

SCHEDULE 19

HERITAGE GUIDELINES AND PROTOCOLS

See attached.

**BEST PRACTICE GUIDELINES FOR THE
TREATMENT OF HUMAN SKELETAL REMAINS DISCOVERED OUTSIDE
A LICENSED CEMETERY**

The attached document is a “best practices” guideline describing the procedures for the treatment of human skeletal remains discovered outside a licensed cemetery. It reflects an agreement among members of the various ministries and agencies involved in the resolution of such burials (i.e., First Nations Burial Committee of Toronto; Toronto Police Service; Ministry of Citizenship, Culture and Recreation; Cemeteries Regulation Section of Ministry of Consumer and Commercial Relations; Ministry of Transportation; and The Office of the Chief Coroner) and reflects what is seen as the best practice.

The document is intended to serve as a guide to approval authorities as a discovery goes through the many different steps involved in a reburial to ensure that human remains are treated with respect and dignity and processed in a timely and efficient manner.

It is intended that this guide be reviewed periodically to reflect experiences with the topic. The signatories to this guideline have agreed to ensure that staffs within their jurisdictions have access to this guideline.

Should clarification be required, please refer to the *Cemeteries Act* (Revised) R.S.0.1990 or contact one of the signatories.

Signatories:

First Nations Burial Committee of Toronto
Toronto Police Service
Ministry of Citizenship, Culture and Recreation
Cemeteries Regulation Section of Ministry of Consumer and Commercial Relations
Ministry of Transportation
Office of the Chief Coroner

The Discovery of Human Remains - Best Practices

Introduction

The following is designed to assist all those involved in responding to and addressing discoveries of human skeletal remains outside of a licensed cemetery. The advice is presented as a series of best practices among the many overlapping interests and jurisdictions of several ministries, agencies, police services and other government bodies that are triggered when human skeletal remains are uncovered. This approach has been developed with the support and approval of the First Nations Burial Committee of Toronto. The practices outlined here are equally applicable to discoveries of human remains across Ontario.

These best practices support the existing regulatory and statutory mechanisms in Ontario. Responsibility for a burial passes through a number of jurisdictions (i.e., Police, Coroner, Cemeteries Regulation Section) and the intent of this document is to ensure this flow is effective and seamless. This information should be read along with the attached flow chart outlining the mandatory process to be followed under existing statutes. Although the flow chart describes the process as being linear, in many instances events can and do happen simultaneously.

A Note on Public Notification:

Getting through the entire discovery and disposition process when human remains are found will see the authority of the issue shift among several agencies. As such, until all investigations have been carried out and the disposition resolved, formal press releases or contacting the media should only occur if all affected authorities have concurred (i.e. police, coroner and Cemeteries Registrar). In addition, after all investigations have been completed, the concerns of the landowner and group acting as representative for the deceased (e.g. First Nation) should be considered before media contact. Premature media notification, particularly prior to having accurate identification of the deceased, will lead to misinformation, misplaced concerns being raised, and potentially a hardening of attitudes. This can make a final disposition agreement more difficult to reach.

Any media interest should be directed to the agency that has authority over the burial site at the time of the media contact (i.e. police, Coroner's Office or Cemeteries Registrar). Media photography of the remains should be avoided: a publicly displayed photograph of skeletal remains is both disrespectful to the deceased and offensive to representatives for the deceased.

A Note on Archaeology:

It is important to note that the discovery of human remains will occur in two basic contexts: either through accidental discovery by an individual in unexpected circumstances, or through discovery as part of an archaeological examination/excavation of a locale by a trained archaeologist, licensed by the Ministry of Citizenship, Culture & Recreation (MCzCR) under the *Ontario Heritage Act*. In the latter case, the archaeologist will possess the skills, knowledge and expertise to assist both the police and coroner in determining the age of the interment, as well as to assist the landowner in generating the information the Cemeteries Registrar will require to determine the nature, extent and cultural affiliation of the persons buried. His or her presence at the front end of the discovery process will greatly aid all authorities in making quick and accurate determinations, and as such should be relied on as much as possible in such circumstances.

