



PRINCE EDWARD ISLAND  
ÎLE-DU-PRINCE-ÉDOUARD

# **ARCHAEOLOGY ACT**

## PLEASE NOTE

This document, prepared by the *Legislative Counsel Office*, is an office consolidation of this Act, current to December 2, 2015. It is intended for information and reference purposes only.

This document is *not* the official version of the Act. The Act and the amendments as printed under the authority of the King's Printer for the province should be consulted to determine the authoritative statement of the law.

For more information concerning the history of this Act, please see the *Table of Public Acts* on the Prince Edward Island Government web site ([www.princeedwardisland.ca](http://www.princeedwardisland.ca)).

If you find any errors or omissions in this consolidation, please contact:

*Legislative Counsel Office*

*Tel: (902) 368-4292*

*Email: [legislation@gov.pe.ca](mailto:legislation@gov.pe.ca)*



## ARCHAEOLOGY ACT

### Table of Contents

Section	Page
1. Definitions.....	5
2. Minister responsible for Act.....	6
3. Register .....	7
4. Order designating protected archaeological site .....	7
5. Temporary stop order.....	8
6. Appeal .....	9
7. Archaeological permit.....	9
8. Work permit.....	10
9. Prohibitions .....	11
10. Discovery of archaeological or palaeontological object .....	11
11. Property vested in Crown.....	12
12. Prohibition against buying, selling, trading .....	12
13. Provincial museum as repository .....	12
14. Property to human remains vested in Crown .....	12
15. Compensation not payable .....	13
16. Offence.....	13
17. Regulations .....	13
18. Repeal .....	14





## ARCHAEOLOGY ACT

### CHAPTER A-17.1

#### 1. Definitions

##### (1) In this Act

- (a) **“archaeological investigation”** means an investigation made by a person for the purpose of discovering, retrieving, exposing or recovering archaeological objects or samples in the province and includes a survey or examination on or in land that may result in the interference with, or the removal of,
  - (i) the soil at an archaeological site, or
  - (ii) an archaeological object or archaeological sample on or in land;
- (b) **“archaeological object”** means an object showing evidence of manufacture, alteration or use by humans that
  - (i) is found on or in land, and
  - (ii) is of value for the information that it may provide on past human activity;
- (c) **“archaeological permit”** means an archaeological permit issued by the Minister under subsection 7(2);
- (d) **“archaeological sample”** means a sample of a substance associated with an archaeological object, and includes fauna, pollen, soil and carbon samples;
- (e) **“archaeological site”** means any site in the province at which archaeological objects or archaeological samples may be found in or on land, and includes
  - (i) shipwreck sites within provincial waters, and
  - (ii) the physical and structural remains associated with past site use;
- (f) **“Commission”** means the Island Regulatory and Appeals Commission established under the *Island Regulatory and Appeals Commission Act* R.S.P.E.I. 1988, Cap. I-11; repealed by 2015, c.28, s.3;
- (g) **“Director”** means an employee under the administration of the Minister designated as Director by the Minister;
- (i) **“human remains”** means the remains of a person, including
  - (i) human remains that are situated or discovered outside a recognized cemetery or burial ground in respect of which there is some manner of identifying the persons buried therein, and
  - (ii) human remains that present as chemical signatures from ceremonial burial methods that resulted in the human remains being dissolved or destroyed by natural chemical action;
- (j) **“Minister”** means the Minister responsible for Aboriginal Affairs;
- (k) **“palaeontological object”** means a fossil of a vertebrate animal or a macroscopic fossil of an invertebrate animal or a plant that lived in the geological past, but does not include

- (i) a fossil fuel and fossiliferous rock intended for industrial use, or
- (ii) any form, in addition to those mentioned in subclause (i), of a preserved remain or trace of a multicellular organism that may be prescribed in the regulations;
- (l) “**permit holder**” means a person who holds a permit under subsection 7(2) or 8(2);
- (m) “**protected archaeological site**” means an archaeological site that is designated by the Minister
  - (i) as a protected archaeological site under subsection 4(1), or
  - (ii) as a temporarily protected archaeological site under subsection 4(4);
- (n) “**provincial museum**” means the Prince Edward Island Museum and Heritage Foundation established under subsection 3(1) of the *Museum Act* R.S.P.E.I. 1988, Cap. M-14;
- (o) “**Register**” means the Register of Archaeological Sites established under section 3;
- (p) “**work**” includes, but is not limited to, construction, excavation, disturbance, development or other activity on or in an archaeological site that has, or has the potential to have, an impact on that site;
- (q) “**work permit**” means a work permit issued under subsection 8(2).

