional use area.

Cowichan River*

Major river system in Cowichan Valley, Duncan, southeastern Vancouver Island. Hul'qumi'num place name, *Quwutsun Staluw*.

Craig Bay

A bay south of Parksville, eastern Vancouver Island, within the traditional territory of the Coast Salish Hul'qumi'num-speaking Sna-naw-as First Nation (formerly Nanoose Band). In 1994, the large-scale archaeological excavation of an ancient village and burial site to make way for a condominium project at Craig Bay developed into a notorious land-use conflict between the Sna-naw-as First Nation, Intrawest Development Corp., and the provincial Archaeology Branch. The Sna-naw-as First Nation was ultimately unsuccessful in its argument in court to designate the ancient burial site a 'cemetery' under the *B.C. Cemetery and Funeral Services Act*, but did manage to quash the archaeological permit for excavation to discontinue. The archaeological site was eventually purchased by the provincial government as a park for green space.

Crofton Point

A large archaeological site located atop a coastal sand spit at the entrance to the Chemainus River estuary, Vancouver Island. In the 1960's, B.C. Forest Products Ltd. established a lumber

mill at Crofton Point. Ancient human remains have been repeatedly disturbed at this site over the last four decades. In 2001, Hul'qumi'num Elders conducted an emergency salvage effort at Crofton Point to recover ancient human remains disturbed by the replacement of a sewage pipe.

Egeria Bay*

South Pender Island, southern Gulf Islands. In 2003, a luxury commercial resort development, Poets Cove at Bedwell Harbour Ltd. destroyed a large portion of an archaeological shell midden site at Egeria Bay. The property developer's violation of the *B.C. Heritage Conservation Act* is the current issue of conflict between the Hul'qumi'num Treaty Group, the Saanich Tribes, and provincial Archaeology Branch and Crown Counsel.

Genoa Bay

A bay on the northern shoreline of Cowichan Bay, near Duncan, Vancouver Island. Hul'qumi'num place-name, *Hwtumulhum*

Hill 60*

An important wilderness spirit place and traditional use site in the mountains between the Cowichan and Chemainus River Valleys, known in Hul'qumi'num as *Hw't'eshutsun*. In 2000, the Hul'qumi'num Treaty Group signed a treaty-related measure with Canada and British Columbia to protect a large tract of Crown land at *Hw't'eshutsun* from forestry development.

Ivy Green

A historical Hul'qumi'num village near the head of Ladysmith Harbour, Vancouver Island, and the location of Chemainus I.R.12. Hul'qumi'num place-name, *Kwi'kwumluhw*

Koksilah*

Koksilah River, Cowichan I.R.1. Hul'qumi'num place-name, *Xwulqw'selu*

Kulleet Bay*

Hul'qumi'num village of *Q'ulits'*, Chemainus I.R.13, near Ladysmith, Vancouver Island.

Kuper Island*

Penelakut I.R.7, Kuper Island, east of Chemainus, Vancouver Island. The Penelakut Tribe village on Kuper Island is the only permanent residential population of Hul'qumi'num people remaining in the southern Gulf Islands.

Lummi

Lummi Nation traditional territory, Washington State, U.S.A. (see city of *Blaine*).

Lyackson*

Shingle Point, Lyackson I.R. 4, Valdes Island. Hul'qumi'num place-name, *Leeyqsun*
Hul'qumi'num historical village of *T'ee't'qe'*. The historical Christian cemetery at Shingle Point has been repeatedly vandalized since the Lyackson people moved to Vancouver Island beginning in the 1920's. Similarly, many archaeological burial caves on Valdes Island have been looted by curiosity seekers. In 1997, forestry operation by MacMillan-Bloedel Ltd. constructed a road through a recorded archaeological burial cave at Shingle Point I.R.4, which remains an outstanding source of conflict between the Lyackson First Nation and MacMillan-Bloedel Ltd.'s successor, Weyerhaeuser Company Ltd. (see *Shingle Point*).

