



ASSOCIATION OF PROFESSIONAL ARCHAEOLOGISTS

*Working to Promote Professionalism in Ontario
Archaeology*

P.O. Box 493, Port Hope, Ontario L1A 3Z4

WITHOUT PREJUDICE

January 10, 2011 Report on Investigation Requested by APA Member Keith Powers

Introduction

The Association of Professional Archaeologists (APA) was requested by letter of December 07, 2010 from Mr. Keith Powers of The Archaeologists Inc. to carry out an investigation of his excavation strategy and events leading to a stop-work order being issued by the Minister of Tourism and Culture in 2010 (see Exhibits A and B). The President and Executive of the Association of Professional Archaeologists appointed Dr. Lawrence Jackson to lead this investigation and, on his recommendation, two additional committee members were appointed, Dr. Mima Kapches and Dr. Dean Knight – each with several decades of experience in Ontario Iroquoian site excavations and also APA members. A brief synopsis of the experience of each committee member follows:

Mima Kapches (PhD. Toronto, 1981) is a licensed archaeologist in the Province of Ontario who has worked in Ontario Archaeology for 39 years. She recently retired as Senior Curator, Ontario Archaeology from the Royal Ontario Museum, Toronto. She continues to publish articles on Ontario Archaeology. A research archaeologist, she has primarily focused on pre-contact Ontario Iroquoian sites and the First Nations history of Toronto. She served as President of the Ontario Archaeological Society, President of the Canadian Archaeological Association and President of the Eastern States Archaeological Federation. She served as Editor of the Canadian Journal of Archaeology and is currently the Editor of the Bulletin of the Eastern States Archaeological Federation. She served as Chair of the Toronto Historical Board and is one of the Founding Members of the Friends of Fort York, Toronto. She is a life member of the Ontario Archaeological Society and has been a member of the APA for several years.

Dean Knight is a licenced archaeologist in the Province of Ontario who has worked in Ontario archaeology for 42 years. He received his Ph.D. from the University of Toronto in 1977 and recently retired as Associate Professor in Archaeology at Wilfrid Laurier University after 32 years. He is a Past President of the Canadian Archaeological Association and is currently President of the Eastern States Archaeology Federation. His research interest in Iroquoian settlement patterns includes 8 ½ years of excavation on a single Huron village in Simcoe County. He is a long-time member of the Association of

Professional Archaeologists, serving on its Executive for a number of years and is also a member of the Ontario Archaeological Society.

Lawrence Jackson is a licenced archaeologist in the province of Ontario who has worked in Ontario archaeology for 36 years and in consulting archaeology for 22 years. He received his Ph.D. from Southern Methodist University, Texas in 1994 with Dr. Lewis Binford on his committee and received his M.A. from Trent University, Ontario in 1979. He has published extensively on a wide range of Ontario sites. He has served for 20 years on the board of the Association of Professional Archaeologists and is currently Vice-President. He has worked on and published papers on Iroquoian sites, including the Le Caron village with the late Richard Johnston, as well as authoring numerous consulting project reports. He served as Editor of Ontario Archaeology in 1987 and was an Adjunct Professor in the Department of Anthropology at the University of Western Ontario for a number of years.

None of the committee members had a previous relationship with Mr. Powers.

Background to Investigation

The President of the Association of Professional Archaeologists, Scarlett Janusas, advised the Minister of Tourism and Culture of our investigation by letter of December 12, 2010 (see Exhibit C). She requested Ministry co-operation and also that all activity on this file cease pending results of our professional investigation. A second letter was sent to the Minister on December 20, 2010 when it was learned that the Ministry had continued the process by issuing an order to Mr. Powers to turn over all artifacts and original site records by January 15, 2011 (see Exhibit I).

President Janusas charged the APA investigating committee with two tasks: 1) determine if Mr. Powers' methodology met current standards for Stage 4 excavations in Ontario in 2010 and 2) assess whether correct protocols were followed by all agencies participating in the review of Mr. Powers' work at Skandatut.

