

Heritage and Burials Tool Kit: First Nation Responses to Repatriation and Sacred Sites



Anishinabek Nation

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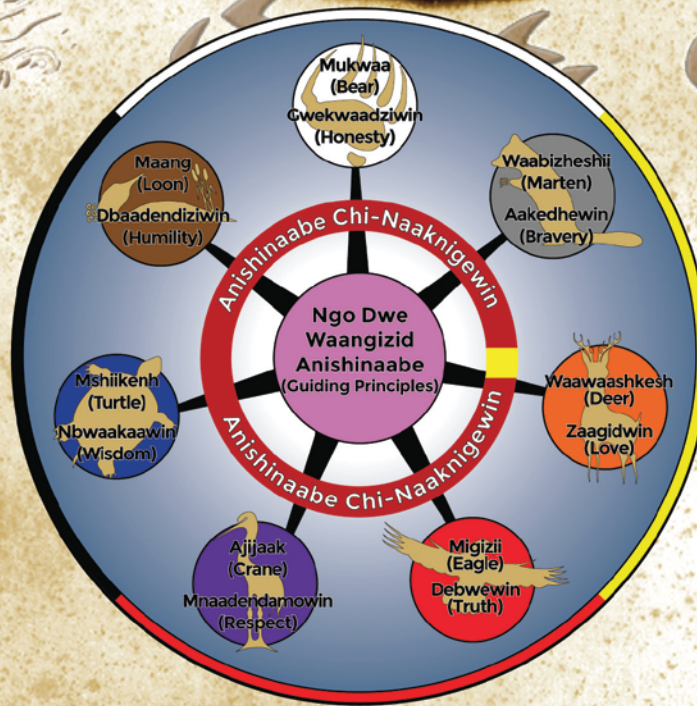
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NGO DWE WAANGIZID ANISHINAABE One Anishinaabe Family

Debenjiged gii'saan anishinaaben akiing giibi dgwon gaadeni mnidoo waadiziwin.
(Creator placed the Anishinabe on the earth along with the gift of spirituality.)

Shkode, nibi, aki, noodin, giibi dgosdoonan wii naagdowendmang
maanpii shkagmigaang.

(Here on mother earth, there were gifts given to the Anishinabe to look after, fire, water, earth and wind.)

Debenjiged gii miinaan gechtwaa wendaagog Anishinaaben waa naagdoonjin
ninda niizhwaaswi kino maadwinan:

(The Creator also gave the Anishinabe seven sacred gifts to guide them. They are:)

Zaagidwin, Debwewin, Mnaadendamowin, Nbwaakaawin, Dbaadendiziwin,
Gwekwaadziwin miinwa Aakedhewin.

(Love, Truth, Respect, Wisdom, Humility, Honesty and Bravery.)

Debenjiged kiimiingona dedbinwe wi naagdowendiwin.

(Creator gave us sovereignty to govern ourselves.)

Ka mnaadendanaa gaabi zhiwebag miinwaa nango megwaa ezhwebag,
miinwa geyaabi waa ni zhiwebag.

(We respect and honour the past, present and future.)

Preamble to the Anishinaabe Chi-Naaknigewin (Anishinabek Nation Constitution)
Adopted by the Anishinabek Grand Council - June 6, 2012

HERITAGE AND BURIALS TOOL KIT: FIRST NATION RESPONSES TO REPATRIATION AND SACRED SITES

What are considered by some to be archaeological remains, are actually our grandmothers and grandfathers – these are our people. Our ancestors deserve to be spoken of and treated with the utmost respect, and it is with this that we are communicating the protocol for people to follow when human remains are discovered....[Haida Protocol for the discovery of Human remains on Haida Gwaii, final draft September 5, 2001]

Working Towards the Development of First Nation Protocols

In November 2015, the Chiefs of Ontario invited representatives from its membership to attend a Heritage and Burials Policy Forum in Toronto. Speakers from all over North America presented their own experiences. Shared themes between the several talks emerged, frequently involving discussions on the challenges of navigating the many different levels of government. The interactions of Indigenous communities with federal, provincial and municipal governments raised questions over sovereignty, land use and ownership, fiduciary duty and usufructory rights, traditional versus conventional knowledge, heritage and preservation. Together these factors make the return of ancestors and cultural treasures or their respectful reinterment complex and emotionally charged exercises.

