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s.12;s.13

## **Batten, Justine FLNR:EX**

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**From:** Batten, Justine FLNR:EX  
**Sent:** Thursday, May 28, 2015 3:36 PM  
**To:** Batten, Justine FLNR:EX  
**Subject:** FW: Interjurisdictional Scan of Burial Policies and Procedures  
**Attachments:** Inter-Jurisdictional Scan of Burial Management Strategies\_Table.docx

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**From:** Glaum, Doug FLNR:EX  
**Sent:** Tuesday, May 12, 2015 1:51 PM  
**To:** Maloughney, Mary Sue FLNR:EX  
**Subject:** Interjurisdictional Scan of Burial Policies and Procedures

Hi Mary Sue:

Attached is the scan Jessica Ruskin extracted from the MPA project Considerations for BC's Archaeology Branch on the Development of a Province-Wide Policy for Handling the Discovery of Ancient Human Remains. This work was done as background for a possible burial policy. The BC hyperlink is just a space holder and link to the present general procedure.

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Province/Territory	Inter-Jurisdictional Scan of Archaeological Burial Management Practices (number of First Nations, Treaties, land claims, protective legislation, regulations, policies, First Nations consultation, re-interment/repatriation)
BC	<ul style="list-style-type: none"> <li>• <a href="https://www.for.gov.bc.ca/archaeology/policies/found_human_remains.htm">https://www.for.gov.bc.ca/archaeology/policies/found_human_remains.htm</a></li> </ul>
Alberta	<ul style="list-style-type: none"> <li>• Alberta has 45 First Nations, all of whom are signatories to one of the three historic numbered treaties falling partly or wholly within Alberta. The treaties do not include any reference to human remains, burials, graves, heritage or culture.</li> <li>• There are no Aboriginal title land claims currently under negotiation in Alberta.</li> <li>• Alberta recognizes burial grounds as "traditional uses" of land that are not s. 35 Treaty rights but are important to First Nations and may be impacted by land and resource management decisions.</li> <li>• The <i>Historical Resources Act</i> contains no references to human remains, burials or graves</li> <li>• However, Regulations under the <i>Historical Resources Act</i> indicate archaeological permit holders must have written authorization to disturb or excavate human remains.</li> <li>• <i>Historical Resources Act</i> clearance is required prior to development in any known burial grounds identified on Alberta's Listing of Historic Resources.</li> <li>• There is no requirement under legislation, regulations or treaty for consultation with First Nations, however Alberta has committed to consult with First Nations concerning potential impacts to cultural heritage resources and sites</li> <li>• A human remains strategy is under development</li> </ul>
Saskatchewan	<ul style="list-style-type: none"> <li>• Saskatchewan has 70 First Nations, 63 of whom are affiliated with one of the nine Saskatchewan Tribal Councils. All but four First Nations are signatories to one of the six treaties in the Province. The treaties do not include any reference to reference to human remains, burials, graves, heritage or culture.</li> <li>• There are no Aboriginal title land claims currently under negotiation in Saskatchewan.</li> <li>• Human remains and burials are explicitly protected under the <i>Heritage Property Act (HPA)</i> and cannot be removed, excavated, or altered without permitted authorization and clear written consent from First Nations.</li> <li>• The <i>Government of Saskatchewan First Nations and Metis Consultation Policy Framework</i> does not explicitly list heritage/archaeological approvals as decisions which would trigger the Province's duty to consult with First Nation and Metis communities.</li> <li>• The Saskatchewan Indian Cultural Centre (SICC) is an advisory body that represents all Saskatchewan First Nations.</li> <li>• The <i>HPA</i> indicates that all human skeletal material discovered outside a recognized cemetery is the property of the Crown; however it indicates Amerindian human remains more recent than 1700 AD will be made available to the Indian Band Council nearest the discovery site for disposition following scientific examination. Amerindian remains older than 1700 AD will be reinterred by the minister following scientific examination.</li> <li>• Saskatchewan has an Archaeological Burial Management Policy endorsed by the SICC that articulates the procedures for handling all discoveries of human remains ("archaeological burials"), whether they are Aboriginal or non-Aboriginal and whether they are found outside of recognized cemeteries on Crown or private land.</li> </ul>



	<ul style="list-style-type: none"> <li>• The policy indicates when deciding whether to remove and relocate versus preserve burials <i>in situ</i> the circumstances of discovery, probability of future disturbance, interests of land owners, and concerns of direct descendants, will be considered.</li> <li>• Once a burial has been determined to be of First Nations' origin, the SICC will be consulted to determine final disposition, which is typically reburial at or near the original location. Other reburial options include the Central Burial Site, a local municipal cemetery or on IR lands if requested by the appropriate interest group. If cultural affiliation cannot be determined, the Minister will determine the place of reburial.</li> <li>• The provincial government hosts and funds an annual fall reburial ceremony at the Central Burial Site.</li> <li>• There are several hundred confirmed or suspected burial locations in the province and between five and 15 new archaeological burials are fortuitously discovered every year, primarily through land development</li> </ul>
Manitoba	<ul style="list-style-type: none"> <li>• Manitoba has over 65, 000 Metis people and over 100, 000 status Indians, representing approximately 15% of the province's total population and represented by three provincial political organizations. All but five of Manitoba's 63 First Nations are signatories to one of the six treaties in the province. The treaties do not include any reference to human remains, burials, graves, heritage or culture.</li> <li>• There are no Aboriginal title land claims under negotiation in Manitoba.</li> <li>• Manitoba's Historic Resources Branch recognizes the "care of the dead" as a s. 35 Aboriginal right.</li> <li>• Human remains are protected under the <i>Heritage Resources Act</i> and cannot be destroyed damaged or altered without a permit issued under this <i>Act</i>.</li> <li>• The <i>Act</i> establishes that the Minister may enter into an agreement with land owners or developers undertaking activities that may damage or destroy human remains in order to manage potential discoveries.</li> <li>• The <i>HRA</i> states that the property in and the title and right of possession to human remains vests in the Crown. However, any interested party, such as First Nations, may enter into a heritage agreement with the owner of a site believed to contain human remains in the form of a heritage covenant.</li> <li>• The Branch does not consult with First Nations on permits; although on request the Branch will inform First Nations of all archaeological work in their respective traditional resource management areas recognized by government.</li> <li>• Since 1987 a cabinet approved Burials Policy (Policy Respecting the Reporting, Exhumation and reburial of Found Human Remains) has been working effectively, with no defined dispute resolution process.</li> <li>• Unless unavoidable and necessary, human remains are to be left <i>in situ</i>. Community consultation with the closest affiliated community is undertaken prior to exhumation, removal and reburial of human remains.</li> <li>• Depending on the circumstances, the developer or Province covers associated costs.</li> <li>• Between 3 and 35 burials are discovered in Manitoba per year.</li> </ul>
Ontario	<ul style="list-style-type: none"> <li>• Ontario has nearly 300,000 Aboriginal people represented by 126 Indian Bands. 46 historic treaties and other agreements, such as land purchases by the Crown were signed between 1781 and 1930.</li> <li>• Since 1981, 50 land claims have been accepted by the Province. Modern land claims of unextinguished Aboriginal title are uncommon because the historic treaties usually provided compensation for Aboriginal groups in exchange for surrendering their rights to their traditional territories.</li> </ul>

	<p>Ontario is currently negotiating its first modern treaty with the Algonquin, which will include a Burial Site protocol.</p> <ul style="list-style-type: none"> <li>• Ontario does not recognize ancestral burial management as a s. 35 Aboriginal right</li> <li>• Human remains are not considered archaeological objects in Ontario and are not protected under the <i>Ontario Heritage Act</i>.</li> <li>• Discoveries of human remains ("burial sites") found outside of recognized cemeteries on Crown or private land are legislated and regulated under the <i>Funeral, Burials and Cremation Services Act (FBCSA)</i>. Burial sites cannot be disturbed except on instruction of the coroner, pursuant to a site disposition agreement (SDA), or in accordance with the regulations.</li> <li>• The Registrar may order an archaeological investigation into the origins of a burial site in order to make a declaration as to whether the site is an Aboriginal peoples burial ground, a burial ground or an irregular burial site (a \$20,000-\$80,000 cost to be borne by the land owner). Where the Registrar believes this would impose undue financial burden on the land owner, the Registrar may cover the costs. This occurs a few times per year.</li> <li>• Per the <i>FBCSA</i>, Site Disposition Agreements (SDAs) are negotiated between the land owners and the representative of the deceased. In the case of Aboriginal burials, the representative is the nearest First Nations government or another First Nation community with close cultural affiliation. There may be more than one Aboriginal group declared as representatives in certain situations and all would be party to SDA negotiations</li> <li>• Formal consultation with First Nations over discoveries of human remains follows the legislated process outlined in the <i>FBCSA</i> once a burial is formally declared an "Aboriginal peoples burial ground". First Nations' consent is required if remains or artifacts are to be removed from the site or if scientific analysis of the remains is to be conducted.</li> <li>• Under a SDA, human remains in an Aboriginal burial ground will either be 1) left <i>in situ</i> if not under threat, 2) disinterred and reburied in a cemetery on the representative's IR, or 3) disinterred and reinterred on the same property and registered as a cemetery.</li> <li>• An SDA is not required for irregular burial sites (burial sites not set aside with the apparent intention of interring human remains – e.g., fragmentary human remains of undetermined cultural affiliation found on a lake shore without associated archaeological deposits). In these cases, the landowner shall ensure that the remains are interred in a cemetery.</li> <li>• Disagreements in the SDA negotiation process may be settled through binding arbitration. Parties to the negotiations are responsible for the associated costs.</li> <li>• As a way of avoiding potential conflict, information sessions are routinely held across Ontario with First Nations communities to explain the legislated process for the management of archaeological and burial sites</li> <li>• Discoveries of burial sites are common, on average 16 per year, and site disposition agreements have only gone to arbitration twice in the last 20 years.</li> </ul>
Quebec	<ul style="list-style-type: none"> <li>• Review of Quebec's <i>Cultural Property Act</i>, <i>Cultural Heritage Act</i>, and the Archaeological Research Regulation indicates no references to "human remains", "burials", or "graves"</li> </ul>
Newfoundland and Labrador	<ul style="list-style-type: none"> <li>• Newfoundland/Labrador contains four Indian Bands, two of which are Innu and two of which are Mi'kmaq. The Mi'kmaq arrived on the island post contact and in all but one instance to date, are buried in cemeteries. There are no historic treaties in the Province but much of the area (Labrador) where pre-contact human remains and burial sites may be encountered is now covered by settled or in-progress land claims agreements.</li> </ul>

