



TARBUTT CEMETERY BOARD
Cemetery Board Agenda
Thursday, May 16th, 2023 at 6:00 p.m.
Township Council Chambers, 27 Barr Road S.

1. CALL TO ORDER

2. DISCLOSURES OF PECINAIRY INTEREST

3. APPOINTMENT OF CHAIR - Option of Rotating Chair

4. APPOINTMENT OF MEMBER - G. Rooney

5. PREVIOUS MINUTES

- a. Minutes of Regular Board meeting held December 5th 2023, meeting

6. DEPUTATIONS / PRESENTATIONS – none requested

7. STAFF REPORT

- a. Bereavement Authority of Ontario – Webinar attended by J. Brice

8. OTHER BUSINESS

- a. Stickney Cemetery – Projects for 2024
- b. Port Findlay Cemetery – Survey to locate/replace markers

9. INFORMATION

10. ADJOURNMENT



TARBUTT CEMETERY BOARD
Cemetery Board Minutes
Tuesday, December 5th, 2023 @ 5:30 p.m.
Township Council Chambers, 27 Barr Road S.

PRESENT: Ursula Abbott
Debbie Conway
Ursula Abbott
Jared Brice

STAFF: Jared Brice

1. CALL TO ORDER

Meeting called to order at 5:30 p.m.

2. DISCLOSURES OF PUCNIARY INTEREST

3. APPOINTMENT OF ROTATING CHAIR

Resolution No. C2023-06

Moved by: J. Brice Seconded by: C. Smith

Be it resolved that the Board appoint Ursula Abbott as the Chair for this meeting.

Carried

4. APPOINTMENT OF MEMBER

Resolution No. C2023-07

Moved by: D. Conway Seconded by: D. Conway

Be it resolved that Carey Smith be appointed to the Tarbutt Cemetery Board.

Carried

5. PREVIOUS MINUTES

Resolution No. C2023-08

Moved by: D. Conway Seconded by: J. Brice

Be it resolved that the Board accepts the minutes of the regular board meeting held April 6th, 2023 be adopted as circulated.

Carried

6. DEPUTATIONS

7. STAFF REPORTS

Resolution No. C2023-09

Moved by: D. Conway Seconded by: C. Smith

Be it resolved that the Cemetery Board receive the Staff Report for the Overview of the Cemetery Operations for the Year 2023; and

That the Cemetery Board request an increased allocation of \$2000 from the 2024 budget for a total of \$6000 annual levy from the Township of Tarbutt for ongoing expenses, additional operating fees and for professional services to locate/replace missing survey marker.

Carried



TARBUTT CEMETERY BOARD

Cemetery Board Minutes

Tuesday, December 5th, 2023 @ 5:30 p.m.
Township Council Chambers, 27 Barr Road S.

Resolution No. C2023-10

Moved by: C. Smith Seconded by: D. Conway

Be it resolved that the Cemetery Board receive the Port Findlay Cemetery Interments, Lot and Monument Purchase for the Year 2023 as presented.

Carried

Resolution No. C2023-11

Moved by: D. Conway Seconded by: C. Smith

Be it resolved that the Cemetery Board receive the Interment Checklist as amended.

Carried

8. OTHER BUSINESS

Resolution No. C2023-12

Moved by: D. Conway Seconded by: C. Smith

Be it resolved that the Cemetery Board support of projects at Stickney Cemetery in 2024; and That the Board identifies the primary project(s) to be the identification process at Stickney Cemetery.

Carried

9. INFORMATION

Resolution No. C2023-13

Moved by: C. Smith Seconded by: J. Brice

Be it resolved that the Cemetery Board receives the BAO – New Consumer Protection fee as presented; and

That the Board receives the BAO – Guide to Death Care in Ontario as presented.

Carried

10. ADJOURNMENT

Resolution No. C2023-14

Moved by: C. Smith Seconded by: J. Brice

Be it resolved that the Cemetery Board adjourns its meeting at 7:00 p.m.

Carried

Re: Cemetery Board response

GR

Gerard Rooney [REDACTED]

To: Jared Brice

Sun 2024-05-12 7:27 PM

Please consider my interest in becoming a member of the Tarbutt Cemetery Board. I am a retired Sault Ste. Marie Police Officer, husband and father of two adult children. I look forward to participating with this Board and learning about our local cemetery issues. Given the opportunity, I will respond in a favourable manner.

Sincerely

Gerard Rooney

[REDACTED]

BAO

Bereavement
Authority of
Ontario

**Cemeteries, Crematoriums & Alternate
Dispositions – Approvals, Operations, Compliance
& Obligations - FBCSA**

**Bereavement Authority of Ontario
AMCTO - Spring 2024 Professional Development Cohort -
March 26, 2024**

Michael D'Mello

Deputy Registrar, BAO



Agenda



1. **Who is the BAO?**
2. **Municipal approvals, obligations & the FBCSA:**
3. **Care and Maintenance Trust Fund/Account (CMFA)**
4. **Annual renewal and C&M reporting requirements**
5. **Impacting Cemeteries – Rezoning, Severances & Disturbing burials**
6. **Recent important Legislative amendments**
7. **Cemetery Inspections - BAO**
8. **Q & A at the end**

Legislation governing the Bereavement Sector

Funeral, Burial and Cremation Services Act, 2002 (FBCSA)

FBCSA

- Royal Assent on December 13, 2002
- Proclaimed in force on February 9, 2011
- Bereavement Sector law as of July 1, 2012

Legislation includes:

- Ontario Regulation -- 30/11 (General)
- Ontario Regulation – 412/19 (amendment to clause 125 (1)(a) and (b) of 30/11)
- Ontario Regulation - 184/12 (Care and Maintenance Trust Fund Exemptions & Social Service Charges)
- Ontario Regulation 216/18 (Code of Ethics)
- Safety and Consumer Statutes Administration Act, 1996
- Ontario Regulation 374/18 (Discipline & Appeal Committees Regulations)

Ministry of Government and Consumer Services, now Ministry of Public Business and Service Delivery (MPBSD) delegated administration authority (DAA) for the Bereavement Sector to the BAO, under the Registrar, FBCSA, BAO

MPBSD retained oversight for Abandoned Cemeteries, Burial Sites, Cemetery Closures and War Graves (ABCW) under the Registrar, FBCSA, MPBSD

**Bereavement Authority
of Ontario (BAO)
established
January 16, 2016**

BAO has authority and jurisdiction for the Regulation of Cemetery, Crematorium, Funeral Establishment & Transfer Service Operators, Funeral Directors, Funeral Preplanner and sales representatives, associated with these operators

About the BAO

The Bereavement Authority of Ontario (BAO) is a government delegated authority administering provisions of the *Funeral, Burial and Cremation Services Act, 2002*, (FBCSA) on behalf of the Ministry of Public Business and Service Delivery (MPBSD).

The BAO is responsible for protection of the public interest, and regulates and supports:

- ❖ Licensed funeral establishment operators, funeral directors and preplanners;
- ❖ Cemetery, crematorium and alkaline hydrolysis (alternative disposition) operators;
- ❖ Transfer service operators; and
- ❖ Sales representatives and F of licensed Bereavement sector operators across Ontario.

The BAO is wholly funded by licensee fees.

The Registrar/CEO, BAO, FBCSA, is Jim Cassimatis.

NOTE: MPBSD has retained some sections of the FBCSA - oversight for Abandoned Cemeteries, Burial Sites, Cemetery Closures and War Graves, under the Registrar, FBCSA, MPBSD. The Registrar at MPBSD is Ian Hember. Email: Ian [Hember@Ontario.ca](mailto:Ian.Hember@Ontario.ca)

FOCUS

- **Legislative Amendments- 1 July 2021, 1 January 2022**
- **Requirements for Licensing operators, sales representative & Exemptions**
- **Family led dispositions**
- **Scattering cremated remains**
- **Price lists displayed on website**
- **Care and Maintenance Fund or Account**
- **Annual Licensure Reports – Reporting to the Registrar – It is the licence renewal!!!**
- **Unlicensed, Neglected & Abandoned Cemeteries**
- **Abandonment Process – to Municipalities**
- **Sales of lots – graves, niches, crypts, scattering grounds. Caution re: Older areas without credible records & mapping – Ground Penetrating Radar not credible unless “ground truthed” i.e., topsoil removed**
- **Sales, re-zoning, severances, partial closures and acceptance of “abandoned” sites**
- **Documents required to be maintained by the licensed operator - Public Register, Contracts/Interment Rights Holder Certificates & Contracts, Bylaws, Price Lists..**

FOCUS - CONTINUED

- Documents to be provided to consumers – Interment Rights Certificates, Consumer Information Guide, Bylaws, Price List
- Interment Rights Holder – Person identified in the Interment Rights Certificate is the authority. If deceased; then it's the personal representative identified through the Will or the Court appointed Estate Trustee.
 - As the decision maker consents to:
 - who can be interred in the lot
 - who can be disinterred from the lot
 - the installation of monuments and markers
 - the sale, transfer or assignment of a lot.
- Resales/Transfers of Interment Rights AND identification of Interment Rights Holder

Q. What must an Operator do when the person who purchased the lot or plot, and their immediate family, are deceased?

A. Get authorization from person who inherited the estate, or seek legal advice or get an Order from Ontario Superior Court of Justice or relevant court.

Some current issues of concern:

- **Use of lots in old areas of a cemetery without credible maps, records etc.**
- **Operational- Opening of graves by more than one individual:**
 - **If grave is being opened next to an existing burial, there should be one person monitoring opening while the other person operates the equipment.**
 - **This will ensure that human burials are not disturbed and not lead to serious consequences for both employee and operator.**
- **Disturbing a cemetery to locate sunken markers:**
 - **Can be done by a cemetery operator if credible maps, records etc. exist:**
 - **In the course of regular cemetery care and maintenance**
 - **Restoration efforts**
 - **If no credible maps and records are available, operator must obtain a Cemetery Investigation Authorization (CIA)**

Municipalities & the FBCSA

Municipalities participate in the FBCSA as:

- **Approval authority;** to establish cemeteries, crematoriums, funeral establishments – Class 1 & 2 and transfer services - Class 1 & 2. Consideration of Zoning - Location, Building and Safety Standards, Health etc. in consideration of long-term use. Note: Municipal zoning by-laws need to be amended to differentiate between a “funeral home” and a “crematorium”
- **Licensed cemetery operators, and crematorium operators;** municipalities are required to submit Annual Licensure Reports (may need to submit Audited Financial Statements as well) re: Care & Maintenance Funds & Activity – sales of interment rights, interments, cremations etc., and must comply with all requirements of the FBCSA
- **Trustees of Care & Maintenance Trust funds** for their own cemeteries and for any other non-municipal cemetery operators
- **Compliance body** to enforce maintenance of cemeteries within the community
- **Entity responsible for abandoned and neglected cemeteries**
- **May be the providers of assisted burials and cremations** (including funeral services and installations of markers or monument)
- **Approval authority for other buildings and developments;** taking into account archaeological deposits – human remains and artifacts.

Municipal Obligations



Municipal obligations & awareness of the FBCSA and O. Regs.

Planning Departments – Zoning, Severances, Building & Permits for large structures on cemetery lands. Note: Once cemetery is established the Registrar, BAO, has jurisdiction of the cemetery land!

- **Health – Certificate from Medical Officer of Health – Land is suitable of burials, distance from potable water sources**
- **Clerk/Treasurer & Finance Department – Council Approval for establishment of Cemeteries, Crematoriums etc., Care and Maintenance Fund (CMF) for the municipality’s cemeteries and acts as Trustee for any other cemetery operator’s CMF**
- **Parks & Recreation – Cemetery operations, work orders re: neglected**
- **Social Services.**

Municipal Obligations - continued



Severance of cemetery lands – Must be in compliance with FBCSA:

- Landowner/cemetery operator must have Registrar’s consent to establish, alter or increase cemetery lands
- Severance without closure results in 2 or more cemeteries unless cemetery is “Closed” or partially “Closed”
- Identifying line of severance – boundaries should be based on location of burials
- A Municipality may expropriate a cemetery or part of a cemetery, however the land remains cemetery lands until it is Closed!!

Acceptance of responsibility for cemeteries:

- CMF – Negotiate contribution from seller to accept responsibility
- Require transfer of records – maps, plans, public register, receipts
- May not be held responsible for activities in cemetery prior to date of transfer
- Add cemetery to list of sites identified in by-laws

Permits issued – *Building Code Act* requires compliance with other Acts. While the BCA may not list the FBCSA, it does reference compliance with “any other Acts (legislation)”. Hence, MUST issue permits so long as the structure etc. will also be in compliance with the FBCSA

Updating/Correcting Site Info

Q. What happens when the information that municipalities/operators have on file doesn't match the BAO?

- **Contact a licensing officer at the BAO and explain the discrepancy. The licensing officer will review the information provided to determine which records are more credible – supported by evidence, and then make the appropriate corrections to the Municipality's list of cemetery sites.**

Q. What do they need in order to update their records?

- **Usually, written documentation to support the information being provided or simply your identification; so that they can make the changes and note the source of the information.**

Q. What should the municipality do about Historic Cemeteries in “backyards”?

- **Report the evidence of the cemetery and identity of the landowner to the BAO**
- **Ensure the cemetery is not impacted by development – No permits issued**
- **Have the boundaries defined/confirmed**
- **Apply to have landowner transfer lands to municipality or make application for abandonment**

Unlicensed, Neglected and Abandoned Cemeteries

FBCSA - Section 101.1, O. Reg. 30/11 - Sections 170-171



Neglected Cemeteries:

- A municipality may order a cemetery operator who does not keep the cemetery in good order and repair to restore it to good order and repair
- If an operator does not restore a cemetery as specified in an order given within such reasonable time as is set out in the order, the municipality may have the required work done and recover the costs from the operator

Abandoned Cemeteries:

- An application to declare a cemetery abandoned may be made to a judge of the Superior Court of Justice, if the owner of the cemetery,
 - a. cannot be found or is unknown; or
 - b. is unable to maintain it; or
 - c. is not a licensed operator and there is no licensed operator
- The application may be made by the Crown, the local municipality, the owner or operator, or the Registrar, FBCSA, Ministry of Public Business & Service Delivery.
- Municipalities are encouraged to obtain the ownership of the cemetery lands via mutual agreement, failing which make an Application for abandonment. Consider making several applications at one time so that the Judge is “seized” and understands the legislated process and the long term impact for the cemetery.

Obligations – Neglected/Abandoned

Cemetery transfer and acceptance by Mutual Consent

Pursuant to subsection 101.1 (1) of the *Funeral, Burial and Cremation Services Act, 2002* a cemetery may be transferred or declared abandoned to the municipality, if the owner of the cemetery,

- a) Cannot be found
- b) Is unable to maintain it, or
- c) Is not a licensed operator and there is no licensed operator for the cemetery.

In cases where neither the owner or an operator, whose consent had been obtained from the owner of the land upon which the cemetery is located, are unable to maintain the cemetery, the operation and maintenance of the cemetery becomes the responsibility of the local municipality.

By mutual consent of the landowner and/or the currently licensed cemetery operator and the municipality, the cemetery and the land on which it is located (listed below) is intended to be transferred to the municipality:

Information About the Cemetery

| | |
|--|--|
| Operator Licence Number: | |
| Operator Name: | |
| Cemetery Site Number: | |
| Cemetery Name: | |
| Other Names: | |
| Landowner Name and contact information: | |
| Contact Person Name and Contact Information: | |
| Street Address: | |
| Concession/Lot: | |
| Care and Maintenance Fund/Account Information and Trustee Name | |
| Status: Active vs. Inactive? (Are graves still being sold? If not, when was the last one sold) | |
| Are there any unused interment rights? | |
| Location of Books and Records: | |

The cemetery operator agrees to:

- Voluntarily terminate their licence to operate the cemetery
- Transfer the cemetery lands to the Municipality

Signature of the cemetery operator/representatives: _____

Municipality conditionally agrees to:

- Accept the responsibility for the operation and maintenance of the listed cemetery
- Accept the ownership of the cemetery lands

Signature of Municipal representative Clerk/CAO

If more space is needed, please attach the information under separate cover.

