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Management of Found Skeletal Remains

(Apparently not recent)

PROCEDURE

4804.1 **PURPOSE**

The purpose of this document is to outline the approach to be followed when the Office of the Chief Coroner/Ontario Forensic Pathology Service (OCC/OFPS) is notified about the discovery of skeletal remains that are apparently not recent.

NOTE: Approach to Recent Deaths

If the information reported suggests that the discovered remains represent a recent death and/or a criminally suspicious death, routine death investigation approaches must be followed, including, but not limited to:

- Coroner notification
- Police involvement (if not already involved)
- Coroner and police scene attendance

The approach to scene management, including involvement of forensic anthropology expertise will be informed through discussion with the Regional Supervising Coroner (RSC) and the OFPS forensic pathologist (FP) on-call. Circumstances that should be investigated as recent deaths include, but are not limited to:

- Potential discovery of remains of a missing person
- Potential for identification arising from investigation information or scene findings (e.g., personal identifiers present with the remains)
- Findings of potential foul play, including apparent clandestine burials
- Surface scattered remains

4804.2 INTRODUCTION

The authority for the coroner to take possession of and examine human skeletal remains is found in the <u>Coroners Act</u> s.10 (1), s.15 (1) and s.28 (1). Forensic anthropologists (FAs) are experts in the study of bones in the medicolegal context. FAs make an important contribution to the OCC/OFPS in death investigations involving skeletonized, burned, mutilated or otherwise unrecognizable remains. In Ontario, FAs act as consultants to FPs, who are ultimately accountable for the postmortem examination of remains. Early involvement of FPs is expected when remains appear recent and/or when criminally suspicious.

This document summarizes best practices that consider the overlapping interests and jurisdictions of ministries, agencies, police services, Indigenous communities and other government bodies

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that are involved when skeletal remains are found. The practices outlined here are applicable to the discovery of skeletal remains across Ontario.

Early notification of Indigenous communities is important to ensure appropriate consideration/involvement of cultural traditions, practices and ceremony. Collaborative and respectful discussion will inform the approach followed when human skeletal remains, potentially of Indigenous ancestry, are discovered.

4804.3 SCOPE

This procedure applies to all members of the death investigation service who may be involved when skeletal remains that are apparently not recent are discovered.

4804.4 REFERENCES

Coroners Act

Funeral, Burial and Cremation Services Act

How to Use Ontario Portal for Indigenous Consultation to Identify First Nations Contacts: Training Manual (QID 4812)

<u>Human Vs Non-Human Anthropology Consultation – Notification and Case Management at the PFPU (QID 2941)</u>

Management of Found Skeletal Remains - Email Templates (QID 4856)

Form for Case Information as Part of Official Referral of the Burial Site from the Forensic Anthropologist to the Registrar (QID 4857)

DEFINITIONS

Archaeological: Where there are no concerns of recent foul play which require further investigation by the OCC/OFPS, human skeletal remains may be considered "archaeological" in nature

Burial Site: Land containing human remains that is not a cemetery

Cemetery: Land that has been established as a cemetery under the *Funeral, Burial and Cremation Services Act, 2002*, a private Act or a predecessor of one of them that related to cemeteries, or land that was recognized by the Registrar as a cemetery under a predecessor of this Act that related to cemeteries. It 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

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Forensic Interest¹: Demonstrated when the medicolegal death investigation system is engaged by others regarding the discovery of human skeletal remains (i.e., for assessment and investigation for potential foul play)

Foul Play: When information from the investigation following discovery of human skeletal remains raises concerns that the death may have resulted from the actions of others. These investigations are also characterized as criminally suspicious

Recent: Often described by investigators as less than 50 years, within the context of the criminal justice system. A decision about further investigation by the OCC/OFPS must be based upon the findings of individual investigations as opposed to a strictly applied time interval

Registrar, *Funeral, Burial and Cremation Services Act* (*FBCSA*): Public servant within the Consumer Services Operations Division, Ontario Ministry of Public and Business Service Delivery (MPBSD) with statutory authority for burial sites under the *Funeral, Burial and Cremation Services Act, 2002*