Table 1 provides a time-line for significant documents in this investigation.

Table 1: Timeline of Events Associated with Skandatut Site Inspection, OAS Independent Panel Review and Stop Work Order

October 2004, AIGv193 (Skandatut) Stage 1 and 2 Report (Archaeological Services Inc.).

July, 2005, 2004&2005 Stage 3 and 4 Report (Amick Consulting)

23 August 2010, Ontario Archaeological Society letter by Dr. Neal Ferris, OAS President, to Keith Powers.

12 September 2010, Letter from Ontario Archaeological Society, Neal Ferris, to Keith Powers.

14 September 2010, Letter from Peter Armstrong Director, Programs and Services Branch, MTC, Culture Division, to Keith Powers.

15 September 2010, Inspection Report, Ontario Heritage Act, Inspector Mr. Dave Fumerton in company of Mr. Norbert Stanchly and Mr. Malcolm Horne of Ministry of Tourism and Culture.

26 September 2010, Dr. Andrew Stewart, a member of the OAS, emailed President of the OAS to form a panel of OAS members to review the Inspection Report of 15 September 2010.

1 October 2010 Dr. Ron Williamson of Archaeological Services Inc. forwarded the OAS Independent Review report to Gary Templeton who subsequently forwarded the report to the lawyers for the landowners and Keith Powers.

6 October 2010, the Ministry of Tourism and Culture posted a stop work order at the site.

7 December 2010. Letter from Keith Powers to Association of Professional Archaeologists "Request for Investigation for Skandatut Site."

20 December 2010 Letter from Mariflor Toneatto, Ministry of Tourism and Culture to Keith Powers requiring transfer of all Skandatut site collections and all original field notes and records to London office of Ministry of Tourism and Culture.

APA Investigating Committee Report on Keith Powers' 2010 Excavations at the Skandatut Site Property Owned by Joseph Pandolfo

The initial step of our investigation was to carry out a detailed interview with Mr. Keith Powers to examine his methodology and records. Dr. Lawrence Jackson, head of the investigating committee, met with Mr. Powers on December 14, 2010 for this purpose. A conference call with Mr. Powers was also held on January 06, 2010 with all three committee members. Mr. Powers provided detailed answers to all questions and turned over all requested records, including a site map and other records of his work, as well as various items of correspondence and his legal reply to an indictment filed by Luc Laine and Ron Williamson on behalf of the Huron-Wendat Nation (see Exhibit D).

A telephone interview was carried out with Mr. Michael Henry of Amick Consulting on December 14, 2010 to ask specific questions about the Stage 3 and 4 excavations that he conducted at Skandatut in 2004 and 2005. Dr. Jackson was the interviewer.

Although it was intended that interviews also be carried out with staff of the Ministry of Tourism and Culture, the Minister has yet to reply to our request of December 10, 2010. However, we did have access to the detailed inspection report of September 15, 2010 written by Dave Fumerton, Ministry of the Environment, Malcolm Horne and Norbert Stanchley, both of the Ministry of Tourism and Culture, who were sent to the site for their archaeological expertise (Exhibits E and F).

Dr. Jackson made contact by telephone with John Alati, lawyer for the site property owner, Mr. Joseph Pandolfo, seeking written permission to enter and inspect the site and to confirm visits to the Huron-Wendat in Quebec by Mr. Pandolfo in 2005 and 2006. Mr. Alati advised that we should formally notify the Ministry of Tourism and Culture when we intended to make a site inspection. We anticipate making a site visit once snow cover is gone although we understand that extensive site alteration under Ministry authority has taken place.

Dr. Kapches and Dr. Jackson interviewed the senior author of the OAS Independent Panel Review of the official site inspection report of September 15, 2010, Dr. Gary Warrick. This interview was carried out by conference call on December 30, 2010 (see Exhibit G).

Mr. Michael D'Mello, Registrar of Cemeteries for Ontario was interviewed on January 05, 2011 by Dr. Jackson to confirm that one of his inspectors attended the Skandatut site in response to a complaint and that there were no concerns. Mr. D'Mello provided written confirmation that his inspector had no concerns with Mr. Powers' work at the Skandatut site (see Exhibit H).