	<ul style="list-style-type: none"> <li>• The Labrador Inuit Land Claim Agreement (LILCA) outlines how human remains and burial sites within the settled area will be managed. Cultural affiliation must be determined by the Permitting Authority before the remains are removed. If the remains are determined to be Inuit, their possession will be transferred to the Nunatsiavut Government (NG) unless there is agreement to return them to the discovery site. If cultural affiliation cannot be determined, the human remains are generally handled by the Permitting Authority.</li> <li>• LILCA indicates that the Inuit will identify and provide a list (to be supplemented or amended) of ancient burial sites and sites of religious or spiritual significance to Inuit to Canada and NL. The Minister will consult NG prior to issuing a permit authorizing disturbance of a site on the list or a site which may be relevant. No such list has been provided to NL but it has been deemed less of a priority by the NG due to the positive and collaborative relationship between NL and NG with respect to archaeology.</li> <li>• NL's Archaeology Office would not [generally] approve excavation of an Aboriginal grave but there are circumstances where human remains will have to be removed. If mitigation could ensure safety of the remains (i.e., by avoidance or capping), development may proceed.</li> <li>• If human remains are found on privately owned land by the home owner, the Province would assist with archaeological costs. If the remains are found by a developer, the cost would rest with this them. There are no known instances where the human remains found on private land have stopped development and no instances where a home owner has had to pay several thousands of dollars due to a discovery of human remains.</li> <li>• Outside of the land claims agreements, there is no formalized process for handling human remains discoveries. However, the Archaeology office is working on a burial protocol that will provide a clear statement of how these situations are handled, whether they are Aboriginal or not. The draft will be taken out to stakeholders for consultation.</li> <li>• There are no instances of unresolvable disagreements arising from these discoveries. The government has a positive relationship with Aboriginal communities regarding archaeology, including training archaeology officers from the NG on government regulatory and permitting processes.</li> <li>• It is common for human remains to be uncovered by erosion from historic European cemeteries from the 1700s and 1800s; Aboriginal human remains are less common.</li> </ul>
New Brunswick	<ul style="list-style-type: none"> <li>• New Brunswick has 15 First Nations communities that are descendants of groups that signed historical treaties. All of the First Nations are represented by one of two broader organizations: the Mawiw Tribal Council or the Union of NB Indians. Along with the treaty rights, the First Nations believe they continue to hold rights and title throughout their traditional territories.</li> <li>• New Brunswick's (NB) Duty to Consult Policy indicates that "disturbing or damaging culturally significant areas" triggers the Province's duty to consult. There are no references to dispute resolution or accommodation, obligations or measures, in the policy document.</li> <li>• Human remains are not considered archaeological objects. However, human remains and ancient burial grounds are explicitly protected under the <i>Heritage Conservation Act</i> and cannot be excavated and/or disturbed without a permit issued under this Act. The Act is silent on title and rights concerning possession of human remains.</li> <li>• Archaeological research on or alteration of any burials is not permitted without formal consultation with appropriate First Nations (30 day referral and comment period). Accommodation is determined on a case-by-case basis but may entail project redesign and/or commitments to hire local people and have monitors present during archaeological work.</li> <li>• Where fortuitous human burials are encountered and found to be of First Nations ancestry, appropriate agencies work through a protocol, in accordance with NB's guidelines for archaeological assessments, that ensures First Nations involvement.</li> <li>• Under the Act, the Minister may give directives respecting the burial of human remains or may take possession of the remains to ensure they are (re)buried. Disposition is determined on a case-by-case basis and where remains are believed to be of First Nations ancestry, disposition is</li> </ul>

	<p>determined through consultation with these parties. An alteration permit would not be issued if the First Nation is opposed and until adequate consultation has been completed.</p> <ul style="list-style-type: none"> <li>• There are no formal dispute resolution provisions under the <i>HCA</i>. However, there are no discoveries to date which have led to unresolvable disagreements.</li> <li>• Maliseet Advisory Committee on Archaeology (committee with both Provincial and First Nations representatives) is touted as an example of a best practice for other departments of government</li> <li>• Fortuitous discoveries of ancient human remains are rare (none since HCA formalized in 2010).</li> </ul>
Nova Scotia	<ul style="list-style-type: none"> <li>• Nova Scotia has 13 First Nations, represented by two tribal councils. The majority (63%) are of Mi'kmaq descent and are signatories to historical treaties and agreements which outline formal Terms of Reference for a consultation process and indicate that "Sacred Sites and Archaeology" are subjects that will be negotiated. Along with the treaty rights, the First Nations believe they continue to hold rights and title throughout their traditional territories.</li> <li>• Archaeological sites are protected under the <i>Special Places Protection Act</i>; however, this act does not include definitions for archaeological human remains or burials. The regulations under this <i>Act</i> also do not include specific references to human remains, burials or graves.</li> <li>• Unmarked burial sites of human remains are protected under the <i>Cemeteries and Monuments Protection Act</i> and further disturbance of found human remains requires approval of the Minister.</li> <li>• The Archaeology Permit Guidelines indicate that individuals who have knowledge of archaeological resources in the permitted study area must be consulted, though the Guidelines do not specifically indicate First Nations must be consulted.</li> <li>• The Guidelines state that disposition of collections from Native sites may be subject to consultation with, and approval by, the Micmac Association of Cultural Studies or other responsible Native organizations. Archaeological projects may trigger the Crown's duty to consult First Nations but certain procedural elements of consultation may be delegated to proponents.</li> <li>• The Guidelines state that fortuitously discovered human remains shall not be further disturbed unless absolutely unavoidable.</li> <li>• The Guidelines indicate that along with appropriate authorities, the Mi'kmaq band closest to the fortuitous discovery site of ancestral human remains must be immediately informed and consulted on appropriate action.</li> </ul>
Prince Edward Island	<ul style="list-style-type: none"> <li>• PEI has two Mi'kmaq Bands who are descendants of those who signed historical treaties. Along with the treaty rights, the First Nations believe they continue to hold rights and title throughout their traditional territories.</li> <li>• Provincial policy on consultation indicates decision makers must consult with First Nations on decisions or actions that may adversely affect an asserted or proven Aboriginal treaty right of the Mi'kmaq. There are no references to dispute resolution processes, time lines or accommodation measures in the policy.</li> <li>• The Aboriginal Affairs Secretariat is responsible for all archaeological work carried out in the province</li> <li>• Human remains and burial sites are protected under the <i>Ancient Burial Grounds Act</i> and the <i>Archaeology Act</i>. All burial grounds that are not regulated cemeteries are declared to be vested in the Crown.</li> <li>• Legislation provides that title and right of possession of ancient human remains may be transferred to Mi'kmaq community as appropriate; and</li> </ul>

	<p>protocols may be entered into with Mi'kmaq communities to ensure deference is shown to traditional Mi'kmaq approaches to handling remains.</p> <ul style="list-style-type: none"> <li>Archaeological permit applications must include information regarding consultation with Aboriginal parties if the site is likely to be significant to them. The Minister may refuse to issue archaeological permits if the Minister believes consultation with the Aboriginal community was not adequate.</li> <li>The Act indicates that no compensation will be provided for any reduction in value of a person's interest in land or for any loss or damages that result from exercises of the Act.</li> </ul>
Yukon	<ul style="list-style-type: none"> <li>The Yukon has 14 First Nations. One historic treaty (Treaty 11) covers part of the southeastern corner of the territory. Modern land claims have been settled with 11 of 14 First Nations and resulted in the implementation of Final and Self Government Agreements. The remaining three First Nations are not currently negotiating a comprehensive claim and remain Indian Bands.</li> <li>The Umbrella Final Agreement (UFA) defines "Yukon First Nation Burial Site" as a place outside of a recognized cemetery where the remains of a cultural ancestor of a Yukon Indian Person have been interred, cremated or otherwise placed. The UFA protects burial sites from disturbance and provides that Government and Yukon First Nations would establish procedures for the protection and management of these sites.</li> <li>Ownership and right of possession of ancestral human remains found on Settlement Lands vests with the Yukon First Nations and they are entitled to manage burial sites in those lands. The Yukon First Nation are entitled to take over the ownership and right of possession to human remains found outside of Settlement Lands but determined to be Aboriginal. Where ancestral remains are found on public lands, they are jointly managed by the First Nation and Government.</li> <li>If agreement cannot be reached within a reasonable period of time, the matter will be referred to arbitration to determine terms and conditions that would allow the burial to be further disturbed. If the arbitrator orders exhumation, examination, and reburial of ancestral human remains, these will be monitored by Yukon First Nations.</li> <li>Government of Yukon's Guidelines Respecting the Discovery of Human Remains fulfil obligations under the UFA to establish procedures for the protection and management of Yukon First Nations Burial Sites. Each discovery is handled on a case-by-case basis in consultation with affected parties. Any exhumation, examination and reburial of ancestral human remains is at the discretion of the affected First Nations.</li> <li>The Guidelines provide for Site Disposition Agreements to be drafted and approved by the Yukon Government and the First Nations. Disposition options include: 1) leaving the remains <i>in situ</i> and having the site recorded as a burial/heritage site, 2) having the remains disinterred and reinterred in the nearest appropriate cemetery, 3) removing the remains from the site for analysis and having them reinterred in a recognized cemetery, or 4) having the Province or First Nation act as the temporary repository of the remains.</li> <li>Under the <i>Historic Resources Act</i>, a permit is required to search for, excavate, destroy or alter human remains found outside of a recognized cemetery or burial site. The Act provides for immediate notification of the appropriate Yukon First Nation where remains are found on Settlement Lands. If the Minister believes the human remains are to be endangered by activity on the land, he may make an agreement for investigation, including preservation or removal of remains, with the Yukon First Nation, owner or proponent.</li> <li>Provisions under the Act allow for covenants to be placed on the land providing for maintenance, preservation or protection of human remains.</li> <li>Where a burial site not previously known or designated is identified during land alteration and subject to damage, the Minister may issue a stop work order and require the proponent to apply for a permit and undertake archaeological studies. The Act authorizes the Minister to require a permit applicant to allocate money and mitigate damage to a site or human remains.</li> </ul>

	<ul style="list-style-type: none"> <li>• Historic human remains and burial sites are protected under various other bodies of land use legislation.</li> </ul>
Northwest Territories	<ul style="list-style-type: none"> <li>• Land claims have been settled over the majority of the NWT. Three comprehensive land claims and one combined comprehensive land claim and self-government agreement have been completed to date.</li> <li>• The Land Claim Agreements establish consultation obligations and legal custodial interests for land claims authorities over archaeological remains, including human remains. The Gwich'in agreement provides explicit protection for burial sites and mandates consultation with First Nations for archaeological site permits. The Sahtu Agreement indicates Sahtu consent is required for archaeological permits on Sahtu Lands and indicates permit holders must consult with Sahtu communities. The Tlicho agreement includes a specific section for burial sites which indicates written consent of the Tlicho Government is required in order to disturb a burial site on Tlicho lands and that the Parties must jointly develop procedures to protect Tlicho burial sites.</li> <li>• The <i>Archaeological Sites Act</i> came into force on April 1, 2014, to replace the <i>NWT Act</i> and applies to both public and private land. While there are no specific provisions related to human remains or burial sites, both would satisfy the stated definition of "archaeological artifact" ("tangible evidence of human activity that is more than 50 years old, in respect of which an unbroken chain of possession cannot be demonstrated"), thereby affording their protection.</li> <li>• Under the legislation, sites cannot be altered or disturbed without a permit.</li> <li>• First Nations are consulted on permits in accordance with the land claims agreements; and in areas where land claims have not been resolved, the same consultation principles are applied. Under the old regulations, permit applications had a mandated 60 day turn around with 45 of those days apportioned to the Aboriginal communities for their review and response. Decision authority rests with the Minister, except for the Sahtu who have a veto over archaeological permits under the Sahtu Agreement.</li> <li>• Where human remains are found on private or Crown land and not considered forensic, the government and appropriate land claims authority will be notified. Each case is jointly managed and negotiated. Where remains are not under the threat, a record of the discovery will be kept in government and the next permitted archaeologist working in the area will be asked to inspect the remains. Scientific analysis and ultimate disposition is dependent on what the land claims authority desires.</li> <li>• The GNWT takes responsibility for the costs associated with the return of ancestral remains to descendant communities.</li> <li>• Discoveries of human remains are infrequent and relationships between governments and Aboriginal groups are positive in regards to archaeology. There are no instances of found human remains that have required any form of dispute resolution.</li> </ul>
Nunavut	<ul style="list-style-type: none"> <li>• The <i>Nunavut Lands Claims Agreement</i> contains specific provisions regarding archaeological resources. Archaeological research projects wholly or partially on Inuit Owned Lands require permission from the Regional Inuit Organization. Archaeological permit applications must be sent to the Inuit Heritage Trust (IHT) for review.</li> <li>• The Inuit Heritage Trust and/or designated agencies determines the disposition of all specimens found on Inuit Owned Lands or in the Nunavut Settlement Area off Inuit Owned Lands, including found ancient Inuit human remains.</li> <li>• The NLCA states that the Government and the IHT jointly own all archaeological specimens found within the Nunavut Settlement Area that aren't public records, private property, or within areas administered by Parks Canada.</li> <li>• The Protection of Nunavut's archaeological heritage is a shared responsibility of the Governments of Canada and Nunavut. Under the <i>Nunavut Act</i>, the federal government has the authority to make regulations for the protection, care and preservation of sites.</li> </ul>

	<ul style="list-style-type: none"> <li>• The Nunavut Archaeological and Paleontological Sites Regulations (NASPR) does not explicitly mention human remains or burial sites, but the definition of "archaeological artifacts" may be interpreted as capturing both human remains and burial sites. Archaeological artifacts and sites are protected under this regulation and permits are required in order to undertake any archaeological investigations or alterations.</li> <li>• Government of Nunavut's Human Remains Policy applies to fortuitous discoveries and to permit applications where archaeological analysis involves human remains. The location of human remains must be recorded but remains should not be disturbed pending notification of the local and territorial authorities. If authorities cannot respond within a reasonable period of time, the remains should be protected from further disturbance.</li> <li>• Destructive testing of archaeological specimens requires written permission from Nunavut's Director of Heritage and this decision must be made in consultation with the designated repository. Consultation with the affected Inuit community is not required; however, IHT is responsible for specifying the repository for archaeological items recovered from Inuit Owned Lands and therefore may have a role in the decision making process.</li> <li>• The Policy and Guidelines clarify that an objection filed by the IHT concerning proposed disturbance of an archaeological site of religious or spiritual significance to Inuit may be grounds to refuse permit issuance.</li> <li>• Consultation with the community nearest the research area is an integral part of the permit granting process.</li> </ul>
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**Batten, Justine FLNR:EX**

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**From:** Batten, Justine FLNR:EX  
**Sent:** Monday, June 1, 2015 10:25 AM  
**To:** 'Denise Walker'; 'Lisa Doetzel'  
**Subject:** internal branch policy statement on dealing with human remains  
**Attachments:** Human Remains DRAFT procedure document.docx

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## Archaeology Branch

### Human Remains Policy Discussion

There are two ways that archaeological human remains come to Provincial attention: as remains disturbed during archaeological studies under the terms of a HCA permit, or as incidental finds reported to law enforcement and the BC Coroners Service. There are different legislative requirements for remains found on private and Crown land, and for lands under Federal jurisdiction such as Indian Reserves.