#### **Application**

- (2) This Act applies
  - (a) in respect of archaeological or palaeontological objects, samples and sites, to such objects, samples and sites that are, or appear to be, at least 150 years old; and
  - (b) to human remains that, in the opinion of the chief coroner appointed under subsection 3(1) of the *Coroners Act* R.S.P.E.I. 1988, Cap. C-25.1, are not subject to the *Coroners Act*.

#### **Paramountcy**

- (3) Where there is a conflict between a provision of this Act or the regulations and a provision of any other enactment, including any permit or other authorization issued under another enactment, the provision of this Act or the regulations prevails to the extent of the conflict. *2006, c.2, s.1; 2009, c.73, s.2; 2010, c.31, s.3; 2015, c.28, s.3.*

## **2. Minister responsible for Act**

- (1) The Minister is responsible for the administration and enforcement of this Act.

#### **Minister provides direction**

- (2) The Minister may establish policies or programs respecting
  - (a) the protection and preservation;
  - (b) the coordination of orderly development;
  - (c) the study and interpretation; and
  - (d) the promotion of appreciation,
 of archaeological, and palaeontological, objects and sites in the province.

#### **Minister may enter into agreements**

- (3) The Minister may, on behalf of the Government, enter into any agreement respecting the coordination, preservation, study, interpretation and promotion of archaeology or palaeontology in the province, with

- (a) the Government of Canada or the government of another province; or
- (b) any person, agency or organization.

**Minister may develop programs**

- (4) The Minister may develop programs to support and encourage the conservation of archaeological sites and archaeological or palaeontological objects, including
  - (a) providing grants or loans to owners of such sites or objects;
  - (b) providing technical or advisory assistance;
  - (c) providing educational and information services;
  - (d) providing incentives by means of property or sales tax exemptions; and
  - (e) entering into agreements with an owner, municipality, or other body respecting the matters referred to in clauses (a) to (d).

**Advisory panel**

- (5) The Minister may establish an advisory panel to advise the Minister with respect to matters pertaining to this Act. *2006, c.2, s.2.*

**3. Register**

The Minister shall establish a Register of Archaeological Sites which shall include

- (a) a copy of the order designating each protected archaeological site; and
- (b) a description of any site
  - (i) that is not a protected archaeological site, and
  - (ii) that the Minister believes to be an archaeological site. *2006, c.2, s.3.*

**4. Order designating protected archaeological site**

- (1) The Minister may, by order, designate any archaeological site as a protected archaeological site if the archaeological site meets the criteria for designation prescribed by the regulations.

**Notice of intention to order designation**

- (2) Before making an order under subsection (1), the Minister shall
  - (a) give a notice of the Minister's intention to make the order;
  - (b) provide information to the prescribed persons on how to make an objection to the intended order; and
  - (c) consider any objections that may have been made,in accordance with the regulations.

**After order is made**

- (3) Where the Minister makes an order under subsection (1), the Minister shall cause
  - (a) a copy of the order to be entered in the Register by the Director;
  - (b) a notation of the order on the prescribed form to be registered in the appropriate land registry office; and
  - (c) the order to be published in the Gazette.

**Imminent threat to unprotected archaeological site**

- (4) Where
  - (a) an archaeological site is not a protected archaeological site; and

(b) in the Minister's opinion there is an imminent threat to that archaeological site, the Minister may, by order, designate the archaeological site as a temporarily protected archaeological site for a specified period not exceeding 120 days. *2006, c.2, s.4.*

#### **5. Temporary stop order**

- (1) Where the Minister believes that any person is engaged in any activity that the Minister considers is likely to result in damage or destruction to any archaeological site, the Minister may issue a stop order to that person, for a period not exceeding 120 days, requiring the person to cease the activity or any part of the activity that is specified in the stop order in order that the Minister may
- (a) cause the salvage of the archaeological objects that may be in danger;
  - (b) cause an archaeological investigation to be made;
  - (c) cause a record to be made or the excavation of the archaeological site;
  - (d) temporarily designate the site under subsection 4(4); or
  - (e) take the necessary steps to make an order for the designation of the archaeological site as a protected archaeological site under this section.

