

A Toolkit For
Understanding

ABORIGINAL HERITAGE & BURIAL RIGHTS & ISSUES



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INTRODUCTION



INTRODUCTION

PURPOSE

The Union of Ontario Indians has created this toolkit to offer assistance to member First Nations to understand heritage and burial rights and issues. This toolkit provides a general explanation of what are heritage and burial rights, and items for First Nations to consider if a situation arises where heritage or burial rights or issues are affected.

This toolkit contains:

- 🌀 Explanations of common words and terms
- 🌀 Introduction to legislation that address heritage and burial rights
- 🌀 Summaries of the processes followed when a heritage site or burial item is discovered
- 🌀 Overview of repatriation processes
- 🌀 Factors in cultural affinity and close affiliation determinations
- 🌀 Issues to consider when entering into heritage and burial protocols or agreements
- 🌀 Best practices in heritage and burial situations
- 🌀 List of resources

NOT LEGAL ADVICE

This toolkit is not intended as legal advice and should not be relied on as legal advice. The information in this toolkit is not intended to be exhaustive as legislation may change in the future, government may develop new policies, and the courts may make decisions in cases that affect heritage and burial rights and issues. Also, no two situations where heritage and burial rights are concerned are the same; each situation is different from one another.

It is recommended that you contact a lawyer if you require legal advice concerning heritage and burial rights and issues.

DEFINITIONS



DEFINITIONS

The language used to discuss heritage and burials can often be technical and may not be presented in a worldview that reflects that of First Nation peoples. For example, terms such as 'repatriation of human remains' is used rather than 'bringing home our ancestors,' as well as 'artifacts' rather than 'sacred items and bundles.'

The following are definitions for many common words and terms used in relation to heritage and burials.

Arbitration – This means where an independent person or body is appointed to settle a dispute.

Artifacts – This means an object that is made or changed for human use.

Aboriginal – This refers to First Nations, Métis, and Inuit people.

Aboriginal peoples burying grounds – This means land where Aboriginal people were buried.

Associated burial objects – This refers to items that were placed with the deceased at the time they were buried.

Burial site or burial ground – This means land containing the body of the deceased, where the land is not a cemetery.

Cultural affinity – This means where there is a direct relationship. For example, where it can be demonstrated that the deceased was a citizen of a specific First Nation.

Close affiliation – This means where there is a connection or association. For example, where it can be demonstrated that the deceased may have been connected to a particular Nation.

Disinterred and re-interred – This means to dig up a burial site and then to re-bury the deceased in a cemetery.

Disposition – This means the final arrangements for the deceased, and can refer to either burial or cremation.

Heritage – This may include medicines, ceremonies, stories, traditional harvesting and hunting grounds, villages and trading areas.

Heritage site – This means a historical site, building, or area that is considered to be important to the heritage of an area, people, or country.

Human remains – This means the body (partial or intact) of the deceased.

Interred – This means to place the body of the deceased in a grave or tomb.

Irregular burial site – This means a site where there is no evidence of an intentional burial.

Minimum disturbance investigation – This refers to the process of investigating where human remains are found with as little disturbance to the area as possible.