Dr. Kapches interviewed archaeologist Gordon Dibb on January 03, 2011 to discuss proto-contact archaeological sites north of Toronto.

Finally, Dr. Jackson met with Chief James Marsden of Alderville First Nation on January 06, 2011 to discuss Mississauga territorial claims. Chief Marsden noted that he had recently advised the Chief of the Huron-Wendat that Skandatut lies in traditional Mississauga Territory. Councillor Dave Mowat of Alderville First Nation was also in attendance.

List of Exhibits:

- A. Letter of December 07, 2010 from Keith Powers to the Association of Professional Archaeologists.
- B. Stop work order issued by Minister of Tourism and Culture to Keith Powers.
- C. Letter of December 12, 2010 from Association of Professional Archaeologists to the Minister of Tourism and Culture
- D. Cover Page of Legal Reply to Indictment filed by Luc Laine and Ron Williamson acting on behalf of the Huron-Wendat Nation.
- E. Letter of September 14, 2010 from Peter Armstrong to Keith Powers notifying him of inspection on September 15, 2010.
- F. Inspection Report. Ontario Heritage Act. September 15, 2010.
- G. Independent OAS Panel Review and Two Letters from the President of the Ontario Archaeological Society to Mr. Keith Powers.
- H. E-mail from Michael D'Mello, Registrar of Cemeteries, confirming no concerns with Skandatut site.
- I. Letter of December 20, 2010 from Mariflor Toneatto to Keith Powers requiring transfer of all collections and records.

Investigation of Methodology in Skandatut Excavation Reviews

1. Within the Independent OAS Panel Review and in letters written by Neal Ferris of the Ontario Archaeological Society are a number of incorrect statements. Perhaps most significant is the statement that the Skandatut site was "minimally disturbed". The Stage 1 and 2 report by Archaeological Services Inc. (ASI) clearly describes the site area as ploughed. It was subject to surface collection in 2001 and 2002 by ASI and in 2004 and 2005 was also surface collected by Amick Consulting. A telephone interview with Michael Henry of Amick Consulting elicited the information that the site was actually "heavily disturbed" with highly fragmented pottery. By normal standards of consulting archaeology in Ontario, if a site has been consistently ploughed for agricultural purposes it is, in fact, disturbed. To refer to this site as minimally disturbed is highly misleading.
2. The Independent OAS Panel Review incorrectly stated that 153 square meters of the Skandatut site had previously been hand-excavated when, in fact, there were actually 301 square meters hand-excavated, roughly double what was claimed by the OAS Independent Panel Review. Mr. Powers' work was also halted before he could begin his major hand excavations. Criticism of the inadequacy of hand excavation is unfounded. Mr. Powers had only completed 55 square meters of his preliminary hand excavation when he was stopped. It is also not mentioned in the independent review that 153 square meters of Stage 3 work at the site was carried out by Amick Consulting using entirely fine 1/8 inch mesh or that Amick hand-excavated an additional 93 square meters as part of its Stage 4 excavations before a legal letter from the Huron-Wendat led to abandonment of the excavations.