In order to be informed and proactive the Chiefs of Ontario have set up a Heritage and Burials Advisory Committee composed of representatives from the several Provincial Territorial Organizations (PTO's). These PTOs have each in turn appointed an Elder and a technical spokesperson. Delegates meet bi-annually and stayed connected during the rest of the year through conference calls, wherein all aspects of heritage, burial and sacred sites are open for discussion. As part of its commitment to the HBAC, the Anishinabek Nation created *A Toolkit for Understanding Aboriginal Heritage & Burial Rights & Issues* (2015) to assist its member First Nations in understanding and interpreting the existing legislation as it pertains to heritage and burial sites. The publication examines language, laws and processes as well as Best Practices and other issues that First Nations may face when dealing with repatriation. Our report is designed to be a companion piece to the toolkit, a brief examination of the opinions and observations generated from the other side of the table.

Regardless of where a First Nation might be in terms of developing action plans for dealing with heritage and burial matters, there exists a commonality in experience given the constant and universal clash between the need to protect sacred sites and Ontario's desire for revenue and progress. Former Regional Chief Isadore Day believes that in the development of a standard protocol its authors must acknowledge the diverse perspectives and teachings as well as the different levels of community engagement and coping strategies. The starting point for any procedure of this kind requires identifying and collecting a set of principals, the most pragmatic of which will also be the most inclusive as they will resonate with most communities. Chief among these principals is a shared respect for ancestors. This respect manifests itself in policies that favor the path of least intrusion and cause the lowest impact upon a site.

From here some First Nations will find its protocols or best practices already in place, for others these conventions can be cultivated through research, interaction with Elders and Knowledge Keepers, community involvement and cross-cultural sharing of ideas. With these concepts in place a community can generate an action plan and implement it toward the protection of sacred sites.

One of the most important first steps in protection of sacred sites is to become proactive. Joan McLeod, head of the Lands Administration Department, in Nipissing First Nation is dealing with the reality of grave disturbance and ever-increasing site disruptions by builders and construction crews by codifying the breadth of ancestral burials through traditional mapping projects, Traditional Elder Knowledge (TEK) studies, and oral histories, wherein sacred sites and burials are noted throughout the traditional territory and considered alongside fishing, hunting, sugaring, harvesting sites, etc. These exercises are treated as a process rather than a static study so that they can be updated on a regular basis with fresh information from current generations of Elders and other cultural representatives. Mapping and other record keeping projects must not only expand through time, but also spatially as Ontario First Nations deal with repatriation issues inside their own reserves, within their much larger traditional territories, and in some cases internationally, as cultural treasures and ancestral remains can still be found in museums and other institutions throughout the world. Each of these situations brings with it its own unique challenges and creating successful relationships that require flexibility and finesse on the part of the negotiating First Nation.

Given this complex layering of governments, the work of the HBAC, and by extension its community representatives, is both timely and necessary. In November 1990, the American Congress passed the *Native American Graves Protection and Repatriation Act* (Pub. L. 101-601, 25 U.S.C. 3001 et seq., 104 Stat. 3048) requiring all federal institutions and museums to compile a list of American tribal burial goods and human remains. From there, it became incumbent upon each institution to determine the provenance of each item and then to work with related tribes towards the ultimate goal of repatriation. If American statistics are indicative of a Canadian experience, the potential for repatriation is huge: Statistics published in 2007 reported that the enactment of NAGPRA has led to an accounting of 32,706 human remains through the use of mandatory museum inventories. But it is still estimated that in American museums alone, there are 300,000 to 600,000 remains of individuals waiting to be repatriated. [Blancke 1990: 125, as in B. Onciul, *Indigenous Peoples and Museology*, 2015, p. 37]. Moreover, NAGPRA only extends to the repatriation of American tribal items meaning that American museums are not legally obligated to return Canadian First Nation ancestral remains or sacred treasures. Unlike the United States, Canada does not currently have a federal repatriation law.

But some First Nations are working around these limitations and gathering allies along the way. For example the Batchewana First Nation was able to partner with the Gnoozhekaaninghe of Bay Mills Michigan in order to repatriate six of its ancestors who were previously held at Washington's Smithsonian Institution. Similarly, some institutions, like the Royal Ontario Museum, Toronto have drafted their own repatriation policy. Still, there is no legal obligation on the part of Canadian museums to adhere to NAGPRA-type principles. Because of this, the HBAC is encouraging its member communities to join the discussion on heritage and repatriation so that it can work with the province on policies that protect cultural treasures.

