

Implementing Ontario's New Archaeology Standards

Municipal planners and developers are finding that they not only have to address how a proposed project could affect the environment, but also its potential to affect Aboriginal cultural resources.

Failing to work an archaeology assessment into the planning phase of development, including consultation with interested Aboriginal people, may cause significant project delays, unanticipated costs, and Ministry of Tourism, Culture, and Sport (MTCS) "stop work" orders.

Caledonia, Oka, and Ipperwash had, at their heart, sacred archaeological sites. Thankfully, most archaeological work does not result in national flashpoints. However, from the urban cores to adjacent suburbs, significant archaeological finds are being uncovered during routine development.

The Toronto and Region Conservation Authority reports over 100 archaeology sites within its properties.¹ Ancient villages and burial sites have been found during municipal infrastructure and housing development activity across Southern Ontario, including the ossuary uncovered during the widening of Teston Road in York Region in 2005, and the 500-year-old Indigenous village site called Skandatut during a 2010 subdivision development in Vaughan, Ontario. The MTCS issued a stop work order against the developer in the latter project.²

New Standards, Guidelines, and Requirements

In 2011, the MTCS implemented new Standards and Guidelines for Consultant Archaeologists and a technical bulletin about Engaging Aboriginal Communities in Archaeology.³ These standards and guidelines and the technical bulletin create consistency in archaeological practices,

and require archaeologists to consider Aboriginal engagement in archaeology for the first time.

The MTCS also requires municipal planners and developers to hire licensed archaeologists to prepare and conduct archaeological site assessments of proposed development sites. Archaeologists are regulated under the *Ontario Heritage Act*.⁴ The *Ontario Heritage Act* prohibits anyone from disturbing or altering an archaeological site – whether on land or in the water – without an archaeological licence from MTCS.

Anyone who disturbs or alters an archaeological site or removes an artifact from a site without a licence can be fined or imprisoned. A person or a director of a corporation found in violation of the Act or its regulations can face a fine of up to \$1,000,000 or imprisonment for up to one year or both. A corporation found in violation of the Act or the regulations can face a fine of up to \$250,000.⁵

A licensed archaeologist must obtain a permit to excavate the property or re-

move any artifact.⁶ Archaeologists must comply with the MTCS regulations and guidelines. The archaeological field work process in Ontario has four stages. Not all stages will be necessary for all projects.

The MTCS encourages archaeologists to consider early Aboriginal engagement during Stages 1 and 2 of the archaeological assessment in order to build relationships with Aboriginal communities that will facilitate their engagement in future projects.⁷ Overall, Aboriginal engagement considers the interest of Aboriginal communities in the archaeological assessment, the protection of Aboriginal archaeological sites, and the disposition of Aboriginal artifacts and ancestral remains.

The MTCS requires archaeologists to engage with potentially affected Aboriginal communities during Stage 3 of the archaeological assessment. The Aboriginal engagement process during Stage 3 entails researching and gathering site specific information from the Aboriginal communities, documentation reporting



- 1 <www.trca.on.ca/the-living-city/land/archaeology/resource-management.dot>.
- 2 Gary May, "New rules will help preserve archaeological sites," *The Globe and Mail* (18 November, 2010); Alex Horkay, "Province halts work at indigenous site," *TheStar.com* (6 October, 2010) <www.thestar.com/news/article/871918--province-halts-work-at-indigenous-site>.
- 3 Ministry of Tourism and Culture, "Engaging Aboriginal Communities in Archaeology: A Draft Technical Bulletin for Consultant Archaeologists in Ontario" (Queen's Printer for Ontario, 2011).
- 4 R.S.O 1990, c. O.18. See O. Reg. 8/06. Licences under Part VI of the Act – excluding marine archaeological sites.
- 5 *Ibid.* at s. 69.
- 6 *Ibid.* at s. 56.
- 7 *Ibid.*



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on Aboriginal engagement, and whether a site requires a mitigation strategy.

When Archaeological Resources Are Found

In the event significant archaeological resources are found, the planner or developer is required to preserve the resource on-site. Essentially, “only development and site alteration that preserves the heritage integrity of the site may be permitted. This may occur, for example, when an Aboriginal village site, extending over a large area, is preserved by allocating the area as green space.”⁸

The MTCS may also issue a stop work order against the developer if, after consulting with Ontario Heritage Trust, the MTCS is of the opinion that the property is of archaeological or historical significance and is likely to be altered, damaged, or destroyed by reason of development. The stop work order prohibits any work on the property for a period of no longer than 180 days. Within this period, the MTCS may examine the property and remove or salvage artifacts from the property.⁹

The developer affected by the stop work order may get compensation for personal or business damages resulting from the stop work order.¹⁰

When Human Remains Are Found

If a burial site or artifacts associated with human remains are uncovered at a development site, the project activity must

immediately stop and report the discovery to the police and coroner. This is a mandatory requirement of the *Cemeteries Act (Revised)*.¹¹

The registrar appointed under the *Cemeteries Act (Revised)* will investigate and declare if the proposed site is an unapproved Aboriginal Peoples cemetery, unapproved cemetery, or an irregular burial ground.¹² The registrar, on declaring a burial site to be an unapproved Aboriginal Peoples cemetery or unapproved cemetery, will notify the appropriate persons and require those persons to enter into negotiations with a view of entering into a “site disposition agreement.”¹³ If a site disposition agreement is not made within the prescribed time, the registrar will refer the matter to arbitration.¹⁴

Municipal Master Plans Provide Guidance

In order to assist municipalities in how to effectively manage cultural and heritage resources, the MTCS encourages municipalities to develop archaeological management plans to identify areas where known archaeological sites are present; areas where there is potential for archaeological resources to be present; and archaeologically sensitive areas, such as the specific locations of cultural remains.¹⁵ The plan would also enable property owners, developers, and prospective buyers to know beforehand whether they will have to conduct archaeological investigations if they want to develop or redevelop a site.

The City of Kingston for example, redeveloped its “Master Plan of Archaeo-

logical Resources”¹⁶ that serves as a guide for its municipal staff when assessing and making planning decisions. Their master plan includes locally-developed policies, processes, and protocols. The city recognizes the value of implementing an archaeological policy because “the risk of unfortunate surprises occurring (such as disturbing a burial site) is significantly reduced, and public awareness of archaeological resources considerably increased.”¹⁷ The move by the city to identify and protect pre-contact archaeological sites is also viewed positively by the local Aboriginal communities.¹⁸ *MW*

8 Ministry of Tourism, Culture, and Sport, “Land Use Planning and Development” <www.mtc.gov.on.ca/en/archaeology/archaeology_planning.shtml>.

9 *Ontario Heritage Act*, *supra*, note 6 at s. 62 (1).

10 *Ibid.* at ss. 62 (2) and 63.

11 R.S.O. 1990, c. C.4, at s. 68.

12 *Ibid.* at s. 71.

13 *Ibid.* at s. 14. Site disposition agreement requirements: legal description of cemetery, manner in which human remains are to be disinterred or reinterred, provisions for future maintenance of the cemetery, allocation of costs to carry out agreement, etc.

14 *Ibid.* at s. 72.

15 See Ontario Ministry of Municipal Affairs and Housing, “Archaeological Management Plans” <www.mah.gov.on.ca/Page7302.aspx>.

16 City of Kingston, Planning and Development Department, “Master Plan of Archaeological Resources of the City of Kingston, Technical Report” <www.cityofkingston.ca/residents/culture/heritage/archaeology/index.asp>.

17 *Ibid.* at 2.

18 *Ibid.* at 12.

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