

The Burial Site Investigation Process

Ian Hember, Registrar

Funeral, Burial and Cremation Services Act

Introduction

I'm Ian Hember.

I'm the Registrar under the *Funeral, Burial and Cremation Services Act* responsible for burial sites, cemetery closures and abandonments, and war graves.

I'm also the manager of the Burials Unit at the Ministry of Public and Business Service Delivery and Procurement.

I've worked in archaeology since 1996 and have been a regulator with the Ontario Government since 2010.

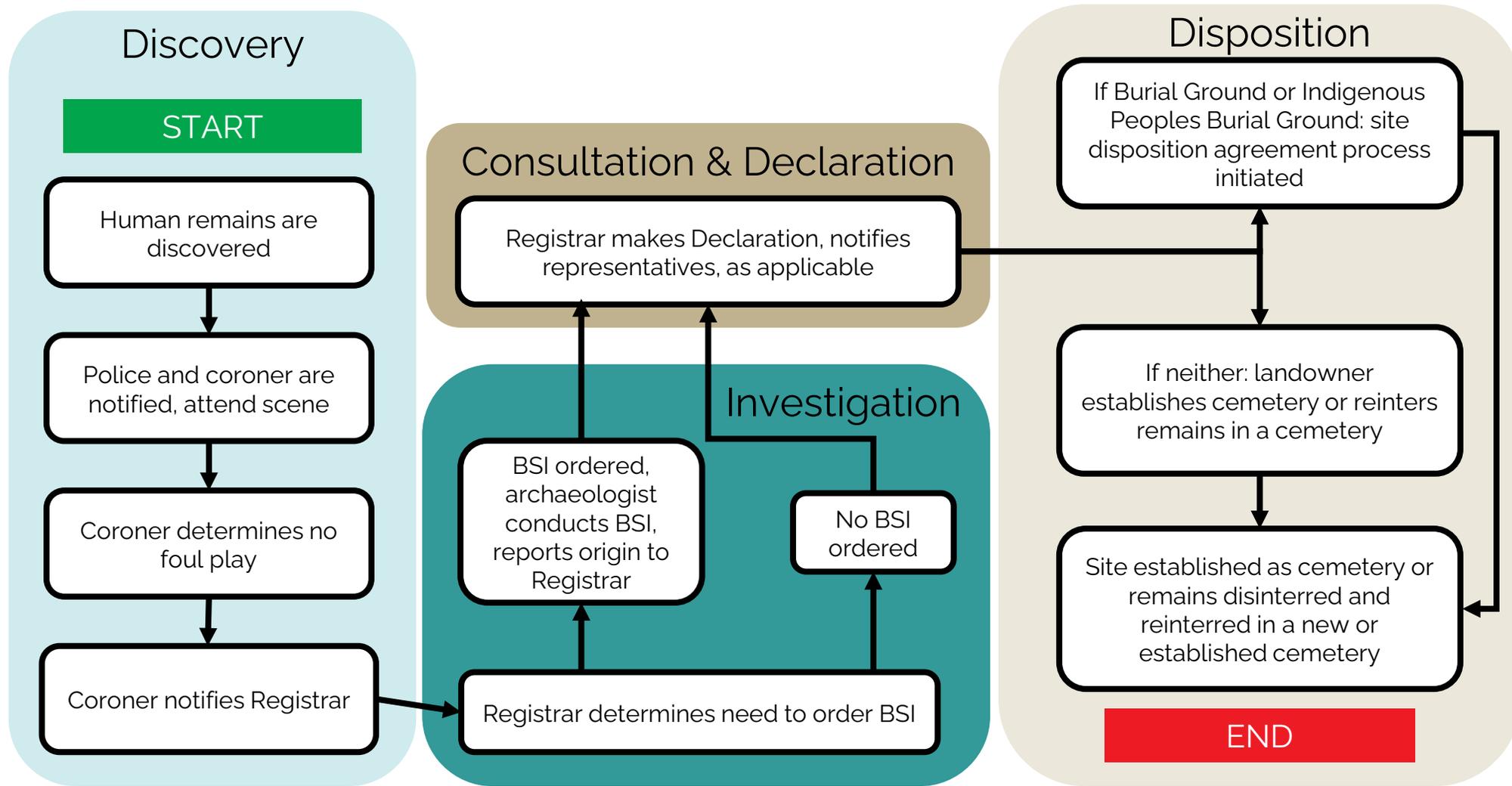
Purpose

We'll walk through the burial site investigation process.

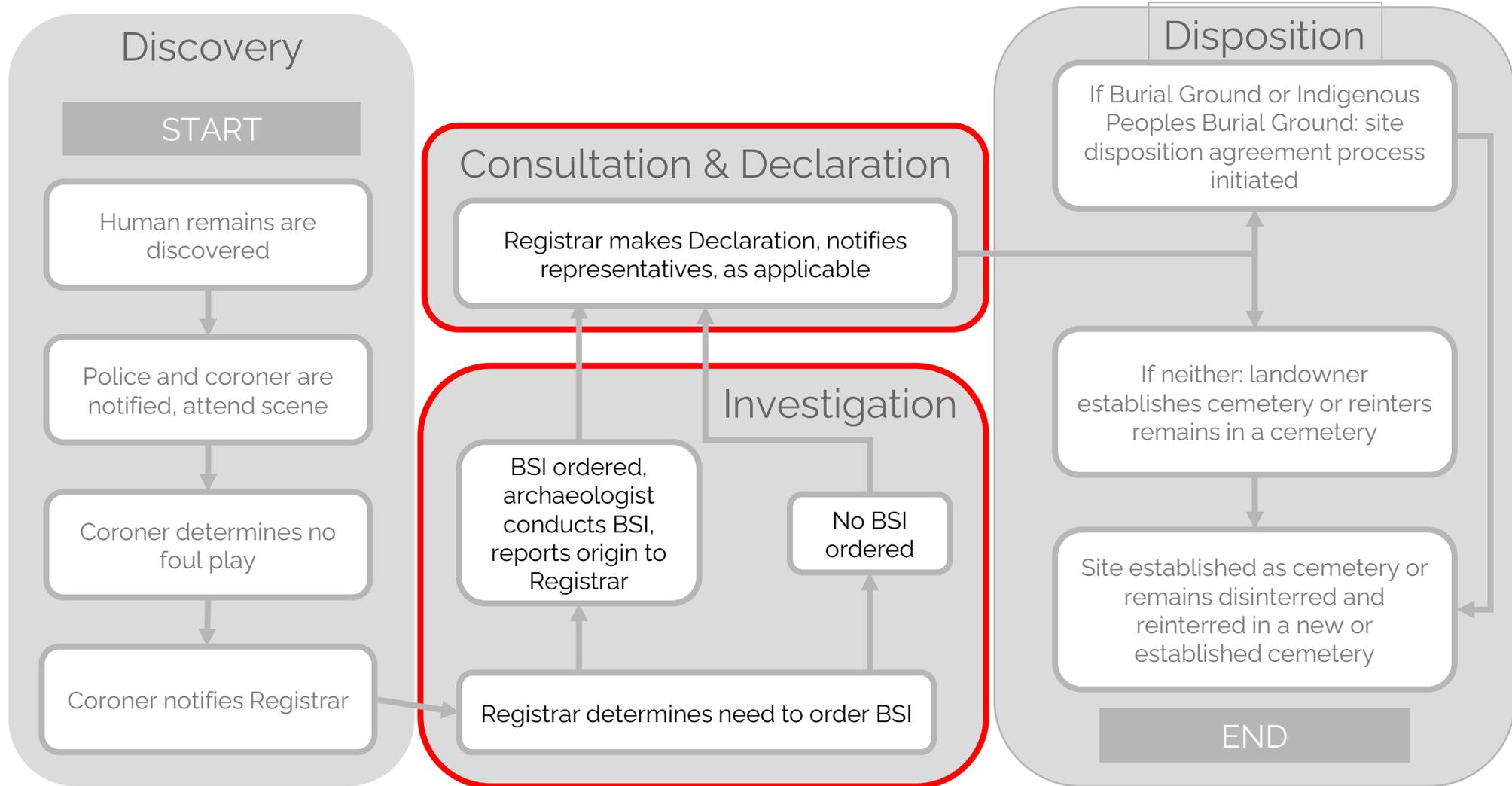
I'll highlight when and how various partners are involved, from police to coroners to Indigenous communities to archaeologists to other ministries