"The act of imposing unrest on the dead is a serious endeavor and one that can't be taken lightly"
 – Isadore Day, Ontario Regional Chief, 2016

Navigating Federal and Ontario Legislation

When Ontario First Nations do work within the parameters of both provincial and federal laws they are, as noted in the *Toolkit*, entering into 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." [*Toolkit*, p. 9] When the discussion of ancestral remains and sacred artifacts move into the realm of archaeology provincial heritage laws are most often the level of government in force.

One of the challenges facing those First Nation policy makers is the obvious imbalance of agency. Along these lines, Brandy George, a professional archaeologist and Anishinaabe woman, has examined Ontario's *Heritage Act* and its governing agency, the *Ontario Heritage Trust* and repeatedly questions whether their provisions and mandates regarding the selection and protection of sites and artifacts are truly beneficial to First Nations. A gap still exists, says Ms. George, between the social and spiritual *needs* of First Nations and the *wants* of the province's collective material culture.

Although she sees the trend moving in the right direction, Ms. George is wary of existing provincial legislation as it struggles to move past its antiquated ideas of ownership, protection and control of cultural heritage, a heritage largely culled from the lives and experiences of First Nations' ancestors. This approach has in the past allowed little to no recognition of First Nations rights or interests. Given the fact that First Nation ancestors enjoyed the full extent of their traditional territory their traces can be found over hundreds if not thousands of kilometers. Because these lands are now a part of the Treaty relationship and outside of a reserve boundary First Nation community protocols set up to deal with archaeological issues can become compromised.

The nebulous nature of the *Ontario Heritage Act* helps obscure the role of Indigenous agency. For instance Ms. George notes the difference between Ontario Ministry's *standards*, which are rules, and Ministry *guidelines*, a term open to a much wider interpretation. In the past, the duty to consult with First Nations fell under the category of guidelines leaving it up to the individual archaeologist to engage the local First Nation community. With the regulatory changes passed in 2011, it is now mandatory to consult with local First Nations at a certain stage when excavating a pre-contact site. Ms. George sees this as a positive start, but cautions that the need to consult only comes in at the third, or latter stage of a site-specific project, that is, when an area has been physically identified as archaeologically significant. This stage, if it occurs at all, happens well after a property has been assessed for cultural importance, or a developer has contracted a consultant archaeologist.

This recurring scenario serves to illustrate how governments have imposed their own concepts of progress and development upon First Nations and how in response Indigenous communities must

implement policies which often result in imposing upon the dead, an action that most First Nations feel as strongly counter intuitive to the observation of sacred traditions. The depth of this responsibility goes well beyond living memory to include a recognition of Pre-contact ancestors. It is important that those in the front lines of archaeological discoveries ask: *Why is this person being disturbed? Who is imposing this action upon us? How do we minimize the level of intrusion upon our ancestors and incorporate this challenge within a viable archaeological discourse?*

Ron Bernard, a member of the Algonquins of Pikwàkanagàn First Nation and an appointee to the Chiefs of Ontario First Nation *Heritage and Burial Sites Advisory Committee* believes that First Nations should be involved at every step of the archaeological process, from the moment when the discovery of human remains are assessed as outside of the boundaries of the *Ontario Cemeteries Act*, that is, after Provincial authorities have reviewed the situation and have ruled out foul play. From that point onward the territorial First Nation should be immediately consulted so that it can take charge of the process.

Ideally, each community should be ready for this when this happens. Once a protocol is in place, the First Nation should take complete charge over the remains, including the ability to determine whether an ancestor stays where they were buried or needs to be re-located. A community should have a team of individuals composed of Traditional Knowledge Keepers and Elders who could conduct the appropriate ceremonies, and facilitators who would coordinate the process. Bernard also pointed out the need for discretion among the repatriation team since there is always a possibility for vandalism once a location is made public.



Anishinabek Nation Southeast Regional Engagement, January 10, 2019

Archaeology and the Protection of Ancestors

First Nation concepts of appropriate procedures are further removed from government policies by the visceral response attached to ancestral repatriation. Anne Taylor, the Cultural Archivist for Curve Lake First Nation spoke about the emotional and psychological toll that the process of repatriation takes upon an individual or group. She cited one example involving the remains of two children and a young adult. These people were removed from their original resting place and delivered to her nation's cultural centre where they were cared for and laid to rest in birch bark pouches. Staff felt their presence and when they were reburied they were missed, their absence creating a palpable void.