Q. What are the obligations of a municipality to take over a private cemetery that is still Active? By either Mutual Consent or Court ordered Abandonment.

Active vs. Inactive Vs. Closed:

- **Not defined in the FBCSA. BAO defines for resource allocation based on activity since 1995 – Burials conducted, IRs sold and available**
- **A cemetery remains a cemetery in perpetuity and a burial may be requested/required under rare circumstances if INTERMENT RIGHTS (IR) are confirmed**
- **Municipality must obtain all boundary, lot layout maps, records, public register, receipt books etc. are ensure they under its control, especially if site will continue to be active**
- **Sale of IRs can continue based on the agreement to accept the cemetery site, or agreement may stop the sale of new IRs but must recognize IRs sold/unexercised and allow burials in those lots. Hence the need to have credible records etc. Must be referenced in by-laws**
- **Closed – By Order and bodies disinterred and reinterred in another cemetery**

Template letter – Municipality to Landowner of an unlicensed cemetery site

DATE

Landowner
Address
City, ON POSTAL CODE

**RE: Cemetery Name – Abandonment/Transfer to Municipality
Organization/Landowner
Cemetery Site #
Concession and Lot:**

Dear NAME

You are being contacted because the Township has been alerted by Bereavement Authority of Ontario | (BAO) that there is an existing cemetery located on your property which you have failed to licence. The BAO regulates all cemeteries in Ontario.

As cemeteries are of religious, traditional, historical, and heritage significance to communities and to the province, all cemeteries in Ontario must be licensed.

To ensure that the cemetery is respectfully and safely cared for in perpetuity and as the landowner you are required to do one of the following:

1. Submit a completed licence application to the BAO, with relevant surveys/maps etc., as the operator of the cemetery and continue to maintain the cemetery. The BAO has Licensing Officers available to answer your questions about this process and can be reached using the contact information below.
2. Transfer and deed the cemetery lands to the municipality through mutual agreement or the Abandonment process via the Ontario Superior Court of Justice.

We look forward to your timely response and to working with you to address the ongoing care and protection of the cemetery. Please respond no later than [insert date].

Township staff are available to answer any questions you may have.

Yours truly,

Township Staff
Contact Information

CC: **Bereavement Authority of Ontario** – www.thebao.ca
 Karie Draper – Special Project Lead Gillian Glover – Licensing Officer
karie.draper@thebao.ca gillian.glover@thebao.ca
 647.952.0937 647.952.0879

Obligations – Neglected/Abandoned



- Care and Maintenance Fund must be transferred from cemetery operator's original C&M to the Municipality's Trustee – C&M, with the Registrar's written authorization.

Q. When does the “generational interment rights holder’s” right to be buried end?

“Generational IRs holders” NOT defined. Every person who requests to exercise an IR MUST provide proof of being entitled to that authority. Requestor may provide:

- Will of original IRH to prove they inherited the estate and are the only person entitled to provide consent to burial. If estate left to more than one person; then consent of the others is required or related issues must be addressed.
- If no Will; then evidence that the person only inherited the estate

Requestor needs to provide proof; not the cemetery operator!!

Neglected and Abandoned Cemeteries (Continued)

FBCSA - Section 101.1, O. Reg. 30/11 - Sections 170-171



- The municipality is responsible for:
 - the cost of an abandonment application, unless:
 - the cemetery is not declared to be abandoned by the judge,
 - if not declared abandoned the owner of the cemetery is responsible for the cost of the application
 - the cost of a survey of the land involved and the maintenance of the cemetery during the application
- A judge to whom an application is made, upon being satisfied that there is a basis for the application, shall, by order, declare the cemetery to be abandoned
- Upon declaration that a cemetery is abandoned, the judge will:
 - convey the cemetery and the land on which the cemetery is situated, with an easement for access, to the municipality
- Once the declaration/order is registered – LRO, the municipality becomes the owner of the cemetery with all the rights and obligations with respect to the cemetery, and the assets, trust funds and trust accounts related thereto, that the previous owner had.
- The process for the transfer of the site to the Municipality also includes the transfer of any Care and Maintenance Funds or Accounts that cemetery operator may have had.

Requirements For Licensing – Operator & Sales Reps

FBCSA Section 4. (1),(2) & (3)(5)(6)

Operating cemeteries (inground graves, mausoleums, columbariums and scattering grounds)

4 (1) No person shall operate a cemetery or hold themselves out as the operator of a cemetery, unless the person is licensed to do so. Note: This prohibition includes the operation of a GREEN cemetery

Selling rights and services

(2) No person shall sell or offer to sell interment rights, scattering rights or cemetery services to the public, or hold themselves out as available to sell such rights or services to the public, unless,

(a) the person holds a prescribed licence and is acting on behalf of a cemetery operator; or

(b) the person is licensed as a cemetery operator.

Interring remains

(3) No person shall inter human remains in a place other than in a cemetery that is operated by a person licensed under subsection (1).

Land for scattering

(5) No person shall maintain or set aside land to be used for the purpose of scattering cremated human remains unless the person is licensed as a cemetery operator and the land is within a cemetery.

Fee for scattering

(6) No person shall charge a fee for the use of land for scattering cremated human remains unless the person is a licensed cemetery operator and the scattering takes place on land within a cemetery.

FBCSA Section 5. (1)(2)(3)(5))

Operating cemeteries (inground graves, mausoleums, columbariums and scattering grounds)

Operator's duties (continued)

(b) cemetery grounds, including all lots, structures and markers, are maintained to ensure the safety of the public and to preserve the dignity of the cemetery; and

(c) every person has reasonable access to a lot or scattering ground at any time except as prohibited by the cemetery by-laws.

Operator's duties re: employees, etc.

(5) A cemetery operator shall ensure that,

(a) every licensee that the operator employs carries out his or her duties in compliance with this Act and the regulations; and

(b) every other person to whom the operator delegates responsibility carries out that responsibility in compliance with this Act and the regulations.

Educational requirements for all licensees - Cemetery, Crematorium & Alternative Disposition Facilities (Hydrolysis), Funeral Establishment and Transfer Service Operators, Pre-planners and Sales Representative licences.

Requirements For Licensing – Landowner/Operator

FBCSA Section 5. (1)(2)(3)(5)

(Continued)

Operating cemeteries (inground graves, mausoleums, columbariums and scattering grounds)

Owner's (Landowner) duties

5 (1) An owner of a cemetery shall,

- (a) ensure that the cemetery is operated and maintained by a person who is licensed to operate the cemetery; and**
- (b) ensure that the cemetery operator complies with the requirements of this Act and the regulations.**

Owner

(2) If there is no licensed operator of a cemetery, the owner of the cemetery is subject to the duties of an operator of a cemetery under this Act, subject to the regulations.

Operator's duties (with consent of the landowner if the operator is not the landowner)

(3) A cemetery operator shall ensure that the cemetery is operated in accordance with this Act and the regulations and shall ensure that,

- (a) any interment of human remains and any scattering of cremated human remains are carried out in a decent and orderly manner and that quiet and good order are maintained in the cemetery at all times;**

Requirements For Licensing – Operator & Sales Reps

FBCSA Section 5. (1)(2)(3)(5) (Continued)

Operating cemeteries (inground graves, mausoleums, columbariums and scattering grounds)

Operator's duties (continued)

(b) cemetery grounds, including all lots, structures and markers, are maintained to ensure the safety of the public and to preserve the dignity of the cemetery; and

(c) every person has reasonable access to a lot or scattering ground at any time except as prohibited by the cemetery by-laws.

Operator's duties re: employees, etc.

(5) A cemetery operator shall ensure that,

(a) every licensee that the operator employs carries out his or her duties in compliance with this Act and the regulations; and

(b) every other person to whom the operator delegates responsibility carries out that responsibility in compliance with this Act and the regulations.

Educational requirements for all licensees - Cemetery, Crematorium & Alternative Disposition Facilities (Hydrolysis), Funeral Establishment and Transfer Service Operators, Pre-planners and Sales Representative licences.

Requirements For Licensing – Crematorium, AH Facility Operators & Sales Reps

Section 1.1 and 6. (1)(2) & (3) - FBCSA

Operating Crematoriums and Alkaline Hydrolysis Facilities (Alternate disposition facilities):

6 (1) No person shall operate a crematorium or hold themselves out as the operator of a crematorium, unless the person is licensed to do so. 2002, c. 33, s. 6 (1).

Selling services

(2) No person shall sell or offer to sell crematorium services to the public, or hold themselves out as available to sell crematorium services to the public, unless,
(a) the person holds a prescribed licence and is acting on behalf of a crematorium operator; or
(b) the person is licensed as a crematorium operator. 2002, c. 33, s. 6 (2); 2006, c. 34, Sched. D, s. 5.

Note: Exception i.e. A funeral director by virtue of already being licensed under the FBCSA may sell Crematorium services so long as there is a written business arrangement with that crematorium operator.

Cremating remains (Locations)

(3) No person shall cremate a human body at a place other than a crematorium operated by a person licensed under subsection (1).

Requirements For Licensing – FS,TS Operators

FBCSA - Section 8. (2), & 12 , Ontario Regulation 30/11, Section 7. (2)

Selling Funeral Services:

8. (2) No person shall sell or offer to sell funeral services to the public, or hold themselves out as available to sell funeral services to the public, unless,

- (a) the person holds a prescribed licence and is acting on behalf of a funeral establishment operator;**
- (b) the person is a licensed funeral establishment operator; or**
- (c) the person is part of a prescribed class of persons and the services are prescribed.**

Exception – Place of Worship:

(3) A licence is not required with respect to rites or ceremonies traditionally provided in a place of worship.

Selling Transfer services:

12 (1) No person shall operate, or hold themselves out as the operator of a transfer service, unless the person is licensed to operate a transfer service

(2) No person shall sell or offer to sell transfer services to the public, or hold themselves out as available to sell transfer services to the public, unless,

- (a) the person is licensed as a transfer service operator or a funeral establishment operator; or**
- (b) the person holds a prescribed licence and is acting on behalf of a transfer service operator or a funeral establishment operator.**

Requirements For Licensing – Sales reps.

FBCSA - Section 4.2 (a) and 8.(2)(3), Ontario Regulation 30/11, Section 7. (1)

Selling Cemetery Supplies and Services:

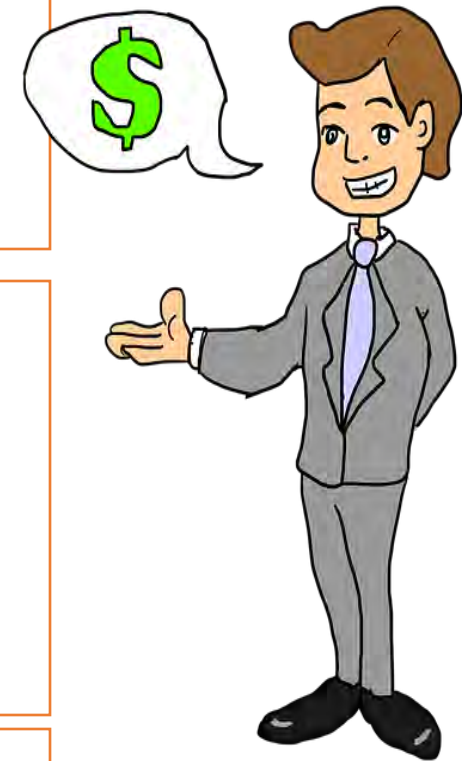
No person shall sell or offer to sell interment rights, scattering rights or cemetery services to the public, or hold themselves out as available to sell such rights or services to the public, unless,

- the person holds a prescribed licence and is acting on behalf of a cemetery operator; or
- the person is licensed as a cemetery operator.

A person is exempt from clause 4 (2) (a) of the Act if,

- (a) the person is acting on behalf of the operator of a cemetery other than a commercial cemetery;
- (b) selling licensed supplies or services is not the person's primary occupation; and
- (c) the person is not selling, or holding oneself out as available to sell, licensed supplies or services in circumstances in which,
 - (i) money is required to be held in trust under section 52 of the Act, or
 - (ii) payment is to be made by way of proceeds of an annuity or insurance contract, including group insurance. O. Reg. 30/11, s. 7 (1).

A family member of the deceased may/must Register the death of the individual at the Municipality in which the dead individual resides. The Medical Certificate of Death (from the Doctor who pronounced the death) along with the completed Statement of Death Form (from the Municipality) must be provided so that a Burial Permit may be issued.



Exemption from being Licensed as a Sales Representative

(Continued)

Personal Licences– FBCSA – ss. 4. (2) & section 7 of O. Reg. 30/11

Simply put, the regulation allows for an exemption from being licensed as a sales representative if 7. (1)(a) applies together with 7. (1)(a) or 7. (1)(b). In other words a person is exempt if :

- The person is acting on behalf of an operator of a cemetery other than a commercial cemetery
 - Cemeteries that are “other than commercial cemeteries” include municipal, religious, non-share and trustee/volunteer boards. The exemption is not applicable to a person acting on behalf of an operator of a not-for-profit cemetery
 - A commercial cemetery operator includes “not-for-profit” and “for profit” operators

AND

- Selling licensed supplies and services is not the person’s primary occupation

AND

- The person is not selling or indicating that they are available to sell licensed supplies and service when:
 1. The money paid by the consumer (for the contract) is required to be held in trust (i.e. pre-paid money) or
 2. The payment for the contract is to be made by the proceeds of an annuity or insurance contract, including group insurance.

So, if the person is acting in a part-time position for a non-commercial cemetery but is selling supplies and services that include pre-paid monies having to be trusted or involve insurance products, the person must be licensed.

- Please review the legislation provided above to be absolutely clear.

FAMILY LED FUNERALS

Preparation, Transfers, Burials, Cremations and scattering.



Note: A family member of a deceased individual is exempt from subsection 8 (2) of the Act when the family member is, for no consideration, providing funeral services in respect of the deceased individual, other than arterial embalming. Subsection 8. (2) addresses selling or offering to sell funeral services to the public.

Family Led Funerals – Continued

FBCSA - section 8. (2), Ontario Regulation 30/11, Section 7. (2)

A family member (for no consideration) may:

- Take possession of a deceased individual from a hospital, Coroner's Offices, or other facility upon providing suitable/required authorization (may require the Burial Permit)
- Transport the deceased individual in a respectable/dignified vehicle to another facility or residence for preparation/ceremonies

Note: There is no current law or by-law that dictates or prohibits the period of time during which dead human may be held in a residence.

- A family member may not carry out the service of arterial embalming in respect of the deceased individual.

A family member (for no consideration) may:

- Place the deceased individual in a suitable container/shroud etc. that satisfies the requirements of the operator of the disposition facility i.e. Crematorium, Alkaline Hydrolysis Facilities or Cemetery
- Transport the deceased in a respectful/dignified manner to the site of final disposition

A family member should:

- Contact the hospital, cemetery or crematorium prior to attending at that facility to ensure that the required documentary identification and authorizations are acceptable
- Confirm the type of container required (if necessary) to transport the deceased individual.

Family Led Funerals – Cremation

FBCSA - section 8. (2), Ontario Regulation 30/11, Section 7. (2)

A family member of the deceased may also apply for a Coroner's Cremation Certificate at the Office of Chief Coroner of Ontario if they do not wish to use the services of a licensee. Will require the Medical Statement of Death in order to apply for the Cremation Certificate.