3. The Independent OAS Panel Review criticizes Mr. Powers for inadequate staffing during machine excavation of trenches at the site to guide subsequent hand excavations. While staffing certainly needs to be adequate for a project, this is for the consultant to determine, not an independent panel which included only one consultant in its four reviewers. Once a site is machine-stripped and shovel-shined, six excavators can actually do a very good job of recording and excavating features. Mr. Powers notes that his total crew complement was actually 12 persons, including four part-time crew. Criticism was also made that stripped subsoil floors had been allowed to dry out. Other consultants, faced with the issue of drying of machine stripped floors adopt the simple expedient of using sprayed water, a well accepted archaeological technique which Mr. Powers employed. Our examination of site records also shows clear and accurate mapping of features and post moulds exposed during machine stripping.
4. An interview with the senior author of the Independent OAS Panel Review, Dr. Gary Warrick, was carried out on December 30, 2010 by Dr. Lawrence Jackson and Dr. Mima Kapches. The following facts were noted:
 - a. The senior author, Dr. Gary Warrick, had not seen any information on the site other than OAS letters provided by Neal Ferris, the Ministry of Tourism and Culture inspection report from September 15, 2010 and e-mails from Neal Ferris. When asked, he acknowledged not having seen or read the Stage 1 and 2 site report by Archaeological Services Inc. or the Stage 3 and 4 site report by Amick Consulting. He acknowledged that he did not speak with Mr. Keith Powers about his methodology or his excavation plan nor did he ask to see any information such as site plans or field notes. He was not aware of the error in describing only 153 metres of hand excavation when there were actually 301 meters excavated prior to issuance of the stop work order. Dr. Warrick noted that he wrote very little of the document since it was already being circulated in draft form before he was asked to sit on the panel.
 - b. When asked to describe his involvement with the Independent OAS Panel Review, Dr. Warrick noted that he was asked in October of 2010 to contribute. His understanding was that Andrew Stewart had been approached by the Huron-Wendat to file a complaint. Dr. Kapches (interviewer) asked how Andrew Stewart obtained a copy of the Ministry of Tourism and Culture inspection report apparently within a week of its generation. He had no idea how this occurred. Dr. Jackson (interviewer) asked Dr. Warrick if, as senior author, he had discussed the inspection report with staff of the Ministry of Tourism and Culture, specifically Malcolm Horne and Norbert Stanchley, who approved of Mr. Powers' methodology. He did not speak with anyone at the Ministry or conduct a site visit or speak with Mr. Powers.
 - c. Dr. Warrick asked Dr. Jackson and Dr. Kapches what had happened at the site subsequently. Specifically, he had no awareness of a second site inspection or its results.

5. We believe that the site inspection of September 15, 2010 (see Exhibit F) was carried out in an entirely professional manner by staff of the Ministry of Tourism and Culture and the Ministry of the Environment and examined the site excavations within the proper context of existing regulations and current practice by Mr. Powers' colleagues. It is also important to note that, during the site inspection, Mr. Powers asked Mr. Malcolm Horne of the Ministry of Tourism and Culture if there was anything else they would like him to do. According to Mr. Powers, one minor procedural suggestion made by Mr. Horne was agreed to. Since the inspection concluded that his work met or exceeded existing standards, Mr. Powers was entirely correct in proceeding with his work
6. Our investigation of Mr. Powers' methods notes that, because he was issued a PIF approval by the Ministry of Tourism and Culture, discussed his methodology with at least one staff member of the Ministry prior to and during excavation, and was not informed by the Ministry of Tourism and Culture of any concerns about site significance or its potential designation as an historically significant site, prior to commencement of excavations, that he was proceeding in an entirely legal manner. If the Ministry of Tourism and Culture had concerns about the site these should have been drawn to the attention of Mr. Powers. Regarding machine stripping, we note the following for the Skandatut site. A total of 301 meters of hand excavation had taken place prior to any machine stripping. This amount of hand-excavation is entirely comparable to that carried out by Mr. Powers' colleagues at similar sites. For instance, at the Alexandra site excavated by Archaeological Services Inc. (report available on-line) approximately 279 meters of hand excavation was carried out before stripping the entire village. These excavations were exclusively in three midden areas. We note that none of the three firms carrying out work at Skandatut was able to identify midden areas so, in fact, the hand-excavation that was carried out actually appears to have exceeded the norm. Both Mr. Powers and Mr. Henry each noted independently that artifact counts were surprisingly low in the excavated units at the site. Mr. Powers' machine stripping trenches (see Figure 1) were designed to inform his later hand excavations and he had planned **total** recovery of plough zone artifacts from these trenches using a mechanical screen – this method in itself exceeds that normally used by firms machine stripping villages who **abandon** artifacts in the machine stripped soil. Consistently, Mr. Powers' has informed our investigating committee that he had planned to hand excavate hundreds of additional meters at the site once his machine stripped trenches had informed him of high potential areas.
7. **Rarity and Cultural Identification of Skandatut:** While most archaeologists appear to agree that Skandatut village is an important site, not all agree on what this means. Since even at the antecedent Seed-Barker site it is recognized that there were multiple cultural groups present, including Seneca and Petun, the accuracy of calling Skandatut a solely Huron-Wendat village is questionable. When interviewed on December 30, 2010, Dr. Gary Warrick readily acknowledged this point to Dr. Kapches. The question then arises, should not other groups besides the