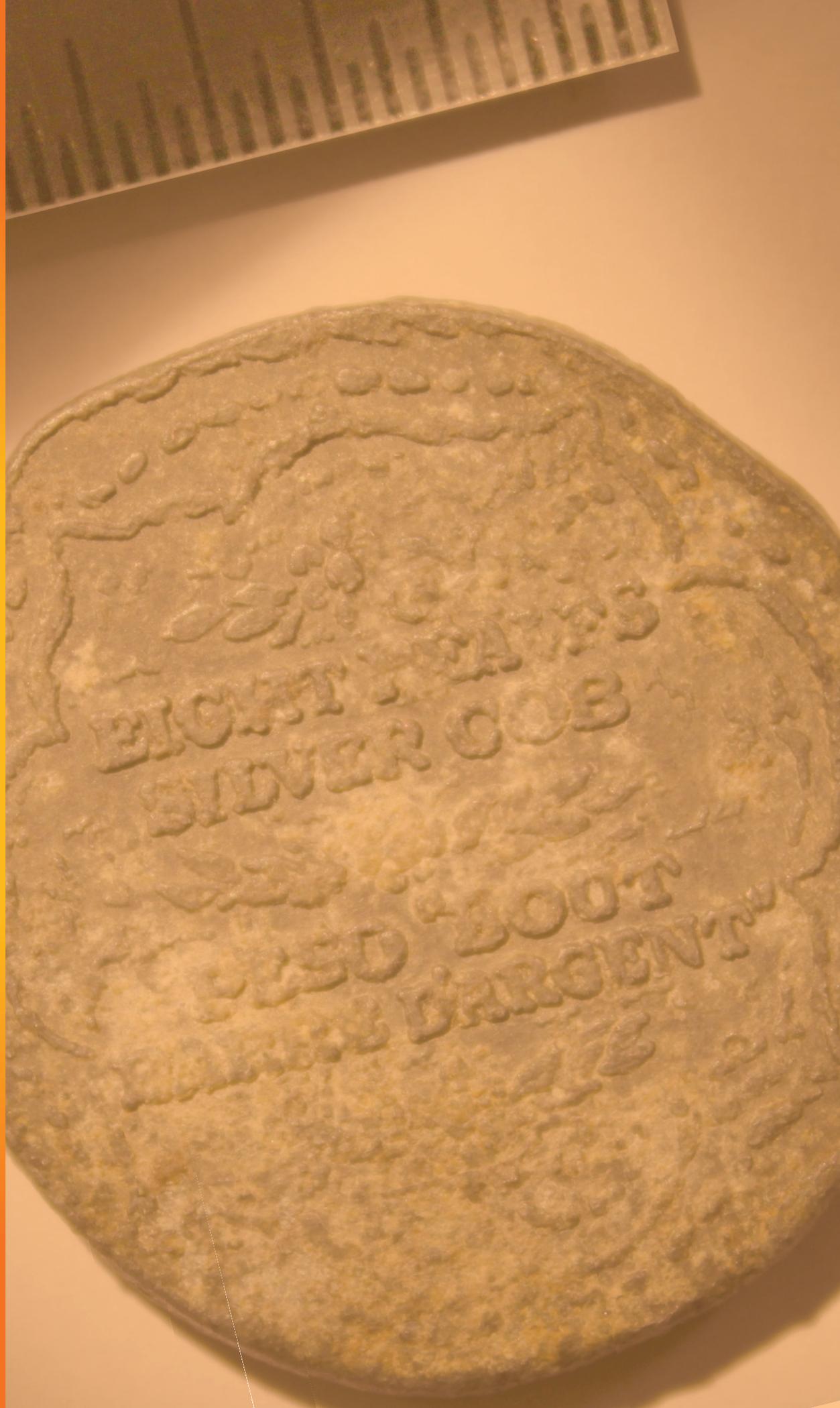
Ossuary – This means a container or room where the bodies of the deceased are placed.

Proponent – This means a person, company or public body who plans to develop or make changes to land.

Repatriation – This means the process of returning human remains to their place of origin.

Site disposition agreement – This is an agreement that may be developed between a First Nation and the landowner as to how the site where human remains are found will be handled.

LEGISLATION



LEGISLATION

Heritage and burials is a complex process due in large part to the fact that there are several different federal and provincial laws that govern heritage and burial matters, and several different federal and provincial government ministries responsible for administering the laws. What law applies and when, depends on if it is a heritage or a burial site, where it is located, and how it is discovered.

An overview of the most commonly applied laws will now be examined.

A. FEDERAL LEGISLATION

While the federal government has responsibility for 'Indians, and Lands reserved for Indians' under section 91(24) of the *Constitution Act, 1867*, there is no overarching federal legislation governing the rights and issues of an Aboriginal heritage and burial site.