Human remains and burial sites on private and crown land in British Columbia are protected under the *Provincial Heritage Conservation Act [HCA]*, the *Cremation, Interment and Funeral Services Act [CIFSA]*, and the *Coroners Act [CA]*.

These laws do not apply on lands under Federal jurisdiction. There is no Federal protection for archaeological sites, although Parks Canada has archaeological protocols that shadow the various Provincial legislations and First Nations traditions around their parks. The *CIFSA* does not issue certificates for cemeteries on Federal land. However, the BC Coroners Service assumes authority for death investigations on Federal land under the *CA* due to a lack of comparable Federal legislation. Mistreatment of human remains is addressed as a criminal matter in the *Federal Criminal Code of Canada*.

The Provincial *CIFSA* requires that human remains be permanently deposited in a cemetery, a crematorium, or an archaeological site, or temporarily in a museum or teaching institution, or in official storage such as the RCMP or BC Coroners Service [in pending medico-legal cases under the *Coroners Act*], or, as a matter of practice, in an archaeologist's secure storage under the terms of a valid *HCA* permit.

The *HCA* [Section 13 (2)(b)] states that, "except as authorized by a permit ... a person must not damage, desecrate or alter a burial place that has historical or archaeological value, or remove human remains or any heritage object from a burial place that has historical or archaeological value." The terms "heritage value" and "heritage object" are broadly and defined in the *Act* as objects or sites having "historical, cultural, aesthetic, scientific, or educational worth or usefulness" to "British Columbia, a community, or an aboriginal people."

The *HCA* only protects "burial places," and does not protect human remains once they have been removed from a burial place. Human remains that have been exhumed under the terms of a *HCA* permit can be kept in secure storage by the *HCA* permit holder until the permit expires, at which time disposition must be made according to the terms of the *Cremation, Interment and Funeral Services Act*.

The *CIFSA* specifies [Part 3, Section 4] that human remains must be disposed by interment in a registered cemetery, or by cremation in a crematorium; or, under the authority of the *Coroners Act*, for the purposes of research or teaching at a museum in the Province or a department of a university or college.

The *Coroners Act* authorizes the BC Coroners Service [BCCS] to investigate unattended or unnatural deaths in BC. Found skeletal remains reported to law enforcement are collected by the BCCS and analyzed to attempt to determine their origin and age. If the remains are determined to be archaeological rather than of medico-legal concern, the BCCS releases interest in the remains under Section 15 of the *Coroners Act*, and the remains technically fall under the jurisdiction of the CIFSA for disposition. However, by agreement, the BC Archaeology Branch takes charge at this point to attempt repatriation with an appropriate First Nation. Repatriation is intended to transfer the remains to the care of a First Nation for disposition on a Federal Indian Reserve, outside Provincial jurisdiction. Remains that can't be repatriated are currently stored at Simon Fraser University's Museum of Anthropology. This arrangement is under revision; another institution may be chosen as a default repository for displaced archaeological human remains in BC.

### **Major Options for Treatment of Archaeological Human Remains on HCA-Permitted Projects**

As of 2015, there are nearly 45,000 recorded archaeological sites in BC. Of these, 2,176 [or 4.8%] of sites are known to contain human remains. Archaeological human remains can be found as intact burials or scattered remains in isolated contexts, or mixed with occupation sites like shell middens, or in special mortuary contexts such as cairns, mounds, burial caves, or cemetery islands.

While most cases of incidental human remains found by law enforcement are already exposed and have to be managed through storage and repatriation, human remains encountered on HCA-permitted archaeological projects can be anticipated in some instances and managed more carefully in a variety of ways. A crucial part of this management is careful planning and consultation with affected parties as part of the permit application process, so that problems with the treatment of remains during the project are minimized.

### **Avoidance**

The preferred treatment method for archaeological human remains encountered during archaeological site alterations is avoidance and protection in-place through development design that emphasizes conservation. This is easier to accomplish with obvious mortuary sites that can be avoided, such as cairn features, burial mounds, burial caves, or known cemetery islands. Shell middens are a more difficult case. Many shell middens appear to have a dual function as both habitation and burial sites, with both intact burials and scattered fragmentary remains commonly found. It has been estimated that larger shell midden sites contain an average of about one burial for every ten cubic meters of deposit.

## Excavation

Where complete avoidance is impossible or unfeasible, human remains must sometimes be exhumed to remove them from the development impact zone. It is very important that this be done by expert osteologists, with full attention to the details of the burial and the collection of all individual elements. First Nations traditions about treatment of remains vary widely, but it is likely that the only opportunity for analysis of the remains will occur during excavation. If there is any suspicion that the remains may be of legal forensic interest, local law enforcement and the BCCS should be contacted, along with the archaeology branch. In definite archaeological cases, the affected First Nation[s] and the archaeology branch should be contacted, but not the BCCS.

Even where burials are anticipated, they are often encountered suddenly during excavation and have to be managed in place. Current policy states that "in the event that articulated human remains are identified in the field, all ground disturbance in the vicinity of the find will cease, the remains will be protected in place, and all concerned parties and the Archaeology Branch immediately informed. If the human remains cannot be avoided during construction and consultation determines that relocation is the most appropriate option, they will be respectfully recovered and placed in secure storage until ready for reburial."

It often happens that fragmentary human remains are collected during excavation without being recognized at the time, and are found mixed with other faunal material back in the lab. In this case, the current policy states "fragmentary human remains identified in the field or during faunal analysis will be kept in secure storage pending final disposition [which] must occur prior to the expiration of the permit."

## Reburial

As mentioned above, First Nations traditions and attitudes toward treatment of ancestral remains vary widely across BC. In some cases, First Nations are becoming interested in the results of specialized analyses such as DNA, stable isotope, 14-C and other destructive testing. In other cases, even photography of remains is discouraged, and it is preferred that the remains be reburied as quickly and as close to the original location as possible. Also as noted above, the *CIFSA* requires that human remains be interred in a registered cemetery, and they "must not be disinterred from a burial place except in accordance with ... a permit under the Heritage Conservation Act." The *HCA* is silent on reburial of archaeological human remains, and the ambiguity of the *CIFSA* on this point has been interpreted to allow the reburial of archaeological remains under the *HCA* **only within the site they originally came from**. Note that there are many instances where the "site" encompasses many urban lots such that reburial may be feasible in an area less subject to future disturbance.

Current archaeology branch policy on this point states: "In consultation with all concerned parties, efforts will be made to rebury the remains in an appropriate area on the property, within the site boundary, and in an area unlikely to be disturbed in the future. The location will be noted, mapped, and recorded on the site form. "

Page 15

Withheld pursuant to/removed as

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## **Batten, Justine FLNR:EX**

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**From:** Maloughney, Mary Sue FLNR:EX  
**Sent:** Thursday, February 12, 2015 1:58 PM  
**To:** Batten, Justine FLNR:EX  
**Subject:** RE: Burial Policy Decision Note

I think that makes sense. Tks

I am thinking frame it all in the context of need for criteria to support consistency in the decision making process for when, where why we say no v. yes and, if we say no, the where when why on whether if and how we compensation.

---

**From:** Batten, Justine FLNR:EX  
**Sent:** Thursday, February 12, 2015 1:41 PM  
**To:** Maloughney, Mary Sue FLNR:EX  
**Subject:** Burial Policy Decision Note

I will review and see if tweaking needed given our discussion this morning. I am thinking we might want to clearly delineate that the crux of the decision is when s.13

*Justine Batten  
Director  
Archaeology Branch  
Ministry of Forests, Lands and Natural Resource Operations*

*Telephone: 250 953-3355  
Fax: 250 953-3340  
email: [justine.batten@gov.bc.ca](mailto:justine.batten@gov.bc.ca)*

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## Batten, Justine FLNR:EX

---

**From:** Batten, Justine FLNR:EX  
**Sent:** Tuesday, February 24, 2015 9:23 AM  
**To:** Robinson, Gordon FLNR:EX  
**Subject:** RE: PO Issues Update

Hi Gordon. As far as I am aware this remains the status of this issue with no changes.

*Justine Batten  
Director  
Archaeology Branch  
Ministry of Forests, Lands and Natural Resource Operations*

*Telephone: 250 953-3355  
Fax: 250 953-3340  
email: [justine.batten@gov.bc.ca](mailto:justine.batten@gov.bc.ca)*



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**From:** Robinson, Gordon FLNR:EX  
**Sent:** Tuesday, February 24, 2015 9:22 AM  
**To:** Batten, Justine FLNR:EX  
**Subject:** PO Issues Update

Good morning Justine

I am working on the PO issues update for tomorrow afternoon and was wondering if you could let me know if there have been any notable developments on the burial policy development issue in the last week.

This is what we have from the previous version:

<b>Heritage Conservation Act</b>	<p>Burial Policy Development</p> <ul style="list-style-type: none"> <li>• A Decision Note is currently with the Minister on retaining an outside consultant to review Archaeology Branch policies and engage in consultation with external stakeholders with a view to developing recommendations for the more culturally appropriate procedures to deal with burial areas.</li> </ul>
----------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Thank you for your help with this.  
Gordon

**Gordon Robinson** | Issues Coordinator | Deputy Minister's Office | Ministry of Forests, Lands and Natural Resource Operations | tel: 250.387.1526 | [Gordon.Robinson@gov.bc.ca](mailto:Gordon.Robinson@gov.bc.ca)

## **Batten, Justine FLNR:EX**

---

**From:** Batten, Justine FLNR:EX  
**Sent:** Tuesday, March 3, 2015 3:25 PM  
**To:** Maloughney, Mary Sue FLNR:EX  
**Subject:** Burial Policy under the Heritage Conservation Act

### **Background:**

The Heritage Conservation Act is mandated to facilitate the protection of heritage property in BC through a permitting process. A type of heritage property that is automatically protected under the Act are "burial places of historical or archaeological value". In 2014 a dispute had been ongoing with respect to a property owner who, having obtained the necessary heritage permits, was planning to build his home on an islet that was discovered to contain 16 First Nations burial cairns. This was Grace Islet located immediately off Ganges, Salt Spring Island. As the islet was of significant cultural importance to First Nations as a burial island, the Province compensated the property owner \$5.4 million with the Nature Conservancy of Canada taking over the title and management of the islet. Since 1976 the Province has expended \$17,810,000 to purchase 11 properties due to their heritage values and seven of these purchases were due to the presence of burials that precluded any development of the land.

### **Issues with the Heritage Conservation Act (Act)**

This legislation does not provide any guidance or criteria with regard to protection of burial areas. This state of ill-defined protective measures prevents decision makers from dealing with the situations in a more proactive manner such that the issue erupts and government is in a reactive position from which they must resolve the matter. The current process under the Act focuses on consultation and discussions between property owners and First Nations and in many instances a successful compromise can be reached. The difficulty arises where the burial area is too important or extensive to allow for any development on the land, yet the property owner wants to proceed to deal with his property.