4804.5 ABBREVIATIONS

BAO	Bereavement Authority of Ontario
BSI	Burial Site Investigation
FA(s)	Forensic Anthropologist(s)
FBCSA	Funeral, Burial and Cremation Services Act
FP(s)	Forensic Pathologist(s)
FPU(s)	Forensic Pathology Unit(s)
HPC	High-Profile Case
ID	Identification
MPBSD	Ontario Ministry of Public and Business Service Delivery
OCC	Office of the Chief Coroner
OFPS	Ontario Forensic Pathology Service
OPIC	Ontario Portal for Indigenous Consultation
PFPU	Provincial Forensic Pathology Unit
RA	Regional Advisor
RSC	Regional Supervising Coroner

4804.6 INVESTIGATIVE PROCESSES

The discovery of skeletal remains can occur in many contexts. Upon discovery of skeletal remains, the first issue is to determine if the bones are human. The decision for notification of the OCC/OFPS demonstrates that the discovery is of forensic significance (i.e., requesting a medicolegal opinion) to the person or organization who made the report.

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¹ NOTE: The term "not of forensic interest" may be considered inaccurate and potentially offensive by some Indigenous peoples.

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If the skeletal remains are determined to be human, the next step is to determine if there are concerns of foul play requiring further investigation by the OCC/OFPS.

4804.6.1 Notification to OCC/OFPS

The discovery of skeletal remains is most often reported to the local police service. The OCC/OFPS may also be notified directly of the discovery of skeletal remains by the person who discovered the remains, or any person having knowledge of the remains (e.g., a Chief of a First Nation or a member of that First Nation, a site monitor or archaeologist). The OCC/OFPS will then notify the local police, if required for investigative purposes (e.g., when criminally suspicious).

When police are notified of the discovery of skeletal remains of unknown origin:

- 1. The police service will contact the Provincial Dispatch Unit in Toronto to request examination by a FA to determine if the remains are human or non-human
- 2. Police, or another agency, will email Provincial Dispatch via occDispatchers@ontario.ca about the discovery. The email should include:
 - a. Photographs of found remains
 - b. Police occurrence number
 - c. Information as to whether the scene is being held pending FA review

Following the procedure <u>Human Vs Non-Human Anthropology Consultation – Notification and Case Management at the PFPU (QID 2941)</u>, Provincial Dispatch will create an F-Path (OFPS case management system) accession and forward the photographs to the FA on-call, copying the Identification (ID) team, for determination.

<u>NOTE</u>: When representatives from Indigenous communities express concerns with, or object to, photographs being taken of found skeletal remains, the coroner and FA, supported by the RSC and Chief Coroner, are expected to discuss these concerns with Indigenous representatives and consider them on a case-by-case basis (e.g., discovery during an archaeological assessment with involvement of site monitors).

4804.6.1.1 Outcome: Non-human

If the FA determines that the remains are not human, the FA reports this to the police agency, Provincial Dispatch and the OCC/OFPS ID team by replying all to the original email. The ID team will upload any related documents to F-Path and formally close the accession (as per <u>Human Vs Non-Human Anthropology Consultation – Notification and Case Management at the PFPU (QID 2941)</u>). The email from the FA serves as the final FA report.

4804.6.1.2 Outcome: Human

If the FA determines that the remains are human, the FA will reply all and request Provincial Dispatch assign a coroner to the investigation, if a coroner is not already involved, and Dispatch will create a case in QuinC. Forensic pathologist involvement is expected when the remains are transferred to a forensic pathology unit (FPU) for further examination.

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The Provincial Dispatch Unit can be reached 24/7 by calling 416-314-4100 or 1-855-299-4100.

The assigned coroner and FA (and FP when required) will discuss the available case-specific information and plan next steps, including necessary notifications, scene attendance and management.

The coroner will follow the **High-Profile Case (HPC) notification** (<u>Type</u>: Skel/Decomp/Fragmented and/or in Uncontrolled Environment) process and contact the RSC oncall.

4804.6.1.2.1 Notification of Indigenous communities

When the FA determines found skeletal remains are human, it is important that Indigenous communities are notified early to open the possibility of attending the scene and participating in discussions about managing the scene and the human remains.