Once the family member applies for and receives the **Coroner's Cremation Certificate** using the electronic process through the Office of the Chief Coroner of Ontario, the family must then contract with a licensed crematorium/alternative disposition facility operator to have the body cremated or alternatively disposed.

The Operator will complete a **Cremation Application** (Authority from Next-of -Kin to cremate) upon being provided with:

1. The Coroner's Cremation Certificate & 2. The Burial Permit.

The operator will require the person making the application to comply with the Crematorium or Alternative Disposition facility's bylaws e.g. casket/container/shroud is constructed of flammable/ materials etc., and to confirm that the body does not contain any radioactive implants (and if the body did have radioactive implants that there are no time period restrictions or that the implants have been removed etc.)

Scattering or Interment of Cremated Remains

O. Reg. 30/11, Sections 161-164

Interment and Scattering Rights

- If cremated remains are to be interred, the cremated remains must be interred in a registered cemetery (see definition of “human remains” and “cemetery”)
- The FBCSA regulates scattering on cemetery land
- The purchase and exercise of scattering rights is regulated in a manner consistent with interment rights
- Where a person intends to offer scattering services, other than on cemetery land, for a fee, they must be licensed as an operator under the FBCSA. This includes scattering on land covered by water
- Family members and others may continue to scatter the cremated remains of their loved ones where the scattering is permitted by the landowner.

Assisted Burials And Cremations

O. Reg. 30/11, Sections 162 And O. Reg. 184/12—sections 3 & 4

Upon receiving a written instruction from a delivery agent (defined in the *Ontario Works Act, 1997*), a cemetery operator who has available space must provide:

- A lot for the interment of the remains of any person referred to in the direction
- Opening and closing services in conjunction with the interment
- Install a marker if,
 - One is provided
 - The operator install markers for other persons at the cemetery and
 - The cemetery bylaws permit the installation.
- If scattering is requested and a common scattering ground is available the operator shall:
 - Scatter, or permit the scattering of the cremated remains
 - Install a marker as mentioned above.

**Issue: Disproportionate demands for lots in commercial cemeteries from Delivery Agents.
Negotiate!!**

The regulation has set the maximum amount that may be charged for a burial service, it is the the lesser of:

- (a) \$1,300 for all services that the operator provided with respect to the interment or scattering;
- and
- (b) the price that the operator charged for the services as shown on the operator's price list.

Unclaimed Cremated Human Remains

O. Reg 30/11, Sections 28, 53, 64, 161.3, O. Reg. 184/12, Section 2

- An operator who has possession of unclaimed cremated remains that were not for the purpose of scattering or interment shall retain them until they are claimed or interred in a cemetery
- If the cremated remains are not claimed within one year from the date of cremation and the operator has made reasonable efforts to contact the purchaser of the cremation service or personal representative/family member of the deceased the operator may have the remains reinterred in a cemetery, including in a common lot in a cemetery
- If the cremated remains are claimed before they are interred i.e. less than a year since the cremation was conducted, the operator shall refund any refundable deposit charged for the interment
- The maximum amount that an operator may specify on the price list as a refundable deposit to inter unclaimed cremated remains is,
 - If the operator is NOT also a cemetery operator, \$350; or
 - If the operator is also a cemetery operator , the lesser of \$350 AND the minimum amount the operator charges for the interment of cremated remains in a common lot in the cemetery.

Note: Ss. 161.3 - No offering, selling or providing “Term” burials or scattering.

Cemeteries are important to Ontario as Religious, Historic & Heritage Cemetery Sites



Cemetery operators licensed to operate cemetery Sites in Ontario as of April 1, 2021

Currently 5,220 licensed operators of cemetery sites in Ontario:

| Organization Type | Active Sites | Inactive Sites | Total Sites |
|--|--------------|----------------|-------------|
| Corporation - Crown | 1 | 58 | 59 |
| Corporation - Municipal - not for profit | 859 | 1697 | 2556 |
| Corporation - Not for profit | 62 | 6 | 68 |
| Corporation - Private | 89 | 50 | 139 |
| Corporation - Publicly Traded | | 1 | 1 |
| Corporation - Religious - not for profit | 1446 | 291 | 1737 |
| Corporation - Trustee/Volunteer Board | 529 | 76 | 605 |
| Partnership (all types) | 1 | 4 | 5 |
| Sole Proprietorship | 10 | 40 | 50 |
| Grand Total | 2997 | 2223 | 5220 |

| Organization Type | Active Sites | Inactive Sites | Total Sites |
|--|--------------|----------------|-------------|
| Corporation - Crown | 2% | 98% | 100% |
| Corporation - Municipal - not for profit | 34% | 66% | 100% |
| Corporation - Not for profit | 91% | 9% | 100% |
| Corporation - Private | 64% | 36% | 100% |
| Corporation - Publicly Traded | 0% | 100% | 100% |
| Corporation - Religious - not for profit | 83% | 17% | 100% |
| Corporation - Trustee/Volunteer Board | 87% | 13% | 100% |
| Partnership (all types) | 20% | 80% | 100% |
| Sole Proprietorship | 20% | 80% | 100% |

Currently 77 licensed crematorium operators in Ontario operated by 53 Organizations:

Interment/Scattering Rights

FBCSA- Section 1 (definitions), 48, Succession Law Reform Act - Definitions



What is an Interment Right?

- “inter” means the burial of human remains and includes the placing of human remains in a lot;
- “interment rights” includes the right to require or direct the interment of human remains in a lot;
- An interment rights holder or a person authorized to act on the holder’s behalf has the right to,
 - (a) inter any human remains in the lot to which the interment rights relate in accordance with the cemetery by-laws;
 - (b) erect a marker on the lot, or other receptacle for human remains, to which the interment rights relate if doing so does not contravene the cemetery by-laws;
 - (c) have reasonable access to the lot to which the interment rights relate at any time, except as prohibited by the cemetery by-laws; and
 - (d) once the interment rights have been paid in full, receive a certificate of interment rights from the operator.

Note: The similar rights apply with necessary modifications to scattering rights

Who is “the” Interment Rights Holder?

- “interment rights holder” means the person who holds the interment rights with respect to a lot whether the person be the purchaser of the rights, the person named in the certificate of interment or such other person to whom the interment rights have been assigned
- “personal representative” means a personal representative as defined in the *Succession Law Reform Act* i.e. “personal representative” means an executor, an administrator or an administrator with will annexed.

The 30- Day Cooling Off Period & Cancellations After 30 Days -Who, What, When and Where?

FBCSA—Section 42-44, O. Reg. 30/11 Sections 140

Q. When can a purchaser of licensed supplies and services cancel the contract for those licensed supplies and services?

A. Anytime, so long as the supplies and services have not been provided.

However, the timing of the cancellation will effect the amount of the refund!

30-Day cooling off period (FBCSA, Sections, 40 - 43):

- **If a purchaser enters into a contract for the provision of licensed supplies and services and all of the contract requirements specified in subsection 40 (1) are met, the purchaser is entitled to cancel the contract at any time within 30 days after the day on which the last of the requirements described in subsection 40 (1) is met.**

Note: None of the supplies or service have been used or provided i.e. under waiver E.g. Interment rights used, cremations etc.

- **Request for cancellation must be in writing**
- **Operator who receives notice of cancellation must refund all money together with amounts that are prescribed within 30 days of receiving the notice**

Note: Ss. 161.3 - No offering, selling or providing “Term” burials or scattering.

Public Access To Information

O. Reg. 30/11, Sections 110,111

Public Register and Information Provided to the Public

- Cemeteries must maintain a public register with information such as the name and address of interment rights holders, who is interred/scattered and the location of the lot or scattering ground... and more
- Crematoriums must maintain a public register with information such as the name of person cremated, the date of cremation and the information on the metal tag – personal identifier for the body & name of crematorium operator
- Licensees are obligated to provide the registrar, within the time that the registrar specifies, the information that the registrar requests. This may include verification by affidavit
- The registrar is required to make available to the public, without charge, by electronic or other means information regarding a licensee such as the licensee's address and any disciplinary action taken against the licensee.

Cemetery & Crematorium Operators- Obligations

Subsections 68.(1), S. 113 And Ss. 118. (1)o. Reg. 30/11

Every operator shall provide, without charge a copy of a price list to every person who requests it.

Every operator of a cemetery or crematorium shall provide a copy of the by-laws to every person who requests it.

Price list and Consumer Information Guide (As of July 1, 2021):

Requirement that every bereavement service operator who maintains or makes use of a website to promote, or to enter contracts for, the sale or provision of a licensed supply or service to make available in a clearly visible place on that website:

- a free, printable electronic version of the operator's price list; and
- a link to the consumer information guide prepared by the Registrar of the BAO.

Every operator shall ensure that, before a contract for the sale of licensed supplies and services is entered into, a prospective purchaser has also received:

- A copy of the Consumer Information Guide
- A copy of the operator's price list
- Disclosure related to the contract (See section 113 of O. Reg. 30/11)

Price Lists

FBCSA Sections 33-34, O.Reg.30/11 Sections 54-75, ss. 87.(1)

- **PRICE** “means the price payable by the purchaser, excluding taxes” (ss. 87.(1))
- **SPECIFIC INFORMATION ON PRICE LIST** - Name of operator, prices for all supplies and services offered for sale, package prices, affiliated services etc. Note: Ensure there are no misrepresentations or excessive prices
- **DATED** - Must have a date on the price list. Out of date price lists must be kept for 6 years
- **INTERMENT RIGHTS** - depending on how they are priced, the price list may show a range of lowest and highest prices
- **CONTRIBUTIONS TO THE CMF OR CMA** - are either a percentage off the “PRICE” or a minimum amount based on the price. The price payable for an interment right includes the CMF or CMA contribution!
See examples on next slide

PRICE “means the price payable by the purchaser, excluding taxes” - (ss. 87. (1) of O. Reg. 30/11)

PRESCRIBED AMOUNTS - (S. 166- 168 of O. Reg. 30/11)

PRICE PAID BY INSTALLMENTS – “the pro rata portion of the payment required” (ss. 87. (3) of O. Reg. 30/11)

PRICE PAID FOR PRIVATE MAUSOLEUMS/COLUMBARIUMS – Calculated on the ground lot size and cost of structure (ss. 87. (5) of O. Reg. 30/11)

Price Lists

FBCSA Sections 33-34, O.Reg.30/11 Sections 54-75, ss. 87.(1)

- **Price list and Consumer Information Guide: (As of July 1, 2021)**
 - Require that every bereavement service operator who maintains or makes use of a website to promote, or to enter contracts for, the sale or provision of a licensed supply or service to
 - make available in a clearly visible place on that website:
 - a free, printable electronic version of the operator's price list; and
 - a link to the consumer information guide prepared by the Registrar of the BAO.
 - **NO REQUIREMENT TO FILE** - a price list with the Registrar, Bereavement Authority of Ontario

 - **REGISTRAR MAY REVIEW AND DISALLOW A PRICE** - that is excessive or significantly higher
- Note:** For supplies and services that must be purchased from the operator, the price offered cannot be more than or exceed the direct cost of the operator or other person providing those supplies and services E.g.:
- Supplies and services related to inspecting the installation of a foundation or marker
 - Supplies and services related to constructing a foundation
 - Supplies and services related to installing or setting a marker
-
- **NO INSPECTION FEE FOR CASKETS** – purchased from another source
 - An operator may appeal the Registrar's decision to disallow a price
 - The *Consumer Protection Act* applies as well.

Prices for Interment Rights

FBCSA Sections 33-34, O. Reg.30/11 Sections 54-75, ss. 87.(1)

Town of Gadsby's price list shows:

| Type | Interment Rights | 40% C&M | 2019 | HST | Total paid by consumer |
|--------------------------------|----------------------|---------------------|------------------|-----------------|------------------------|
| E.g. 1 grave plot, flat marker | \$1346.40 (X) | \$538.56 (X) | \$1884.96 | \$245.04 | \$2130 |

Incorrect as the **Price of the interment right is misleading** and the contribution to the **C&M is incorrect**: There is a shortage in the contribution.

| Should be listed as: | Interment Rights | 40% C&M | 2019 | HST | Total paid by consumer |
|----------------------|------------------|-----------------|------------------|-----------------------|------------------------|
| | \$1884.96 | \$753.98 | \$1884.96 | \$245.04 (13%) | \$2130 |

Again, the contribution to the C&M must be the greater of 40% of the price (\$1884.96) of the interment right i.e. \$753.98, and \$290. The price of the interment right payable by the consumer is \$1884.96 plus \$245.04 (HST) for a total of \$2130. **The price of the interment right is simply the price, paid by the consumer, less the HST!!** And the contribution is greater of \$290 and 40% of the price.

Town of Kingsgarden:

Price list only shows:

Single grave adult: Interment Rights = \$875 That's fine!!

| If you wish to give details: | Interment Right | 40% C&M | 2019 Price | HST | Total (payable by consumer) |
|------------------------------|-----------------|---------|------------|----------|-----------------------------|
| Single grave adult: | \$875 | \$350 | \$875 | \$113.75 | \$988.75 |

Legislative Amendments – July 1, 2021

Licence display requirement:

No requirement; that cemetery, crematorium, funeral establishment, and transfer service operators (bereavement service operators) display their licence or a copy of it near the main entrance of their establishment.

Requirement; that every bereavement service operator who maintains or makes use of a website to promote, or to enter contracts for, the sale or provision of a licensed supply or service to make available in a clearly visible place on that website their licence number and a description of their type of licence.

Price list and Consumer Information Guide:

Requirement: that every bereavement service operator who maintains or makes use of a website to promote, or to enter contracts for, the sale or provision of a licensed supply or service to make available in a clearly visible place on that website:

- a free, printable electronic version of the operator's price list; and
- a link to the consumer information guide prepared by the Registrar of the BAO.

Find these regulatory changes on the e-Laws website, found here: [O. Reg. 258/21: GENERAL \(ontario.ca\)](#); [O. Reg. 259/21: GENERAL \(ontario.ca\)](#).

Care and Maintenance Fund (CMF) or Care and Maintenance Account (CMA) - provisions for Interment/Scattering Rights – Who, Why, How, When? – Section 53 of FBCSA, Sections 83, 84, 85, 86, O. Reg. 30/11

Payment before establishment of cemetery

- 86. (1) When an owner of land applies to the registrar for consent to the establishment of a cemetery on the land, the deposit that the owner is required to pay into a care and maintenance fund or account under clause 86 (1) (c) of the Act is \$165,000. O. Reg. 30/11, s. 86 (1); O. Reg. 258/21, s. 2 (1).
- (2) An owner of land who applies to the registrar for consent to the establishment of a cemetery on the land is exempt from the requirement in clause 86 (1) (c) of the Act and subsection (1) if,
 - (a) the owner is a municipality;
 - (b) the land is a burial site; or
 - (c) the cemetery is being established for the purpose of interring human remains to be moved from a burial site. O. Reg. 30/11, s. 86 (2).
- (3) At the request of the owner of the land on which the cemetery is to be established, the registrar may issue a declaration that it would not be contrary to the public interest for the owner to pay an amount set out in the declaration that is less than \$165,000, or to pay nothing, into a care and maintenance fund or account, if,
 - (a) the owner provides evidence satisfactory to the registrar that the cemetery will be maintained in accordance with the Act and the regulations despite the payment of the lesser amount or the non-payment, as the case may be;
 - (b) the owner provides evidence satisfactory to the registrar that the municipality has consented to the request; and
 - (c) the cemetery to be established is not a commercial cemetery. O. Reg. 30/11, s. 86 (3); O. Reg. 258/21, s. 2 (1).
- (4) This section, as it read on December 31, 2021, continues to apply to applications described in subsection (1) or requests described in subsection (3) made on or before that day. O. Reg. 258/21, s. 2 (2).
- Discussion: When is a cemetery established? Is a cemetery from 1860, 1930 etc. that has been sold and is going to be “re-activated – sell interment rights and conduct interments, to be considered exempt or does the “established” triggered when a new owner decides to operate the cemetery?