When development is precluded by the refusal to issue the necessary permits government must then deal with the ramifications of this decision. There must be clear guidance for decision makers before placing government in this position and the implementation of these guidelines must be consistently and equitably applied.

### **Ministry response/proposal**

s.13



**Recommendation**

s.13,s.22

*Justine Batten  
Director  
Archaeology Branch  
Ministry of Forests, Lands and Natural Resource Operations*

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Fax: 250 953-3340  
email: [justine.batten@gov.bc.ca](mailto:justine.batten@gov.bc.ca)*



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for  
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CORRESPONDENCE SERVICES	
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CLIFF: _____	
FEB 17 2015	
Minister Response <input type="checkbox"/> DM	<input type="checkbox"/> ADM
Reply Direct <input type="checkbox"/> Info & File	<input type="checkbox"/> Phone Call

February 5, 2015

The Honourable Steve Thomson  
Minister of Forests, Lands and Natural Resource Operations  
Parliament Buildings  
P.O. Box 9049 Stn Prov Govt  
Victoria, B.C.  
V8W 9E2

MINISTER OF FORESTS, LANDS & NATURAL RESOURCE OPERATIONS	
<b>RECEIVED</b>	
FEB 11 2015	
<input type="checkbox"/> Minister	<input type="checkbox"/> DM
<input checked="" type="checkbox"/> ADM	<input type="checkbox"/> Reply Direct
	<input type="checkbox"/> Info File

Re: Heritage Conservation Act Review

Dear Sir:

I welcome your announcement that you have asked your officials to undertake a review of the *Heritage Conservation Act*. As you have stated publicly, the Act is intended to balance interests. I understand this to mean private, public and First Nations' interests in property deemed to have heritage value.

Your officials have stated publicly that there are more than 44,000 (and possibly three times as many) heritage sites in British Columbia. Many of these sites are on private land and most are unregistered. As a consequence, your review has the potential to impact thousands of families in every region across this province.

I write to ask how you plan to understand and address the concerns of private property owners in your review. How will our rights and interests be represented and articulated in your review? What opportunity will we have to participate in, to comment upon or to otherwise engage in your review?

As the Minister responsible for the administration of the *Land Title Act* and the Torrens system of land registration, you are certainly aware that, for any entity to assert an interest in private land, that interest must be registered in the land title office. Purchasers of private land rely on the land registry system to confirm and value the interests they are acquiring. The statutory guarantee of title is fundamental to the integrity of the Torrens system and a principle I am sure you wish to respect and protect.

The Archaeology Branch has, in most cases, refused to register its interests even though the *Heritage Conservation Act* makes specific provision for registration under section 9. As a consequence, private property owners continue to be adversely affected each time the Branch asserts its unregistered interest in private land.

There are other issues as well. There are ongoing interferences with the quiet use and enjoyment of private land caused by First Nations' protests, blockades and study sessions. There are continuing uncertainties and a lack of closure even after private property owners have complied fully with Branch permitting requirements.

These are serious issues. The burden of settling First Nations' land claims or claims to interests in private land is a public responsibility and not a private one. These issues are much broader and more complex than the simple notion of "developer pays".

We are vitally concerned about the impact of current Branch policies on our homes, our investments and the security of title to our land now and in the future. In essence, we submit that we are one of the primary stakeholders in your review.

In closing, I look forward to your early reply so that the rights, interests and concerns of private property owners can be fully and properly articulated as part of your review of the *Heritage Conservation Act*.

Yours very truly,

s.22



Ref: 212638

s.22

Dear V<sup>s.22</sup>

Your letter of February 5, 2015, to the Honourable Steve Thomson, Minister of Forests, Lands and Natural Resource Operations, regarding a review of the burial policies developed in support of the *Heritage Conservation Act*, has been sent to me for response.

There are significant difficulties associated with accurately linking older data with current cadastre and this deferred the project as there were insufficient resources to deal with all the resulting substantive issues. There is also an inherently misleading element to notating site on title as a clear title would not be a guarantee the property is clear of archaeological sites as there are at least as many undiscovered sites that would not be notated on title.

Ministry staff had been directed to conduct a review of the implementation and administration of the *Heritage Conservation Act* and its burial policies. The manner of this review has not yet been established but it will take into account all rights and interests that may be impacted by the regulated activities. As this matter moves forward we will keep in mind your expression of interest.

Thank you again for writing.

Sincerely,

Gary Townsend  
Assistant Deputy Minister

pc: Honourable Steve Thomson, Minister of Forests, Lands and Natural  
Resource Operations

## **Batten, Justine FLNR:EX**

---

**From:** Batten, Justine FLNR:EX  
**Sent:** Wednesday, March 18, 2015 2:53 PM  
**To:** 'George Nicholas'  
**Subject:** RE: Question about Minister's mention of heritage legislation review

Hello George, good to hear from you.

The Minister actually stated he was directing there be a review of the implementation of the Heritage Conservation Act and its burial policies. The details around how this will be accomplished have not been finalized but it is definitely a "must be done" for the ministry. When more specifics as to how this review will be accomplished are available I will let you know.

Feel free to get back to me if you have any further questions.

*Justine Batten  
Director  
Archaeology Branch  
Ministry of Forests, Lands and Natural Resource Operations*

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email: [justine.batten@gov.bc.ca](mailto:justine.batten@gov.bc.ca)*



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**From:** George Nicholas [<mailto:nicholas@sfu.ca>]  
**Sent:** Wednesday, March 18, 2015 2:48 PM  
**To:** Batten, Justine FLNR:EX  
**Subject:** Question about Minister's mention of heritage legislation review

Dear Justine

I'm glad that we had the opportunity to talk earlier in the year.  
As before, please don't hesitate to call on me if I can be of any assistance.

I do have one question for you, if you are in a position to share information.

After the purchase of Grace Islet was completed, the Minister announced that there would be a review of the heritage legislation.

Have there been any details released on what form that review may take or the approximate timeline?

Thank you.

with best wishes,

George

George Nicholas, P<sup>h</sup> D.

Professor

Director, Intellectual Property Issues in  
Cultural Heritage (IPinCH) Project

Department of Archaeology, Simon Fraser University  
8888 University Drive, Burnaby, British Columbia, Canada V5A1S6

Office: 778-782-5709; E-mail: [nicholas@sfu.ca](mailto:nicholas@sfu.ca)

<http://www.sfu.ca/archaeology/faculty/nicholas.html>

IPinCH Project Web: <http://www.sfu.ca/ipinch>

# MINISTRY OF FORESTS, LANDS AND NATURAL RESOURCE OPERATIONS

## DECISION NOTE

Date: February 23, 2015  
File: 280-20  
CLIFF: 212307

**PREPARED FOR:** Minister Steve Thomson

**ISSUE:** Burial Areas Policy under the *Heritage Conservation Act*

### **BACKGROUND:**

As highlighted by the recent situation of Grace Islet, Salt Spring Island, there is an inherent conflict between land development and First Nations' burial areas. This conflict becomes particularly apparent when dealing with burials on private lands.

The Grace Islet situation is being resolved by the formation of a partnership between the Province, the Nature Conservancy of Canada (NCC) and the relevant First Nations (FNs). The NCC will receive title to the lands and the property owner will be compensated for the sale. The Province had, prior to this incident, purchased 11 properties for a total cost of \$17,810,000 commencing in 1976. In those cases seven purchases were initiated due to the presence of human remains that essentially rendered the land unusable. However, there is no guidance or criteria for decision makers to deal with these situations more proactively. As a result, government ends up in a reactive position once an issue has erupted and then a specific mandate is sought.

The process on Grace Islet reflected the current process followed under the *Heritage Conservation Act* (HCA) whereby if human remains of non-forensic concern are found during an archaeological study or development work hats, the proximate FN's communities are contacted and consultation is held as to the disposition of the remains. The Statutory Decision Maker weighs the representations from the FNs against the proposed project by the property owner, which may include modifications to accommodate FN's concerns. Ultimately a decision is made to proceed with the modified development or to preclude any development from occurring in that area. Precluding development on private land will lead to compensation claims which make this option challenging for decision makers especially without clear policy guidance and criteria to determine this equitably, consistently and balanced with provincial interests.

The *Cremation, Interment and Funeral Services Act* (CIFSA) deals with the disposition of human remains and mandates all remains must either be deposited in a registered cemetery or a research institution. The HCA is an exception to the requirements of CIFSA. Contrary to statements made in the media the HCA is not limited to burials pre-dating 1846 but rather covers "burial places of a historical or archaeological value".

## **DISCUSSION:**

The Government has now directed that there be a review of how the HCA is implemented and different policy options with respect to the respectful, culturally aware treatment of burials. The goal of this review will be to identify potential changes to the Archaeology Branch policies and procedures that would provide greater certainty and equity as to the interests of FN's and land owners in BC.

It is important to distinguish a review focused on the Act and the implementation of the Act as guided by policy and procedure. There has been considerable pressure from opposing viewpoints for broad changes to the Act which would have considerable economic, social and political implications. In light of these considerations, it is important to be cautious and begin an initial phase which considers the treatment of burial sites where there are opportunities to address challenges in managing burial sites through enhanced policy, criteria and guidance without legislative change.

s.13,s.16



Page 28

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**DECISION & SIGNATURE**

Steve Thomson, Minister

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**DATE SIGNED**

*Recommendation  
for  
Minister*

**Attachments:**

**Appendix 1:** DRAFT Work Plan for Review of Burial Areas Policies of the *Heritage Conservation Act*

**Appendix 2:** BN 204032 Heritage Conservation Act - decision for Minister Thomson

**Contact:**  
Gary Townsend, ADM  
Integrated Resource Operations  
250 356-1874

**Prepared by:**  
Justine Batten, Director  
Archaeology Branch  
250 953-3355

Reviewed by	Initials	Date
DM		
DMO		
ADM	GT	February 11/15
Ex Director	MSM	February 11/15

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s.22;s.13

***Heritage Conservation Act (HCA) v. Cremation, Internment and Funeral Services Act (CIFSA)***

	<b>Heritage Conservation Act</b>	<b>Cremation Interment &amp; Funeral Cemeteries Act</b>
<b>Impact</b>	Legislatively defined protected sites on all Crown and private lands, both known and unknown. This includes "burial places that have historical or archaeological value".	Regulates dispositions, exhumations and removal of human remains by requiring all such activities occur within registered designated cemeteries Exception the Heritage Conservation Act
<b>Protection</b>	Cannot damage, desecrate or alter or remove remains or heritage objects without a permit.	Areas on private lands, not Crown, requiring the owner's permission and that of local governments. Designation is registered on the land title.  Land uses governed by conditions of certificate plus per Act no games or sports in registered cemeteries, no discharge of firearms, use of motorized vehicles, deposit trash or visit outside of stated hours.
<b>Penalties</b>	Individual liable for a fine of up to \$50K or 2 years in prison & a corporation is liable for \$1 million fine.	Administrative – individual liable for \$5K per incident and a corporation's liability is \$50K. Offence provisions – individual liable for fine of up to \$10K or 1 year in prison and corporate liability is \$100K which the Court can increase up to 3X based on monetary gain of offence.
<b>Compensation</b>	No requirement or guidelines	No requirement or guidelines

## *Heritage Conservation Act (HCA) v. Cremation, Internment and Funeral Services Act (CIFSA)*

	<b>Heritage Conservation Act</b>	<b>Cremation Interment &amp; Funeral Cemeteries Act</b>
<b>Impact</b>	Legislatively defined protected sites on all Crown and private lands, both known and unknown. This includes "burial places that have historical or archaeological value".	Regulates dispositions, exhumations and removal of human remains by requiring all such activities occur within registered designated cemeteries - Exception the Heritage Conservation Act.
<b>Protection</b>	Cannot damage, desecrate or alter or remove remains or heritage objects without a permit.	Areas on private lands, not Crown, requiring the owner's permission and that of local governments. Designation is registered on the land title.  Land uses governed by conditions of certificate plus per Act no games or sports in registered cemeteries, no discharge of firearms, use of motorized vehicles, deposit trash or visit outside of stated hours.
<b>Penalties</b>	Individual liable for a fine of up to \$50K or 2 years in prison & a corporation is liable for \$1 million fine.	Administrative – individual liable for \$5K per incident and a corporation's liability is \$50K. Offence provisions – individual liable for fine of up to \$10K or 1 year in prison and corporate liability is \$100K which the Court can increase up to 3X based on monetary gain of offence.
<b>Compensation</b>	No requirement or guidelines	No requirement or guidelines