Steps for notification of Indigenous communities:

- 1. After contact by the coroner through the HPC notification process, the RSC notifies the appropriate OCC Regional Advisor (RA) by providing information about the scene (i.e., municipal address)
- 2. The assigned coroner, supported as necessary by the RSC and RA, in consultation with the FA, determines whether any representatives from Indigenous communities have been involved in the undertaking that resulted in the discovery of human remains (e.g., Indigenous field representatives present during an archaeological assessment). If yes:
 - a. The coroner will request contact information from these representatives. If the representatives indicate that a different person or organization in their community should be contacted instead, the coroner will provide this person's contact information.
- 3. The RA accesses the Ministry of Indigenous Affairs' Ontario Portal for Indigenous Consultation (OPIC) to identify the contact information for First Nations that are potentially associated with the location of discovery based on treaty territories, traditional territories, and/or nearby reserves (see How to Use Ontario Portal for Indigenous Consultation Portal to Identify First Nations Contacts: Training Manual (QID 4812) for step-by-step instructions).
 - a. Search municipal address in portal
 - b. List representative Indigenous community/ies based on treaty territories, traditional territories, and/or nearby reserves
 - Search contact information for each identified representative Indigenous community/ies identified (use contact information for staff with archaeological experience and/or responsibilities, if available)
 - d. Email the list of contact information to the RSC, including the name, title, phone number and email address for individuals from representative First Nation(s)

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- 4. <u>Initial Notification</u>: The RSC notifies the First Nations contacts via email, informing them of the discovery and opening the opportunity of participating in next step discussions (e.g., attending the scene) (see <u>Appendix A in Management of Found Skeletal Remains: Email templates (QID 4856)</u>). The notification should include the following information, if known at the time of notification:
 - Municipal address or legal description of the property on which the remains were found
 - Additional addresses if multiple scenes
 - Relevant circumstances of discovery (e.g., discovered by workers while preparing a site for a new home development, if found on surface of soil or in water, etc.)
 - Parties to the discovery (e.g., local police service member on scene, landowner, archaeologist (if involved), Indigenous representative(s), etc.)
 - Contact information for the police investigator, coroner, and FA, if involved
 - Date and time the coroner and/or FA attended the scene
 - Any actions taken to preserve, secure or protect the scene
 - Information on whether the remains are believed to be of Indigenous ancestry and/or the date of death, based on the initial determination by the FA, if any
 - Information about the nature of the site (e.g., cultural origin or religious affiliation, manner of interment, minimum number of individuals), if known
 - Investigative activities (e.g., if further examination by FA is required to understand potential time period of death; if the remains must be removed from the site and transferred to another location for more detailed examination)
- 5. <u>Update/Next Steps Communication</u>: If further investigation occurred, the RSC emails an update to all individuals included on the initial notification email, once the investigation is completed (see <u>Appendix B in Management of Found Skeletal Remains: Email templates</u> (QID 4856)).
 - If there are concerns of foul play that require additional investigation by the OCC/OFPS and police, the email will inform First Nations contacts that the investigation is ongoing with police involvement, and no further information will be provided at this time
 - If there are no concerns of foul play requiring additional investigation by the OCC/OFPS, the email will inform First Nations contacts that the case is being referred to the MPBSD Registrar under the *Funeral*, *Burial and Cremation Services* Act (FBCSA), and FBCSARegistrar@ontario.ca will also be copied on the email
 - If the remains were found within a licensed cemetery, and there are no concerns
 of foul play requiring additional investigation by the OCC/OFPS, the email will
 inform First Nations contacts that the case is being referred to the Bereavement
 Authority of Ontario's (BAO) Registrar under the Funeral, Burial and Cremation
 Services Act, and Registrar@TheBAO.ca will also be copied on the email

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Further investigation by the death investigation service may be required to determine the following:

- a) Concerns of foul play requiring further investigation by the OCC/OFPS with police involvement
- b) Whether the skeletal remains are of potential Indigenous ancestry
- c) Where the skeletal remains originated from (see <u>section 1.7.2</u> for most common scenarios for discovery)

If the human remains are believed to be recent and/or require assessment or examination by a FA and/or FP (e.g., concerns of foul play), routine investigation processes for found human remains should be followed, including police involvement.

If the investigation does not raise concerns of foul play requiring further examination by a FA and/or a FP, follow 1.7.3 Notification of the Registrar, *Funeral, Burial and Cremation Services Act.*

If there is reason to believe that the skeletal remains may be associated with a death of a child at an Indian Residential School or other government or church-run facility², even if the remains are not recent, then the matter should be investigated by the OCC/OFPS to rule out foul play, prior to referral to the Registrar.