Indian Act

The *Indian Act* (R.S.C., 1985, c. I-5) does not have specific provisions on Aboriginal heritage and burial sites, but only provides limited protection for property on reserve that cannot be acquired. Section 91 states:

91. (1) No person may, without the written consent of the Minister, acquire title to any of the following property situated on a reserve, namely,
 - a. an Indian grave house;
 - b. a carved grave pole;
 - c. a totem pole;
 - d. a carved house post; or
 - e. a rock embellished with paintings or carvings.
- (2) Subsection (1) does not apply to chattels referred to therein that are manufactured for sale by Indians.
- (3) No person shall remove, take away, mutilate, disfigure, deface or destroy any chattel referred to in subsection (1) without the written consent of the Minister.
- (4) A person who contravenes this section is guilty of an offence and liable on summary conviction to a fine not exceeding two hundred dollars or to imprisonment for a term not exceeding three months.

Aboriginal Affairs and Northern Development Canada administers the *Indian Act*.

Cultural Property Export and Import Act

The federal legislation *Cultural Property Export and Import Act* (R.S.C., 1985, c. C-51), governs the export and import of cultural property in Canada. The Act provides for the establishment of a Canadian Cultural Property Export Control List including:

4. (2) Subject to subsection (3), the Governor in Council may include in the Control List, regardless of their place of origin, any objects or classes of objects herein described in this subsection, the export of which the Governor in Council deems it necessary to control in order to preserve the national heritage in Canada:
 - a. objects of any value that are of archaeological, prehistorical, historical, artistic or scientific interests and that have been recovered from the soil of Canada, the territorial sea of Canada or the inland or other internal waters of Canada;
 - b. objects that were made by, or objects referred to in paragraph (d) that relate to, the aboriginal peoples of Canada and that have a fair market value in Canada of more than five hundred dollars;

- c. objects of decorative art, herein described in this paragraph, that were made in the territory that is now Canada and are more than one hundred years old:
 - i. glassware, ceramics, textiles, woodenware and works in base metals that have a fair market value in Canada of more than five hundred dollars, and
 - ii. furniture, sculptured works in wood, works in precious metals and other objects of decorative art that have a fair market value in Canada of more than two thousand dollars;
 - d. books, records, documents, photographic positive and negatives, sound recordings, and collections of any of those objects that have a fair market value in Canada of more than five hundred dollars;
 - e. drawings, engravings, original prints and water-colours that have a fair market value in Canada of more than one thousand dollars; and
 - f. any other objects that have a fair market value in Canada of more than three thousand dollars.
- (3) No object shall be included in the Control List if that object is less than fifty years old or was made by a natural person who is still living.

The inclusion within the Control List of Aboriginal items means that with the support of a cultural institute, First Nations may be able to repatriate cultural items taken from their communities or burial sites with assistance by the Canadian Cultural Property Export Review Board allowing cultural institutions to purchase those cultural items and artifacts from museums.

The Department of Canadian Heritage administers the *Cultural Property Export and Import Act*.

B. PROVINCIAL LEGISLATION

The provincial governments have responsibility for 'Property and Civil Rights in the Province' under section 92(13) of the *Constitution Act, 1867*. As this section includes cemeteries, it means that each provincial government is responsible for administering cemeteries within their province in accordance with their own provincial legislation. In Ontario, there are a number of pieces of legislation that address or touch upon heritage and burial sites.

Funeral, Burial and Cremation Services Act

The *Funeral, Burial and Cremation Services Act, 2002, S.O. 2002, c.33* regulates how funeral establishments and crematoriums are licensed and operate, how cemeteries and crematoriums are established and closed, and how burial sites are protected. The protection of burial sites are set out in sections 94 to 100 of the Act, which state:

- 94. 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.
- 95. Any person discovering or having knowledge of a burial site shall immediately notify the police or coroner.
- 96. (1) The registrar may order the owner of land on which a burial site is discovered to cause an investigation to be made to determine the origin of the site.
 - (2) Section 94 does not apply to a person investigating the nature or origin of the site who is disturbing the site in the course of the investigation.
 - (3) A person conducting an investigation shall do so with the minimum disturbance to the site that is reasonable in the circumstances.

(4) If the registrar is of the opinion that an investigation under subsection (1) would impose an undue financial burden on the land owner, the registrar shall undertake the investigation.