#### **Minister directs employee to take action**

- (2) The Minister may direct the Director to undertake such actions as are necessary for a purpose referred to in clauses (1)(a) to (d).

#### **Archaeological impact statement**

- (3) Where the Minister believes that any person is engaged in any activity that the Minister considers is likely to result in damage to, or destruction of, any archaeological site, the Minister may order the person to provide the Minister with an archaeological impact statement within the time period set out in the order and in the manner set out in the regulations.

#### **Order may be made once**

- (4) The Minister may make only one order under each of subsection (1) and subsection 4(4) in respect of an archaeological site.

#### **Cancellation**

- (5) The Minister may, at any time, cancel
- (a) an order designating a temporarily protected archaeological site made under subsection 4(4); or
  - (b) a temporary stop order made under subsection 5(1).

#### **Notice of order**

- (6) Where the Minister makes an order under subsection (1) or subsection 4(4), the Minister shall cause the order
- (a) to be served on the owner and occupant of the site; and
  - (b) to be published in the Gazette.

#### **Archaeological permit not required, where**

- (7) For the avoidance of doubt, where the Director acts at the direction of the Minister for a purpose referred to in clauses (1)(a) to (d), the Director
- (a) does not need an archaeological permit; and

- (b) is authorized to enter on the archaeological site that is the subject of the stop order, at a reasonable hour and after providing prior reasonable notice to the occupant or owner. *2006,c.2,s.5.*

## **6. Appeal**

- (1) The owner of a protected archaeological site may appeal an order made under subsection 4(1) by filing a notice of appeal with the Commission in accordance with the regulations, not later than 30 days from the date of the order.

### **Grounds of appeal**

- (2) An appeal under subsection (1) shall be made only on a ground permitted by the regulations.

### **Powers of Commission on appeal**

- (3) The Commission shall conduct an appeal hearing in accordance with the regulations and may
  - (a) dismiss the appeal; or
  - (b) allow the appeal and cancel the order designating the archaeological site as a protected archaeological site.

### **Commission's decision**

- (4) The Commission shall
  - (a) give written reasons for its decision under subsection (3); and
  - (b) provide copies of its decision to the parties.

### **Minister's duties on cancellation of order**

- (5) Where the Commission cancels the order under clause (3)(b), the Minister shall direct the Director to
  - (a) remove the order from the Register; and
  - (b) file a notice in the prescribed form in the appropriate land registry office releasing the archaeological site from the order. *2006,c.2,s.6.*

## **7. Archaeological permit**

- (1) A person who wishes to conduct an archaeological investigation in the province shall apply to the Minister for an archaeological permit by submitting to the Minister
  - (a) a completed application in the prescribed form;
  - (b) such information respecting the application and the proposed archaeological investigation at the site as the regulations or the Minister may require; and
  - (c) the prescribed fees.

### **Issue archaeological permit**

- (2) The Minister may, on an application made in accordance with subsection (1),
  - (a) issue an archaeological permit to the applicant to carry out an archaeological investigation at the protected archaeological site or other site as specified in the permit; and
  - (b) place such limitations and conditions on the archaeological permit as the Minister considers necessary.

### **Refusal, cancellation of archaeological permit**

- (3) The Minister may

- (a) refuse to issue an archaeological permit under subsection (2) on any of the grounds set out in the regulations; or
- (b) at any time amend, suspend or cancel an archaeological permit issued under subsection (2), by serving notice of the amendment, suspension or cancellation on the permit holder.

**Duties of permit holder**

- (4) A permit holder shall,
  - (a) upon completion of the archaeological investigation authorized by the permit, restore the archaeological site to the condition that existed before the beginning of the archaeological investigation, where it is reasonably possible to do so; and
  - (b) deliver possession to the Minister of all archaeological objects recovered as the result of the archaeological investigation carried on under the archaeological permit.