4804.6.2 Most Common Scenarios for Discovery

4804.6.2.1 <u>Accidental discovery</u>

Police services are generally contacted initially when a member of the public discovers skeletal remains. The OCC/OFPS may also be notified directly of the discovery of skeletal remains by the person who discovered the remains, or any person having knowledge of the remains (e.g., a Chief of a First Nation or a member of that First Nation, a site monitor or archaeologist). In such cases, the OCC/OFPS will notify the police, if required for investigative purposes (e.g., when criminally suspicious).

The police will attend, photograph the scene and the remains and contact Provincial Dispatch by phone to report the discovery. Provincial Dispatch will direct the police to email the photographs to OCCDispatchers@ontario.ca.

<u>NOTE</u>: When representatives from Indigenous communities express concerns with, or object to, photographs being taken of found skeletal remains, the coroner and FA, supported by the RSC and Chief Coroner, are expected to discuss these concerns with Indigenous representatives and consider them on a case-by-case basis, (e.g., discovery during an archaeological assessment with involvement of site monitors).

² May include Federal Hostels, recognized, or not recognized, under the Indian Residential School Settlement Agreement (IRSSA), and other associated institutions, such as hospitals (including psychiatric hospitals and sanatoria), Indian hospitals, reformatories, and industrial schools.

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Provincial Dispatch will send the photographs to the FA on-call (copying the ID team at ldentification@ontario.ca) to make a determination, whether the person contacting Provincial Dispatch believes the remains are human or not (see Human Vs Non-Human Anthropology Consultation – Notification and Case Management at the PFPU (QID 2941)).

If the remains are determined to be human, early notification of Indigenous communities is expected (see <u>1.7.1.1 Outcomes</u> for notification of Indigenous communities).

If the remains are determined to be human, the FA must determine the nature/context of the remains. The FA may be able to make this determination from submitted photographs, though the FA will often need to attend the scene and, in some situations, transfer the remains for further examination. Scene attendance should be planned together with the FA, coroner and police services, with RSC support, as well as discussion with Indigenous communities.

<u>NOTE</u>: The coroner is expected to notify the FP on-call if the remains are transferred to a FPU for further examination.

In some cases, the FA may need to conduct minimal excavation of the remains at the scene to determine whether foul play may be suspected. Efforts should be made to minimize site disturbance. All bone and associated grave-related materials still embedded in the ground should not be disturbed unless removal is essential for investigative purposes or unless leaving them in place may cause them to be harmed, damaged, or destroyed.

If further examination of skeletal remains by the FA and/or FP is required to determine the potential of foul play concerns, discussion with Indigenous representatives regarding next steps is expected, particularly prior to undertaking destructive testing to inform the potential for foul play requiring further investigation by the OCC/OFPS (e.g., DNA testing or carbon dating).

The presence of concerns of foul play requiring further investigation by the OCC/OFPS will be determined through discussion involving the FA, FP, coroner and police services, with RSC support. When concerns remain, investigation by the death investigation team, including police services, will continue.

4804.6.2.2 Archaeological assessment

If potential human remains are discovered during an archaeological assessment, any person on site who has knowledge of the presence of human remains must contact the local police or the OCC/OFPS by calling Provincial Dispatch to report the discovery.

<u>NOTE</u>: Indigenous Peoples express that discovery of a tooth represents an Ancestor. In circumstances where the found remains are teeth, or a tooth (i.e., no bones), the Registrar (see 1.7.3 Notification of the Registrar, *Funeral, Burial and Cremation Services Act*) should be informed directly that under the authority of the *Coroners Act*, a tooth does not constitute a 'body', and the OCC does not have jurisdiction; therefore there are no concerns of foul play that require investigation by the OCC/OFPS.

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The archaeological assessment must be paused pending review by the death investigation service and additional direction by the Registrar (see <u>1.7.3 Notification of the Registrar</u>, *Funeral*, *Burial and Cremation Services Act*).

Dispatch will engage the FA on-call to initiate the process outlined in 1.7.2.1 Accidental Discovery.

The FA will contact the assigned coroner and contact the archaeologist for contextual information about the site, including the possible age of the burial and possible cultural affiliation, to assist in determining if there may be concerns of foul play requiring further investigation by the OCC/OFPS.

