

# The Ministry of Public and Business Service Delivery

## Burial Site Discovery: Frequently Asked Questions (FAQs) for Land Owners (2022)

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## **Burial Sites: Legislation, Regulations, and Authority**

### **1. What are the main sections under the *Funeral, Burial and Cremation Services Act, 2002* (FBCSA) that pertain to burial sites?**

The main provisions specifically dealing with the discovery, investigation, classification, and disposition of burial sites are set out in sections 1 and 94-100 of the [FBCSA](#). Associated regulatory provisions are set out in sections 145 and 174-184 of [Ontario Regulation \(O. Reg.\) 30/11](#). Please contact the [Registrar](#) for further information on how to proceed with a burial site matter.

### **2. How is jurisdiction allocated between the Bereavement Authority of Ontario and the Ministry of Public and Business Service Delivery Registrar for the FBCSA when it comes to burial sites?**

On January 16, 2016, responsibility for cemetery and crematoria licensing and enforcement was delegated to the [Bereavement Authority of Ontario](#) (BAO). The [The Ministry of Public and Business Service Delivery](#) (MPBSD) retained responsibility for administering the war grave, cemetery abandonment, cemetery closure, and burial site provisions under the FBCSA.

In general, the BAO is not involved with burial sites until it is decided that the site or nearby land will be established as a cemetery. If a cemetery is established, the land owner, or another person consented to by the land owner, must be licensed as the operator of the new cemetery. If a new cemetery is not established, the remains must be reinterred in an existing cemetery. For questions about burial permit requirements, please contact the BAO.

A [burial site](#) means land containing human remains that is not a cemetery. The MPBSD Registrar is responsible for ensuring that the FBCSA provisions related to burial sites are followed.

### **3. What's the difference between a cemetery and a burial site?**

Under the FBCSA, a burial site means land containing human remains that is not a cemetery. Human remains means a dead human body or the remains of a cremated human body. In practice, we don't know the location of burial sites until they are discovered through ground disturbing activities.

A cemetery means,

- (a) land that has been established as a cemetery under the FBCSA, a private Act or a predecessor of one of them that related to cemeteries, or
- (b) land that was recognized by the registrar as a cemetery under a predecessor of the FBCSA that related to cemeteries, and includes,

- (c) land that, in the prescribed circumstances, has been otherwise set aside for the interment of human remains, and
- (d) a mausoleum or columbarium intended for the interment of human remains.

A cemetery includes land that,

- is known to contain human remains,
- was set aside to be used for the interment of human remains,
- was and continues to be set aside for the interment of human remains, and
- was and remains readily identifiable as land containing human remains.

A cemetery may be known to:

- the land owner on whose property the cemetery is located
- relatives or descendants of the deceased
- members of the community in which the cemetery is located
- the BAO, which licenses cemetery operators and maintains a public register of cemeteries in the province.

There may also be historical records indicating that there once was or may have been a cemetery located on the property. The [Bereavement Authority of Ontario \(BAO\)](#) should be contacted before undertaking work that may disturb land in a cemetery or a potential cemetery.

Human remains may be found in land that was a cemetery that was closed or abandoned. Historically, when cemeteries were closed the remains in them were typically supposed to be moved to another cemetery. That said, it's not uncommon to find that not all the remains were moved when a cemetery was closed. Please contact the [MPBSD Registrar for the FBCSA](#) if you think you are dealing with remains on the site of a former cemetery.

## Discovery of Human Remains and Initiating the Burial Site Investigation

### 4. What do I do when human remains are found on a property that I own?

When you, or someone doing work on your property, discovers human remains on your property, [section 95 of the FBCSA](#) requires you to immediately notify the police (local detachment or OPP, as applicable) or coroner. It is an offence under the FBCSA to disturb or order the disturbance of a burial site or artifacts associated with the human remains unless:

- the coroner instructs you to do so
- your activities are part of the execution of a site disposition agreement
- the disturbance is carried out according to the regulations (see [O. Reg. 30/11](#), sections 145 and 174-184 for the main burial site provisions).

You may be charged with an offence for failing to comply with the FBCSA if you do not report the discovery. If the police attend the site first, they will secure it and notify the coroner. Typically, the coroner will either attend the site or the police will send pictures of the human remains to the forensic anthropologist at the provincial coroner's office. The coroner or forensic anthropologist on behalf of the coroner will [determine whether foul play is suspected](#) in relation to the human remains. The coroner's investigative powers are set out under the [Coroners Act](#), which is administered by the [Ministry of the Solicitor General](#).

If the coroner determines that foul play is not suspected, the coroner is required to ensure that the MPBSD Registrar is notified about the burial site. Under the FBCSA the land owner must 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 FBCSA and its regulations. If the coroner declares that foul play is suspected in relation to the discovered human remains, the land ceases to be a burial site.