**Archaeological permit does not entitle trespass**

- (5) Subject to subsection (6), an archaeological permit does not entitle the permit holder to enter onto any site that is the subject of the archaeological permit unless the permit holder has the permission of the owner or a person in occupation or possession of the protected archaeological site.

**Entry on government land**

- (6) Where any site that is the subject of an archaeological permit is owned by the Government, the archaeological permit is deemed to include permission for the permit holder to enter onto such site for the purpose only of carrying out the activities authorized by the archaeological permit.

**Entry authorization by the Minister**

- (7) Where the owner or occupant of the protected archaeological site or other site that is subject to an archaeological permit denies the permit holder entry to such site, the Minister may, in writing, authorize the permit holder to enter on the protected archaeological site or other site, at a reasonable hour and after providing prior reasonable notice to the occupant or owner, for the purpose of making an archaeological investigation respecting the presence of
  - (a) archaeological objects or samples; or
  - (b) human remains.

**Occupant shall not refuse authorized entry**

- (8) Where entry has been authorized in writing by the Minister under subsection (7), the owner or occupant of the protected archaeological site shall not refuse entry to the person so authorized. *2006, c.2, s.7.*

**8. Work permit**

- (1) A person who wishes to carry out any work at a protected archaeological site shall apply to the Minister for a work permit by submitting
  - (a) a completed application in the prescribed form;
  - (b) such information respecting the application and any proposed work at the site as the regulations or the Minister may require; and
  - (c) the prescribed fees.

**Idem**

- (2) The Minister may, on an application made in accordance with subsection (1),
- (a) issue a work permit to the applicant to carry out work at a protected archaeological site as specified in the permit; and
  - (b) place such limitations and conditions on the work permit as the Minister considers necessary.

**Refusal, cancellation of work permit**

- (3) The Minister may
- (a) refuse to issue a work permit under subsection (2) for any work that, in the Minister's opinion, may detract from the archaeological value of the protected archaeological site; or
  - (b) at any time amend, suspend or cancel a work permit issued under subsection (2), by serving notice of the amendment, suspension or cancellation on the permit holder. *2006, c.2, s.8.*

**9. Prohibitions**

- (1) No person shall
- (a) undertake an archaeological investigation in the province unless the person is authorized to do so under an archaeological permit;
  - (b) undertake any work at a protected archaeological site unless the person is the holder of a work permit issued by the Minister under subsection 8(2) that authorizes the work to be undertaken at the protected archaeological site;
  - (c) remove any archaeological object or palaeontological object from an archaeological site except as authorized by this Act;
  - (d) interfere with an archaeological investigation on an archaeological site;
  - (e) contravene a stop order issued under subsection 5(1) that is directed to that person;
  - (f) contravene an order issued under subsection 5(3) that is directed to that person;
  - (g) contravene a term or condition of an archaeological permit or a work permit; or
  - (h) contravene any provision of this Act or the regulations.

**Employees, agents**

- (2) For greater certainty, subsection (1) does not prevent employees or agents of a permit holder from undertaking or participating in an archaeological investigation, or work, on an archaeological site that is the subject of the archaeological permit. *2006, c.2, s.9.*

**10. Discovery of archaeological or palaeontological object**

- (1) Every person who discovers an archaeological object or palaeontological object shall report the discovery immediately to the Minister stating the nature of such an object, the location of the discovery and the date of discovery of the archaeological or palaeontological object.

**Shall not move, destroy, etc. object**

- (2) No person, except in accordance with an archaeological permit, shall move, destroy, damage, deface, obliterate, alter, add to, mark or interfere with the archaeological object or palaeontological object or remove that object from the province. *2006, c.2, s.10.*

**11. Property vested in Crown**

- (1) The property in all archaeological objects and palaeontological objects, whether or not such an object is in the possession of the Crown, is vested in the Crown in right of the Province, as represented by the Minister.