Care and Maintenance Fund (CMF) or Care and Maintenance Account (CMA) – provisions for Interment/Scattering Rights – Who, Why, How, When? – Section 53 of FBCSA, Sections 83, 84, 85, 86, O. Reg. 30/11

FBCSA- Sections 53, O. Reg. 30/11 Sections 76, 83-95, 106, 109, 165-169

Subsection 53. (1) of the FBCSA requires that “Every cemetery operator who sells, assigns or transfers interment rights or scattering rights or who permits the interment of human remains or the scattering of cremated remains in the cemetery shall have a care and maintenance fund or if the regulations so permit, a care and maintenance account”

Note: This is a requirement not an option!

Why must a cemetery operator establish a CMF/CMA ? What is the purpose of the CMF/CMA?

- **The purpose is to generate income for the care and maintenance of the cemetery in perpetuity!**
- **A trustee of a CMF/CMA shall pay the income from the fund, after deducting the trustee’s fees, to the cemetery operator**

How are the contributions to the CMF/CMA calculated?

- **CMF/CMA contributions are based on a prescribed amount or percentage the PRICE of the interment or scattering rights and on the SIZE of the marker or monument.**

Note: There are provisions for exceptions and exemptions (86.3 of O. Reg. 30/11) establishing a Care and Maintenance Fund

Care & Maintenance (C&M) Strategies



Q – What are some C&M strategies for municipalities with rural cemeteries?:

- Consider an increase in the price of a lot and therefore the increase in C&M contributions to build the fund
- Encourage donations and bequests. Put the message out to the community, when making a Will, to consider the preservation of the cemetery. Involve the Ontario Historical & Ontario Genealogical Societies
- Fund raising - E.g. The “Ice Candle Program” at the Lake of the Woods Cemetery, City of Kenora
- If landowner sells the cemetery and intends to transfer to Municipality then request a contribution to the CMFA
- Reduce mowing costs and environmental concerns – reduce carbon footprint etc. by using slow growing grass seed that needs less mowing
- **DO NOT REMOVE** monuments & markers from their positions at a grave. Repair, stabilize if interest from C&M is available, or lay down at grave.

Municipal Approvals, Prices and, Care and Maintenance of Columbariums



Why does Legislation require a Care and Maintenance Fund (CMF) or Care and Maintenance Trust Account (CMA)?



Reasons to ensure the CMF or CMA is established and secured



CMF or CMA (Continued)

FBCSA - Sections 53, O. Reg. 30/11 Sections 76, 83-95, 106, 109, 165-169

- **Operators establishing new cemeteries are required to establish a CMF and deposit \$160,000 (as of Jan 1, 2022) into the fund (municipalities are exempted from this requirement)**
- **Within 60 days after the earlier of the day the operator sells or transfers interment rights or scattering rights and the day the interment or scattering is carried out or a marker is installed. (ss. 87. (2) of O. Reg. 30/11).**
- **For lots and markers sold prior to 1955, if no contributions were collected, a non-commercial cemetery operator may charge care and maintenance at the current price list price (ss. 95. (2) of O. Reg. 30/11)**
- **Requirement for a CMF/CMA also applies to operators of existing “active” cemeteries or, of cemeteries that they intend to “re-activate”**
- **Bequests, Endowments & Donations, that specify or are intended for the long term care and maintenance of a cemetery, must be deposited in the CMF.**
- **Failure, refusal, or resistance to collecting/submitting and growing the CMF will eventually result in the abandonment of cemeteries and an additional burden on the community/tax – payer. Note: It is a requirement and not an option!**

Who can be the trustee of a CMF or CMA?

FBCSA – Subsection 53 (3) (5)(6)(8), O.Reg.30/11- Sections 83-85, 107

Care and Maintenance Fund (CMF) or Account (CMA)

- A Care and Maintenance Fund or account shall be established in a “prescribed type of institution” i.e.:
 - A Corporation registered under the Loan and Trust Corporation Act or
 - A Credit Union or league as defined in the Credit Unions and Caisses Populaires Act
- And, A municipality may act as the trustee of a CMF or a CMA for a:
 - Cemetery of which the municipality is the owner; or
 - Cemetery of which the municipality is NOT the owner, if the cemetery operator requests the municipality to act as trustee
 - Cemetery operator may enter into a Memorandum of Understanding, instead of a Trustee Agreement (Template available), with the municipality
- List of Loan and trust companies registered in Ontario: <http://loanandtrust.fsco.gov.on.ca/>
- Ontario Credit Unions and Caisses Populaires Listing: <http://creditunion.fsco.gov.on.ca/english/>
- All Trustee Agreements and MOUs must be reviewed and approved by the Registrar prior to requesting consent to transfer:
 - Trustee must take responsibility for all investments (Subsection 27(5) of the *Trustee Act*)
 - Trust agreement is something more than a custodian agreement
 - Capital cannot be released without Registrar’s consent
 - Cemetery operator cannot be compensated for placing funds with trustee.

Who can be the trustee of a CMA?

FBCSA – Subsection 53 (5)(6)(8), O.Reg.30/11- Sections 83-85, 107

Care and Maintenance Account – Less than \$50,000 of care and maintenance money being held.

- A cemetery operator shall be the trustee of a care and maintenance account (CMA) if:
 - Care and maintenance money being held is less than 50K
 - The operator is the operator of a non-commercial cemetery, and
 - The municipality has declined to hold the operator's funds, and
 - The operator has obtained the consent of the Registrar and notify the Registrar in writing prior to using the account
- The CMA shall i.e. must be:
 - maintained at an eligible depository (E.g. Bank)
 - designated as the care and maintenance account
 - established in the name of the cemetery operator as it appears on the licence, as trustee
 - used only as a care and maintenance account to hold care and maintenance trust money
- Money in the account may be invested in:
 - Interest-bearing account
 - GIC's, deposit receipt, term deposit etc. issued by an eligible depository

Note: These investments must be transferred to a prescribed "Trustee" once the account reaches \$50 K +\$1

<https://thebao.ca/wp-content/uploads/2019/07/Application-to-Transfer-Cemetery-Care-and-Maintenance-Fund-Account.pdf>

Public Guardian and Trustee: A cemetery operator who does not have a practical alternative may require the Public Guardian and Trustee to act as the Trustee for care and maintenance money for a cemetery.

Care & Maintenance Contributions

January 1, 2022

| Contribution Type | Current Contribution Amount | Contribution Amount (effective January 1, 2022) |
|---|--|---|
| In-ground graves that are 2.23 m ² (24 ft ²) or larger | \$250 or 40% of price (whichever is greater) | \$290 or 40% of price (whichever is greater) |
| In-ground grave that is smaller than 2.23 m ² (24 ft ²) | \$150 or 40% of price (whichever is greater) | \$175 or 40% of price (whichever is greater) |
| Tomb, crypt or compartment in a public mausoleum | \$500 or 20% of price (whichever is greater) | \$830 or 20% of price (whichever is greater) |
| Niche or compartment in a public columbarium | \$100 or 15% of price (whichever is greater) | \$165 or 15% of price (whichever is greater) |
| Scattering ground for which there will be only one scattering rights holder | \$100 or 40% of price (whichever is greater) | \$115 or 40% of price (whichever is greater) |
| Scattering ground for which there will be more than one scattering rights holder | \$25 or 15% of price (whichever is greater) | \$30 or 15% of price (whichever is greater) |
| Scattering ground for which there will be no scattering rights holder | \$25 | \$30 |
| A private mausoleum provided or constructed by a person other than the cemetery operator is installed in a cemetery | \$500 multiplied by the number of tombs, crypts, compartments or 20% of the sum of specified prices (whichever is greater) | \$575 multiplied by the number of tombs, crypts, compartments or 20% of the sum of specified prices (whichever is greater) |
| A private columbarium provided or constructed by a person other than the cemetery operator is installed in a cemetery | \$100 multiplied by the number of niches and compartments or 15% of the sum of specified prices (whichever is greater) | \$115 multiplied by the number of niches and compartments or 15% of the sum of specified prices (whichever is greater) |
| To establish a cemetery | \$100,000 | \$165,000 |
| Flat marker measuring less than 1,116.13 cm ² (173 in ²) | \$0 | \$0 |
| Flat marker measuring at least 1,116.23 cm ² (173 in ²) | \$50 | \$100 |
| Upright marker measuring 1.22 m (4 ft) or less in height and 1.22 m (4 ft) or less in length, including the base | \$100 | \$200 |
| Upright marker measuring more than 1.22 m (4 ft) in either height or length, including the base | \$200 | \$400 |

Another Reason to Ensure the CMF is Established and Secured



For what purposes can the income from the CMF/(CMA) be used?

O. Reg. 30/11, section 93



- **USE OF INCOME** - A cemetery operator who receives money i.e. income from the fund/account shall use the money only to maintain, secure and preserve the cemetery, including its grounds, buildings, structures and markers, and the equipment used to maintain, secure and preserve the cemetery
 - if the work described above has been completed, to maintain, secure and preserve other cemeteries operated by the same operator, including their grounds, buildings, structures and markers, and the equipment used to maintain, secure and preserve the other cemeteries, and
 - to pay the expenses incurred in establishing and maintaining any of the cemetery's CMF/CMA or to purchase equipment to be used strictly for the care and maintenance of the cemetery, if,
 - A. the operator is no longer selling interment rights, and is no longer selling scattering rights, for the cemetery, and
 - B. the cemetery does not generate any revenue from the operation of a funeral establishment, crematorium or transfer service or from the sale of caskets or markers.

Income from the CMF/(CMA) be used for? (Continued)

FBCSA – Subsections 53. (4), 53. (15-19), O. Reg. 30/11 – sections 83-91, 93

Note: Excerpts from O. Reg. 30/11, s. 93 “For greater certainty”

- the operator is not permitted to use income from the fund or account to purchase equipment or to apply to any other purpose other than the care and maintenance of the cemetery
- the operator is permitted to use income from the fund or account to pay a worker wages and benefits for engaging in, or supervising, the stabilization, maintenance, securing or preservation of markers
- the operator is permitted to use income from the fund to pay a worker wages and benefits for engaging in, or supervising, the maintenance, securing or preservation of,
 - the cemetery or any of its grounds, buildings, structures or markers; or
 - the equipment used to maintain, secure or preserve the cemetery. O. Reg. 30/11, s. 93 (4).
- the operator is not permitted to use income from the fund or account to pay a worker wages or benefits for office work, sales work or engaging in, or supervising, the opening or closing of lots.



More importantly:

- No trustee of a CMF/CMA shall pay out any of the capital portion of the fund or account except as required or permitted by the FBCSA or the associated Regulations.
- A trustee of a CMF/CMA may transfer the fund or account to another trustee, with the written consent of the registrar
- Surplus interest i.e. unused interest, must be redeposited in the CMF/CMA. Interest not released cannot be released or used as a credit or at a later date.

Access to the Capital of CMF/(CMA)? (Continued)

FBCSA – Subsections 53. (4), 53. (15-19), O.Reg 258/21 and O. Reg. 30/11 – sections 83-91, 93

As of January 1, 2022 – Section 94 of O. Reg 258/21

- Permit non-commercial cemetery operators to access the capital portion of a cemetery care and maintenance fund or account to increase the capacity of a cemetery subject to approval from the Registrar of the Bereavement Authority of Ontario (BAO), under the condition that the capital is paid back into the trust fund or account.
- The cemetery operator shall only use a payment received under subsection (1) to increase the capacity of the cemetery, including,
 - (a) to purchase land adjoining the cemetery in order to enlarge the cemetery;
 - (b) to establish a columbarium or mausoleum in the cemetery;
 - (c) to increase the volume of a columbarium or mausoleum in the cemetery;
 - (d) to establish a lot or scattering ground in the cemetery; and
 - (e) to increase the dimensions of a scattering ground in the cemetery.

Find these regulatory changes on the e-Laws website, found here: [O. Reg. 258/21: GENERAL \(ontario.ca\)](#); [O. Reg. 259/21: GENERAL \(ontario.ca\)](#).

Reporting to the Registrar – Annual Licensure Reports

FBCSA-Section 111, O. Reg. 30/11, Sections 103-109 O. Reg. 30/11

- All operators are required to file licensure reports annually – “Annual Licensure Report” – Form 1 – Online portal available
- For CMF/CMA, operators must also file a “Report on Care and Maintenance Funds” – Form 2, and include trustee statements showing the year-end balance and list of capital deposits
- Operators must file an ‘Audit Report’, if the C&M Trust Funds exceed \$500,000 or there is a funeral establishment on one of the operator’s cemeteries
- Operators that sell prepaid supplies and services must file the “Report on Prepaid Trust Money” annually.
- An “Audit Report” or “Review Engagement Report” must be filed by an operator if their prepaid trust money is equal to or greater than \$100,000 at any time during the fiscal year
- The Registrar or the BAO Compliance Inspector may request to see specific documents
- The operator is required to provide the Registrar with a copy of their Trust Agreements relevant to the Care and Maintenance Trust Fund
- The operator is required to provide notice of change to the Registrar within 15 days of the change – including changes to ownership, operator, address, contact information, officers/directors/trustees, shares and share distribution.

Care & Maintenance Fund/Account

Recap!!

- ✓ C&M funds must be held in a trust fund managed by a third-party trustee registered under the *Loan and Trust Corporations Act, 1994* (includes credit unions and Caisse Populaire)
- ✓ Exception: if total C&M is < \$50,000, the C&M may be kept in an account at a bank, credit union or Caisse Populaire.
- ✓ Municipalities may act as a C&M trustee for any cemetery operator
- ✓ For every interment or scattering right sold, a minimum \$ amount or % of the price must go into C&M within 60 days of receipt of payment.
- ✓ Only interest income can be used to maintain the cemetery

Common deficiencies:

- x Late deposit of funds
- x Not depositing enough funds
- x Using income for purposes other than what is allowed by Act and Regulations



Do you have enough money in your C&M Fund/Account to maintain your cemetery in perpetuity?





Bereavement Authority of Ontario
 100 Sheppard Avenue East,
 Suite 505 Toronto, ON M2N 6N5
 Tel: 647-483-2643 Toll-free: 844-493-6356
 Fax: 647-748-2643 Email: info@thebao.ca

Annual Licensure Report (ALR) - Form 1
 Cemetery/Crematorium Operator
Funeral, Burial and Cremation Services Act, 2002 (FBCSA)

| | |
|-----------------|--------------|
| Organization #: | Reviewed by: |
|-----------------|--------------|

Name and Mailing Address:

[Redacted Name and Mailing Address]

Form 1 (includes List of Cemetery/Crematorium Sites) & 2 (if applicable) must be completed and filed with licence renewal payment (if applicable) to the Bereavement Authority of Ontario (BAO) within 90 days of your fiscal year end. You may access fillable ALR forms on the BAO website (www.thebao.ca).

REVIEW THE INFORMATION BELOW AND INDICATE ANY CHANGES:

| | | |
|---------------------------|------------|---------------------------|
| 1. Operator contact name: | | Position/Title: |
| [Redacted] | | [Redacted] |
| Telephone no: | Fax no: | Email address (required): |
| [Redacted] | [Redacted] | [Redacted] |

2. Business Structure Type (choose one only):

| | | |
|--|---|--|
| Corporation: <input type="checkbox"/> Private <input type="checkbox"/> Publicly Traded <input type="checkbox"/> Trustee/Volunteer Board <input type="checkbox"/> Crown | <input type="checkbox"/> Not for profit <input type="checkbox"/> Municipal - not for profit <input type="checkbox"/> Religious - not for profit | Other: <input type="checkbox"/> Sole proprietorship <input type="checkbox"/> Partnership (all types) <input type="checkbox"/> Cooperative |
|--|---|--|

3. Does the operator sell licensed supplies and services before the time of need (yes or no):
 [Redacted]

4. Please indicate below the total number of full body interments, cremation interments, scatterings and cremations to determine the licence renewal fee. Licence renewal fees are \$15.00 plus \$12.00 per interment, scattering and cremation. Operators who conduct less than 10 in total are exempt from the licence renewal fee.