You'll learn about how you can contribute to positive outcomes.

The burial site investigation process



The Registrar's Duty to Consult



Outcomes of a burial site investigation

When the archaeologist completes the burial site investigation, they need to provide the following information in a report:

- *A determination of the **probable cultural origin** or **religious affiliation** of the persons whose remains are interred and the basis upon which it is made.*
- *A description of the **boundaries of the burial site**.*
- *Details of the **style and manner** in which the human remains are interred.*
- *A description of any **artifacts that form part of the burial site**.*
- *An opinion as to whether the burial site was **set aside with the apparent intention of interring human remains** in accordance with cultural affinities and the basis upon which the opinion is made.*

- *Information relevant to the preparation of a **site disposition agreement**.*

Outcomes of a burial site investigation

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Declaration

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- Information relevant to the preparation of a **site disposition agreement**.

Site Disposition

BSI outcomes: the Registrar's declaration

	Indigenous	Non-Indigenous
Deliberate burial in its original location	Indigenous Peoples Burial Ground	Burial Ground
Disturbed, displaced, etc.	Burial site containing ancestors' remains not in their original or intended resting place	Burial site containing human remains not in their original or intended resting place [the origins of which are inconclusive]

BSI outcomes: protecting the remains in a cemetery

The burial site becomes a cemetery

OR

The remains are moved to an existing cemetery

OR

The remains are moved to a new location that becomes a cemetery

Success stories: collaborating on new paths forward

Chatham-Kent

- Nearly intact ossuary found on rural residential property
- Nations participated in BSI, decision making
- Landowner agreed to establish a cemetery

Kitchener

- Very large burial site damaged by two centuries of farming
- Nations stressed the desire to leave the Ancestors in peace with minimal disturbance
- Landowner agreed to establish cemetery with no further excavation

Supporting our partners: guidance

Registrar, Burials Unit, Ontario Ministry of Public and Business Service Delivery

Burial Sites – *Funeral, Burial and Cremation Services Act*

1. What to do when human remains are discovered on an archaeological project

When human remains or Indigenous ancestors (referred to as ancestors for the remainder of this document) are discovered, work must stop, and the police or coroner must be contacted immediately. The site must not be disturbed until the Office of the Chief Coroner has completed their investigation. Please make sure that the burial site is protected until the coroner arrives. If the coroner determines that there is no foul play, the coroner's office will notify the Registrar that a burial site has been found. You may also notify the Registrar directly, in addition to notifying the coroner, if you so choose. The landowner must take whatever steps are necessary to preserve the burial site until the final disposition of the site is determined.

You don't have to wait for the archaeologist to contact the Office of the Chief Coroner.
You can do it yourself as soon as ancestors are discovered.