Mt. Prevost*

A mountain north of Duncan, Vancouver Island, known in Hul'qumi'num as *Swuq'us* – one of

the most significant cultural landscapes in Hul'qumi'num Traditional Territory. Hul'qumi'num creation myths identify *Swuq'us* as the place where the First Ancestors fell to Earth from the Sky World. As an important wilderness spirit location and traditional use site, industrial forest and mining developments and increasingly recreational use are believed by many Hul'qumi'num Elders to have desecrated this location.

Mt. Tzouhalem*

A mountain on the north side of Cowichan Bay, east of Duncan, Cowichan I.R. 1, Vancouver Island. An important cultural landscape in Hul'qumi'num myth and history. Mt. Tzouhalem is the origin of the Hul'qumi'num place-name of Cowichan, or *Shqwutstun* 'basking in the sun'. The mountain is a key wilderness spirit location, traditional use site and ancient burial location that is increasingly threatened by urban encroachment, recreational use and vandalism.

Nanoose Bay

A large bay north of Nanaimo, eastern Vancouver Island, Nanoose I.R.1, in the traditional territory of the Coast Salish Hul'qumi'num-speaking Sna-na-nas First Nation.

Quamichan

Hul'qumi'num village of *Kwamutsun*, Cowichan I.R.1, on the Cowichan River, near Duncan, Vancouver Island.

Ross Bay

The pioneer historical cemetery in the provincial capital of Victoria, British Columbia.

Semiahmoo

Also *Semiahmoo Spit*. A large coastal sand spit and archaeological shell midden site near the city of Blaine, Washington State, U.S.A. (see city of *Blaine*)

Shell Beach*

Hul'qumi'num village of *Thuq'min*, Chemainus I.R.13, on the east shoreline of Ladysmith Harbour, Vancouver Island.

Shingle Point*

Shingle Point, Lyackson I.R. 4, Valdes Island. Hul'qumi'num place-name, *Leeyqsun* Hul'qumi'num historical village of *T'ee't'qe'*. The historical Christian cemetery at Shingle Point has been repeatedly vandalized since the Lyackson people moved to Vancouver Island beginning in the 1920's. Similarly, many archaeological burial caves on Valdes Island have been looted by curiosity seekers. In 1997, forestry operation by MacMillan-Bloedel Ltd. constructed a road through a recorded archaeological burial cave at Shingle Point I.R.4, which remains an outstanding source of conflict between the Lyackson First Nation and MacMillan-Bloedel Ltd.'s successor, Weyerhaeuser Company Ltd. (see *Lyackson*).

Skutz Falls

Waterfalls on the upper Cowichan River, near Cowichan Lake. Hul'qumi'num village of *Skwuts*, Cowichan I.R.10.

Somena

Hul'qumi'num village of *S'amunu* on Cowichan River, Cowichan I.R.1, Duncan, Vancouver Island.

Somenos Creek*

An archaeological inland shell midden site located near Somenos Lake, Duncan, Vancouver Island. In 1992, ancient human remains were discovered at Somenos Creek during the clearance of the property for a residential subdivision project by Timbercrest Estates Ltd. In 1994, large-scale archaeological investigations at Somenos Creek prior to property development were halted at the request of the Cowichan Tribes after the discovery of 24 burials. Today, Somenos Creek remains a continuing source of land-use conflict between Cowichan Tribes, the District of North Cowichan and Timbercrest Estates Ltd., who have continued to make applications to subdivide the property for residential development.

Stone Church

In 1859, Father Rondeault of the Roman Catholic Church established the first mission in Hul'qumi'num traditional territory at Comiakem Hill on Cowichan Bay. In 1870, the Stone Church (also known as the Butter Church) was built to replace the former wooden mission building. Today, the presently abandoned Stone Church remains an important landmark in the Cowichan Valley.

T'eet'qe'

Hul'qumi'num village at Shingle Point, Lyackson I.R.4, Valdes Island. Also place-name of a historical Hul'qumi'num village on Koksilah River, Cowichan I.R.1. (see *Lyackson*).