Huron-Wendat be involved in discussing the disposition of this site. Chief James Marsden of Alderville First Nation is on record as advising the Chief of the Huron-Wendat that the Skandatut site lies within traditional Mississauga territory. This raises yet another jurisdictional issue in First Nations consultation. Dr. Warrick notes in his recent monograph on the Huron that Skandatut is the most likely candidate for the village associated with the Kleinberg Ossuary. Dr. Dean Knight, of the APA investigating committee, was field director at the Kleinberg Ossuary and notes that the glass trade bead study carried out by Dr. Bill Fitzgerald at Kleinberg indicates an age of about 1620 A.D. for the site, significantly later than the presumed age of 1580 to 1600 suggested for Skandatut. Dr. Knight notes the near-impossibility of ever correctly identifying a village site with an historically known locale without overwhelming supporting evidence. Although some researchers believe Skandatut to be directly connected to the Kleinberg ossuary, this is not a uniformly held opinion. There are at least four other Indirect Contact village sites known in the area north of Toronto. Archaeologist Gordon Dibb notes that Period I glass trade beads are found at all four sites, making the claim of the rarity of Skandatut less convincing. It is also clear from interviews with both archaeologists who excavated at different times at Skandatut (Keith Powers and Michael Henry) that there was a surprising scarcity of contact period materials from the hand excavations, even using fine mesh screen to enhance recovery.

Summary of Methodology Criticisms

We have demonstrated that the Independent OAS Panel Review was seriously misinformed about Mr. Powers' methodology. No one asked Mr. Powers what work was to follow the machine stripping, no one determined the actual and correct amount of hand excavation already completed, no one recognized that a ploughed agricultural site would be disturbed (a glaring oversight for trained archaeologists), and no one examined Mr. Powers' field maps with a view to understanding his post-machine stripping strategy of hand excavation. Indeed, it appears that he was not even credited with having planned additional hand excavations. In addition, no comparative data was presented on similar excavations carried out by Mr. Powers' colleagues. We find that Mr. Powers' methodology was entirely consistent with currently accepted practices.

We note that a second inspection of the Skandatut site was carried out on October 04, 2010 and, given the large size of the inspection report, will make it the subject of a separate APA investigating committee report.

Investigation of Protocols Followed by Reviewing Agencies

1. The Independent OAS Panel Review held the work of Mr. Powers to the 2009 Draft Standards even though this document was not adopted into regulation until January 01, 2011. Since these standards had not been passed into regulation and Vaughan had no requirement to adhere to them, Mr. Powers appears to have been inappropriately criticized. It is also clear that the criticisms applied to machine stripping misunderstood the nature of that work and of the detailed work which was to follow in the form of hand excavation of large village areas. In addition to misunderstanding the nature of regulated consulting practices, the panel members apparently made no attempt to visit the site to familiarize themselves with the actual work, to ascertain correctly how much hand excavation had been done previously or was to be done by Mr. Powers prior to writing their report.