97. In sections 98 to 100,

"aboriginal peoples burial ground" means land set aside with the apparent intention of interring in it, in accordance with cultural affinities, human remains and containing remains identified as those of persons who were one of the aboriginal peoples of Canada;

"burial grounds" means land set aside with the apparent intention of interring it, in accordance with cultural affinities, human remains and containing remains identified as those of persons who were not one of the aboriginal peoples of Canada;

"irregular burial ground" means a burial site that was not set aside with the apparent intention of interring human remains in it.

98. As soon as the origin of a burial site is determined, the registrar shall declare the site to be,

- a. an aboriginal peoples burial ground;
- b. a burial ground; or
- c. an irregular burial site.

99. (1) Unless the regulations provide otherwise, the registrar, on declaring a burial site to be an aboriginal peoples burial ground or a burial ground, shall serve notice of the declaration on the persons or class of persons that are prescribed.

(2) Unless the regulations provide otherwise, all persons serviced with the notice shall enter into negotiations with a view of entering into a site disposition agreement.

(3) Unless the regulations provide otherwise, if the person served with the notice do not make a site disposition agreement within the prescribed time, the registrar shall refer the matter to arbitration.

(4) Unless the regulations provide otherwise, despite subsection (3), the registrar, if of the opinion that an agreement may be reached, may defer referring the matter to arbitration so long as there appears to be a reasonable prospect of an agreement being reached.

(5) The persons named in an arbitrated settlement who have been given the opportunity to fully participate in the arbitration process are bound by the settlement whether they chose to participate or not.

100. (1) Unless the regulations provide otherwise, an owner of land that contains an irregular burial site shall ensure that the remains found in the site are interred in a cemetery.

(2) Unless the regulations provide otherwise, no owner of a cemetery interring human remains for an owner of land to whom this section applies may charge more than the prescribed amount for the interment.

The Ministry of Government and Consumer Services administers the *Funeral, Burial and Cremation Services Act*.

Public Lands Act

The *Public Lands Act*, R.S.O. 1990, c P.43, governs the management, sale, and disposition of the public lands and forests in Ontario. Although the Act itself does not include any provisions concerning Aboriginal heritage and burial sites, encompassed within the objectives and strategies of Policy 4.02.01: Application Review and Land Disposition Process are:

- A. To consult with Aboriginal communities where a requested disposition will infringe on the exercise of existing Aboriginal or treaty rights, or where the disposition involves lands that are subject to an aboriginal land claim.

Constitutionally protected treaty and Aboriginal rights, such as traditional harvesting activities, are often exercised on/in provincial Crown lands and waters. Some dispositions may, therefore, affect areas that are traditionally used by Aboriginal communities who hold existing Aboriginal or treaty rights. Any disposition of Crown lands that will infringe on the exercise of these rights must be justified and in that regard, the Crown has a duty to consult with the affected community.

Therefore, it is advisable that consultation with Aboriginal communities occur with respect to proposed dispositions where there will be an infringement of an existing Aboriginal or treaty right if the disposition proceeds. Any consultation process undertaken will vary with the circumstances of each individual case and disposition. In most cases, where consultation is required, it will involve, to varying degrees, a process of information exchange and consideration. If an agreement can be reached with respect to a proposed disposition by the end of the consultation process, this is a preferred outcome but is not a requirement.

The MNR or the local office of the MNR may have agreements with specific First Nations as to notice, disclosure, or consultation processes regarding MNR projects, including land dispositions. Where any such agreements are in place, the consultation process set out therein is to be followed, if appropriate. The development of local agreements is encouraged where such agreements do not exist.

In the event that an Aboriginal community, organization or First Nation identifies a land claim issue during the consultation process, or MNR is otherwise aware of a potential land claim issue, the Aboriginal Affairs Unit and Legal Services Branch should be consulted. If, as discussed above, a local protocol or agreement is in place and applies, the process set out therein should be followed.

The Ministry of Natural Resources administers the *Public Lands Act*.