Payment: If this form is due and received by March 31, 2021, FEES ARE WAIVED. After March 31, 2021, pay via credit card, cheque or money order payable to the Bereavement Authority of Ontario in the amount calculated below. A \$35 service charge applies for NSF cheques. Access the BAO website (www.thebao.ca) for the credit card payment form.

| Fiscal year end | Full body interments | Cremation interments | Scatterings | Crematorium Cremations | Total Licence Renewal Fee |
|---|----------------------|----------------------|-------------------|------------------------|--|
| January 1, 2020 - December 31, 2020 | [Redacted] (A) | [Redacted] (B) | [Redacted] (C) | [Redacted] (D) | (Total Fee is exempt if total activity is less than 10) $([Redacted] \times \$12) + \$15 = \$ [Redacted]$ Total Activity (A+B+C+D) Total Fee Required |

Complete the boxes below if the cemetery/crematorium operator's fiscal year end date is different

| Fiscal year end | Full body interments | Cremation interments | Scatterings | Crematorium Cremations | Total Licence Renewal Fee |
|---------------------------------------|----------------------|----------------------|-------------------|------------------------|--|
| [Redacted], 20 - [Redacted], 20 | [Redacted] (A) | [Redacted] (B) | [Redacted] (C) | [Redacted] (D) | (Total Fee is exempt if total activity is less than 10) $([Redacted] \times \$12) + \$15 = \$ [Redacted]$ Total Activity (A+B+C+D) Total Fee Required |

5. Please list below all officers/directors of the cemetery/crematorium operator, attach a separate sheet if necessary:

| Name | Full Address | Position/Title | Phone # |
|---------------|--------------|----------------|------------|
| 1. [Redacted] | [Redacted] | [Redacted] | [Redacted] |
| 2. [Redacted] | [Redacted] | [Redacted] | [Redacted] |
| 3. [Redacted] | [Redacted] | [Redacted] | [Redacted] |
| 4. [Redacted] | [Redacted] | [Redacted] | [Redacted] |
| 5. [Redacted] | [Redacted] | [Redacted] | [Redacted] |
| 6. [Redacted] | [Redacted] | [Redacted] | [Redacted] |

Notice and consent as required by applicable privacy laws

In order to complete or verify the information provided on Forms 1, it may be necessary for the BAO to collect additional information from some or all of the following sources: federal, provincial and municipal licensing bodies and police forces, other law enforcement agencies, sheriff's offices, the Registrar of Bankruptcy, credit bureaus, trust companies for compensation fund records, professional and industry associations, former and current employers, employers for whom you may work while this registration is valid, the Ontario Ministry of Transportation and Industry Canada. Only information relevant to your registration/licence will be collected. Please refer to our Privacy and Access Code on the BAO website.

I consent to the collection of this information as authorized under the *Funeral, Burial and Cremation Services Act, 2002*. I understand that this information will be used to determine whether I am and remain qualified to be licensed under the FBCSA.

Note: For corporations, this report must be signed by two officers, except if there is only one officer/director. For partnerships, this report must be signed by all partners. For municipalities, religious organizations, trustees and volunteer boards this report must be signed by an authorized officer.

WARNING: IT IS AN OFFENCE TO PROVIDE FALSE INFORMATION ON THESE REPORTS.

I (we) certify that to the best of my (our) knowledge and belief the within statements are true and correct and are in agreement with the records maintained by the cemetery/crematorium operator.

| | | |
|-----------------------|------------------|--------------------|
| Authorized signature: | Print full name: | |
| [Redacted] | [Redacted] | |
| Position: | Telephone no.: | Date (dd/mm/yyyy): |
| [Redacted] | [Redacted] | [Redacted] |
| Authorized signature: | Print full name: | |
| [Redacted] | [Redacted] | |
| Position: | Telephone no.: | Date (dd/mm/yyyy): |
| [Redacted] | [Redacted] | [Redacted] |

Return all forms to the address below. Submission by email or fax is preferred. If you sent forms by mail, keep a copy for your records. For questions or assistance completing the forms, please contact:

Bereavement Authority of Ontario
 100 Sheppard Avenue East, Suite 505
 Toronto, ON M2N 6N5
 Tel: 647-483-2645 Toll-free: 844-493-6356 Fax: 647-748-2645
 Email: trust@thebao.ca



Bereavement
Authority of
Ontario

100 Sheppard Avenue East,
Suite 505 Toronto, ON M2N 6N5
Tel: 647-483-2643 Toll-free: 844-493-6356
Fax: 647-748-2643 Email: info@thebao.ca

Annual Licensure Report (ALR) - Form 1
List of Cemetery/Crematorium Sites

Please note we are updating all licensee information on our public register.

PLEASE DOUBLE CHECK, COMPLETE AND CORRECT (IF NECESSARY) ALL FIELDS BELOW:

| Organization #: | | Name: | | | | | |
|---|---|---|--|--------------------------------|--------------------------------|-----------------------|---|
| Licence # & Status (Active or Inactive) | Physical Cemetery Address | Office/Mailing Address (location where day to day business occurs) | Person in Charge of day to day operations | Number of full body interments | Number of cremation interments | Number of Scatterings | Number of Cremations (Crematorium only) |
| Licence #: Status: | Cemetery Name & Address: Lot: Concession: | <input type="checkbox"/> Same as cemetery address <input type="checkbox"/> If not, provide full address: | Name: Position: Telephone #: | | | | |
| Licence #: Status: | Cemetery Name & Address: Lot: Concession: | <input type="checkbox"/> Same as cemetery address <input type="checkbox"/> If not, provide full address: | Name: Position: Telephone #: | | | | |
| Licence #: Status: | Cemetery Name & Address: Lot: Concession: | <input type="checkbox"/> Same as cemetery address <input type="checkbox"/> If not, provide full address: | Name: Position: Telephone #: | | | | |
| Licence #: Status: | Cemetery Name & Address: Lot: Concession: | <input type="checkbox"/> Same as cemetery address <input type="checkbox"/> If not, provide full address: | Name: Position: Telephone #: | | | | |
| Licence #: Status: | Cemetery Name & Address: Lot: Concession: | <input type="checkbox"/> Same as cemetery address <input type="checkbox"/> If not, provide full address: | Name: Position: Telephone #: | | | | |
| Licence #: Status: | Cemetery Name & Address: Lot: Concession: | <input type="checkbox"/> Same as cemetery address <input type="checkbox"/> If not, provide full address: | Name: Position: Telephone #: | | | | |
| Licence #: Status: | Cemetery Name & Address: Lot: Concession: | <input type="checkbox"/> Same as cemetery address <input type="checkbox"/> If not, provide full address: | Name: Position: Telephone #: | | | | |
| Licence #: Status: | Cemetery Name & Address: Lot: Concession: | <input type="checkbox"/> Same as cemetery address <input type="checkbox"/> If not, provide full address: | Name: Position: Telephone #: | | | | |
| Total Sites: | | | | Total: | | | |

[How To Login to the Licensing Portal](#)

Please ensure that you review the names and addresses of the cemeteries listed on the site list as being under your care and supervision

If those sites names are incorrect or are not located in your municipality please note on site list and advise the BAO IMMEDIATELY.

Cemetery grounds

Requirements:

- ✓ Must be maintained in “quiet and good order” with safety in mind
- ✓ Interments to be carried out in a “decent and orderly manner”
- ✓ Provide reasonable access, except as prohibited by your by-laws
- ✓ Graves to be dug to allow at least 2 feet of soil on top of the casket (does not apply to C/R interments)
- ✓ Unstable markers to be repaired, reset, or laid down

Digging in an old section of the cemetery? Have 2 people – one to



and one to watch (to avoid disturbing interred remains)



➤ St. John's Dixie Cemetery & Crematorium, Mississauga



➤ St. James' Cemetery, Toronto

Price list and Consumer Info Guide

Price List Requirements:

- ✓ Must be made available to anyone who asks for a copy
- ✓ Must be provided before a contract is entered into (not just offered)
- ✓ If you have a website, it must be on your website in a downloadable format
- ✓ Operator's name, business name, address, contact info, licence number
- ✓ Name of person in charge of day-to-day operations and title
- ✓ Prices for interment rights, all types
- ✓ Prices for other services and supplies
- ✓ Describe payment options

Consumer Information Guide (CIG):

- ✓ Must be *provided* before a contract is entered into
- ✓ Order online for free at <https://thebao.ca/professionals/order-consumer-information-guide/> (order max one year's supply)



Operator Name
operating as
Business Name

123 Main Street
City/Town, ON
POS 1T0
Tel: (###) ###-###
Website: www.abccemetery.ca
Email: info@abccemetery.ca

Cemetery Operator Licence # CM -
Crematorium Operator Licence # CR -
Transfer Service Operator - Class 1/2 Licence # TS -

Person in Charge of Day-to-Day Operations:
Jane Doe
Insert title

PRICE LIST
Effective date: Month Day, 20xx

Unless otherwise specified, prices shown do NOT include applicable HST.

The following format and content of the price list has been stipulated by the Bereavement Authority of Ontario and is required to be posted by all bereavement licensees.

Page 1 of 3

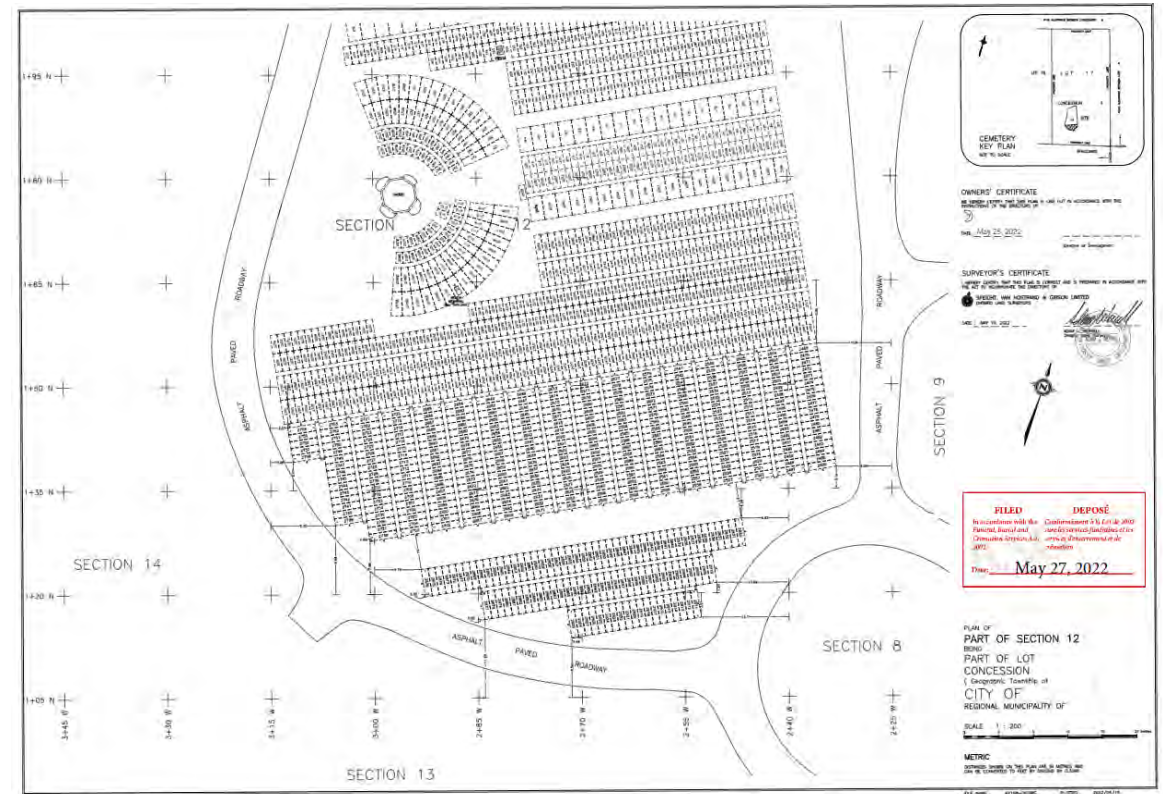
General Plan of Cemetery

Requirements:

- ✓ Must have a general plan of the cemetery, that is current and available to the public
- ✓ Must be drafted by an Ontario Land Surveyor (at least for new cemeteries and expansions of existing cemeteries)
- ✓ Numbering system must be unique
- ✓ Plans must be filed with the BAO 30 days ahead of development
- ✓ Must include dimensions of lots, and distances between lots and roads/boundaries/buildings

Common deficiencies:

- ✗ Not showing compass bearings
- ✗ Not having it available during regular business hours



By-Laws

SAMPLE CEMETERY BY-LAWS

(updated November 2017)

The Bereavement Authority of Ontario has provided a set of sample by-laws which have been approved by the Registrar, *Funeral, Burial and Cremation Services Act, 2002* (FBCSA), Bereavement Authority of Ontario. You may adopt these by-laws if they are relevant to the cemetery sites you operate under your licence, provided you follow the process regarding "Notice" procedures as required by the FBCSA and Ontario Regulation 30/11 and 184/12 (O. Reg. 30/11 and 184/12).

There is "no standard set" of by-laws that applies to the activities of every cemetery in Ontario. Each cemetery operation is unique and requires specific by-laws to reflect its uniqueness. For example, cemeteries operated as "religious" cemeteries may have by-laws that require interment rights holders or individuals to be of specific faith to be buried in the cemetery. By-laws of a Municipality may require that only residents be permitted to acquire interment rights and be buried within the cemetery operated by that municipality. Some cemeteries may have by-laws that permit upright monuments while other cemeteries may prohibit upright monuments and only permit markers set flush and level with the ground. The hours of operation for one cemetery may be different from those of another cemetery etc.

Most importantly, every operator of a cemetery must have a set of by-laws, approved by the Registrar, that are in compliance with the FBCSA and O. Reg. 30/11 and 184/12, are in the public interest, do not give the cemetery operator or supplier an unreasonable or unfair advantage over another supplier, and relate to the current functioning of the cemetery.

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| Section A: | DEFINITIONS |
| Section B: | SAMPLE BY-LAWS - GENERAL INFORMATION |
| Section C: | SAMPLE BY-LAWS - SALE AND TRANSFER OF INTERMENT RIGHTS |
| Section D: | SAMPLE BY-LAWS - BURIAL OR SCATTERING OF CREMATED REMAINS |
| Section E: | SAMPLE BY-LAWS - MEMORIALIZATION |
| Section F: | SAMPLE BY-LAWS - CARE AND PLANTING |
| Section G: | SAMPLE BY-LAWS OUTLING ITEMS THAT ARE PROHIBITED AND PERMITTED |
| Section H: | SAMPLE CONTRACTOR/MONUMENT DEALER BY-LAWS |
| Section I: | SAMPLE BY-LAWS FOR MAUSOLEUMS |
| Section J: | SAMPLE BY-LAWS FOR COLUMBARIUMS |

Requirements:

- ✓ Must be approved by the Registrar
- ✓ Must be provided free of charge upon request
- ✓ Must have an effective date
- ✓ If amending your by-laws, follow submission procedure to have by-laws approved by Registrar (Public Notice)

Common deficiencies:

- x By-laws have not been updated since the FBCSA came into force on July 1, 2012 (old definitions, missing resale info)
- x Wrong legislation and organization quoted (Cemeteries Act, 1990, Ministry)
- x Making vaults mandatory throughout the entire cemetery (unless permitted by MOH)

Public Register

Requirements:

- ✓ Must contain name and address of each Interment/Scattering Rights (IR) holder and location of lot or scattering ground
- ✓ Name and address of each purchaser, date of sale
- ✓ If resold/transferred: name of each new IR holder and date of sale/transfer
- ✓ Name of each person whose remains are interred/scattered and date/location
- ✓ Disinterments: name of person who requested, date of disinterment, and new interment location or name of person who took possession of remains.