### **Designating FN burial sites under the CIFSA**

s.13

## Summary of Internal Events leading to the Purchase of Grace Islet

### Provincial Purchases of Lands Containing Archaeological Sites

Site	Name	Location	Size	Cost	Year Purchased
Midden with burials	Pender Canal	Pender Island	1 ha.	\$57,000	1976
Pit House	Monte Creek	Near Kamloops	4 ha.	\$80,000	1978
Midden with burials	Beach Grove	Tsawwassen	0.16 ha.	\$110,000	1980
Pit houses with burials	Vallican	South Slokan	8 ha.	\$81,000	1983 & 1985
Ancient house with spiritual rock	Hatzic Rock	Mission	7.25 ha.	\$1.2 million	1993
Midden with burials	Little Beach	Uchuelet	0.78 ha	\$400,000	1994
Midden with burials	Craig Bay	Parksville	5.7 ha.	\$7.8 million	1995
Ancient village site	McCallum	Near Agassiz	5.4 ha.	\$425,000	2001
Midden with Burial Area	Departure Bay	Nanaimo	City lot	\$2,307 million	2008
Midden with Burials	Marpole	Vancouver	Six city lots	\$5.5 million	2012

**Total:** Ten cases with a combined cost of \$17,960,000.

### Influencing Factors:

- Often there has been considerable financial commitment and investment into a project before the archaeological site is encountered, and this investment may now be without value.
- Sites are of great significance to First Nations and conflict may result from any mitigative measures to be taken. This is particularly true with respect to burial sites.
- Given the large size of the site and the significance, there is no way to avoid it nor is excavation financially feasible. For example, with the Departure Bay site in excess of 100 sets of human remains had been found and, as it was likely more were through out the property, there was no option to develop the land in any way.
- The Province was also involved in brokering the purchase of a portion of the Marpole archaeological site in Vancouver. In this case the Musqueam Indian Band purchased the land and the Province compensated the developer for development costs.

### Grace Islet – summary of internal discussions leading to purchase

Construction of the private residence on Grace Islet, a privately owned property near Ganges Harbour, Saltspring Island triggered civil disobedience from First Nations and members of the public due to its location on a First Nations burial ground. A site alteration permit under the Heritage Conservation Act was first issued in October 24, 2011. On September 17, 2013 an amendment to the site alteration permit allowing the property owner to continue development on Grace Islet was issued.

## Batten, Justine FLNR:EX

---

**From:** Khaira, Kally FLNR:EX  
**Sent:** Monday, May 25, 2015 11:22 AM  
**To:** Batten, Justine FLNR:EX  
**Cc:** Glaum, Doug FLNR:EX  
**Subject:** FW: Revisions to FLNRO Burial Sites Policy Review Proposal  
**Attachments:** FLNRO Burial Sites Policy Review Proposal 14may2015.docx; CS16IROD 003 ELEVATE SCHEDULE A.docx; General Service for Elevate.doc; schedule B CS16IROD-003.docx

s.22

I wanted to forward to you the work plan proposal from Elevate for the burial review. I am just about to finalize all the contract details but thought you might to ensure all is complete and accurate and the work plan is meeting the needs of the branch.

Let me know if you have any questions.

Regards,

Kally Khaira  
A/Manager, IROD  
T: 250.387.1780  
C: 250.920.9628

PRE CONTRACT  
INFO

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**From:** Denise Walker [<mailto:Denise@elevateconsulting.ca>]  
**Sent:** Tuesday, May 19, 2015 4:05 PM  
**To:** Maloughney, Mary Sue FLNR:EX  
**Cc:** Glaum, Doug FLNR:EX; Khaira, Kally FLNR:EX; Calarco, Andrew FLNR:EX; XT:Makar, Lisa FIN:IN  
**Subject:** Revisions to FLNRO Burial Sites Policy Review Proposal

Hi Mary Sue,

Attached is a revised draft of the proposal that incorporates our discussion today. With the scheduling of the workshop for June 9<sup>th</sup>, you will see that I have moved the writing of the first draft of the report to take place after the workshop. I think the timing will work well, as we will present at the workshop the summary of what we have heard to date and the preliminary recommendations for review by the Project Team, and based on the Team's feedback we can then proceed to write the first draft of the report.



We have also added a component to the final report recommendations related to Protocol Agreements, and removed the worksteps related to interviewing external parties as well as drafting the final communique.

Finally, we have adjusted the timing of the project to start on Monday, May 25<sup>th</sup>, and be completed on Wednesday July 8<sup>th</sup>.

I hope this reflects our conversation today. If you have any further comments or edits, please let me know and we will make the necessary changes.

Thanks!!



Denise Walker - Management Consultant

VICTORIA BC | P 250.483.6660 | C 250.686.3357

EDMONTON AB | P 780.250.4828

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## APPENDIX #1

### DRAFT Work Plan

#### Review of Burial Area Policies under the *Heritage Conservation Act*

##### **Key Messages:**

- The Province understands the cultural and historic significance of these areas to First Nations.
- The government is committed to the protection of these important sites.
- Now is the time to review the implementation of the *Heritage Conservation Act* and the different policy options available that would be more respectful and effective.
- In the Archaeological Site Inventory there are approximately 44,000 sites registered and, of these, 2,176 contain human remains.
- Given that there are many more sites that have yet to be recorded and that First Nations' burial traditions are as diverse as the First Nations' communities themselves, it will be a significant challenge to develop equitable policies that can take the differences into account.

**Task:** Review of the *Heritage Conservation Act*'s implementation and policies with regard to burial sites

**Goal:** Identify potential changes to the Archaeology Branch policies and procedures that would provide greater certainty and equity as to the interests of First Nations and land owners in British Columbia

##### **Elements of the Policy Review Project:**

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### **Proposed Timelines:**

s.13



### **Communication Plan:**

Given the high media profile of the Marpole and Grace Islet burial issues, this review must be based on a strong communication plan developed in co-ordination with GCPE and reviewed with MARR.



ELEVATE  
CONSULTING

Contractual  
info  
for next  
20 pages

May 19, 2015

Mary Sue Maloughney  
Executive Director  
Ministry of Forests, Lands and Natural Resource Operations  
[MarySue.Maloughney@gov.bc.ca](mailto:MarySue.Maloughney@gov.bc.ca)

**Re: Management Consulting Services**

Dear Mary Sue,

Thank you for the opportunity to provide a proposal for consulting services. This document is a follow-up to your conversation on May 12<sup>th</sup>, 2015 with Denise Walker where you requested a proposal to undertake a review of the province's approach to First Nations burial sites. Below is an outline of our understanding of the scope of this project, as well as a proposed approach, budget and identification of the resources we believe are best suited to conduct the work.

**SCOPE OF WORK**

The BC political landscape in relation to First Nations is continually evolving as a consequence of ongoing changes in the environment the parties are operating in. Recently, a number of changes have resulted in the BC Government modifying its approach to First Nations engagement, reconciliation and negotiation efforts. One of the prime drivers of change is the recent Supreme Court of Canada decision in *Roger William*, which has necessitated a review of provincial negotiating mandates and approaches to both treaty and non-treaty negotiations.

The Ministry of Forests, Lands and Natural Resource Operations (FLNRO), through the Integrated Resource Operations Division, is guided by the *Heritage Conservation Act* to protect and preserve archaeological sites in British Columbia. In the Archaeological Site Inventory there are approximately 44,000 registered sites and, of these, 2,176 are known to contain human remains. There are many other sites that are either not currently known or are not registered. This sites are culturally and historically significant to First Nations in BC. These sites can lead to disputes or disagreements between First Nations and developers / private property owners, and some have resulted in a high profile with media and/or culminated in settlements that have involved a significant amount of Provincial compensation.

As a result, the Province has identified the need to undertake an internal review of the Archaeology Branch policies and procedures in order to develop advice and recommendations on potential changes that would support greater certainty and equity for First Nations and land owners in British Columbia. The goal of the

project is to develop a report to the Integrated Resource Operations Division that would inform the development of a submission to Cabinet.

We would propose the scope of work for this engagement includes the following key elements. Below is the outline for the key activities required, as well as suggested timelines, and expected deliverables and outcomes of conducting each step. We have estimated the time for this engagement would take approximately six weeks, based on the assumptions outlined below in the workplan.

Workstep	Timeline	Deliverables / Outcomes	Estimated Effort
<b>1. Project Kickoff</b> <ul style="list-style-type: none"> <li>Confirm and approve the scope, timelines, key risks, and review assumptions</li> <li>Confirm the suitability of our proposed project approach and ensure there is a shared understanding of expectations and intended results</li> <li>Identify and confirm stakeholders to be involved and their availability</li> <li>Identify key documents to be collected and reviewed</li> <li>Draft a project communicate for internal staff and for external stakeholders to be circulated by the FLNRO Project Sponsor</li> </ul>	May 25 – 26, 2015	<b>Deliverables:</b> <ul style="list-style-type: none"> <li>Finalized project work plan</li> <li>Project Communicate(s)</li> <li>Emails to stakeholders and internal staff</li> </ul> <b>Outcomes:</b> <ul style="list-style-type: none"> <li>Elevate and FLNRO Division Executive have a common understanding of the scope, process and timing of deliverables outlined in the work plan</li> <li>Stakeholders and staff are informed of the project</li> </ul>	.5 days
<b>2. Documentation / Literature Review</b> <ul style="list-style-type: none"> <li>Collect and review relevant documentation to inform the project, including: <ul style="list-style-type: none"> <li>Communications material</li> <li>Mandates or key Cabinet direction documentation</li> <li>Current policies and procedures including: <ul style="list-style-type: none"> <li>Found Human Remains policy</li> <li>Major options for the treatment of human remains</li> <li>Disposition of human remains</li> </ul> </li> <li><i>Considerations for BC's Archaeology Branch on the Development of a Province-Wide Policy for Handling the Discovery of Ancient Human Remains</i> (Research Paper)</li> </ul> </li> </ul>	May 26 – June 1, 2015	<b>Deliverables:</b> <ul style="list-style-type: none"> <li>Document review</li> </ul> <b>Outcomes:</b> <ul style="list-style-type: none"> <li>This step will provide context to support development of the project report</li> </ul>	4 days
<b>3. Prepare for, schedule and conduct staff interviews</b> <ul style="list-style-type: none"> <li>Prepare materials, and schedule and conduct interviews with key staff in the Integrated Resource Operations Division. Information gathered during the interviews will include: <ul style="list-style-type: none"> <li>Identification of challenges, barriers, successes and opportunities, particularly in relation to: <ul style="list-style-type: none"> <li>Sites on private property</li> <li>Utilization of professional archaeologists</li> <li>Compensation</li> <li>Tools for working with First Nations</li> </ul> </li> <li>Communications within government and with stakeholders and the public</li> </ul> </li> </ul>	June 1 – 5, 2015	<b>Deliverables:</b> <ul style="list-style-type: none"> <li>Interview Guide</li> <li>Interviews scheduled and conducted</li> </ul> <b>Outcomes:</b> <ul style="list-style-type: none"> <li>Interview Materials are prepared</li> <li>Staff interviews are scheduled and conducted</li> </ul>	1.5 days