Environmental Assessment Act

The *Environmental Assessment Act*, R.S.O. 1990, C. E.18, governs the process by which environmental assessment applications are approved, establishes Class Environmental Assessments, and oversees provincial offences under the Act. The Act applies to public and designated private sector projects and requires that:

- 5.1 When preparing proposed terms of reference and an environmental assessment, the proponent shall consult with such persons as may be interested.

Heritage sites are routinely included in environmental assessments, so where it is an Aboriginal heritage site, the proponent must consult with the First Nations that may be interested. Proponents are advised that when consulting with Aboriginal communities, they should contact the Chief and Band Council, notify the First Nation of meetings and open houses, provide project documentation and information, respond to questions and concerns about impacts from the project, notify the Crown if rights are raised, notify the Crown if consultations stall, and follow any other Aboriginal consultation requirements under the regulations or codes of practice and guidelines. Proponents are further advised to document the identification and consultation of Aboriginal communities, what issues were raised, and how the issues were avoided, prevented, mitigated or addressed.¹

The Ministry of Environment and Climate Change administers the *Environmental Assessment Act*.

¹ Government of Ontario, *Environment Assessments: Consulting Aboriginal Communities*, Queen's Printer for Ontario, 2012-15, <http://www.ontario.ca/government/environmental-assessments-consulting-aboriginal-communities>

Planning Act

The rules for land use planning and controlling of land use planning is established in the *Planning Act*, R.S.O. 1990, c. P.13. The *Planning Act* provides that any person or public body can make a submission on an official plan before it is approved, and First Nations are specifically stated to be included in the definition of public body.

In conjunction with the *Planning Act*, the Provincial Policy Statement, 2015 requires:

- 2.6.1 Significant built heritage resources and significant cultural heritage landscapes shall be conserved.
- 2.6.2 Development and site alteration shall only be permitted on lands containing archaeological resources or areas of archaeological potential if the significant archaeological resources have been conserved by removal and documentation, or by preservation on site. Where significant archaeological resources must be preserved on site, only development and site alteration which maintain the heritage integrity of the site may be permitted.
- 2.6.3 Development and site alteration may be permitted on adjacent lands to protected heritage property where the proposed development and site alteration has been evaluated and it has been demonstrated that the heritage attributes of the protected heritage property will be conserved.

Mitigative measures and/or alternative development approaches may be required in order to conserve the heritage attributes of the protected heritage property affected by the adjacent development or site alteration.²

The Ministry of Municipal Affairs and Housing administers the *Planning Act*.

Ontario Heritage Act

The *Ontario Heritage Act*, R.S.O. 1990, c. O. 18, gives municipalities and the provincial government the power to preserve Ontario's heritage by protecting heritage sites and archaeological sites.

The Act grants the Lieutenant Governor in Council the power to make regulations that define archaeological fieldwork, archaeological site, artifact, cultural heritage, and marine archaeological site. Ontario Regulations 9/06 and 10/06 were enacted in this regard. Ontario Regulation 9/06: Criteria for Determining Cultural Heritage Value or Interest, reads as follows:

1. (1) The criteria set out in subsection (2) are prescribed for the purposes of clause 29 (1) (a) of the Act. O. Reg. 9/06, s. 1 (1).
- (2) A property may be designated under section 29 of the Act if it meets one or more of the following criteria for determining whether it is of cultural heritage value or interest:
 1. The property has design value or physical value because it,
 - i. is a rare, unique, representative or early example of a style, type, expression, material or construction method,
 - ii. displays a high degree of craftsmanship or artistic merit, or
 - iii. demonstrates a high degree of technical or scientific achievement.
 2. The property has historical value or associative value because it,
 - i. has direct associations with a theme, event, belief, person, activity, organization or institution that is significant to a community,

² Government of Ontario, Provincial Policy Statement, 2005, <http://mah.gov.on.ca/Page1485.aspx>

- ii. yields, or has the potential to yield, information that contributes to an understanding of a community or culture, or
 - iii. demonstrates or reflects the work or ideas of an architect, artist, builder, designer or theorist who is significant to a community.
3. The property has contextual value because it,
- i. is important in defining, maintaining or supporting the character of an area,
 - ii. is physically, functionally, visually or historically linked to its surroundings, or
 - iii. is a landmark.
2. This Regulation does not apply in respect of a property if notice of intention to designate it was given under subsection 29 (1.1) of the Act on or before January 24, 2006.