### 5. What are my responsibilities when human remains are found on a property that I own?

Your first responsibilities are to stop work immediately, ensure that the remains and any associated artifacts are protected from further disturbance or destruction, and contact the [police or coroner](#).

If the coroner does not suspect foul play, the coroner's office must notify MPBSD' Registrar for the FBCSA of the discovery. When asked, please provide the Registrar with information that may help them to determine if a burial site investigation is needed.

**Note:** [O. Reg. 30/11, subsection 175\(1\)](#) specifies that the land owner is required to take whatever steps are necessary to preserve the site, the human remains and any artifacts until the final disposition of the remains is made in accordance with the FBCSA and its regulations.

If the Registrar orders you, as the land owner, to get a burial site investigation to determine the origin of the site, you must hire an archaeologist with a professional licence under the [Ontario Heritage Act \(OHA\)](#) to conduct the investigation.

## **6. Why am I being ordered to complete a burial site investigation?**

Under the FBCSA, the Registrar may [order](#) a land owner to undertake a burial site investigation to determine the origin of the site. The Registrar will order an investigation if there is inadequate information available about the origin of the site, which is often the case when remains are found accidentally. The investigation should provide the Registrar with information, including but not limited to the cultural origin and boundaries of the site, that can inform decision-making regarding the identification of representatives of the deceased and determining what will happen with the site.

## **7. Why do I have to hire a licensed professional archaeologist to do the investigation for me?**

You are required to hire a licensed professional archaeologist to complete a burial site investigation on your property under [subsection 174\(1\) of O. Reg. 30/11](#). The licensed professional archaeologist is qualified to address [O. Reg. 30/11 s.174\(2\)](#), which requires that the archaeologist provide the following information in writing to the Registrar:

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.

## **8. How do I find a licensed professional archaeologist to carry out the burial site investigation on my property?**

The [Archaeology Programs Unit](#) of the Ministry of Heritage, Sport, Tourism and Culture Industries maintains a public list of licensed professional archaeologists in the province. The list can be accessed [here](#).

## **9. What activities does a burial site investigation consist of?**

The archaeologist will begin by conducting detailed archival research on your property, including accessing municipal and provincial records that document your property's land use history. This may include consulting land registry records, historical atlases, aerial photography, and historical reference volumes. They will use this information to better understand the archaeological potential of the property, focusing on the potential for the presence of human remains and/or unmarked graves. This will help them to create a detailed strategy for exploring your property through archaeological excavation techniques.

As a matter of best practice, the Registrar asks archaeologists conducting burial site investigations to excavate the area within a minimum of five metres of the initial discovery of the human remains, and to continue excavating until they have:

1. Established a sterile (containing no additional human remains) five metre buffer around the initial discovery; and/or
2. Reached the property line; and/or
3. Have encountered physical barriers that prevent them from excavating further (for example, presence of a structure, watercourse, bedrock etc.).

Completing the work in this manner will help ensure that all remains have been identified and/or recovered to the best of the archaeologist's ability, depending on the context.

## **10. What kind of questions should I ask to figure out which archaeologist I might want to hire?**

You may choose to contact more than one archaeologist to obtain quotes for the burial site investigation, similar to the general approach that many land owners choose when hiring contractors to do work at their property. Consider asking the archaeologists whom you contact the following questions:

- How much experience do you have conducting burial site investigations?
- Do you employ staff with expertise in bioarchaeology or human osteology (the study of human bones)? If not, will you be subcontracting for this work?
- Do you have immediate availability to complete this investigation?
- What activities will you undertake in order to meet the requirements of Ontario Regulation 30/11?
- How long will the investigation take?
- What are the total costs associated with the investigation, including research, fieldwork, and reporting requirements?

## 11. What if I think there might be a burial site or a cemetery on my property, but no remains have been found yet? What should I do about this?

The first thing to do is to contact the [Bereavement Authority of Ontario \(BAO\)](#) to determine whether or not there is an existing cemetery on the property. You can do a simple search of the BAO's [public register](#) of cemeteries, and/or [contact](#) them via phone or email.

Even if the BAO is unaware of a cemetery in that location, if you have credible information that suggests that a cemetery is located on your property, you may wish to contact a [licensed professional archaeologist](#) to conduct a [Stage 1 archaeological assessment](#) of your property. If, through researching and visiting the property, the archaeologist indicates that there is evidence that suggests that a cemetery may be present, please contact the BAO before you initiate an archaeological assessment in that area that may physically disturb the site.

For the definition of "cemetery" under the FBCSA, see [section 1 of the FBCSA](#) and [subsection 145\(2\) of O. Reg. 30/11](#).

If, through your assessment of land that is not a cemetery, you encounter human remains, you must stop work and immediately notify the police or coroner. When human remains are found outside of a cemetery that the coroner has determined were not the subject of foul play, the MPBSD Registrar for the FBCSA will be contacted and may order a burial site investigation, as described above.

### **Additional Questions? Contact the Registrar.**

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