Workstep	Timeline	Deliverables / Outcomes	Estimated Effort
<ul style="list-style-type: none"> <li>○ Outlining where the Province wants to go and what success would look like in the future</li> <li>● Conduct interviews with key staff in the Integrated Resource Operations Division.</li> </ul>			
<b>4. Integrated Resource Operations Division Workshop</b> <ul style="list-style-type: none"> <li>● High level summary of the findings from the document review and interviews</li> <li>● Preliminary recommendations to the Project Team for review and discussion</li> </ul>	June 9, 2015	<b>Deliverables:</b> <ul style="list-style-type: none"> <li>● Scheduling and conducting workshop</li> <li>● High level summary of findings</li> <li>● Preliminary recommendations</li> </ul> <b>Outcomes:</b> <ul style="list-style-type: none"> <li>● Project Team has reviewed and provided feedback on the preliminary recommendations</li> </ul>	1.5 day
<b>5. First Draft of Report</b> <ul style="list-style-type: none"> <li>● Based on the outcomes of the staff workshop, interviews and document review, develop a first draft of the FN Burial Sites policy review and submit to the Project Team for review and comment.</li> </ul>	June 10 – 24, 2015	<b>Deliverables:</b> <ul style="list-style-type: none"> <li>● First draft of FN Burial Sites Policy Review report</li> </ul> <b>Outcomes:</b> <ul style="list-style-type: none"> <li>● Project Team has reviewed and provided feedback on the first draft of the report</li> </ul>	6.0 days
<b>6. Final Draft of Report</b> <ul style="list-style-type: none"> <li>● Based on feedback, a final report will be completed and presented to the Project Sponsor for review and approval. Components will include: <ul style="list-style-type: none"> <li>○ Identification of challenges facing staff and stakeholders</li> <li>○ Identification of gaps in communications material</li> <li>○ Recommendations and options regarding: <ul style="list-style-type: none"> <li>■ Criteria for guiding decisions by statutory decision-makers</li> <li>■ Tools to working with First Nations</li> <li>■ Framework for compensation</li> <li>■ Protocol Agreements with First Nations</li> <li>■ Consultation with external stakeholders</li> <li>■ Next steps</li> </ul> </li> </ul> </li> </ul>	June 25 – July 8, 2015	<b>Deliverables:</b> <ul style="list-style-type: none"> <li>● Final draft of the FN Burial Sites Policy Review report</li> </ul> <b>Outcomes:</b> <ul style="list-style-type: none"> <li>● Project Sponsor understands the challenges and issues of staff and stakeholders</li> <li>● Project Sponsor is equipped with options to further engage government on this issue</li> </ul>	6.0 days
<b>7. Project Management</b> <p>As with all Elevate engagements, a structured, yet flexible approach to project management will be applied to this engagement. Activities include the following:</p> <ul style="list-style-type: none"> <li>● Communication and reporting of the progress of the project</li> <li>● Monitor the project budget and timelines</li> <li>● Perform a project close out</li> </ul>	May 25 – July 8, 2015	<b>Deliverables:</b> <ul style="list-style-type: none"> <li>● Regular updates, including identifications of issues, risks and budget considerations</li> </ul> <b>Outcomes:</b> <ul style="list-style-type: none"> <li>● The project is completed on budget within the timeframe</li> <li>● Expectations are monitored and managed to be in line with project objectives and outcomes</li> <li>● Issues and risks are identified</li> </ul>	0.5 days
<b>TOTAL ESTIMATED EFFORT</b>			<b>20 days</b>

The key deliverables to be developed for this initiative include a final paper, including recommendations, for review by the Integrated Resource Operations Division.

## ASSUMPTIONS

Our estimated effort to successfully complete this engagement as specified above in the scope of work and high-level work plan is based on the following assumptions:

- The Project Sponsor is fully engaged throughout the project
- There is adequate access to the Project Sponsor in a timely manner
- The project is estimated to be completed within approximately six weeks from the project kick-off session
  - As the timeframe to complete this engagement will be six weeks, it will be important to confirm the deliverables review cycle, process and associated timelines at the project kick off meeting. Our suggestion for an engagement of this nature is to have a one deliverables review cycle as below:
    1. The Elevate team creates and submits a deliverable to the client
    2. Within 72 hours, the client conducts a review, providing edits, comments, suggestions and feedback
    3. Within 24 hours, to the extent possible, the Elevate team incorporates client edits, comments, suggestions and feedback as required and is then approved by the client
  - Relevant Integrated Resource Operations Division staff will be available to participate in the project, either via 1:1 interviews or focus group sessions
  - Stakeholders involved will be jointly agreed to between the Project Sponsor and Elevate Consulting, with an anticipated maximum of 3-5 stakeholders interviewed
  - Issues will be resolved in an effective and timely manner

## ELEVATE TEAM

Elevate is proposing a team who have worked together on similar projects. The project manager for this engagement will be Denise Walker, supported by Lisa Makar, both senior management consultants. Resumes for both Denise and Lisa are attached to this proposal.

**Denise Walker**<sup>MA MPA</sup> is a management consultant with Elevate. She has developed an extensive background in strategic and business planning, organizational design, project management, complex policy development and performance management over 18 years of work with the public sector, most of this tenure at a senior executive level. She has extensive experience working across government on “wicked” policy problems and working with organizations to develop evidence-informed solutions and recommendations. Her passion and strength is to support organizations in the transformation of their business through the identification of key decisions and barriers, robust planning and good governance.

**Lisa Makar**<sup>MPA</sup> is a management consultant with Elevate. Lisa draws from over 15 years of executive management experience leading organizations across a wide variety of industries. Lisa's predominant areas of focus include strategic and business planning, communications and change management. As a result, Lisa has become adept at guiding organizations in defining their vision of success and determining how to

successfully achieve that vision. In working with organizations on significant transformation initiatives, Lisa focuses on a collaborative approach, believing that communications, engagement and governance are critical to effective change management and overall success.

## TIMELINE

The project is estimated to take six weeks to conclude.

## ESTIMATED EFFORT AND COST

The effort and cost for this engagement is *estimated* at **\$24,800**, exclusive of any applicable taxes.

This estimate includes all the components of the work plan. Elevate *will only bill for effort expended* and we will utilize other Elevate staff for administrative activities to maximize value for money.

Consultant	Rate
Denise Walker	s.21,s.22
Lisa Makar	

Mary Sue, I hope this proposal meets the needs outlined for the project. Please let me know if you have any questions or concerns.

Cheers  
Ken MacDonald



**Ken MacDonald - Managing Partner**

EDMONTON AB | P 780.250.4828 | C 780.235.1578

VICTORIA BC | P 250.483.6660

[www.elevateconsulting.ca](http://www.elevateconsulting.ca)



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Withheld pursuant to/removed as

s.22



Ministry of  
Forests, Lands and  
Natural Resource Operations

## Schedule A - Services

File: CS161ROD-003

Attachment to the Agreement with DENISE WALKER OF ELEVATE CONSULTING TO REVIEW AND TO PROVIDE RECOMMENDATIONS OF THE PROVINCES APPROACH TO FIRST NATIONS BURIAL SITES.

### 1. THE SERVICES

- 1.01 The Contractor MUST provide the following Services in accordance with the following documents which are attached to and form part of this agreement:
- a) The deliverables and milestones outlined in the attached Management Consulting Services Work Plan (see appendix A)
  - b) The Province is providing a list of factors, criteria and deliverables (see appendix B)

### 2. KEY PERSONNEL

The Services shall be performed by the following "Key Personnel":

Denise Walker and Lisa Makar of Elevate Consulting Services

and there MUST be no substitution for the person(s) listed above without the prior consent of the Province.

### 3. CONFIDENTIALITY:

- 3.02 In addition to the Contractor's obligation in Article 7 Privacy, Security and Confidentiality, the Contractor must keep strictly confidential any legal advice the Contractor receives on behalf of the Province under this Agreement other than to communicate it to authorized officials of the Province, and must not do anything that could result in a waiver or breach of the solicitor-client privilege associated with that advice.

- 3.03 The Contractor is an agent of the Province for the limited purpose of providing instructions on behalf of the Province to, and receiving legal advice on behalf of the Province from, the Province's legal counsel.



Ministry of  
Forests, Lands and  
Natural Resource Operations

Consulting and General  
Services Contract

CONTRACT /FILE NO: CS161FROD-003	THIS AGREEMENT DATED FOR REFERENCE THE 19 <sup>th</sup> DAY OF MAY, 2015.
PROJECT DESCRIPTION: REVIEW AND TO PROVIDE RECOMMENDATIONS OF THE PROVINCES APPROACH TO FIRST NATIONS BURIAL SITES.	

**BETWEEN:**

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, as represented  
by the MINISTER OF FORESTS, LANDS AND NATURAL RESOURCE OPERATIONS

Integrated Resource Operations  
Ministry of Forests, Lands and Natural Resource Operations Division  
314- 1<sup>st</sup> floor, 780 Blanshard Street  
Victoria BC V8W 9M1  
Phone Number: 250-356-1874  
Ministry Representative: Kally Khaira and Andy Calarco  
E-mail Address: [kally.khaira@gov.bc.ca](mailto:kally.khaira@gov.bc.ca)

(the "Province", "we", "us", or "our" as applicable)

**AND:**

Denise Walker  
Elevate Consulting  
302-31 Bastion Square  
Victoria BC V8W 1J1  
Phone: 250.483.6660 Cell: 250.686.3357 Fax: 250.483.4353  
E-mail Address: [Denise@elevateconsulting.ca](mailto:Denise@elevateconsulting.ca)  
Contractor Representative: Denise Walker  
Business Number: Elevate Consulting

(the "Contractor", "you", or "your" as applicable)

The Province wishes to retain the Contractor to provide the Services specified in Schedule A and, in consideration for the remuneration set out in Schedule B, the Contractor has agreed to provide those Services, on the terms and conditions set out in this Agreement.

**The Province and the Contractor agree as follows:**

**ARTICLE 1 DEFINITIONS**

1.01 In this Agreement, unless the context otherwise requires:

- (a) "**Business Day**" means a day, other than a Saturday or Sunday, on which Provincial government offices are open for normal business in British Columbia;
- (b) "**Incorporated Material**" means any material in existence prior to the start of the Term or developed independently of this Agreement, and that is incorporated or embedded in the Produced Material by the Contractor or a Subcontractor;
- (c) "**Material**" means the Produced Material and the Received Material;

- (d) **"Produced Material"** means records, software and other material, whether complete or not, that, as a result of this Agreement, are produced or provided by the Contractor or a Subcontractor and includes the Incorporated Material;
  - (e) **"Received Material"** means records, software and other material, whether complete or not, that, as a result of this Agreement, are received by the Contractor or a Subcontractor from the Province or any other person;
  - (f) **"Record"** is the definition of "record" in the *Interpretation Act* and as incorporated into this Agreement and "records" will bear a corresponding meaning;
  - (g) **"Services"** means the services described in Schedule A;
  - (h) **"Subcontractor"** means a person described in Section 16.05;
  - (i) **"Term"** means the term of the Agreement described in Section 3.01 of this Agreement subject to that term ending earlier in accordance with this Agreement; and
  - (j) **"Unit of Measure"** has the meaning described in Schedule B.
- 1.02 The headings of the clauses of this Agreement have been inserted for reference only and do not define, limit, alter or enlarge the meaning of any provision of this Agreement.

## ARTICLE 2 CONTRACT DOCUMENTS AND MODIFICATIONS

- 2.01 The attached schedules are applicable to and form part of this Agreement:

Schedule		Title
Schedule 'A'	Services	
Schedule 'B'	Contract Payment	

- 2.02 of, the parties.

## ARTICLE 3 TERM OF CONTRACT

- 3.01 The Term of this Agreement is from and including May 19, 2015 to and including July 3, 2015.
- 3.02 Regardless of the date of execution or delivery of this Agreement, the Contractor must provide the Services during the Term.
- 3.03 Time is of the essence in this Agreement and, without limitation, will remain of the essence after any modification or extension of this Agreement, whether or not expressly restated in the document effecting the modification or extension.

## ARTICLE 4 CONTRACTOR'S OBLIGATIONS

- 4.01 You must provide the Services described in Schedule A (the "Services") in accordance with this Agreement.
- 4.02 Unless the parties otherwise agree in writing, you must supply and pay for all labour, materials, equipment, tools, facilities, and approvals and licences necessary or advisable to perform your obligations under this Agreement, including the license under Section 8.04.
- 4.03 Unless otherwise specified in this Agreement, you must perform the Services to a standard of care, skill, and diligence maintained by persons providing, on a commercial basis, services similar to the Services.
- 4.04 You must provide, instruct, and supervise a sufficient number of qualified personnel to enable timely and proper performance and completion of the Services. All such personnel shall be competent, English literate, efficient and qualified by education, training and experience to carry out the tasks to which each is assigned.
- 4.05 We may from time to time give you reasonable instructions (in writing or otherwise) as to the performance of the Services. You must comply with those instructions but, unless otherwise specified in this Agreement, you may determine the manner in which the instructions are carried out.
- 4.06 If we provide an instruction under Section 4.05 other than in writing, you may request that the instruction be confirmed by us in writing, which request we must comply with as soon as it is reasonably practicable to do so.
- 4.07 Requesting written confirmation of an instruction under Section 4.06 does not relieve you from complying with the instruction at the time the instruction was given.
- 4.08 In the performance of your obligations under this Agreement, you must comply with all applicable laws.