Chief Day shares this emotion and sees it translated into an inherent right to care for Indigenous ancestors, to protect them and keep them safe and in their own space. As this right is Creator-given, it goes beyond any existing legislative authority. Also, the obligation on a community to protect its ancestors both supersedes and transcends the treaty relationship and thus has never been rescinded through the treaty-making process.

With his belief that the "act of imposing unrest on the dead is a serious endeavor and one that can't be taken lightly" Day spoke about the levels of imposition. For example, one part of the perceivable action plan should involve the consideration of what instigated the disturbance. *Was the discovery made by developers or by accident?* If it was development then a First Nation must now contemplate disturbing a burial site. It must respond in a way that will conform to the values of Indigenous people.

Those First Nation individuals interested in archeological study, like Ron Bernard, are also keeping an eye on an evolving Ontario Ministry of Tourism, Culture and Sport policy that promises a willingness to adhere to the traditions of First Nations, in particular the desire to leave archaeological and cultural treasures *in situ* and unmolested whenever possible. This is an important breakthrough, and Bernard, like many Elders, believes that some things should not be taken, nor stored away in institutions, a practice he considers disrespectful, and in some cases disgusting. Mr. Bernard questions the appropriateness of certain exhibitions of cultural treasures especially since some items can be construed as sacred. The tools and treasures of the ancestors should belong to those First Nation cultures that are the rightful inheritors.

The legislative concept of ownership should also be examined. Ms. George, in referencing certain sections of the *Ontario Heritage Act* speculated on the problematic nature of an act which tacitly allows the province to assume ownership over artifacts by legislating its Minister with the power to determine which institution may hold collections for the benefit of Ontarians. First Nations, as demonstrated by the words of Mr. Bernard, view these artifacts as belonging to their ancestors, and feel further alienated from the process by lack of consultation.

Any progress to be made in bridging this philosophical schism must truly begin at ground level. It will include assessments aimed at leaving ancestral remains in place, and sincere efforts by both policy makers and archaeologists to examine other routes to achieve the required results, methodologies that would mitigate the level of impact or damage, or infringement put upon the remains. There should be an understanding regarding the principals of the natural environment and a revisiting of the tenet that sacred instruction is always about coexistence with the land. Returning to the land is part of life's circle and this is one of the reasons why repatriation is so emotional for many First Nations people. As Chief Day explained, if we've lived a good life and we were fortunate enough to be

buried in a good or respectful way then our return to the land completes this venerable right of passage. So when Elders and Knowledge Keepers enter into the process of reinterment or repatriation they must be mindful that disturbing the dead is a tragic activity as all invasion is inherently sacrilegious. Day also contends that developers run the risk of digging below the depth of their authority in their attempt to assert control over something they have no right to control. For many, these words have both literal and figurative meanings.

Cultivating both cooperation and preservation within a framework that is both respectful and flexible can be accomplished. M'Chigeeng's Ojibwe Cultural Foundation (OCF) is now the guardian of nearly 300 bankers boxes of material collected by provincial archaeologists from the 1950's through to the 1990's. Here these items are kept in a respectful atmosphere by staff who understand the importance of ceremony. The OCF has also been successful in forging mutually beneficial partnerships with London, Ontario's Sustainable Archaeology, as well as the Ontario Archaeological Society. Institutions like the OCF have the potential to act as a gathering point for cultural treasures that have been scattered through time and space by multiple excavations and collections. With First Nation involvement and consent, these items can be studied and catalogued and made available to their respective communities.

When she's in the field, Brandy George instructs her crew to step back from their excavation units and picture a scene wherein a community had lived and in some cases died, imagining the movement and the atmosphere of such a place. She encourages individuals to feel an artifact's inherent energy, to revel in its age. This is how an archaeologist can develop a sense of compassion for the world about to be uncovered.

Ms. Taylor counsels that this compassion can be further developed by having empathy for the deceased during the reburial process. She points out how important it is to be cognizant of the fact that these individuals when they were laid to rest had no concept of reserves or conventional cemeteries, but instead exploited a very wide territorial range. When they died they were often buried at a location expressly chosen for the purpose of laying that person to rest.