Common deficiencies:

- ✗ Not having all required information on one document
- ✗ Not keeping register up-to-date (within 5 days of interment/scattering)

For discussion – Should there be two Registers? One for the public with no addresses of the IRH and one detailed for the operator?



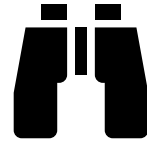
Executed Contracts

Requirements:

- ✓ Must be in writing
- ✓ Signed by both parties
- ✓ Cancellation rights and refund entitlements
- ✓ Contract number
- ✓ Copy of contract delivered to purchaser upon signing
- ✓ And more
- ✓ Make sure you also keep burial permits for at least 2 yrs

Common deficiencies:

- x Not having a contract
- x Not including the name and address of the interment rights holder
- x Not including the amount of the care and maintenance contribution



Along with the contracts, the inspector will review bank records – deposits, withdrawals, cancelled cheques, and bank statements.



Interment/Scattering Right Certificates

Requirements:

- ✓ Name and location of cemetery
- ✓ Name of IR holder
- ✓ Location and dimensions of lot or scattering ground
- ✓ Amount paid
- ✓ Date of purchaser or transfer
- ✓ And more

Common deficiencies:

- ✗ Including purchaser name not IR holder name
- ✗ Not including amount of C&M contribution
- ✗ Not including restrictions re. installation of markers
- ✗ Not including info re: transfer or resale

BAO Bereavement Authority of Ontario
1401 Eglinton Avenue East, Toronto, Ontario M1G 1P8
Tel: 416-497-2333 Fax: 416-497-2334
www.bao.on.ca

SAMPLE INTERMENT RIGHTS CERTIFICATE

Interment Rights Certificate # _____ Date Purchased: _____ Contract # _____

Interment Rights Holder(s): The Interment Rights Holder(s) listed below have the right to direct/consent to the burial, and memorialization associated with the Interment Rights in conjunction with the cemetery by-laws.

| | |
|--|-----------------------------|
| Rights Holder Name: <u>[Record the Rights Holders Information]</u> | Rights Holder Name: _____ |
| Address: _____ | Address: _____ |
| City: _____ Province: _____ | City: _____ Province: _____ |
| Postal Code: _____ | Postal Code: _____ |

| | |
|--|--|
| Cemetery Name: <u>Name as shown on BAO licence</u> | Cemetery Phone Number: _____ |
| Cemetery Address: <u>ABC Cemetery address and postal code</u> | Interment Right Type: <u>Grave, niche, crypt</u> |
| Interment Right Location: <u>Detailed description of the location with lot & plot numbers</u> | Interment Right Price: <u>Example \$1,000.00</u> |
| Care & Maintenance Contribution: <u>Show a minimum of \$250 or 40% of the purchase price (whichever is greater) that has been contributed to the Core and Maintenance Fund</u> | |
| Area: <u>Example: Show area (2.23 square metres) or show dimensions (0.91 m wide x 2.45 m in length)</u> | |
| Interment Right Capacity: <u>[As specified in accordance with your Cemetery By-laws]</u> | |
| Memorialization Permitted: <u>[As specified in accordance with your Cemetery By-laws]</u> | |

Refer to the Cemetery By-laws provided to you at the time of purchase for a complete listing of by-laws that apply to your specific Interment Right

[Include a statement as to whether the cemetery operator will permit private transfer or resale under the cemetery by-laws, or the cemetery by-laws prohibits private transfer of the Interment Rights, allowing the Rights Holders to only transfer their Rights back to the cemetery operator for the current amount in effect on the cemetery's price list at the time of transfer. Include a statement that the Interment Rights Certificate must be returned to the cemetery operator if the Rights Holder(s) chooses to resell or transfer the Interment Rights to a third party Purchaser. Include a statement that a new Interment Rights Certificate will be issued by the cemetery operator to a third party Purchaser upon registration of transfer.]

[Include a statement that the Interment Rights Certificate must be returned to the cemetery operator if the Rights Holder(s) wish to transfer their rights to a third party purchaser, a transferee, or back to the cemetery operator. If the original Interment Rights Certificate is misplaced the cemetery operator must issue a duplicate certificate in order to complete the transfer of ownership of the Interment Right, and the cemetery operator is entitled to charge an administration fee (as shown on the cemetery's price list) for the issuance of a duplicate certificate.]

[The Certificate should be signed by a person legally authorized to act on behalf of the cemetery operator] _____ [Date the Certificate was issued]

Annual Licence Renewals (ALR)

Requirements:

- ✓ Must be submitted by March 31st, every year, when your cemetery licence(s) expire(s)
- ✓ Activities reported on are for the previous calendar year.
- ✓ Reporting time frame is no longer based on fiscal year end

Common deficiencies:

- ✗ Not reporting on time
- ✗ Missing cemetery physical addresses – If there is no “911” street address, it’s okay to use an approximate description (ex., Robson Road, 500m east of John Street)

BAO Bereavement Authority of Ontario

100 Sheppard Avenue East, Suite 205 Toronto, ON M2N 6K5
Tel: 647-463-2645 Toll Free: 844-493-6156 Fax: 647-748-2645 Email: info@thebao.ca

Annual Licence Report (ALR) - Form 1
Cemetery/Crematorium/Hydrolysis Operator
Funeral, Burial and Cremation Services Act, 2002 (FBCSA)

Name and Mailing Address: _____ Operator #: _____

Form 1 (includes List of Cemetery/Crematorium/Hydrolysis Sites) must be completed and filed with your licence renewal payment (if applicable) to the BAO by March 31st every year. You may access fillable ALR forms on the BAO website (www.thebao.ca). If your ALR and payment are not received or postmarked by the March 31st deadline, your licence renewal may be subject to a late fee.

REVIEW THE INFORMATION BELOW AND INDICATE ANY CHANGES:

1. Operator contact name: _____ Position/Title: _____
Telephone no: _____ Fax no: _____ Email address (required): _____

2. Business Structure Type (choose one only):
 Private Corporation Not For Profit Corporation Partnership
 Publicly Traded Corporation Municipal Cooperative
 Trustee/Volunteer Board Religious
 Crown Corporation Sole Proprietorship

3. Does the operator sell licensed supplies and services before the time of need? Note that interment and scattering right sales are not considered as "preneed" sales. An example of a preneed sale would be the advance sale of the interment fee (opening and closing fee).
 Yes
 No

4. Please indicate below the total number of full body interments, cremation interments, scatterings, cremations and hydrolysis processes to determine the licence renewal fee. Licence renewal fees are **\$17.04 plus \$13.63 per interment, scattering and cremation**. Operators who conduct less than 10 in total are exempt from the licence renewal fee.

Payment: Payment can be made by credit card, cheque, or money order payable to the Bereavement Authority of Ontario in the amount calculated below. A \$39.76 service charge applies for NSF cheques. Access the BAO website (https://thebao.ca/011_2017_credit_card_authorization_form_october2017/) for the credit card payment form. BAO fees have increased by 13.6%, which represents the total of cumulative inflation (based on the CPI Index) since the last fee increase in 2014.

The activities listed below are for those conducted between January 1, 2022 and December 31, 2022.

| Full body Interments | Cremation Interments | Scatterings | Crematorium Cremations | Hydrolysis Processes | Total Licence Renewal Fee |
|----------------------|----------------------|-------------|------------------------|----------------------|--|
| (A) | (B) | (C) | (D) | (E) | (Total Fee is NIL if Total Activity is less than 10) $\left(\frac{A}{1} + \frac{B}{1} + \frac{C}{1} + \frac{D}{1} + \frac{E}{1} \right) \times \$13.63 = \$0.00$ + \$17.04 = \$ 17.04 (Total Licence Renewal Fee) |

BAO Bereavement Authority of Ontario

100 Sheppard Avenue East, Suite 205 Toronto, ON M2N 6K5
Tel: 647-463-2645 Toll Free: 844-493-6156 Fax: 647-748-2645 Email: info@thebao.ca

Annual Licence Report (ALR) - Form 1
Cemetery/Crematorium/Hydrolysis Operator
Funeral, Burial and Cremation Services Act, 2002 (FBCSA)

We are updating all licensee information on our public register. Please make sure the physical site address is complete and includes a municipal street (also known as "911") address if available. The numbers to be entered below are for the activities conducted during your entire reporting fiscal year, on a per site basis (i.e. per cemetery, crematorium or hydrolysis facility, as applicable). Attach additional sheets if required. Note re: "inactive" status: the BAO considers a cemetery to be "inactive" if it has not conducted any burial or scattering activity or sold interment/scattering rights since January 1, 1995. Inactive cemeteries are not expected to fully comply with some requirements of the legislation.

PLEASE DOUBLE CHECK, COMPLETE AND CORRECT (IF NECESSARY) ALL FIELDS BELOW:

| Organization # | Name | Physical Cemetery Address | Office/Mailing Address (location where day to day business occurs) | Person in Charge of day to day operations | Number of full body interments | Number of cremated (hydrolysed remains) interments | Number of Scatterings | Number of Cremations (Crematorium only) | Number of hydrolysis processes |
|----------------|----------------|---|---|---|--------------------------------|--|-----------------------|---|--------------------------------|
| License # | Name & Address | Physical Cemetery Address (If not, please provide full address) | Office/Mailing Address (If same as cemetery address, please provide full address) | Name Position Telephone # | | | | | |
| License # | Name & Address | Physical Cemetery Address (If not, please provide full address) | Office/Mailing Address (If same as cemetery address, please provide full address) | Name Position Telephone # | | | | | |
| License # | Name & Address | Physical Cemetery Address (If not, please provide full address) | Office/Mailing Address (If same as cemetery address, please provide full address) | Name Position Telephone # | | | | | |
| License # | Name & Address | Physical Cemetery Address (If not, please provide full address) | Office/Mailing Address (If same as cemetery address, please provide full address) | Name Position Telephone # | | | | | |
| License # | Name & Address | Physical Cemetery Address (If not, please provide full address) | Office/Mailing Address (If same as cemetery address, please provide full address) | Name Position Telephone # | | | | | |
| License # | Name & Address | Physical Cemetery Address (If not, please provide full address) | Office/Mailing Address (If same as cemetery address, please provide full address) | Name Position Telephone # | | | | | |
| License # | Name & Address | Physical Cemetery Address (If not, please provide full address) | Office/Mailing Address (If same as cemetery address, please provide full address) | Name Position Telephone # | | | | | |
| Total Sites: 2 | | | | | Total: 0 | 0 | 0 | 0 | 0 |

Page 2 of 2

Prepaid Trust Records

Requirements:

- ✓ Payment received in advance of need for services and supplies must be placed in trust within 35 days of receipt
- ✓ Accepting prepaid funds requires annual reporting to the BAO
- ✓ Funds must remain in trust until services and supplies are provided or purchaser cancels the contract.



Did you know? Interment rights sold in advance of need are not prepaid services.



Did you know? Licensed operators (cemeteries, funeral establishments, etc.) are **not required** to accept preneed funds. In fact, less than 1% of Ontario's cemetery operators accept preneed \$.

Common deficiencies:

- ✗ Funds not deposited within the required timeframe
- ✗ Excess funds at the time of need not returned (to the estate)
- ✗ Preneed report submitted late

BAO Bereavement Authority of Ontario | 100 Sheppard Ave. E., Suite 303 Toronto, ON M2N 0N5 | Tel: 847-883-2645 Toll Free: 1-888-919-6336 Fax: 847-748-2645 Email: info@thebao.ca

Report of Prepaid Funds (RPF)
For the operator's fiscal year ending in 2022
Funeral, Burial and Cremation Services Act, 2002 (FBCSA)

Instructions to Operator:
The following operators must complete and submit this Report of Prepaid Funds (RPF) annually to the BAO within three (3) months* of the fiscal year end, for EACH site or location it operates:

- ALL Funeral Establishment Operators – Class 1 and 2 (including non-public)**
- ALL Transfer Service Operators – Class 1 and 2 (including non-public)**
- ONLY Cemetery, Crematorium and Hydrolysis Operators that accept prepaid funds

**For funeral establishments and transfer services that do not have or accept prepaid funds, including those not open to the public, please check off the box below and sign the back of the form.

Operators who must submit an RPF must also engage a public accountant to complete a review engagement report OR an audit report, as required by section 109 of Ontario Regulation 30/11. [Exception: A review engagement or audit report is not required if the operator does not have any prepaid funds held in trust/insurance, or has one or more pooled trust funds where the total amount held in trust did not exceed \$100,000 at any time during the reporting year.]

When you submit your RPF, it must include the following three items:

1. This RPF form completed and signed by the person in charge of day-to-day operations
2. Review Engagement Report or Audit prepared by your public accountant on the accounting firm's letterhead
3. Financial statements from each institution where prepaid funds are held, for the month of your fiscal year end.

Please submit your RPF by regular mail, fax to 647-748-2645 or email to trust@thebao.ca. Fax or email is preferred. Please submit all three items described above, together.

*If your accountant prepares an audit on your prepaid trust funds, the deadline to submit your RPF is within six (6) months of your fiscal year end.

Instructions to Public Accountant:
The review engagement or audit report must be prepared by a public accountant licensed under the Public Accounting Act, 2004, who is independent of the licensed operator. The public accountant must conduct a compliance review engagement or audit for the operator's full fiscal year with the criteria established by sections 76, 78, 79, 80, 81, 82, 99, 108 & 109 of Ontario Regulation 30/11.

Review Engagement Reports are conducted under CSAE 3530 - Limited Assurance of the Chartered Professional Accountants of Ontario (CPA) Member's Handbook. The review engagement report must be submitted on the public accountant's letterhead. If discrepancies are found, include a written explanation with evidence of non-compliance.

Audit Reports are conducted under CSAE 3530 - Reasonable Assurance of the CPA Member's Handbook. The audit report must be submitted on the public accountant's letterhead. If discrepancies are found, include a written explanation with evidence of non-compliance.

This report is for the fiscal year _____, 202_ to _____, 2022

| Operator Information: | |
|--|--|
| Licensed Operator Name: | Licence Class: Choose Licence Class |
| Business Name, if different than Licensed Operator Name: | Operator Licence # |
| *Site # (Cemetery/Crematorium/AH only): | Name of person in charge of day to day operations: |
| | Email Address: |

If Operator has No Prepaid Contracts:

I certify that the operator has not accepted any prepaid funds or entered into any prepaid contracts for licensed prepaid supplies or services as defined in the FBCSA. Provide signature on bottom of Page 2.

Page 1 of 2

Report on C&M Fund/Account

(Form 2)

Requirements:

- ✓ Must be submitted yearly, within 90 of your FYE, unless if you need to submit an audit, then within 180 days of your FYE
- ✓ A separate report is due on EACH fund or account.

Submit your renewal and C&M report(s) online at www.thebao.ca!

BAO Bereavement Authority of Ontario
 520 Sheppard Ave. E., Suite 505
 Toronto, ON M2N 6K5
 Tel: 416-403-2648 Toll Free: 1-844-403-6376
 Fax: 416-748-2445 Email: info@thebao.ca

Report on Care and Maintenance Trust Fund/Account - Form 2
 Funeral, Burial and Cremation Services Act, 2002 (FCSA)

Submit a separate Form 2 for each care and maintenance ("C&M") fund/account. Fillable forms are available at <https://thebao.ca/for-professionals/cemeteries-crematoriums/forms/>. See the instruction sheet for further details and reporting requirements.