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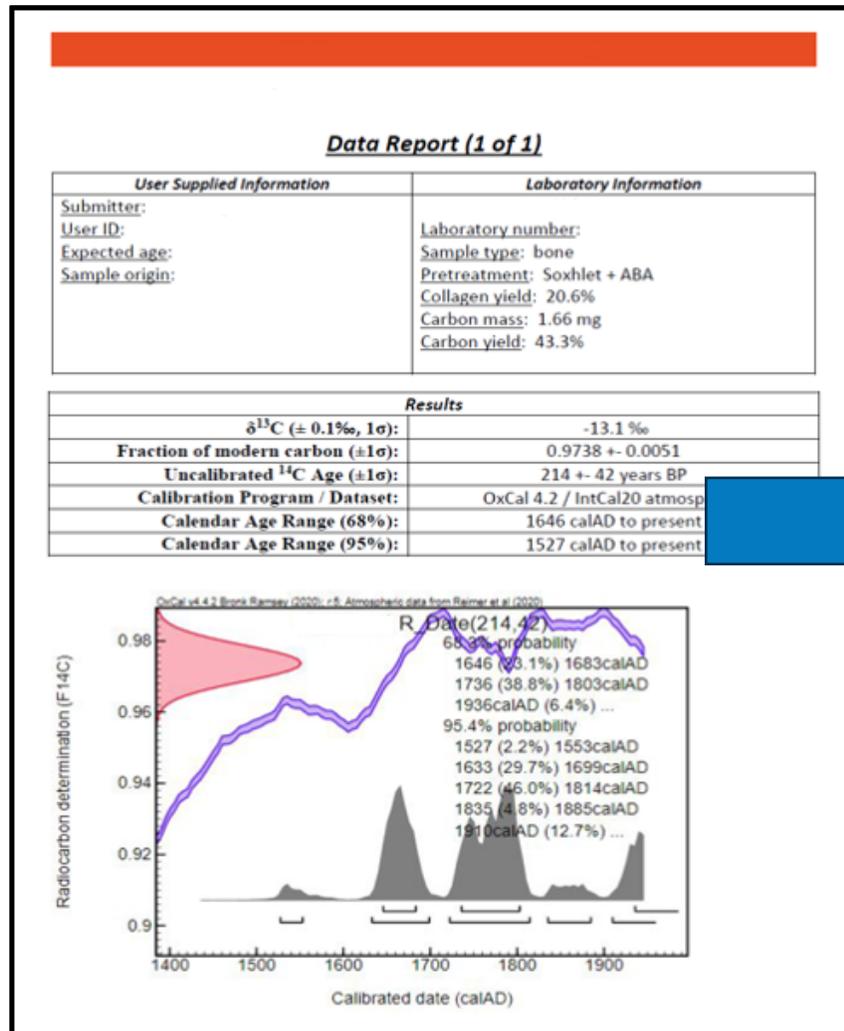
Ministry of Public and Business Service Delivery
Consumer Services Operations Division

Ontario 

Registrar's Bulletin

Obligations under the *Funeral, Burial and Cremation Services Act, 2002* when human remains are discovered outside of a cemetery during archaeological fieldwork

Supporting our partners: alternative solutions



“At the request of the First Nations engaged in this archaeological assessment, the Ancestral remains have not been photographed.”

“No destructive analysis of the Ancestral remains has been conducted, so conclusions are based on morphological analysis alone.”

Best practices

Communicate and collaborate early and often, with the right people

Understand our respective roles and responsibilities and work within them

Don't do anything you don't have to do

If you're not sure, ask

Questions?

Ian Hember

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The Burials Unit

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Burial Sites – *Funeral, Burial and Cremation Services Act*

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2. Who conducts a burial site investigation and what are they allowed to do?

It is illegal for anyone to disturb a burial site unless the Registrar or the coroner gives permission. Only a licensed Professional archaeologist can undertake a burial site investigation on behalf of a landowner, and they must do so with minimal disturbance. The archaeologist also has to inform the Registrar about the potential cultural origins of the site within five days of starting the investigation so that the Registrar can contact those who may be representatives of the deceased. Archaeologists are required to engage with Indigenous Nations at certain points of the assessment process on sites containing ancestors. That can, but doesn't always, mean only conducting archaeology when Monitors are on site.