Ancestral use of traditional lands has been discussed above in relation to the imposition of multiple layers of policy, however when viewed through an Anishinabek lens this subject demonstrates a much more ancient and resilient truth: Ancestors cannot be separated from the concept of territory. The reverse is also true: The concept of Indigenous territory is inextricably linked with a respect for ancestors and sacred sites. Because this relationship is so important, there exists a collective desire for actual validation of First Nations' connection to the land and by extension, respect for the protocols and ceremonies which bind communities to their traditional territories and to the recognition of a First Nation's overall jurisdiction to its land, ancestors, sacred sites and cultural treasures. Official and proactive acknowledgement must also come from all levels of government in order to ensure the protection of sacred sites but also to stand as evidence of sincerity.



Kettles at Wiiwkwedong (Kettle Point),
Chippewas of Kettle and Stony Point
First Nation

"The problem with written history is that once a story is put to paper the teller has permission to forget it."
 – Anne Taylor, Curve Lake First Nation, 2016

The Importance of Language and Tradition

Part of the process towards thoughtful consultation includes a reexamination of the Anishinaabemowin used. Often barriers are put up at the very core of any discussion just through the use of certain phrases. For example, heritage professionals commonly rely on words like *collection*, *repatriation*, and phraseology such as *irregular burial sites*, yet First Nations people could find their applications limiting or insulting. The use of words like *prehistoric* and *artifacts* should be reconsidered.

Also, incorporating Traditional Anishinabemowin terms into the archaeological lexicon would be a step towards parity. For example, the phrase *Our Ancestors* is preferred over the words *human remains*. While the former term engenders respect, it also opens the path for the traditional practice of talking to these ancestors, ensuring them that no harm is meant and that they are being looked after.

When asked about the importance of language in creating a work plan, or in using the existing Tool Kit, Peter Beaucage, a Nipissing First Nation Elder, expressed the desire to see more traditional terms incorporated into the legislation. For example, use of the words *Nookomisinaanig* [Our Grandmothers] or *Mishoomisinaanig* [Our Grandfathers] would replace the sterile term *human remains*, *Ndoo-bi-giiwewinaanig ni-mishoomisinaanig* [we are bringing home our grandfathers] would convey a deeper meaning than the use of the term *repatriation*. Making an effort to exchange English words for the more descriptive or meaningful terms in a traditional Anishinabemowin will help incorporate the nuances of an ancient, traditional language within English which, although it is the language of communication, is also limited and Eurocentric.

There is also a need to be mindful of the English words we do use when creating work plans or legislation. For example, Glenna Beaucage, Cultural Manager, Nipissing First Nation preferred the use of the word *Indigenous* to *Aboriginal*, the former term she believed, conveyed a stronger tie to belonging to a particular place, an important distinction when viewed against the larger discussions of traditional territory. Ms. McLeod also cautioned against using words such as "community" interchangeably with "Nation". To do so, she believed, was erroneous and potentially restricting for the more powerful concept of Nationhood.

For some First Nations the development and implementation of a Best Practices protocol will be challenging, especially for those communities who have been subjected to a long history of assimilation. The loss of language threatens historical memory, Traditional Knowledge and ultimately the proper and respectful application of ceremonies. But change can be brought about through education, through cultivating a cultural awareness, and an understanding of a First Nation's history. It can also be brought about through the exchange of ideas and Traditional Knowledge between different First Nations. Fortunately, this ability to share lies at the core of the Anishinabek ethos, and has helped secure a collective survival in spite of the unspeakable atrocities put upon Indigenous people over the past centuries.

Communication is key to producing a new generation of sympathetic and canny archaeologists. Hopefully in the future those who are in positions of authority will offer more than lip service to the virtues of accommodation and consultation. A discussion of how archaeology would fit into First Nations' worldview, the involvement of Elders and Knowledge Keepers combined with an increased credence in oral history, would help ensure that Traditional beliefs are upheld.

Along with an emphasis on communication, Ms. George would like to see introductory programs for archaeological methods and practices made available to First Nation communities to help them navigate through the consultation process and assist them to best determine how their people will work with a contract archaeologist or a government representative. Through community involvement a First Nation could then decide what might be the most meaningful approach to consultation and engagement, what it would like to get out of the process and the most important information it needs to convey to outsiders.

While the science of archaeology can add academic cachet to a people's history, Ms. Taylor also points out that there should be more value placed on Indigenous knowledge and the wisdom of the Elders. The written word, especially in the form of educational textbooks, often denies the Indigenous past. Traditional knowledge is just as viable as institutional learning and it is important to value those who hold a community's past through oral history. Respecting Elders' words and oral traditions is also a way to help celebrate language, and from this relationship of language and culture comes a stronger connection to the land, and thus to the ancestors.