Account number: _____
 Licensed Operator #: _____

COMPLETE ALL FIELDS BELOW:

Name of trustee or financial institution holding Care and Maintenance trust funds: _____ Account number: _____
 Contact name of trustee or financial institution: _____ Position/Title: _____ Telephone #: _____
 Address: _____ Email Address: _____

Fund/Account relates to (check applicable boxes): Interment/Scattering Rights Monuments/Markers

Fiscal year reporting period: January 1 to December 31, ____ OR ____ 20__ to ____ 20__

1. Opening book value or tax cost balance according to your trustee/financial statements (Should match previous year's line #10 on Form 2. Please do not use the market value.) \$ _____
 2. ADD (if applicable): C&M contributions collected during your previous fiscal year end and deposited during this reporting fiscal year. (Copy line 9 of your previous year's Form 2.) \$ _____
 3. ADD (if applicable): C&M contributions for the sale of interment and scattering rights (chart below). *For assistance, use our C&M calculator at <https://thebao.ca/calculator/>

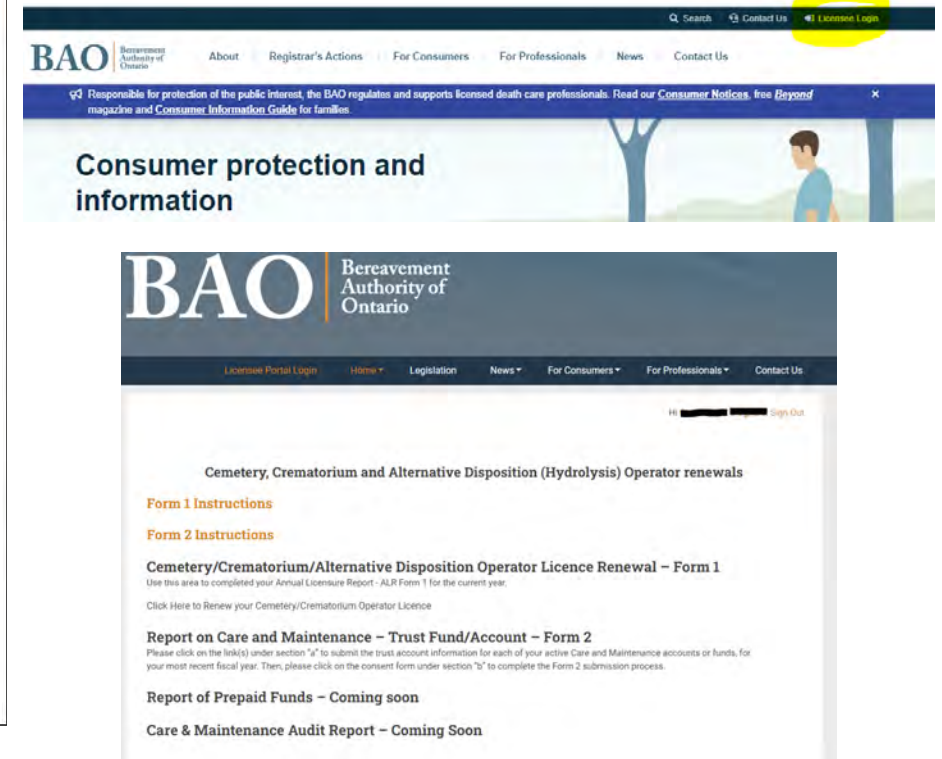
| Type of Interment/Scattering Rights & *Prescribed Contributions | Non-Installment Sales | | Installment Sales | |
|--|--|----------------------------|---------------------------------|---|
| | Number of interment/scattering rights sold or assigned | Total amount of Sales (\$) | Total installment payments (\$) | Total C&M Contributions for installment payments (\$) |
| In-ground grave (2.23m/24ft ² or larger) *520 or 40% of selling price, whichever is greater | | | | |
| In-ground grave (smaller than 2.23m/24ft ²) \$175 or 40% of selling price, whichever is greater | | | | |
| Crypt \$830 or 20% of selling price, whichever is greater | | | | |
| Niche \$165 or 40% of selling price, whichever is greater | | | | |
| Scattering Ground (single right) *515 or 40% of selling price, whichever is greater | | | | |
| Scattering Ground (multiple rights) *530 or 15% of selling price, whichever is greater | | | | |
| Scattering Ground (no rights) *530 per scattering | | | | |
| Total A: | | 0.00 | | 0.00 |

Total care and maintenance contributions for interment and scattering rights, Total A + Total B = \$ 0.00

Page 1 of 3

Common deficiencies:

- x Not reporting on time
- x Failing to submit financial statements
- x Not depositing the minimum required amount into C&M



The 30-Day Cooling Off Period & Cancellations After 30 Days (Continued)

Who, What, When and Where? FBCSA—Section 42-44, O. Reg. 30/11 Sections 140

Cancellation after the 30-Day cooling off period:

- Refund of all money received under the contract along with the greater of; the income earned on the money AND the income that would have been earned had the money been deposited as required by the FBCSA & Regulations
- Refund of all money received after deducting the value of any supplies and services that have been provided and the lesser of the following amounts, if the balance is positive:
 - 10% of the sum of the money received by the operator under the contract and the interest/income earned AND
 - \$350

Note: Following the 30-day cooling off period for a contract for interment rights, the purchaser becomes the owner of the interment rights. Should they wish to cancel the contract they must abide by the by-laws of the cemetery relating to the resale of lots i.e. Does the cemetery restrict the re-sales of interment rights and buy them back OR Does the cemetery require the interment rights holder to sell the lot on the open market.

Re-sale/ Re-purchase of Interment/Scattering Rights

FBCSA- Section 4, O. Reg. 30/11-Sections 140

If Cemetery operator's by-laws prohibit re-sale:

The re-sale price cannot be more than the price listed on the operator's current price list

- Cemetery operator must re-purchase the rights at market value (the price listed on the operator's current price list) less the amount that was originally paid into the cemetery's care and maintenance fund
- Operator may choose to refund full amount, however no money may be withdrawn from the operator's care and maintenance fund and this portion of the refund would come from the operator's own funds
- The operator is not obligated to re-purchase interment rights in a plot, if any lots within the plot have been used, i.e. contain a burial or have a monument already installed on the lot
- When the operator re-sells the rights to another consumer, the consumer pays the current price for the rights, including the full amount required for care and maintenance
- When the operator re-sells the rights, the operator is required to top-up the care and maintenance fund with the difference between what was deposited into the fund for care and maintenance originally and the current amount of care and maintenance that would now be required

Re-Sale/Re-Purchase of Interment/Scattering Rights

FBCSA - Section 4, O. Reg. 30/11 – Section 140

If Cemetery operator's by-laws do not prohibit re-sale:

Prohibition - The purchase of interment or scattering rights for the sole purpose of reselling the rights with a view to making a profit i.e. financial gain, is prohibited.

- The interment rights holder has a right to sell their interment or scattering rights to a third party on the open market
- The sale price cannot exceed the market value for the rights (the price listed on the operator's current price list)
- Neither the interment rights holder, nor the purchaser is required to deduct or pay any additional care and maintenance on the rights and the interment rights holder may sell the rights for the full price of the rights
- The exchange of money is between the interment rights holder and the purchaser; however, the transfer of the rights must be carried out by the licensed cemetery operator
- The operator may charge a reasonable administrative fee to complete the transfer and issue a new interment rights certificate to the purchaser
- The operator is required to confirm that the seller is the interment rights holder of the rights and may require that the original certificate be returned.

By-laws – Cemetery

FBCSA Subsection 40.1(e), O. Reg. 30/11 sections 118, 150-153, 162 (20), 189-191

- Defined in the FBCSA as “the rules under which the cemetery or crematorium is operated”

CEMETERY BY-LAWS

- A cemetery operator may make by-laws governing the operation of the cemetery and, in particular, governing rights, entitlements and restrictions with respect to interment and scattering rights
- A cemetery by-law shall not prohibit an interment or scattering rights holder from making required arrangements with the cemetery operator by telephone or otherwise if the arrangements are necessary to exercise the rights
- No cemetery operator shall operate a cemetery except in accordance with the by-laws of the cemetery
- A cemetery’s by-laws shall specify the documentation required in order to carry out an interment, scatterings or the installation of a marker
- A cemetery operator is not prohibited from removing human remains placed in a cemetery without permission of the cemetery operator if the removal is authorized by the cemetery by-laws and if the removal is done in accordance with the cemetery by-laws.



By-laws (Continued)

FBCSA Subsection 40.1(e), 47.(1), O. Reg. 30/11 sections 118, 150-153, 189-191



- **By-laws are a vital requirement for a contract to be valid i.e.:**
 - in the case of a contract for the purchase of interment or scattering rights, the operator delivers to the purchaser,
 - (i) a copy of the by-laws of the cemetery and written notice as to whether the by-laws of the cemetery permit the purchaser to resell the interment rights or scattering rights to a third party, and
 - (ii) a description of the location of the lot or scattering ground that is purchased;
 - in the case of a contract for the purchase of crematorium supplies and services, the operator delivers to the purchaser a copy of the crematorium's by-laws; and
- **By-laws are an integral requirement for the resale of Interment Rights i.e.:**
 - an interment rights holder or a scattering rights holder has the right to sell the interment rights or scattering rights, as the case may be, to a third party before the rights are exercised, if such a resale is not prohibited by the by-laws of the cemetery. 2002, c. 33, s. 47 (1).

By-laws (Continued)

FBCSA Subsection 48.1 &2, O. Reg. 30/11 sections 118, 150-153, 189-191

- In accordance with the cemetery by-laws:
 - An interment rights holder or a person authorized to act on the holder's behalf has the right to,
 - (a) inter any human remains in the lot to which the interment rights relate
 - (b) erect a marker on the lot, or other receptacle for human remains, to which the interment rights relate
 - (c) have reasonable access to the lot to which the interment rights relate at any time, except as prohibited by the cemetery by-laws; and
 - (d) once the interment rights have been paid in full, receive a certificate of interment rights from the operator
 - An interment rights holder and the relatives of any person whose remains are interred in a cemetery have the right to decorate the lot in which the remains are interred if the decoration does not contravene the cemetery by-laws
- Same with Scatterings
 - (a) every person has reasonable access to a lot or scattering ground at any time except as prohibited by the cemetery by-laws.

By-laws (Continued)

FBCSA Subsection 40.1(e), O. Reg. 30/11 sections 118, 150-153, 189-191

CREMATORIUM BY-LAWS

- A crematorium operator may make by-laws governing the operation of the crematorium, including any rights or entitlements of purchasers of crematorium services or restrictions on the rights or entitlements of such purchasers
- No crematorium operator shall operate a crematorium except in accordance with the by-laws of the crematorium
- No crematorium operator shall cremate animal remains unless the by-laws of the crematorium authorize it

CONTENT OF CREMATORIUM BY-LAWS

- The by-laws of a crematorium shall specify the documentation required by the operator in order for a cremation to be carried out
- The by-laws of a crematorium shall provide that, without the written and signed consent of the purchaser of the cremation services, the operator is prohibited from,
 - (a) cremating the remains of more than one person at once;
 - (b) cremating human remains together with animal remains; and
 - (c) co-mingling cremated remains.

By-laws (Continued)

Submission Procedures for Approval

FBCSA Subsection 40.1(e), O. Reg. 30/11 sections 118, 150-153, 189-191

- **NO CEMETERY &/OR CREMATORIUM BY-LAW OR BY-LAW AMENDMENT IS EFFECTIVE UNTIL THE REGISTRAR, FBCSA, BAO, HAS APPROVED IT**
- The exception to obtaining the registrar's approval applies to a standardized by-law previously approved by the registrar. however, the notice provisions still apply
- Notice of filing must be:
 - a. Published once in a newspaper with general circulation in the locality in which the cemetery is located.
 - b. Conspicuously posted on a sign (for 4 weeks) at the cemetery entrance.
 - c. Delivered to each supplier of markers who has delivered a marker to the cemeteries during the previous twelve-month period
- The notice shall state that the owner will allow interested parties access to the proposed by-law in order to make copies of it and that all proposed by-laws are subject to the Registrar's approval
- The owner shall allow interested persons to inspect and make copies of the proposed by-law.

By-laws (Continued)

Submission Procedures for Approval

FBCSA Subsection 40.1(e), O. Reg. 30/11 sections 118, 150-153, 189-191

The Licensing Officer, BAO will therefore require the following:

1. Two copies of the proposed by-laws to be approved by the Registrar
2. A copy of the newspaper notice.
3. A photo of the sign that was posted at the cemetery entrance for 4 weeks (Please indicate the beginning and end dates of posting on the back of the photo). Please submit one photo of the sign that clearly shows the wording and one photo of the sign indicating its size and position in relation to the cemetery entrance.
4. A list of monument dealers and their addresses that the cemetery by-laws were delivered to.

Upon approval by the Registrar, a copy endorsed by the BAO will be returned.

PROVIDING COPIES OF BY-LAWS

- NOTE: Every operator of a cemetery or crematorium shall provide a copy of the cemetery by-laws or crematorium by-laws, as the case may be, to every person who requests it.

By-laws (Continued)

Submission Procedures for Approval

FBCSA Subsection 40.1(e), O. Reg. 30/11 sections 118, 150-153, 189-191

SAMPLE NEWSPAPER NOTICE FOR THE BY-LAWS

(Note: The sign and newspaper notice should be identical in content)

NOTICE

(Name of Cemetery/Crematorium)

(Name of Operator) has submitted by-laws to the Registrar, *Funeral, Burial, and Cremation Services Act, 2002, Bereavement Authority of Ontario*.

The by-law or by-law amendment is not effective until the Registrar approves it.

Any interested parties may contact:

(Name of Operator's Representative) at Tel: (XXX) XXX-XXX for information, or to make copies.

By-laws or amendments may be reviewed or copied at (enter address location).

These by-laws are subject to the approval of the Registrar, *Funeral, Burial, and Cremation Services Act, 2002, Bereavement Authority of Ontario*. Telephone: Bereavement Authority of Ontario 647-483-2645 or 1-844-493-6356, E-mail info@thebao.ca

By-laws (Continued)

Submission Procedures for Approval of Standardized By-laws FBCSA Subsection 40.1(e), O. Reg. 30/11 sections 118, 150-153, 189-191

- Standardized by-laws submitted by a recognized organization and previously approved by the Registrar are not required to be submitted. However, the previously mentioned notice provisions must be followed.
- Submission procedures for the approval of a “standardized” Cemetery and/or Crematorium by-laws with minor deletions and/or amendments or addendums
- If a cemetery operator intends to adopt a previously approved standardized by-law that includes a few by-laws that are unsuitable/un-applicable to the operation of their particular cemetery, or requires additional by-laws the operator may:
 - Submit the standardized by-laws with:
 - an addendum of additional by-laws, or
 - the unsuitable/un-applicable by-laws stroked out and initialed by the operator
 - the unsuitable/un-applicable by-laws stroked out and initialed by the operator along with an addendum of any additional by-laws required to reflect the particular requirement
- The Registrar will then only review and approve the additional by-laws included in the addendum/schedule.

Note: The above-mentioned notice provisions must be followed.

By-laws – Allowance to inter CREMATED companion PET remains

- FBCSA allows for the interment of human remains in a cemetery i.e. land that, in the prescribed circumstances, has been otherwise set aside for the interment of human remains
- Recent by-laws approved by the Registrar, FBCSA, BAO, allows:
 - Cremated “companion” pet remains to be interred with human remains
 - Must be approved, following By-law approval/amendment process, by Registrar
 - Cannot be in an area where Interment Rights have been previously sold
 - Must be in a separately mapped area of a licensed cemetery site, so that all Interment Rights Holders are aware that cremated pet remains with human remains may be interred alongside their loved ones.