Tent Island

Small uninhabited island south of Kuper Island, Penelakut I.R.8. Hul'qumi'num place-name, *Hwth'stusun*

Thetis Island*

Large, populated island north of Kuper Island I.R.7, east of Chemainus, Vancouver Island.

Valdes Island*

Large southern Gulf Island east of Ladysmith, Vancouver Island, the traditional territory of the Lyackson First Nation, whom manage a third of the island as reserve land (see *Lyackson*; *T'eet'qe'*)

Walker's Hook*

A large archaeological shell midden site located on a sand tombolo on northeast Salt Spring Island in the southern Gulf Islands. Hul'qumi'num Elders identify this location as a village site, *Syuhe'mun*, "*Place to Catch Up*". In 2003, the archaeological monitoring of utility trenches for an aquaculture development project by Sablefin Hatcheries Ltd. disturbed at least 8 burials. Hul'qumi'num Elders from the Penelakut Tribe have currently filed a court case against the Ministry of Water, Land and Air Protection to quash the waste permit atop of this ancient burial site.

Willy's Island*

Hul'qumi'num historical village of *Xwulelth*, Halalt I.R.1. located at the entrance to the Chemainus River estuary, north of Crofton, Vancouver Island.

Appendix D:

Glossary of Hul'qumi'num Words

Note: Words listed below are the correct spellings based on the new orthography, but they may not match the spelling used in some of the participant interviews.

Hul'qumi'num word	Meaning
A-E	
<i>alhut</i>	to respect, to care for, to look after
F-K	
<i>hwune'unt/yuhwun'nut</i>	evening, dusk
<i>hwulmulh</i>	Aboriginal person
<i>hwunitum</i>	"hungry people"; white person
<i>kwewe'uts</i>	Roosevelt elk
<i>kw'a'luhw</i>	chum salmon
<i>kwutmin</i>	winter spirit dance ceremonial pole and deer-hoof rattle
L-P	
<i>mustimuhw</i>	people
<i>nutsamaat</i>	one team or group, one whole piece
<i>nutsamaat shqwaluwun</i>	working together as one
<i>'o'h'ps'tum</i>	getting struck by a ghost/spirit
<i>pqwutsun</i>	sand
Q-U	
<i>qw'uneem</i>	changing ways; maturing
<i>quxmin</i>	Indian consumption seeds
<i>qwqwils</i>	cleanse
<i>shuhel' (n.); li'hel' (v.)</i>	bonegame; to be playing the bonegame
<i>smilhu</i>	long house group
<i>sulhween</i>	ancestors
<i>syuw'en</i>	traditions; lore; history
<i>st'ulnup</i>	ancient ground
<i>shmukw'elu</i>	graveyard
<i>shne'um</i>	Indian doctor, shaman
<i>shulmuhwtsus</i>	ceremonial cleansing rattle
<i>spulqwitth'e</i>	ghost, spirits; graveyard; owl
<i>stuy wut</i>	north wind
<i>suy'la</i>	soul/spirit
<i>s-hiithun</i>	refuse; midden
<i>syuwun</i>	spiritual helper
<i>swuw'alh</i>	blanket
<i>snu'uy'ulh</i>	teachings, private advice; <i>snuy'</i> (abbrev.)

<i>suntl'e'</i>	eldest brother, sister, cousin
<i>thi'thu'</i>	spiritual medium; clairvoyant
<i>tuw'tuw'uluqup</i>	A tree fungus
<i>ts'itth'</i>	pure; innocent
<i>tth'up'I'a'qw</i>	great-great-great grandparent
<i>tth'xut</i>	gravel
<i>tumuhw</i>	land/earth
<i>tumulh</i>	red ochre
V-Z	
<i>Xeels</i>	the Transformer/Creator
<i>xixwa</i>	sea urchins
<i>xowsalkwlh</i>	winter spirit dance initiate, new dancer
<i>Xpey</i>	western red cedar
<i>x'wi x'wuy</i>	sickness; killed
<i>xwaytum</i>	kill them
<i>yuw'I'na'qw</i>	leaders