Ontario Regulation 10/06: Criteria for Determining Cultural Heritage Value or Interest of Provincial Significance states:

1. (1) The criteria set out in subsection (2) are prescribed for the purposes of clause 34.5 (1) (a) of the Act. O. Reg. 10/06, s. 1 (1).
- (2) A property may be designated under section 34.5 of the Act if it meets one or more of the following criteria for determining whether it is of cultural heritage value or interest of provincial significance:
1. The property represents or demonstrates a theme or pattern in Ontario's history.
 2. The property yields, or has the potential to yield, information that contributes to an understanding of Ontario's history.
 3. The property demonstrates an uncommon, rare or unique aspect of Ontario's cultural heritage.
 4. The property is of aesthetic, visual or contextual importance to the province.
 5. The property demonstrates a high degree of excellence or creative, technical or scientific achievement at a provincial level in a given period.
 6. The property has a strong or special association with the entire province or with a community that is found in more than one part of the province. The association exists for historic, social, or cultural reasons or because of traditional use.
 7. The property has a strong or special association with the life or work of a person, group or organization of importance to the province or with an event of importance to the province.
 8. The property is located in unorganized territory and the Minister determines that there is a provincial interest in the protection of the property.

The Ministry of Tourism, Culture and Sport administer the *Ontario Heritage Act*.

C. SUMMARY

The above overview demonstrates that the legislation and process that is applicable to a particular heritage and burial right and issue is very much contingent on whether it is located on or off-reserve, if it is on private or public land, and whether it concerns a heritage site or a burial site.

HERITAGE AND BURIAL SITE PROCESSES



HERITAGE AND BURIAL SITE PROCESSES

Burial sites may be found by archaeological assessment where the area is specifically being examined by archaeologists, or by accident such as in the construction of a new road.

The following process generally occurs when a burial site is found:

1. It must be immediately reported to either the police or to the coroner's office;
2. The burial site and any artifacts are to remain secure and are not to be disturbed;
3. The police and coroner will determine if the burial site has any forensic interest;
4. The burial site will come under the jurisdiction of the Registrar of Cemeteries after the forensics are completed;
5. The Registrar of Cemeteries will notify the landowners of the site of what their obligations are under the *Funeral, Burials and Cremation Services Act*;
6. An archaeological assessment will be conducted to determine the origin of the burial site;
7. Following the completion of the archaeological assessment, the Registrar of Cemeteries will declare the site to be either an Aboriginal people's burial ground, a burial ground, or an irregular burial ground;
8. The Registrar of Cemeteries will then notify the representatives of the person who is buried there;
9. The landowner and the representatives of the person will receive a Notice of Declaration advising that they will be required to negotiate a site disposition agreement;
10. The site disposition agreement will explain how the burial will be handled, such as whether the site will be established as a cemetery or if the person will be disinterred from the site and re-interred in a cemetery elsewhere; and
11. Binding arbitration will be imposed if the landowner and the representative of the person cannot reach a site disposition agreement.

Where the site is declared to be an Aboriginal people's burial ground, the representative of the person is determined by considering if the cultural affinity can be established, or if only a close affiliation can be established. A cultural affinity shows a direct relation and can be supported by geographical, material cultural and biological evidence. A close affiliation meanwhile, means where a larger broader connection or association can be supported. The First Nation or First Nations that have a cultural affinity or a close affiliation will be identified and contacted as the representative of the person.

REPATRIATION



REPATRIATION PROCESSES

Repatriation involves the process by which First Nations have their ancestors and sacred and ceremonial items returned back from museums, archives, universities, private collections, and abroad. In many instances, their ancestors and the sacred and ceremonial items were taken without the consent and knowledge of the First Nations.

