

***The following section of the 2016 APA Investigation Report is released with permission of the APA member who requested it. These recommendations may provide a basis for discussion among Ontario archaeologists.***

### **Recommendations for Streamlining of Provincial Government Handling of Burials Situations**

APA investigation of the Stage 1 and Stage 3 reports on (name removed) by (name removed) identified serious problems in application of appropriate Standards, unacceptable delays in reviews once the issue of human remains was raised, broken links in the chains of communication between Ministries and the archaeologist, untimely delays in the issuance of Declarations, and confusion over which Ministry actually accepts burial investigation reports. We offer the following suggestions to help remediate future difficulties in this process:

1. Any reference to the possible presence of human burials in a Stage 1 report should immediately flag that report for priority in review.
2. If revisions to a Stage 1 report noting possible presence of human burials are required, the subsequent revised report should also be given priority in review.
3. The Registrar of Cemeteries should be advised at Stage 1 when there is a possible burials concern.
4. Review of a Stage 3 burials Investigation Report by MTCS should not take precedence over acceptance of an Investigation Report by the Registrar for the purpose of issuing a Declaration. The law in Ontario is clear that burials investigations are the mandate of the Registrar and delays caused by MTCS reviews, which can amount to years, should not be part of this process.
5. A centralized data base is needed of all known human burials in Ontario, including all information from previous publications such as those of Andrew Hunter and David Boyle, contained in the Annual Archaeological Reports for Ontario and other sources. The Borden site record registry for Ontario should have a readily accessible subset of all burial records in the province.
6. Communications between the office of the Registrar of Cemeteries, MTCS Archaeology Unit, and MTCS review staff, are inadequate judging from the incomplete communications and delayed actions seen in the case of (name removed) reports on (name removed), including discovery of human remains and Registrar's Investigations.
7. The Office of the Coroner needs to provide ready access to results of forensic examinations and ensure that not just the Registrar of Cemeteries but also the MTCS Archaeology Unit staff receive this information promptly.
8. The Funeral, Burial and Cremation Services Act, 2002 came into force July 01, 2012. The (name removed) human remains discovery and associated Registrar's Investigation took place a year earlier under the Cemeteries Act, RSO 1990. The only statement in the MTCS 2011 Standards and Guidelines for Consulting Archaeologists about reporting responsibilities for burials is as follows:

*The terms and conditions of an archaeological licence requires licencees to comply with all relevant provisions of the Cemeteries Act and Ontario Regulation 133/92 Burial Sites.*

There is no legislated requirement to file burial reports with MTCS as part of a Registrar's burials Investigation, only with Cemeteries Branch. In the case of (name removed), the Stage 3 investigation reports submitted to the Registrar of Cemeteries

were technically sufficient for making a Declaration. Accepted reports from MTCS are not required for a Declaration. Accepted reports are required only to meet MTCS licencing terms and conditions. This confusing situation needs to be resolved so that human burial sites can be addressed correctly and swiftly, as originally intended under the Cemeteries Act RSO1990.

Ontario Regulation 133/92, current to February 10, 2011 and still cited as an MTCS licencing requirement, states:

*2.(1) If an investigation of a burial site is ordered under Section 70 of the Act, the person conducting the investigation shall, within five days after beginning the investigation, advise the Registrar of the possible cultural origins of the human remains O. Reg.133/92, S.2(1)*

*(2) Upon completing the investigation, the investigator shall provide the Registrar with a final, written report containing the following information.*

- 1. 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.*
- 2. A description of the boundaries of the burial site.*
- 3. Details of the style and manner in which the human remains are interred.*
- 4. A description of any artifacts that, in the opinion of the investigator, form part of the burial site.*
- 5. 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.*
- 6. Information relevant to the preparation of a site disposition agreement. O. Reg. 133/92. S.2(1).*

Regulation 133/92 is still stated as the requirement under MTCS licencing terms and conditions and there is no legislation stating that Registrar's Investigations need to comply with the 2011 Standards and Guidelines for Consulting Archaeologists. Under the Funeral, Burial and Cremation Services Act there is no mention of reporting to MTCS. It simply says:

*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 2002, c. 33, s.96(1). FBCSA 2002.*

It does not state that a licenced archaeologist must investigate nor does it specify the parameters of a report or identify a report as to be submitted to the MTCS Archaeology Unit rather than the Registrar. For a Declaration:

*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. 2006, c. 34, Sched. D, s. 66.*

Once a Declaration is made it appears there is no centralized data base containing this information which would alert MTCS review staff to the sensitivity and urgency of examining all requests for development work on a property. Notification processes depend much too heavily on inter-personal communication and the system is not designed to alert reviewers or archaeologists to a potential for, or actual discovery of, human remains. The Borden site designation system, because it is incompletely maintained, has marginal utility in ensuring this information is accessible although

current efforts are being made by MTCS to improve that system. There is also no notification mechanism in place to alert researchers and make available to them burial reports, historic indicators for burial presence, or an indexed register of reports on burials listed by location.

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