Under the *Coroner's Act*

1. A person finding skeletal material may first contact staff in an agency other than the police or coroner (e.g. MCzCR or Ministry of Consumer & Commercial Relations [MCCR] staff). When that occurs, the person is to be immediately instructed to report the find to the local police or coroner. An appropriate contact list (e.g. Regional Coroner's offices) should be maintained by all agencies that may be first contacted about such a discovery.
2. When the police are first contacted they will attend the scene, protect the site and contact the local coroner. The coroner, or the police on behalf of the coroner, will conduct an investigation to determine if: a) the skeletal material is human and b) if the site represents a crime scene. The investigators will need to obtain all the information required to make a determination. However, efforts should be made at this stage to minimize site disturbance. All bone and associated grave goods still embedded in the ground should not be disturbed unless removal is essential for the coroner to make a determination. Poking, pulling, and digging up the bone in an uncontrolled manner can quickly destroy critical data essential to making accurate identifications.
3. Whenever possible, the police and coroner should seek the assistance of an archaeologist in conducting the investigation. This is especially critical since burials are archaeological deposits in their own right, and are often found as part of more extensive archaeological deposits. As such, confirming an association of the burial with a surrounding archaeological site will help determine whether or not the remains are part of a crime scene. Also, the archaeologist can help ensure that the larger heritage resource is not destroyed or damaged during investigation of the skeletal material. MCzCR staff can sometimes be called on to visit the scene with the police.
4. Archaeologists will consider issues such as the condition and discoloration of the bone, presence of artefacts around the discovery site, and knowledge of known archaeological sites in the area to determine chronological (and cultural) associations. If intact deposits are examined, features such as the presence/absence of a coffin, depth of remains, position of body, presence of grave goods, etc., will also assist the determination.
5. When skeletal material is found and it is not readily obvious that this material is either a burial or crime scene, coroners will often employ the services of a physical anthropologist or osteologist to examine the bone in detail. While the coroner requires only a basic determination of age (i.e. recent vs. historic/ancient) and nature of the interment, the physical anthropologist's study can also determine cultural affiliation (based on the presence/absence of specific skeletal traits), age of the individual at death, sex, and even funerary practices. This information will be essential for both the Cemeteries Registrar's investigation, as well as for the deceased's representative in determining the appropriate re-interment requirements. As such, latitude in allowing the physical anthropologist to complete a full, basic descriptive analysis of the skeletal material as a part of the coroner's investigation will greatly aid in addressing remaining issues associated with this process.
6. When the Coroner is satisfied the discovery site is not a crime scene, it is essential that he/she notifies the Registrar of Cemeteries of the discovery, and passes along any relevant information (e.g. contacts, results of any analyses, etc.). It is also essential that the landowner understand that he/she will need to preserve and protect the site from the point when the police are no longer involved, and until a disposition is made under the *Cemeteries Act*.