## ARTICLE 5 PAYMENT

- 5.01 If you comply with this Agreement, we must pay you at the rates and times described in Schedule B:
- (a) the fees described in that Schedule;
  - (b) the expenses, if any, in accordance with that Schedule if they are supported, where applicable, by proper receipts and, in our opinion, are necessarily incurred by you in providing the Services; and
  - (c) any applicable taxes payable by us under law or agreement with the relevant taxation authorities on the fees and expenses described in paragraphs (a) and (b).
- We are not obliged to pay you more than the maximum amount or dollar limit specified in Schedule B on account of fees and expenses.
- 5.02 In order to obtain payment of any fees or expenses, if any, under this Agreement, you must submit written statements of account to us in a form satisfactory to us, but no sooner than the dates referred to in Schedule B.
- 5.03 Without limiting Section 11.01 we may withhold from any payment due to you an amount sufficient to indemnify, in whole or in part, the Province and its employees and agents against any liens or other third-party claims that have arisen or could arise in connection with the provision of the Services. An amount withheld under this section must be promptly paid by the Province to you upon the basis for withholding the amount having been fully resolved to the satisfaction of the Province.
- 5.04 Our obligation to pay money to you is subject to the *Financial Administration Act*, which makes that obligation subject to an appropriation being available in the fiscal year of the Province during which payment becomes due.
- 5.05 Unless otherwise specified in this Agreement, all references to money are to Canadian dollars.
- 5.06 If you are not a resident in Canada, you acknowledge that we may be required by law to withhold income tax from the fees described in Schedule B and then to remit that tax to the Receiver General of Canada on your behalf.
- 5.07 Without limiting Section 16.11(a), you must not, in relation to performing your obligations under this Agreement, commit or purport to commit us to pay any money except as may be expressly provided for in this Agreement.
- 5.08 You must:
- (a) apply for, and use reasonable efforts to obtain, any available refund, credit, rebate or remission of federal, provincial or other tax or duty imposed on you as a result of this Agreement that the Province has paid or reimbursed to you or agreed to pay or reimburse to you under this Agreement; and
  - (b) immediately on receiving, or being credited with, any amount applied for under paragraph (a) remit that amount to us.

## ARTICLE 6 REPRESENTATIONS AND WARRANTIES

- 6.01 As at the date this Agreement is executed and delivered by, or on behalf of, the parties, you represent and warrant to us as follows:
- (a) except to the extent you have previously disclosed otherwise in writing to us:
    - (i) all information, statements, documents and reports furnished or submitted by you to us in connection with this Agreement (including as part of any competitive process resulting in this Agreement being entered into) are in all material respects true and correct;
    - (ii) you have sufficient trained staff, facilities, materials, appropriate equipment and approved subcontractual or other agreements in place and available to enable you to fully perform the Services and to grant any licenses under this Agreement; and
    - (iii) you hold all permits, licenses, approvals and statutory authorities issued by any government or government agency that are necessary for the performance of your obligations under this Agreement; and
  - (b) if the Contractor is not an individual:
    - (i) you have the power and capacity to enter into this Agreement and to observe, perform and comply with the terms of this Agreement and all necessary corporate or other proceedings have been taken and done to authorize the execution and delivery of this Agreement by, or on behalf of, you, and
    - (ii) this Agreement has been legally and properly executed by, or on behalf of, you and is legally binding upon and enforceable against you in accordance with its terms except as enforcement may be limited by bankruptcy, insolvency or other laws affecting the rights of creditors generally and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction.

## **ARTICLE 7 PRIVACY, SECURITY AND CONFIDENTIALITY**

- 7.01 You must comply with the Privacy Protection Schedule if attached to this Agreement.
- 7.02 You must make reasonable security arrangements to protect the Material from unauthorized access, collection, use, disclosure, alteration, or disposal and comply with the Security Schedule, if attached.
- 7.03 You must treat as confidential all information in the Material and all other information accessed or obtained by you or a Subcontractor (whether verbally, electronically or otherwise) as a result of this Agreement, and not permit its disclosure or use without our prior written consent except:
- (a) as required to perform your obligations under this Agreement or to comply with applicable laws;
  - (b) if it is information that is generally known to the public other than as a result of a breach of this Agreement; or
  - (c) if it is information in any Incorporated Material.
- 7.04 Any public announcement relating to this Agreement will be arranged by us and, if such consultation is reasonably practicable, after consultation with you.
- 7.05 You must not, without our prior written approval, refer for promotional purposes to the Province being your customer or the Province having entered into this Agreement.

## **ARTICLE 8 MATERIAL AND INTELLECTUAL PROPERTY**

- 8.01 If you receive a request for access to any of the Material from a person other than us, and this Agreement does not require or authorize you to provide that access, you must promptly advise the person to make the request to us.
- 8.02 We exclusively own all property rights in the Material that are not intellectual property rights. Any equipment property we may provide to you or a subcontractor is our exclusive property. You must deliver any Material or equipment property to us immediately following expiration of this Agreement, or sooner upon our request, in the same condition it was supplied to you, excepting always loss or damage attributable to reasonable wear or tear.
- 8.03 We exclusively own all intellectual property rights, including copyright:
- (a) in Received Material that you receive from us, and
  - (b) in Produced Material, other than any Incorporated Material.
- Upon our request, you must deliver to us documents satisfactory to us that irrevocably waive in our favour any moral rights that you (or your employees) or a Subcontractor (or its employees) may have in the Produced Material and confirm the vesting in the Province of the copyright in the Produced Material, other than any Incorporated Material.
- 8.04 Upon any Incorporated Material being embedded or incorporated in the Produced Material and to the extent that it remains so embedded or incorporated, you grant the Province:
- (a) a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to exercise, in respect of that Incorporated Material, the rights set out in the *Copyright Act* (Canada), including the right to use, reproduce, modify, publish and distribute that Incorporated Material; and
  - (b) the right to sublicense or assign to third-parties any or all of the rights granted to the Province under Section 8.04 (a).

## **ARTICLE 9 RECORDS AND REPORTS**

- 9.01 You must, upon our request, fully inform us of all work done by you or a Subcontractor in connection with providing the Services.
- 9.02 If Schedule B provides for you to be paid fees at a Unit of Measure rate or for you to be paid or reimbursed for expenses, you must maintain time records and books of account, invoices, receipts and vouchers of expenses in support of those payments, in form and content satisfactory to us. Unless otherwise specified in this Agreement, the Contractor must retain such documents for a period of not less than seven years after this Agreement ends.

## **ARTICLE 10 AUDIT**

- 10.01 In addition to any other rights of inspection the Province may have under statute or otherwise, we may at any reasonable time and on reasonable notice to you, enter on your premises to inspect and, at our discretion, copy any of the Material and you must permit, and provide reasonable assistance to, the exercise by us of our rights under this section.



## **ARTICLE 11 INDEMNITY AND INSURANCE**

- 11.01 You must indemnify and save harmless the Province and its employees and agents from any loss, claim (including any claim of infringement of third-party intellectual property rights), damage award, action, cause of action, cost or expense that the Province or any of its employees or agents may sustain, incur, suffer or be put to at any time, either before or after this Agreement ends, (each a "Loss") to the extent the Loss is directly or indirectly caused or contributed to by:
- (a) any act or omission by you or by any of your agents, employees, officers, directors or Subcontractors in connection with this Agreement; or
  - (b) any representation or warranty by you being or becoming untrue or incorrect.
- 11.02 You must comply with the insurance requirements in Schedule D, if attached, as those terms may be modified from time to time in accordance with our directions.
- 11.03 Without limiting the generality of Section 4.08, you must ensure that any Subcontractors comply with, all applicable occupational health and safety laws in relation to the performance of your obligations under this Agreement, including the *Workers Compensation Act* in British Columbia or similar laws in other jurisdictions.
- 11.04 At your own expense, and where required under *Workers Compensation Act* in British Columbia, you must obtain WorkSafe BC coverage for yourself, all workers and any shareholders, directors, partners or other individuals employed or engaged in the performance of the Services and you shall ensure all approved Subcontractors obtain WorkSafe BC Coverage.
- 11.05 If you are an individual or a partnership of individuals and do not have the benefit of mandatory workers compensation coverage under the *Workers Compensation Act* in British Columbia, you must apply for and maintain Personal Optional Protection under the *Workers Compensation Act*.
- 11.06 You are responsible for all fines, levies, penalties and assessments made or imposed under the *Workers Compensation Act* and regulations relating in any way to the Services.
- 11.07 You may be considered the "Prime Contractor" for the Services, as described in the attached Safety Conditions Schedule, and as such shall enter into a Prime Contractor Agreement and carry out the duties as described therein;
- 11.08 Upon our request you must provide us with evidence of your compliance with Sections 11.02, 11.04 and 11.05.

## **ARTICLE 12 FORCE MAJEURE**

- 12.01 An "Event of Force Majeure" means a natural disaster, fire, flood, storm, epidemic or power failure, war (declared and undeclared), insurrection or act of terrorism or piracy, strike (including illegal work stoppage or slowdown) or lockout, or a freight embargo if such event prevents a party from performing its obligations in accordance with this Agreement and is beyond the reasonable control of that party.
- 12.02 An "Affected Party" means a party prevented from performing its obligations in accordance with this Agreement by an Event of Force Majeure.
- 12.03 An Affected Party is not liable to the other party for any failure or delay in the performance of the Affected Party's obligations under this Agreement resulting from an Event of Force Majeure and any time periods for the performance of such obligations are automatically extended for the duration of the Event of Force Majeure provided that the Affected Party complies with the requirements of Section 12.04.
- 12.04 An Affected Party must promptly notify the other party in writing upon the occurrence of the Event of Force Majeure and make all reasonable efforts to prevent, control or limit the effect of the Event of Force Majeure so as to resume compliance with the Affected Party's obligations under this Agreement as soon as possible.

## **ARTICLE 13 NON-COMPLIANCE WITH AGREEMENT CONDITIONS**

- 13.01 An "Event of Default" means any of the following:
- (a) your failure to perform any of your obligations under this Agreement, or
  - (b) any representation or warranty made by you in this Agreement is untrue or incorrect, or
  - (c) an Insolvency Event, which means any of the following:
    - (i) an order is made, a resolution is passed or a petition is filed, for your liquidation or winding up,

- (ii) you commit an act of bankruptcy, make an assignment for the benefit of your creditors or otherwise acknowledge your insolvency,
  - (iii) a bankruptcy petition is filed or presented against you or a proposal under the *Bankruptcy and Insolvency Act* (Canada) is made by you,
  - (iv) a compromise or arrangement is proposed in respect of you under the *Companies' Creditors Arrangement Act* (Canada),
  - (v) a receiver or receiver-manager is appointed for any of your property, or
  - (vi) you cease, in our reasonable opinion, to carry on business as a going concern.
- 13.02 On the happening of an Event of Default, or at any time thereafter, we may, at our option, elect to do any one or more of the following:
- (a) by written notice to you, require that the Event of Default be remedied within a time period specified in the notice;
  - (b) pursue any remedy or take any other action available to us at law or in equity; or
  - (c) by written notice to you, terminate this Agreement with immediate effect or on a future date specified in the notice, subject to the expiration of any time period specified under Section 13.02(a).
- 13.03 No failure or delay on our part to exercise our rights in relation to an Event of Default will constitute a waiver by us of such rights.
- 13.04 If you become aware that an Event of Default has occurred or anticipates that an Event of Default is likely to occur, you must promptly notify us of the particulars of the Event of Default or anticipated Event of Default. A notice under this section as to the occurrence of an Event of Default must also specify the steps you propose to take to address, or prevent recurrence of, the Event of Default. A notice under this section as to an anticipated Event of Default must specify the steps you propose to take to prevent the occurrence of the anticipated Event of Default.