**Sale of land not sale of object**

- (2) A sale or other disposition of Crown lands shall not operate as a sale or disposition of an archaeological or palaeontological object unless the sale or other disposition expressly states that it does so operate. *2006,c.2,s.11.*

**12. Prohibition against buying, selling, trading**

No person shall buy, sell, trade, or otherwise dispose of, or remove from the province for the purpose of selling, trading or otherwise disposing of, an archaeological or palaeontological object found in, or taken from any land in the province. *2006,c.2,s.12.*

**13. Provincial museum as repository**

- (1) The provincial museum shall be the official repository for archaeological and palaeontological objects acquired by the Minister under this Act.

**Minister may direct care and management**

- (2) The Minister may provide for the care and management of specific archaeological or palaeontological objects with other agencies, organizations or individuals for the purposes of
- (a) long-term care and management;
  - (b) display and interpretation; or
  - (c) research.

**By loan only**

- (3) All archaeological and palaeontological objects subject to care and management under subsection (2) shall be on the basis of a loan only and shall be accompanied by the appropriate documentation.

**Minister may acquire**

- (4) The Minister may acquire, through donation or loan, archaeological or palaeontological objects associated with the human or natural history of the province. *2006,c.2,s.13.*

**14. Property to human remains vested in Crown**

- (1) The property in, and title and right of possession to, any human remains found by any person, is vested in the Crown in right of the Province, as represented by the Minister .

**Finding of human remains**

- (2) Any person who finds an object that is, or that the person believes to be, human remains, shall forthwith report the find to the police and the person shall not handle, disturb or do anything to such remains except in accordance with such requirements as the police may direct.

**Police report to Minister on human remains**

- (3) The police, having jurisdiction in an area in which human remains are found shall, in a timely fashion, advise the Minister of any object that is, or is believed to be, human remains.

**Examination and reinterment of human remains**

- (4) The Minister
- (a) may determine whether excavated or naturally exposed human remains may be used for
    - (i) scientific examination, or
    - (ii) research or educational purposes; and
  - (b) shall appoint a person who will be responsible to ensure that the human remains are reinterred after their use for a purpose authorized under clause (a).

**Agreements or protocols on human remains**

- (5) The Minister may enter into agreements or develop protocols with the aboriginal community to
- (a) ensure that deference is shown to traditional Mi'kmaq approaches for the handling of human remains, where the Minister believes such human remains are of Mi'kmaq ancestry; and
  - (b) provide, notwithstanding subsection (1), for the title and right of possession of human remains shown to be of Mi'kmaq ancestry to be vested with the aboriginal community. *2006, c.2, s.14.*

**15. Compensation not payable**

- (1) Compensation is not payable by the Province to any person for any reduction in the value of that person's interest in land or for any loss or damages that result from
- (a) any order made by the Minister under this Act; or
  - (b) the exercise in good faith of any power or authorization conferred under this Act.

***Idem***

- (2) An incentive or agreement provided under subsection 2(4) shall not be considered as compensation for any reduction in the value of land as a result of the exercise of this Act. *2006, c.2, s.15.*

**16. Offence**

Every person who contravenes any provision of this Act or the regulations, or any order made or given pursuant to this Act or the regulations, is guilty of an offence and is liable on summary conviction:

- (a) in the case of a corporation, to a fine not exceeding \$250,000;
- (b) in the case of an individual, to a fine not exceeding \$10,000. *2006, c.2, s.16.*

**17. Regulations**

The Lieutenant Governor in Council may make regulations

- (a) respecting the designation of an archaeological site as a protected archaeological site;
- (b) respecting objections to the designation of an archaeological site as a protected archaeological site;
- (c) respecting appeals from the designation under subsection 4(1) of an archaeological site as a protected archaeological site;
- (d) respecting archaeological investigations;
- (e) respecting inspections of an archaeological site;

- (f) respecting archaeological impact statements;
- (g) respecting palaeontological sites or palaeontological objects;
- (h) respecting offences and penalties for the contravention of this Act or the regulations;
- (i) prescribing forms to be used and procedures to be followed in carrying out the purposes of the Act;
- (j) defining any word or phrase used in this Act but not defined in this Act;
- (k) respecting any matter considered necessary or advisable to carry out the intent and purpose of this Act. *2006,c.2,s.17.*

**18. Repeal**

The *Archaeological Sites Protection Act* R.S.P.E.I. 1988, Cap. A-7 is repealed. *2006,c.2,s.18.*