If you have concerns about the burial site investigation, let us know.
Registrar, Burials Unit, *Funeral, Burial and Cremation Services Act* (2002)
56 Wellesley Street West, Toronto, ON, M7A 1C1

Phone: 416-212-7499

E-mail: FBCSARegistrar@ontario.ca

3. Involving your Nation in the burial site investigation

The archaeologist should engage your Nation as early as possible to give you an opportunity to provide meaningful input. The archaeologist should ensure that Monitors are aware of the burial site and should seek their Nation's input on how to approach the investigation before it begins or as soon as possible thereafter. If your Nation's Monitors are not on site, the archaeologist should ensure that they are notified of the discovery so that they have the opportunity to participate in the process.

Registrar, Burials Unit, Ontario Ministry of Public and Business Service Delivery

4. The goals of a burial site investigation

A burial site investigation is not complete until the archaeologist reports the following to the Registrar:

- I. A description of the likely cultural origin or religious affiliation of the ancestors;
- II. A description and detailed map of the location and boundaries of the burial site;
- III. Details of how the ancestors were placed, including the orientation of the body, the position of the limbs, and any personal effects that were buried with them;
- IV. A determination about whether the site was created for the purpose of burying people, and an explanation of what information supports this conclusion; and,
- V. Any other information relevant to the preparation of a site disposition agreement.

5. How the Registrar identifies the representatives of the deceased

The Registrar will consider:

- I. Asserted or established Charter (Aboriginal or Treaty) rights or interests in the burial site;
- II. Whether anyone has expressed interest in being a representative;
- III. Who has been involved in the burial site investigation; and,
- IV. Information provided in a burial site report, including the archaeologist's opinion as to probable cultural origin or religious affiliation.

Your Nation will not necessarily be named as a representative of the deceased just because you've been working on a burial site. If your Nation is interested in being a representative, let the Registrar know as early as possible.

6. Burial sites containing ancestors not in their original or intended resting place

For ancestors who aren't in their original or intended resting place, the landowner isn't specifically required to negotiate a site disposition agreement with representatives. Nevertheless, the Registrar always encourages landowners to negotiate with Indigenous Nations, and in practice, landowners typically do work with Nations to identify a final resting place for the ancestors.

In all cases, the Registrar will make sure that Indigenous Nations are aware of every burial site that might be of interest to them, as early in the process as possible.

Contact the Registrar:

Registrar, *Funeral, Burial and Cremation Services Act* (2002) (and [Ontario Regulation 30/11](#))
Burials Unit, Inspections, Investigations and Licensing Branch
Ontario Ministry of Public and Business Service Delivery
56 Wellesley Street West, 16th Floor
Toronto, ON, M7A 1C1
Tel: 416-212-7499 Email: FBCSARegistrar@ontario.ca

Registrar's Bulletin

Obligations under the *Funeral, Burial and Cremation Services Act, 2002* when human remains are discovered outside of a cemetery during archaeological fieldwork

Introduction

This bulletin is intended to remind those carrying out archaeological fieldwork under the *Ontario Heritage Act* what the *Funeral, Burial and Cremation Services Act, 2002* (FBCSA, the Act) requires when human remains are discovered on lands that are not a cemetery

Human remains may be encountered during any stage of archaeological fieldwork. Remains may be anticipated or unexpected, and may be found *in situ* or in disturbed contexts. While human remains discovered during archaeological fieldwork are often Indigenous, they may be ancestral to any of the peoples currently or formerly present in Ontario.

When human remains are discovered during archaeological fieldwork the FBCSA requires two things to happen immediately:

- Everyone on site must stop work so that they do not impact the burial site; and,
- The police or coroner must be notified.

What the FBCSA says

- The FBCSA defines a burial site as “land containing human remains that is not a cemetery.” The FBCSA also includes definitions for “cemetery” and “human remains”.