In 1991, the Assembly of First Nations and the Canadian Museums Association issued *Turning the Page: Forging New Partnerships Between Museums and First Peoples (The Task Force Report on Museums and First Peoples)*. Concerning repatriation, the Report specifically recommended:

This report considers the disposition of Aboriginal cultural patrimony, including human remains, burial objects, sacred and ceremonial objects and other cultural objects that have ongoing historical, traditional or cultural import to an Aboriginal community or culture. The Canadian Museums Association and the Assembly of First Nations should endorse and encourage the adoption of the following guidelines relating to the repatriation of Aboriginal cultural patrimony:

A. Human Remains

- i. Remains of individuals whom evidence indicates are remembered by name must be offered for disposition at the request of the families, their descendants or clan, upon notification of the appropriate First Nations, community, tribes, clan or family members.
- ii. Human remains which evidence indicates may be affiliated with a named First People must be reported to that Nation, community, clan, tribe or family.
- iii. Upon agreement and in cooperation with the museum the appropriate First Nations group may work with scientific interests for a mutually agreed upon period, and may have the remains re-interred according to the appropriate traditional or other religious practices of the First Nation or Aboriginal community.
- iv. The treatment and disposition of remains and associated burial objects that are ancient or that cannot be affiliated with a named First People shall be decided through discussion and negotiation with an advisory committee of First Peoples. The First People may work with scientific interests for a mutually agreed upon time period and may have the remains re-interred in manner consistent with local traditional practices.
- v. Museums that acquire human remains through any means must involve the appropriate First Nation in the treatment and disposition of the remains.
- vi. The retention of Aboriginal human remains for prolonged periods against the expressed wishes of First Peoples is not acceptable.

B. Objects of Cultural Patrimony

The treatment, use, presentation and disposition of sacred and ceremonial objects and any other objects of cultural patrimony should be decided on moral and ethical grounds with the full involvement of the appropriate First Nations as equal partners. In the event of disputes between individuals, between an individual and the community or between communities, the onus should be on the First Peoples to resolve the dispute according to customary practice.

Recommended options for this process include the following:

- i. Restitution or Reversion. This includes the return to an originating culture or individuals of any objects that are judged by current legal standards to have been acquired illegally. This process involves the transfer or return of legal title to an originating culture or individual from the museum, based upon existing legal mechanisms for de-accessioning.
- ii. Transfer of Title. Even in cases where materials have been obtained legally, museums should consider supporting the requests by Aboriginal communities and community-based Aboriginal museums for the transfer of title of sacred and ceremonial objects and of other objects that have ongoing historical, traditional or cultural importance to an Aboriginal community or culture. This involves a case-by-case negotiation with the appropriate communities based on moral and ethical factors above and beyond legal considerations.
- iii. Loan of Materials. Museums should loan sacred and ceremonial objects for use by Aboriginal communities in traditional ceremonies and community festivities, based on mutual agreement on the use and time period

in question as well as the risk to the physical object. Again, these decisions should be based on moral and ethical considerations both from the perspective of First Peoples and from that of museum conservation ethics (i.e., respect for the physical and historical integrity of the object).

- iv. **Replication of Materials.** Museums and First Peoples communities should consider the replication of materials slated either for repatriation or retention by the museum for the use of the other party. Negotiations should be guided by moral and ethical considerations and the traditional knowledge and authority of the First Peoples involved, as well as the scientific knowledge of academically-trained museum personnel.
- v. **Shared Authority to Manage Cultural Property.** In all cases museums are urged to share management of their collections by involving the appropriate First Peoples in assisting to define access to collections, to determine storage conditions and use of collections, and to recognize traditional authority or individual ownership systems of the originating culture.

C. Repatriation of Foreign Holdings

The CMA and the AFN are urged to promote repatriation of human remains and objects of cultural patrimony held outside the country, subject to the same criteria outlined above under 1 & 2, through lobbying efforts in association with national governments, UNESCO, the International Council of Museums and other professional organizations.³

Building on the recommendations of the Task Force, some museums and universities have developed repatriation policies that are used to receive repatriation requests, establish repatriation criteria, and to guide the repatriation process. The Repatriation Policy of the Canadian Museum of Civilization Corporation is one example where the policy has assisted in returning human remains to several First Nations, sacred and ceremonial items have been returned, and repatriation agreements and custodial arrangement agreements with First Nations have been established.⁴

While various policies have been established, it is important to understand that they are not consistent and may be handled differently. More significantly, there is currently no federal repatriation legislation in Canada.