Pottery: 3-D Pottery Prints. Courtesy of Ojibwe Cultural Foundation

"There is a growing awareness and interest in heritage in many communities, and in some cases an understanding among young people that there is a need to regain identity through learning ancestral languages and cultural practices before they are completely lost."

– Ron Bernard, Algonquins of Pikwàkanagàn First Nation, 2016

Next Steps

Chief Day believes that the new Liberal federal government as well as some private developers are now heading toward constructive dialogue, but he urges individuals to remember that this is not the extent of the hard work that is needed to move beyond a policy bubble and into the practical world. For their part Canadians have to recognize that these policies are in place and are having an effect on Canadian society at large. Day suggests that you can take the positive policies shaping repatriation and use them as awareness-building opportunities for other important issues. This spirit of respect coupled with a willingness on the part of Canadians to recognize First Nation jurisdiction could be shown as a template for what true reconciliation might look like. Mutual respect can foster the next generation of aldermen or councilors, city planners, law makers and heritage planners who have a collective understanding that there needs to be First Nations consultation at every step of a project.

There is also a responsibility on the part of First Nations to understand the psyche of local towns and communities, the history of an area and how its inhabitants will look at the question of heritage and burials. Policy should also be forward thinking. *Does it accommodate those communities whose burial practices dictate that the dead are buried close to their families? Does the policy allow for other modern-day sacred rituals?* Future policy makers would be wise to consider such questions.

While governments promise greater transparency and consultation Canadian museums and institutions are also evolving. Curators like Kevin Brownlee, at Winnipeg's Manitoba Museum, prefers that a community tell its own story, giving a voice to the people who created the artifacts on display. Also, Alberta's Glenbow Museum has collaborated with the Niitsitapiisini to produce interactive web programs for teachers and the general public. For a First Nation, cooperation with institutions and museums can help preserve cultural treasures, those items that the ancestors have bequeathed to their descendants.

Cultivating both cooperation and preservation within a framework that is both respectful and flexible can be accomplished. For example, the groundbreaking work of London, Ontario's Sustainable Archaeology, a provincially and academically funded institution collects academic and contextual information, accommodates native ceremonies like smudging, provides storage facilities and liaises between First Nation clients and government. Its mandate is to work towards the integration of the several forms of the discipline of archaeology by bringing together the archaeological record. Institutions like SA have the potential to act as a gathering point for cultural treasures that have been scattered through time and space by multiple excavations and collections. With First Nation's involvement, these items can be studied and catalogued before their eventual release to their respective community.

"When I go to Universities and talk to classes I talk about the Golden Rule, to treat others the way you want to be treated. Archaeology is after all the study of people."

– Brandy George, Cultural Research Inc.

Concluding Remarks

First attempts at understanding existing legislation and policies may leave people with more questions than answers. *Who decides whether a First Nation community has been adequately consulted? And if a group is approached what is the depth of this consultation? Are the appropriate people involved, are they armed with adequate and comprehensible information? Is funding in place to facilitate travel and hire expertise?* And there are more difficult decisions to consider, such as: *What makes up a sacred site? Can you separate the sacred from the everyday?* While archaeologists and regulatory bodies may try to physically divide the two by categorizing some artifacts associated with burials as sacred, and leaving others outside of an arbitrary range, Elders maintain that everything is sacred, that the day-to-day life and death of a community cannot be separated. Overriding all is what Brandy George considers to be the simple application of the Golden Rule, treating others the way we want to be treated. Archaeology is the study of people. George believes that it is imperative to remind archaeologists that this is the essence of their profession. Creating links between the past and the present is a way to ensure everyone who is involved in an archaeological project remains mindful and respectful.

Codifying a system of how to deal with repatriation and burials, sacred sites and ceremonies will have to take into consideration the independence of each First Nation that chooses to use it. Wherever possible, in the written text, the name of the First Nation should be used over more generic terms, and similarly, a workable Best Practices protocol should include the use of traditional place names alongside current place names. Ritual and Language can also be specific to each Nation as passed down by Elders and on a more micro level, each Nation conducting a repatriation procedure must be respectful of its members' sensibilities, e.g. whether that group wishes a traditional or Christian ceremony, or in cases where an individual can be identified, such as fallen heroes of World War I or II, the wishes of the family to have their loved one remain at his current resting place or brought back home.

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