- Section 94 of the FBCSA states:
No person shall disturb or order the disturbance of a burial site or artifacts associated with the human remains except,
 - (a) *on instruction by the coroner;*
 - (b) *pursuant to a site disposition agreement; or*
 - (c) *if the disturbance is carried out in accordance with the regulations.*
- Section 95 of the FBCSA states:
Any person discovering or having knowledge of a burial site shall immediately notify the police or coroner," [emphasis added].
- Subsection 79(1) of the FBCSA states, in part:
A person is guilty of an offence who... contravenes or fails to comply with any section of this Act or the regulations...
- Subsection 175(1) of Ontario Regulation 30/11 states:
 - (1) *If a burial site is discovered and a coroner declares that foul play is not suspected in relation to the human remains at the site,*
 - (a) *the coroner shall ensure that the registrar is notified; and*
 - (b) *the owner of the land shall take whatever steps are necessary to preserve the site, the human remains and any artifacts until a final disposition is made in accordance with the Act and the regulations.*
 - (2) *If the coroner declares that foul play is suspected in relation to the discovered human remains, the land ceases to be a burial site.*
- Subsection 179 of Ontario Regulation 30/11 states:
Unless a representative of a person whose remains are interred in a burial ground or an aboriginal peoples burial ground consents, no person shall,
 - (a) *remove the remains or associated artifacts from the site; or*
 - (b) *conduct scientific analysis of the remains or associated artifacts.*

What this means for those carrying out archaeological fieldwork

Stop fieldwork when human remains are discovered

- The FBCSA forbids disturbing human remains and artifacts associated with a burial site except under the specific circumstances listed in section 94 of the Act.
- When human remains are found, all activities that may disturb the burial site must immediately stop, even if it seems obvious that the remains have not been the subject of foul play. Only the coroner has the authority to make a determination with respect to foul play.
- Archaeological fieldwork and other activities that may disturb the burial site can only resume when at least one of the following conditions are met:
 - If the coroner instructs excavation of some or all of the burial site to support the coroner's investigation;
 - In the context of a burial site investigation with the written authorization of the Registrar;
 - In the context of fulfilling the conditions of a burial site disposition agreement following the Registrar's declaration that the burial site is a burial ground or Indigenous peoples burial ground;
 - Following the Registrar's declaration that the burial site is an irregular burial site or a burial site containing ancestors' remains not in their original or intended location:
 - In the context of ensuring the remains are disinterred, then interred in a cemetery; or
 - In the context of ensuring that a cemetery is established at the burial site;
 - After the Registrar has determined that there is no further risk of impact to human remains.

Under the FBCSA, failing to immediately halt fieldwork that may disturb a burial or resuming this without authorization is an offence punishable by a fine, imprisonment, or both.

Notify the Coroner or Police

- The FBCSA does not give anyone the authority to delay notifying the coroner or police of the discovery of human remains, nor the authority to direct anyone else to delay notifying the coroner or police, even if it seems likely that the remains have not been the subject of foul play.

- Anyone who has knowledge of or discovers human remains is required by law to immediately report the discovery to the coroner or police.

Under the FBCSA, failing to immediately notify the coroner or the police is an offence punishable by a fine, imprisonment, or both.

Penalties

- An individual convicted of an offence under the FBCSA may be liable for:
 - A fine of up to \$50,000;
 - Imprisonment for up to two years less a day; or,
 - Both a fine and imprisonment.
- A corporation that is convicted of an offence under the FBCSA may be fined up to \$250,000.
- A person who is convicted of an offence under the FBCSA may be ordered to pay compensation or make restitution in addition to any other penalty.
- In certain circumstances, the Superior Court may order a person to comply with the FBCSA or its regulations, or an order made under the FBCSA, if it appears they are not in compliance.

Contact the Registrar

Registrar, *Funeral, Burial and Cremation Services Act* (2002) (and Ontario Regulation 30/11)

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