#### ARTICLE 14 TERMINATION

- 14.01 In addition to our right to terminate this Agreement under Section 13.02(c) on the happening of an Event of Default, we may terminate this Agreement for any reason by giving at least 5 days' written notice of termination to you.
- 14.02 Unless Schedule B otherwise provides, if we terminate this Agreement under Section 14.01:
- (a) we must, within 30 days of such termination, pay you any unpaid portion of the fees and expenses described in Schedule B which corresponds with the portion of the Services that was completed to our satisfaction before termination of this Agreement; and
  - (b) you must, within 30 days of such termination, repay to us any paid portion of the fees and expenses described in Schedule B which corresponds with the portion of the Services that we have notified you in writing was not completed to our satisfaction before termination of this Agreement.
- 14.03 The payment by us of the amount described in Section 14.02(a) discharges us from all liability to make payments to the Contractor under this Agreement.

#### ARTICLE 15 DISPUTE RESOLUTION

- 15.01 In the event of any dispute between the parties arising out of or in connection with this Agreement, the following dispute resolution process will apply unless the parties otherwise agree in writing:
- (a) the parties must initially attempt to resolve the dispute through collaborative negotiation;
  - (b) if the dispute is not resolved through collaborative negotiation within 15 Business Days of the dispute arising, the parties must then attempt to resolve the dispute through mediation under the rules of the British Columbia Mediator Roster Society; and
  - (c) if the dispute is not resolved through mediation within 30 Business Days of the commencement of mediation, the dispute must be referred to and finally resolved by arbitration under the *Arbitration Act*.
- 15.02 Unless the parties otherwise agree in writing, an arbitration or mediation under Section 15.01 will be held in Victoria, British Columbia.



- 15.03 Unless the parties otherwise agree in writing or, in the case of an arbitration, the arbitrator otherwise orders, the parties must share equally the costs of a mediation or arbitration under Section 15.01 other than those costs relating to the production of expert evidence or representation by counsel.

## ARTICLE 16 GENERAL

- 16.01 Any notice or document contemplated by this Agreement, to be effective, must be in writing and delivered as follows:

- (a) hand delivered to the party or the specified party representative, in which case it will be deemed to be received on the day of its delivery; or
  - (b) by prepaid post to the party's address specified on the first page of this Agreement, in which case if mailed during any period when normal postal services prevail, it will be deemed to be received on the fifth Business Day after its mailing; or
  - (c) delivered by courier service to the party's address specified on the first page of this Agreement, in which case it will be deemed received on the fifth Business Day after collection by the courier service; or
  - (d) by facsimile or electronic transmission to the specified facsimile number or Email address on the first page of this Agreement, in which case it will be deemed to be received on the day of transmittal unless transmitted after the normal business hours of the addressee or on a day that is not a Business Day, in which cases it will be deemed to be received on the next following Business Day.
- 16.02 Either party may from time to time give notice to the other party of a substitute address, Email address, or fax number, which from the date such notice is given will supersede for purposes of Section 16.01 any previous address, Email address, or fax number specified for the party giving the notice.
- 16.03 You must not assign any of your rights or obligations under this Agreement without our prior written consent. Upon providing written notice to you, the Province may assign to any person any of the Province's rights under this Agreement and may assign to any "government corporation", as defined in the *Financial Administration Act*, any of the Province's obligations under this Agreement.

- 16.04 You must not subcontract any of your obligations under this Agreement without our prior written consent, excepting persons listed in Schedule A.

- 16.05 No subcontract, whether consented to or not, relieves you from any obligations under this Agreement. You must comply with the Subcontracting Schedule if attached to this Agreement. You must ensure that any person retained by you or any person retained by a person retained by you fully complies with this Agreement in performing the subcontracted obligations.

- 16.06 We may, for reasonable cause, object to the use of a proposed Subcontractor and require you to retain another qualified subcontractor.

- 16.07 A waiver of any term or breach of this Agreement is effective only if it is in writing and signed by, or on behalf of, the waiving party and is not a waiver of any other term or breach.

- 16.08 This Agreement and any modification of it constitute the entire Agreement between the parties as to performance of the Services.

- 16.09 Sections 4.08, 5.01 to 5.04, 5.07, 5.08, 7.01 to 7.05, 8.01 to 8.04, 9.01, 9.02, 10.01, 11.01, 11.02, 11.07, 12.01 to 12.04, 13.02, 13.03, 14.02, 14.03, 15.01 to 15.03, 16.01, 16.02, 16.09, and 16.11, any accrued but unpaid payment obligations, and any other sections of this Agreement (including schedules) which, by their terms or nature, are intended to survive the completion of the Services or termination of this Agreement, will continue in force indefinitely subject to any applicable limitation period prescribed by law, even after this Agreement ends.

- 16.10 The schedules to this Agreement (including any appendices or other documents attached to, or incorporated by reference into, those schedules) are part of this Agreement.

- 16.11 In relation to the performance of your obligations under this Agreement, you are an independent contractor and not our:

(a) employee or partner; or

(b) agent except as may be expressly provided for in this Agreement.

You must not act or purport to act contrary to this section.

- 16.12 You must not do anything that would result in personnel hired or used by you or a Subcontractor in relation to providing the Services being considered our employees.

16.13 If one or more individuals are identified in the schedules as "Key Personnel", you must cause those individuals to perform the Services on your behalf and not remove or replace them, without our prior written approval. Any approved replacement is at your expense.

16.14 We must make available to you all information in our possession which we consider pertinent to the performance of the Services.

16.15 You must not provide any services to any person in circumstances which, in our reasonable opinion, could give rise to a conflict of interest between your duties to that person and your duties to us under this Agreement.

16.16 If there is a conflict among provisions of this Agreement, a provision in the body of this Agreement will prevail over any conflicting provision in, attached to, or incorporated by reference into a schedule, unless that conflicting provision expressly states otherwise and a provision in a schedule will prevail over any conflicting provision in a document attached to or incorporated by reference into a schedule, unless the schedule expressly states otherwise.

16.17 This Agreement does not operate as a permit, license, approval or other statutory authority which you may be required to obtain from the Province or any of its agencies in order to provide the Services. Nothing in this Agreement is to be construed as interfering with, or fettering in any manner, the exercise by the Province or its agencies of any statutory, prerogative, executive or legislative power or duty.

16.18 If any provision of this Agreement or the application of it to any person or circumstance is invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to any other person or circumstance will not be affected or impaired and will be valid and enforceable to the extent permitted by law.

16.19 Each party must perform the acts, execute and deliver the writings, and give the assurances as may be reasonably necessary to give full effect to this Agreement.

16.20 This Agreement is governed by, and is to be interpreted and construed in accordance with, the laws applicable in British Columbia.

## **ARTICLE 17 INTERPRETATION**

17.01 In this Agreement:

- (a) "we", "us", and "our" refer to the Province alone and never refer to the combination of the Contractor and the Province;
- (b) the Contractor and the Province are referred to as "the parties" and each of them as a "party";
- (c) "includes" and "including" are not intended to be limiting;
- (d) unless the context otherwise requires, references to sections by number are to sections of this Agreement;
- (e) "attached" means attached to this Agreement when used in relation to a schedule;
- (f) unless otherwise specified, a reference to a statute by name means the statute of British Columbia by that name, as amended or replaced from time to time;
- (g) the headings have been inserted for convenience of reference only and are not intended to describe, enlarge or restrict the scope or meaning of this Agreement or any provision of it;
- (h) "person" includes an individual, partnership, corporation or legal entity of any nature; and
- (i) unless the context otherwise requires, words expressed in the singular include the plural and vice versa.

**ARTICLE 18 EXECUTION AND DELIVERY**

18.01 This Agreement may be entered into by a separate copy of this Agreement being executed by, or on behalf of, each party and that executed copy being delivered to the other party by a method provided for in Section 16.01 or any other method agreed to by the parties.

The Parties have executed this Agreement as follows:

<b>SIGNED AND DELIVERED</b> on behalf of the Province by an authorized representative of the Province	<b>SIGNED AND DELIVERED</b> by or on behalf of the Contractor (or by an authorized signatory of the Contractor if a corporation)
(Authorized Ministry Expense Authority)	(Contractor or Authorized Signatory)
(PRINTED NAME of Ministry Expense Authority)	(PRINTED NAME of Contractor)
Dated this ____ day of _____, 20____	Dated this ____ day of _____, 20____



## Schedule B – Contract Payment

File: CS16IROD-003

Attachment to the Agreement with DENISE WALKER OF ELEVATE CONSULTING TO REVIEW AND TO PROVIDE RECOMMENDATIONS OF THE PROVINCES APPROACH TO FIRST NATIONS BURIAL SITES.

### 1. FEES

- 1.01 Your fees (**exclusive of any applicable taxes described in this Agreement**) will be based on an hourly rate as follows:
  - 1.1.1 For Denise Walker <sup>s.21,s.22</sup>
  - 1.1.2 For Lisa Makar <sup>s.21,s.2</sup>
- 1.02 for total satisfactory completion of the Services in accordance with this Agreement.
- 1.03 In no event will fees payable to you, in accordance with this Schedule exceed in total **\$24,800**.

### 2. EXPENSES

- 2.01 We will not pay any expenses to you for the completion of the Services.

### 3. SUBMISSION OF STATEMENT OF ACCOUNT

- 4.01 In order to obtain payment for any fees and, where applicable, expenses under the Agreement, you must submit to us a written Statement of Account and an invoice to us on total satisfactory completion of the Services
- 4.02 The Statement of Account(s) must show the following:
  - (a) your legal name, address, the date and the period of time which the invoice applies ("Billing Period"), the contract number, and a statement number for identification;
  - (b) the calculation of all fees claimed under this Agreement for the Billing Period, with hours, dates, rates, and name(s) of persons providing the Services, a description of specific services/works completed during the Billing Period, including a declaration that the Services have been completed;
  - (c) and where expenses are to be paid under this Agreement, a chronological listing, in reasonable detail and with dates, of all expenses claimed by you under this Agreement for the Billing Period with receipts or copies of receipts, where applicable, attached;
  - (d) if you are claiming reimbursement of any GST or other applicable taxes paid or payable by you in relation to those expenses, a description of any credits, rebates, refunds, or remissions you are entitled to from the relevant taxation authorities in relation to those taxes;
  - (e) the calculation of any applicable taxes payable by us in relation to the Services provided under this Agreement and for the Billing Period as a separate line item;
  - (f) any other billing information reasonably requested by us.

## **SCHEDULE B**

### **CONTRACT PAYMENT**

4.03 Within thirty days of our receipt of your invoice, or the date we authorize payment, whichever is the latter, we must pay you fees and, where applicable, expenses for those Services we determined were satisfactorily received during the Billing Period.

4.04 Invoices are to be submitted to:

Ministry of Forests, Lands and Natural Resource Operations  
Integrated Resource Operations Division (IROD)  
314-780 Blanshard Street, Victoria BC V8W 2H1  
PO Box 9352 Stn Prov Govt  
Victoria BC V8W 9M1

**From:** [Batten, Justine FLNR:EX](#)  
**To:** [Calarco, Andrew FLNR:EX](#); [Hogan, Tania FLNR:EX](#)  
**Subject:** RE: Some thinking from yesterday on the HCA Engagement  
**Date:** Monday, November 9, 2015 2:03:00 PM  
**Attachments:** [Phase 2 Planning - HCA burial review.docx](#)

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See my comments on the attached. Thanks Andy

*Justine Batten  
Director  
Archaeology Branch  
Ministry of Forests, Lands and Natural Resource Operations*

*Telephone: 250 953-3355  
Fax: 250 953-3340  
email: [justine.batten@gov.bc.ca](mailto:justine.batten@gov.bc.ca)*



*Please consider the environment before printing this e-mail*

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**From:** Calarco, Andrew FLNR:EX  
**Sent:** Monday, November 9, 2015 10:58 AM  
**To:** Batten, Justine FLNR:EX; Hogan, Tania FLNR:EX  
**Subject:** Some thinking from yesterday on the HCA Engagement

Still very draft and intro has just been started.

ac