Early notification of Indigenous communities is expected (see <u>1.7.1.1 Outcomes</u> for notification of Indigenous communities).

NOTE: Skeletal remains determined to be archaeological should not be transported to a FPU unless secure storage is otherwise unavailable, or the archaeologist and/or Indigenous representatives feel that the skeletal remains are at risk of destruction or disturbance. Once formal referral has occurred (see 1.7.3 Notification of the Registrar, Funeral, Burial and Cremation Services Act), the Registrar, in discussion with the archaeologist and Indigenous communities, will manage the burial site. If the remains are transported to a FPU for secure storage, the coroner and RSC will work together to arrange for the remains to be returned to the landowner or archaeologist for appropriate repatriation. The FPU will support repatriation as needed.

4804.6.2.3 <u>Cemetery discovery</u>

When unanticipated or unmarked skeletal remains are discovered in a licensed cemetery (active or inactive), the police will usually be contacted. The OCC/OFPS may also be notified directly of the discovery of skeletal remains by the person who discovered the remains, or any person having knowledge of the remains (e.g., a Chief of a First Nation or a member of that First Nation, a site monitor or archaeologist). In such cases, the OCC/OFPS will notify the police, if required for investigative purposes (e.g., when criminally suspicious).

Police will contact Provincial Dispatch to engage the FA on-call, copying the ID team. If the FA determines the remains are human, the FA will determine if the remains originated in the cemetery or not (follow process in 1.7.1 Notification to OCC/OFPS > Outcomes). The FA may be able to make this determination from submitted photographs, though the FA will often need to attend the cemetery and, in some situations, transfer the remains for further examination.

If the remains are determined to have originated from the cemetery, the BAO must be notified by the attending coroner, in discussion with the FA and supported by the RSC, as required, via Registrar@TheBAO.ca or 647-483-2645. The BAO will assume responsibility for the investigation. The remains will be secured by cemetery staff and should not be transported to a FPU (see Registrar@TheBAO.ca). Send to Registrar@TheBAO.ca).

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If the remains cannot be determined to have originated from the cemetery, they should be treated as an accidental discovery (see section <u>1.7.2.1 Accidental discovery</u>).

4804.6.3 Notification of the Registrar, *Funeral, Burial and Cremation Services Act* & documentation

Under Regulation 30/11 of the *FBCSA*, a coroner must ensure the Registrar is notified when a burial site is discovered, and a coroner must declare that foul play is not suspected in relation to the human remains at the site, to allow next steps to occur under the *FBCSA*.

The FA and the coroner, supported by the RSC and police services, will make the determination as to whether foul play requiring further investigation by the OCC/OFPS is suspected. Together, they will discuss next steps, including the plan for release of the site from the authority of the OCC/OFPS and referral to the Registrar, *FBCSA*:

- The FA, copying the coroner, RSC, Chief Coroner and ID team, will email the Registrar at <u>FBCSARegistrar@ontario.ca</u> with as much case information as possible, outlining the nature and context of the discovery, including (see <u>Appendix</u> C in Management of Found Skeletal Remains: Email templates (QID 4856)):
 - Landowner's contact information (phone number and email address)
 - Municipal address or legal description of the property on which the remains were found
 - Location to be as specific as possible (e.g., providing GPS co-ordinates or text descriptions of where on the property the burial site is located)
 - Additional addresses if multiple scenes
 - Date and time the coroner and/or FA attended the scene
 - Parties to the discovery (e.g., local police service member on scene, landowner, archaeologist (if involved), Indigenous representative(s), etc.)
 - Include contact information of the archaeologist (phone number and email address) if involved
 - Include contact information for any Indigenous representatives contacted by the coroner and/or RSC (see <u>1.7.1.2.1 Notification of Indigenous communities</u>)
 - Investigative activities
 - Any actions taken to preserve or secure/protect the site
 - o Information about the nature of the site (e.g., cultural origin or religious affiliation, manner of interment, minimum number of individuals), if known
 - Site sign-off
 - Rationale for the determination of no concerns of foul play requiring further investigation by the OCC/OFPS