Under the *Cemeteries Act*

1. Under the *Cemeteries Act* the Registrar will be required to determine and formally declare what the locale is: either an irregular burial site (unintentional interment), or an unapproved cemetery or unapproved Aboriginal Peoples cemetery. When the information is not already in hand (i.e. based on archaeological findings or the results of the coroner's investigation) the landowner normally will be required to undertake an investigation. Such an investigation will generate the information necessary for the Registrar to make an accurate declaration.
2. In most cases, such investigations will be undertaken by a licensed and qualified archaeologist hired by the landowner. MCzCR ensures that the Cemeteries Registrar has a current list of such licensees which can be made available to the landowner.
3. The intent of the investigation is to provide the Cemeteries Registrar with, the data necessary to make a declaration. As such, burial investigations will minimize normal archaeological fieldwork and reporting requirements. It will be determined following the Registrar's declaration and disposition agreement reached between landowner and deceased's representative whether disinterment is necessary.
4. The investigation for the Registrar must determine whether or not the interment(s) were intentional, and the basis on which this is made, the cultural affiliation of the deceased, and the defined limits of the area containing burials, the style and manner in which the remains are interred, and a description of the artefacts determined to form part of the burial site. It may also be necessary to determine the exact number of discrete burials present in the area. Excavation methods should maximize recovery of this data, while minimizing disturbances to the remains. Recording should also be limited to that required by the Registrar (e.g. emphasis on mapping location of burials in relation to property lines, existing structures, or other reference points). MCzCR will advise licensed archaeologists of the appropriate archaeological methods.
5. During the investigation, the remains must be treated with respect and care. All artefacts found in the burial are to be considered grave goods, and should be treated as part of the burial, and kept with the skeletal remains. Burials must not be unnecessarily exposed to the elements or to casual viewing, and must be covered over as soon as possible following identification. The landowner continues to be responsible for preserving and protecting the site during this investigation, and until a disposition is made under the *Cemeteries Act*.
6. At the conclusion of the investigation a report must be submitted to the Registrar. This report will need to include the information required in Point 4. For sites that date to the last 200 years, historical research (e.g. land title search, newspapers, local informant interviews, etc.) may be required to answer some of the information points outlined in Point 4. This report will also serve to address the archaeologist's reporting requirements for the license issued by MCzCR under the *Ontario Heritage Act*.
7. Once the Registrar can make a declaration, and the locale is determined to be an unapproved cemetery, he/she will locate a representative for the deceased. If the locale is an unapproved Aboriginal Peoples cemetery, the Registrar will contact the nearest First Nation Government. Another community of Aboriginal People whose members have a close cultural affinity to the interred person may also act as representative. As well, if agreed-to and established before-hand, a designated "Burials Committee" can serve as the first point of Aboriginal contact for the Registrar. If the burial is non-aboriginal, the Registrar will attempt to find a representative through media notification. Where no descendant is found, a representative of the same religious denomination as the person buried can act for the deceased.

8. The representative and landowner will agree to a disposition agreement outlining what is to be done with the burials. Where there is no agreement, binding arbitration is provided under the *Cemeteries Act*. Typically there are three options: 1) leave the remains intact and establish the site as a cemetery; 2) establish a cemetery nearby, remove the remains and re-inter them there; 3) remove the remains and reinter them in an existing cemetery. The option selected with respect to an unapproved cemetery or unapproved Aboriginal Peoples cemetery will be negotiated between the landowner and representative for the deceased.

9. If the discovery is declared to be an irregular burial site, there are three options: 1) leave the remains intact and establish the site as a cemetery; 2) establish a cemetery nearby, remove the remains and re-inter them there; 3) remove the remains and re-inter them into an existing cemetery. The landowner will decide which option and is responsible for all costs.

10. In respect to an unapproved cemetery or unapproved Aboriginal Peoples cemetery, if a disinterment/reburial option is selected, the burials will need to be fully uncovered, removed and reinterred with a minimum of damage and time. Costs associated with a disposition agreement will be negotiated by the landowner and representative. While the time it takes to complete this work will be subject to the wishes of the landowner and representative, factors such as the number and nature of interments, level of observations required by the representative for re-interment purposes, etc., will affect the length of time needed to complete the removal and reinterment. Consequently, in order to minimize time while maximizing care and documentation, this work is best done by a licensed archaeologist under the direction of the disposition agreement.

11. During removal, detailed observations will need to be made of the archaeological context of the burial to ensure that all associated remains and grave goods are fully recovered. Age at death and sex of the individual should also be noted. This information will assist in determining the appropriate methods of re-interment, as well as to assist in determining what specific ceremonies need to accompany the reburial. Basic mapping can be used to aid in making these observations. No scientific analysis of the skeletal remains or grave goods can occur during this process without the consent of the representative of the deceased.

12. Should the disposition agreement impact on adjacent archaeological remains, or should concerns be raised for these deposits during negotiations, MCzCR will advise and work closely with the Cemeteries Registrar and others concerned to determine what is the most appropriate course of action. MCzCR will also assist in mediating any issues that might arise between the licensed archaeologist and other parties.

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