3 Assembly of First Nations and the Canadian Museums Association, *Turning the Page: Forging New Partnerships Between Museums and First Peoples* (The Task Force report on Museums and First Peoples), 1991, Page 615-617.

4 Canadian Museum of History, <http://www.historymuseum.ca/home>

CONSIDERATIONS AND BEST PRACTICES



CONSIDERATIONS AND BEST PRACTICES

A number of different considerations arise for First Nations depending on whether they have decided to repatriate their ancestors and their sacred and ceremonial items, or if they are immersed in a process due to a burial site being discovered that they have either a cultural affinity with or a close affiliation to.

The following considerations and best practices are offered to assist First Nations in regards to heritage and burial rights and interests, but is not exhaustive as each situation will differ.

History and Values

1. Record the stories of the Elders, knowledge keepers and historians in the First Nation that recount the history of the community, its citizens, and their customs and practices.
2. Develop maps and GIS systems that record present day and past use of the land, including where the community buried their ancestors, harvested, resided, and traveled.
3. Identify the values of the community and how those values are practiced, protected, and maintained.
4. Determine as a community what is the anticipated objectives and goals of the project. For instance, is it learning more about the history of the ancestors or is it repatriating sacred and ceremonial items.
5. Research the history of the First Nation through archives, journals, government correspondence, and other historical records.

Resources

1. Identify the human resources required to support the heritage and burials rights and issues. This may include a number of individuals such as Elders, leadership, historians, and citizens within the community.
2. Budget the length of time and financial resources that will be required for the project.
3. Determine and prepare for any related activities that will occur following the completion of the project, such as the safekeeping and preservation of repatriated ceremonial items.
4. Establish connections with other First Nations that have previously undergone the same process and are willing to share their experiences and best practices.
5. Project what external resources are required such as archeologists, historians, lawyers, and negotiators.
6. Explore possible funding sources required for the project.

Understanding the Process

1. Research what the process is about, what it entails, how long it is, and how much it may cost.
2. Be proactive in ensuring that the First Nation is consulted on heritage and burial rights and issues.
3. Communicate with experts about the process.
4. Develop a plan on how the values of the First Nation will be central to the project.
5. Identify whether other First Nations should be involved in the project due to a cultural affinity or close affiliation.

RESOURCES



RESOURCES

Legislation and Policy

Constitution Act, 1867, 30 & 31 Victoria, c 3

Cultural Property Export and Import Act (R.S.C., 1985, c. C-51)

Environmental Assessment Act, R.S.O. 1990, C. E.18,

Funeral, Burial and Cremation Services Act, 2002, S.O. 2002, c.33

Indian Act (R.S.C., 1985, c. I-5)

Ontario Regulation 9/06: Criteria for Determining Cultural Heritage Value or Interest

Ontario Regulation 10/06: Criteria for Determining Cultural Heritage Value or Interest of Provincial Significance

Planning Act, R.S.O. 1990, c. P.13

Public Lands Act, R.S.O. 1990, c P.43

Policy 4.02.01: Application Review and Land Disposition Process

Publications and Websites

Assembly of First Nations and the Canadian Museums Association, *Turning the Page: Forging New Partnerships Between Museums and First Peoples (The Task Force Report on Museums and First Peoples)*, 1991, pages 615-617.

Canadian Museum of History, <http://www.historymuseum.ca/home>

Government of Ontario, *Environmental Assessments: Consulting Aboriginal Communities*, Queen's Printer for Ontario, 2012-15, <http://www.ontario.ca/government/environmental-assessments-consulting-aboriginal-communities>

Government of Ontario, Provincial Policy Statement, 2005, <http://www.mah.gov.on.ca/Page1485.aspx>

The Anishinabek
Nation established
the Union of Ontario
Indians as its
secretariat in 1949.
The UOI is a political
advocate for 39
First Nations across
Ontario.



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