2. We are concerned that the President of the Ontario Archaeological Society authored two letters of complaint to Mr. Powers (see Exhibit G), participated as an author in the independent panel review (rather than allowing it to proceed independently), and also participated in the second site inspection in a formal capacity. The level of impartiality in this manner of involvement is questionable. It is also unclear how the site inspection report was so quickly disseminated to third parties. Dismissing the results of the first site inspection carried out by staff of the Ministry of Culture and Ministry of the Environment appears to have been directed by incorrect assumptions. Two significant facts cited in letters from the OAS President to Mr. Powers, for instance, are readily dismissed. No human burials were ever found during Mr. Powers' excavations, as demonstrated by an on-site investigation by Mr. Vaughan O'Toole acting for the Registrar of Cemeteries, Mr. Michael D'Mello (Exhibit H). No rubber tired front-end loaders were ever used, only gradalls as is customary for machine stripping. Rubber tired machinery was in use on the adjacent property and not connected with Mr. Powers work. We have already discussed other errors embedded in these letters and in the Independent OAS Panel Review.

3. That both Mr. Powers and Mr. Henry (Amick Consulting) were each served legal documents by the Huron-Wendat in different years concerning the same site (Skandatut) argues for a consistent pattern of confrontation. Mr. Pandolfo, owner of the site property, actually travelled to Quebec in 2005 and 2006, according to both Mr. Powers and Mr. John Alati (counsel for the owner) to consult with the Huron-Wendat Nation concerning the Skandatut site. There was absolutely no legal obligation for him or his archaeologist to consult under the 1993 Archaeological Standards and Guidelines. Mr. Powers reports previous exchanges with agents for the Huron-Wendat over the Teston Road village site excavations, a project begun by Archaeological Services Inc. Since Mr. Powers was served with a legal indictment filed by Luc Laine and Dr. Ron Williamson (Senior Partner of ASI) on behalf of the Huron-Wendat Nation in 2010 we are concerned that there may have been an inappropriate level of confrontation and a perceived conflict of interest (see Exhibit D).

4. Throughout this process, the Ontario Association of Professional Archaeologists was not informed by either the Ontario Archaeological Society or the Ontario Ministry of Tourism and Culture, that reviews and inspections were taking place. The President of the Ontario Archaeological Society wrote that he recognized Mr. Powers was **not** a member of the Ontario Archaeological Society. The Association of Professional Archaeologists should have been informed of these concerns, as Mr. Powers is a member of the APA. We believe that mediation by the Association could easily have reached an accommodation between Mr. Powers and the Huron-Wendat.

5. We are concerned that the September 15, 2010 site inspection report was circulated to third parties without Mr. Powers' knowledge. This concern may also extend to the October 04, 2010 inspection report. We also believe it is inappropriate of the Ministry of Tourism and Culture to require transfer of all site collections and records (see Exhibit I) when this will place Mr. Powers in the position of being unable to meet his licence reporting obligations.

Summary of Protocol Concerns

Mr. Powers' methodology at Skandatut was consistent with currently accepted practice in Ontario consulting archaeology and should not have been held to standards passed into regulation January 01, 2011. Letters written by the President of the Ontario Archaeological Society contained significant errors of fact and, while recognizing that Mr. Powers was not a member of that society, he did not contact the Association of Professional Archaeologists, of which Mr. Powers is a member. The OAS Independent Panel Review members should have conducted more rigorous research to ensure supportable conclusions. Embedded in various documents is the suggestion that human remains were present at the site when an investigation by the Registrar of Cemeteries actually demonstrated no such concerns. The approach of the agents for the Huron-Wendat can be seen as leading to miscommunication with Ontario archaeologists which serves no ones' interest. We further note that identification of the Skandatut site as of national significance has not been convincingly demonstrated for a variety of scholarly reasons cited here. It is also apparent that the Mississauga First Nations of Ontario have territorial concerns with Huron-Wendat claims concerning Skandatut and should as a basic courtesy have been included in discussions. The participation of some individuals reviewing Mr. Powers' work or with access to confidential documents appears to contain significant areas of conflict of interest rather than impartiality. The Ministry of Tourism and Culture inspection of September 15, 2010 appears to have been carried out professionally and with due regard for existing regulations. Mr. Powers should, as a result of that report, have been permitted to proceed with his work.

Dated: January 10, 2011

Sent via e-mail. Original signed copy sent to Premier of Ontario.

Dr. Lawrence Jackson

Dr. Mima Kapches

Dr. Dean Knight