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- An inventory of the remains and any associated items (e.g., artifacts) discovered, and information about their current location (e.g., at a FPU, temporarily reburied at site, in a secure location on the property, etc.)
- o Inclusion of any photographs or other documents prepared that record the discovery
- File number / case number / unique identifier for the site or remains (i.e., QuinC number)

Discovery information should be populated in the referral email (see <u>Appendix C in Management of Found Skeletal Remains: Email templates (QID 4856)</u>) for email template for Registrar referral). A fillable form is also available to complete and attach to the email for Registrar referral (see <u>Form for case information as part of official Referral of the burial site from the Forensic Anthropologist to the Registrar (QID 4857)).</u>

- Only a coroner has the statutory authority to determine if the remains have been the subject of foul play. The RSC will ensure a <u>reply all</u> to this email is sent by the coroner or RSC to officially refer the burial site to the Registrar (see <u>Appendix D in</u> <u>Management of Found Skeletal Remains: Email templates (QID 4856)</u>)
 - The email will include the statement that the origin of the remains is not suspected to be through foul play that requires additional investigation by the OCC/OFPS and that this is therefore a burial site within the meaning of the FBCSA.
 - The Registrar can be reached via <u>FBCSARegistrar@ontario.ca</u> or at 416-212-7499. Notification of the Registrar should occur promptly after determination of no concerns of foul play requiring further investigation by the OCC/OFPS; completion of a formal report (beyond the information listed above) is not required.
 - The Registrar will assume control of the site and the human remains with a confirmatory email citing the assigned Burial Site Investigation (BSI) number.

Where there are no concerns of foul play requiring further investigation by the OCC/OFPS, police must secure the scene until the landowner is advised of the statutory requirement that the landowner preserve the burial site until the disposition is decided by the Registrar. It is essential that the FA, together with the attending coroner, and with RSC support, or in the absence of a coroner on scene, the attending police officer, communicates to the landowner that the landowner must take immediate steps to preserve and protect the site, skeletal remains and any artifacts until a disposition is made under the *FBCSA*, if they have not already done so.

4804.6.3.1 <u>Closing the case</u>

Completion of the case in QuinC upon referral to the Registrar includes:

- Uploading documentation of the referral to the Registrar (i.e., email thread ending in Registrar confirming assumed control over the referred burial site) in QuinC > Documents
- Recording Manner of Death as Skel/Arch/Animal Remains

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- Entering a narrative outlining the circumstances of discovery, investigation steps and discussions and findings and outcome
- Closing the case in QuinC

Once the official referral of the burial site is made to the Registrar, the Registrar has statutory authority over the site and the responsibility to direct next steps. Any additional work done by the FA and/or the coroner or meetings between the FA and coroner with external parties should be at the Registrar's direction and include the Registrar for case continuity.

<u>NOTE</u>: When a burial site is found on federal reserve lands or other federal lands, the Registrar may be notified by the police, coroner or an Indigenous community directly. If notified, the Registrar will determine next steps, including whether to apply the FBCSA.

4804.7 IMPORTANT CONTACTS

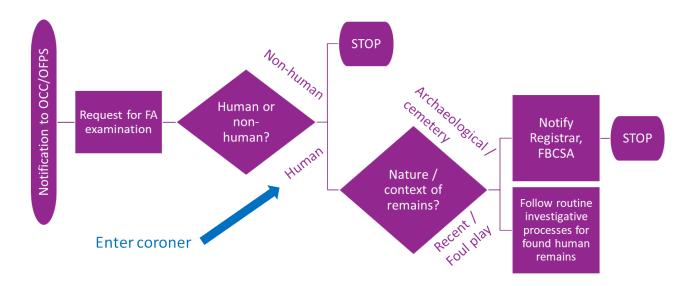
Provincial Dispatch Unit	416-314-4100	
Toronto, ON	1-855-299-4100	
Registrar	FBCSARegistrar@ontario.ca	
Funeral, Burial and Cremation Services Act	416-212-7499	
Registrar	Registrar@TheBAO.ca	
Bereavement Authority of Ontario	647-483-2645	

4804.8 ORIGINAL AUTHORIZATION

Prepared by:	Gillian Currie	Executive Advisor/Registrar
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Authorized by:	Dirk Huyer &	Chief Coroner &
	Michael Pollanen	Chief Forensic Pathologist

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Appendix A: Workflow for found skeletal remains (apparently not recent)



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Appendix B: Workflow