Note: Please ensure that you contact a licensing officer at the BAO prior to making any operational changes to your cemetery.

Approval or Revocation Of By-laws

O. Reg. 30/11 sections 150-153

Approval

- Registrar will approve a by-law or by-law amendment filed unless,
 - (a) approval of the by-law or by-law amendment is not in the public interest; or
 - (b) the effect of the by-law or by-law amendment is to give the cemetery/crematorium operator or other supplier an unreasonable or unfair competitive advantage over another supplier
- Should the Registrar refuse to approve a by-law or by-law amendment, the Registrar shall give the cemetery operator written notice of the refusal and provide reasons and a statement that the cemetery operator may appeal the refusal
- A cemetery/crematorium operator may appeal the Registrar's refusal to approve a by-law or by-law amendment to the Tribunal, by mailing or delivering, within 15 days after service of the notice of refusal, a written request for a hearing to the Registrar and to the Tribunal.

Revocation

- The Registrar may revoke the approval of a cemetery/crematorium by-law or by-law amendment if the registrar is satisfied that,
 - (a) the by-law or by-law amendment is not or is no longer in the public interest; or
 - (b) the effect of the by-law or by-law amendment is to give the cemetery/crematorium operator or other supplier an unreasonable or unfair competitive advantage over another supplier

Burial Site Discoveries

FBCSA Sections 94-100, O. Reg. 30/11 Sections 174-184

The discovery of human remains outside a cemetery (accidentally or during an archaeological assessment) must be reported to the Police and Coroner and the Registrar, FBCSA, Ministry of Public Business and Service Delivery



ARCHAEOLOGICAL INVESTIGATIONS IN OR IMPACTING ON CEMETERY LANDS

Registrar's Directive and Authorization - 1 March 2019

Archaeological Assessments & Investigations on Cemetery lands

The Registrar, *Funeral, Burial and Cremation Services Act, 2002*, Bereavement Authority of Ontario, requires that professionally licensed archaeologists retained to conduct any invasive type of archaeological assessments or investigations within a cemetery, submit a request to the Registrar for an Investigation Authorization prior to commencing the assessment. The Investigation Authorization will relieve the archaeologist of the prohibition and liability related to the intentional disturbance of a human burial within a cemetery.

The request to conduct an archaeological assessment or investigation must include at a minimum a summary of the Stage 1 archaeological report as recommended by the Ministry of Tourism, Culture & Sport's Standards & Guidelines for Consultant Archaeologists (S&G's) – See link:

http://www.mtc.gov.on.ca/en/publications/SG_2010.pdf and also provide:

1. The contact information and permission of the owner of the cemetery land
2. The reason why this activity is necessary and what results are expected
3. What the manner of the assessment or investigation will entail
4. Proposed date of commencement of the activity
5. Confirm that the archaeological assessment will be in keeping with the S&G's and the *Funeral, Burial and Cremation Services Act, 2002* and Ontario Regulation 30/11.
6. Provide the PIF (Project Information Form) number obtained from the Ministry of Tourism, Culture & Sport.

An Investigation Authorization is required whenever archaeological investigations are contemplated to verify and/or determine the boundaries of a cemetery or any similar situation where the records, maps and plans of the cemetery cannot confirm the existence and exact locations of burials within that cemetery.

Should human remains be discovered **outside** the known and defined boundaries of a cemetery, all work should be **halted**, and the Coroner and Police **must** be notified. If the human remains are determined to not be of forensic interest the matter must then be reported to the Registrar, Ministry of Government and Consumer Services.

Note: The S&G's also recommend that archaeological assessments be undertaken within 10 m of the known boundaries of a cemetery prior to the issuance of municipal permits etc. that authorize excavations, invasive land activity or construction activity.

Please contact the BAO at: infor@thebao.ca or (647) 483-2645 for further information.

ARCHAEOLOGICAL INVESTIGATIONS IN OR IMPACTING ON CEMETERY LANDS

Registrar's Directive and Cemetery Investigation Authorization

REGISTRAR'S DIRECTIVE

Authorization for Stages 2-4 Archaeological Fieldwork (Assessments and Investigations) on Cemetery Lands (updated as of February 12, 2021)

The Registrar, *Funeral, Burial and Cremation Services Act, 2002*, Bereavement Authority of Ontario (BAO), requires that a professionally licensed archaeologist retained to conduct any Stages 2-4 archaeological fieldwork (invasive ground disturbances) within a cemetery or within lands adjacent to a cemetery where the boundaries cannot be conclusively determined based on records, maps and plans of the cemetery, apply for and receive a Cemetery Investigation Authorization (CIA) prior to conducting this fieldwork¹.

Pursuant to subsection 96. (1) (2) and (3) of the *Funeral, Burial and Cremation Services Act, 2002*, (FBCSA) the CIA will relieve the licensed archaeologist of the prohibition and liability related to the intentional disturbance of a human burial within a cemetery during this fieldwork.

The application for a CIA must include a copy of the Stage 1 archaeological assessment report and a letter confirming the report was entered into the Ontario Public Register of Archaeological Reports (the Register). Please allow 30 days for review of the CIA application. For reports entered into the Register prior to this Directive, or not yet submitted to Ministry of Heritage, Sport, Tourism and Culture Industries (MHSTCI) for review, the licensed archaeologist must instead provide a detailed fieldwork strategy along with MHSTCI correspondence indicating concurrence with that strategy².

Please note that GPR or other non-invasive methods are considered supplementary and not a replacement for a full Stage 3 cemetery investigation for confirming the presence or absence of burials.

Should grave shafts and/or human remains be documented during archaeological fieldwork, all work must cease, and the BAO must be contacted immediately.

Should human remains be found outside of the confirmed boundaries of a cemetery, the Coroner and Police must be notified immediately. If the human remains are not determined to be of forensic interest the matter must then be reported to the Registrar, *Funeral, Burial and Cremation Services Act, 2002*, Ministry of Government and Consumer Services.

For advice on meeting the 2011 Standards and Guidelines for Consultant Archaeologists in relation to any invasive Stage 2-4 archaeological fieldwork within cemetery lands, or adjacent lands when the boundaries cannot be conclusively determined, please contact MHSTCI at Archaeology@ontario.ca.

For further information about the FBCSA or this Directive, please contact the BAO at info@thebao.ca or (647) 483-2645.

ARCHAEOLOGICAL INVESTIGATIONS IN OR IMPACTING ON CEMETERY LANDS

APPLICATION FOR A CEMETERY INVESTIGATION AUTHORIZATION (as of February 12, 2021)

Pursuant to subsection 96. (1) (2) and (3) of the *Funeral, Burial and Cremation Services Act, 2002*, the archaeologist may cause an investigation of a described area of the cemetery lands and property to confirm the presence of archaeological resources including human remains within the property.

In order that a Cemetery Investigation Authorization (CIA) can be issued we require that the archaeologist, retained by a proponent to conduct an archaeological assessment, in or in close proximity to a cemetery (whose boundaries have not been credibly confirmed), provide in addition to any other relevant information, the following – indicate yes or no:

| No. | Required information to be submitted | Yes | No |
|-----|---|-----|----|
| 1. | The name and full contact information of the proponent | | |
| 2. | The name and full contact information of the cemetery operator | | |
| 3. | The name and full contact information of the landowner | | |
| 4. | The name and full contact information of the Archaeologist who has contracted with the proponent | | |
| 5. | The 'correct' name, address, and legal description of the cemetery | | |
| 6. | Confirmation that the research has been conducted into the cemetery records and the legal boundaries of the cemetery have been confirmed or have not been confirmed | | |
| 7. | The reason for the assessment/investigation | | |
| 8. | The PIF number and date of issue from the Ministry of Heritage, Sport, Tourism and Culture Industries | | |
| 9. | Confirmation that the archaeologist understands and is aware of the related cemetery legislation i.e. Funeral, Burial and Cremation Services Act, 2002 & Ontario Regulation 30/11. | | |
| 10. | Confirmation that the archaeologist will provide the Bereavement Authority of Ontario a copy of the report(s) documenting the fieldwork applicable to this CIA and MHSTCI's letter confirming the report(s) have been entered into the Ontario Public Register of Archaeological Reports. | | |
| 11. | The proposed date to commence the archaeological investigation. Note: The Bereavement Authority of Ontario will require at least 30 days' notice to review the information provided and issue the Cemetery Investigation Authorization unless there are extenuating circumstances. | | |
| 12. | Any other information the archaeologist determines may be relevant to the request. | | |

Another Reason to Ensure the CMF is Established and Secured



APPROVALS TO ESTABLISH A CEMETERY &/or CREMATORIUM/AH

FBCSA- Sections 83 - 85, O. Reg. 30/11-Sections 146-149

APPROVAL & PUBLIC NOTICE PROCESS

Starts with the
landowner/operator
getting Municipal
Approval

- The FBCSA and O. Reg 30/11 require Municipal Approval for the establishment, alteration or increase in capacity of a cemetery prior to the Registrar consenting to issuing a licence to operate a cemetery
 - Municipality - if the cemetery is to be situated within the local municipality
 - Minister of Natural Resources – if the cemetery is to be situated on Crown land in territory without municipal organization. May be referred to the MNR District office
- Municipality “shall grant” approval, in a reasonable time, if, in the Municipality’s opinion, it is in the Public Interest. Must identify “Public Interest”
- When a decision is made to approve or refuse request for approval the Municipality shall:
 - Send a copy of the decision, identifying “public interest” reasons, to the Registrar and the applicant making the request. Registrar must be provided reasons in order to decide whether or not to appeal!! NO REASONS IS GROUNDS FOR AN APPEAL!!
 - Publish notice of the decision in a local newspaper (consider website as well)
- Note: Sections 149 & 185 of O. Reg 30/11 provide that “A building permit is acceptable as proof of municipal approval for a mausoleum, columbarium and a crematorium, but does not eliminate the requirement for a public notice”
 - Applies to installations within an existing cemetery.

NOTICE OF APPROVAL TO ESTABLISH A CEMETERY &/or CREMATORIUM/AH

Sample Notice of Municipal Decision to be incorporated/adapted into standard municipal notices
FBCSA subsection 84.(4)(b) and section 85 (See specifics for sample notice on next page)

FUNERAL, BURIAL AND CREMATION SERVICES ACT, 2002

NOTICE OF MUNICIPAL COUNCIL DECISION

[Name of Municipality]

TAKE NOTICE that on **[date of approval]** Council of the **[Name of Municipality]** approved the **[establishment, alteration or increase of a cemetery/crematorium/Hydrolysis at/address/location of cemetery]** to permit **[specifics of what was approved e.g. Cemetery – Mausoleum, Columbarium, Crematorium etc.]>**

AND FURTHER TAKE NOTICE that the applicant, Registrar or any person with an interest therein may, within 15 days after publication of this notice refer the municipality's decision to the Local Planning Appeal Tribunal (previously the Ontario Municipal Board) for a hearing.

Further information may be obtained from **[name of municipality's contact who will provide further information]**

Dated at **[Name of Municipality]** this **[date][day]**of**[month][year]**

NOTICE OF APPROVAL TO ESTABLISH A CEMETERY &/or CREMATORIUM/AH

EMETERY &/or FBCSA- Sections 86, O. Reg. 30/11-sections 146-149

Publishing Notice of Decision in a Local Newspaper

- Specifics of what was approved is to be described in the newspaper notice and should include:
 - sufficient detail to identify what was approved. (E.g. A one-acre cemetery; A 6 -story or six (6) floor mausoleum containing 10,000 crypts; a one floor columbarium containing 2000 niches; a single story two retort crematorium building)

NOTE: Despite an applicant providing the required documentation to establish, alter or increase the capacity of a cemetery in a local municipality, the registrar shall not consent to the establishment, alteration or increase unless:

- Notice of the municipality's decision to grant its approval has been published in accordance with clause 84 (4) (b) i.e. in a local newspaper and
- Registrar has received a copy of the notice of decision with the public interest reasons.

APPEAL PROCESS

- **Appeal:**
 - The applicant, Registrar or any person with an interest in the decision to grant the approval, may appeal the decision to the Local Planning Appeal Tribunal (LPAT) (previously the Ontario Municipal Board) within 15 days after the publication of the decision and/or receipt of a copy of the municipality's decision (see section 85 of the FBCSA)

Note: If the Registrar has not been provided with a copy of the decision and reasons for the decision the Registrar may appeal to LPAT. "NO REASONS" IS GROUNDS FOR AN APPEAL!!

- **Hearing:**
 - LPAT may hold a hearing and Registrar is entitled to make representations
 - LPAT may reverse the decision and substitute its own decision which is final!!

APPROVAL CRITERIA & PROCESS

- Who makes the decision to approve? Who makes the Public Interest determinations and ensures Public Safety if approval is given?
 - Planning department?
 - Building department?
 - By-law department?
 - Sewer Use By-law department?
 - Ontario Government – Ministries of Natural Resources and Forestry, Environment, Labour, and Tourism, Culture and Sport
 - Delegated Authorities – Bereavement and Technical Standards Safety Authority
- Municipal Approval considerations:
 - Location complies with municipality’s development plan
 - Proposed use complies with municipal by-laws i.e. Zoning bylaws
 - Amendments to the zoning by-law to allow establishment – i.e. non-confirming use
 - *A certificate of the Medical Officer of Health stating that the land is suitable for use as a cemetery i.e. water and soil conditions.
 - Any designation under the *Ontario Heritage Act*.

Municipal Approvals to Establish a Cemetery (continued)

FBCSA- Sections 83 - 85, O. Reg. 30/11-Sections 146-149

APPROVAL CRITERIA & PROCESS

- **Criteria to consider re: Compliance with Zoning by-laws:**
 - Does the proposed establishment (cemetery, crematorium, funeral and transfer service establishment) fit the definitions within the by-law or does the zoning by-law need to be amended? E.g. Many municipal zoning by-laws in Ontario do not define a crematorium (flame-based or otherwise)
 - Can a “Flame-based” crematorium possibly be considered an ancillary use to a Funeral Home i.e. Funeral Establishment?
 - Does an establishment meet the zoning requirement if that particular establishment is not specifically identified in the by-law?
 - Consider the various developments and structures to be located within the cemetery.
 - Will the cemetery be impacted by the surrounding establishments, residences and vice versa.
 - Are there potable water sources within close (250 m) proximity of inground graves
 - That permits, issued for buildings (greater than 15 cubic m. in volume) within the cemetery, will ensure that the building will be installed at least 4.57 m or 15 ft. from any inground grave or scattering ground.
 - Access to the cemetery – pedestrian, vehicular, easement.

Approvals to Establish a Cemetery – Recommendations & Considerations

- **Criteria to consider re: “Public Interest” – Public Safety and/or Community Standards:**
 - Is the proposed cemetery land suitable for burials in keeping with religious and cultural requirements?
E.g. Swamp lands or lands with very high water tables or Rocky, impenetrable and hazardous lands.
 - Certificate and recommendations from the Medical Officer of Health will be implemented.
 - Will the use be safe for the community vs. Hazardous to the community?
E.g. Are there natural water sources – wells, rivers, streams, ponds etc. in close proximity to the proposed burial area. These could also be water wells and/or aquifers
 - Will there be community acceptance and is there a need for a cemetery?
E.g. Access, roadways and parking for vehicular traffic during funerals, visitations etc.
 - Proximity to residential areas, primary schools, senior citizen residences.
 - Has the operator provided sewers and drains that are necessary to provide proper drainage so that caskets are not lowered into graves full of water.

Check these links:

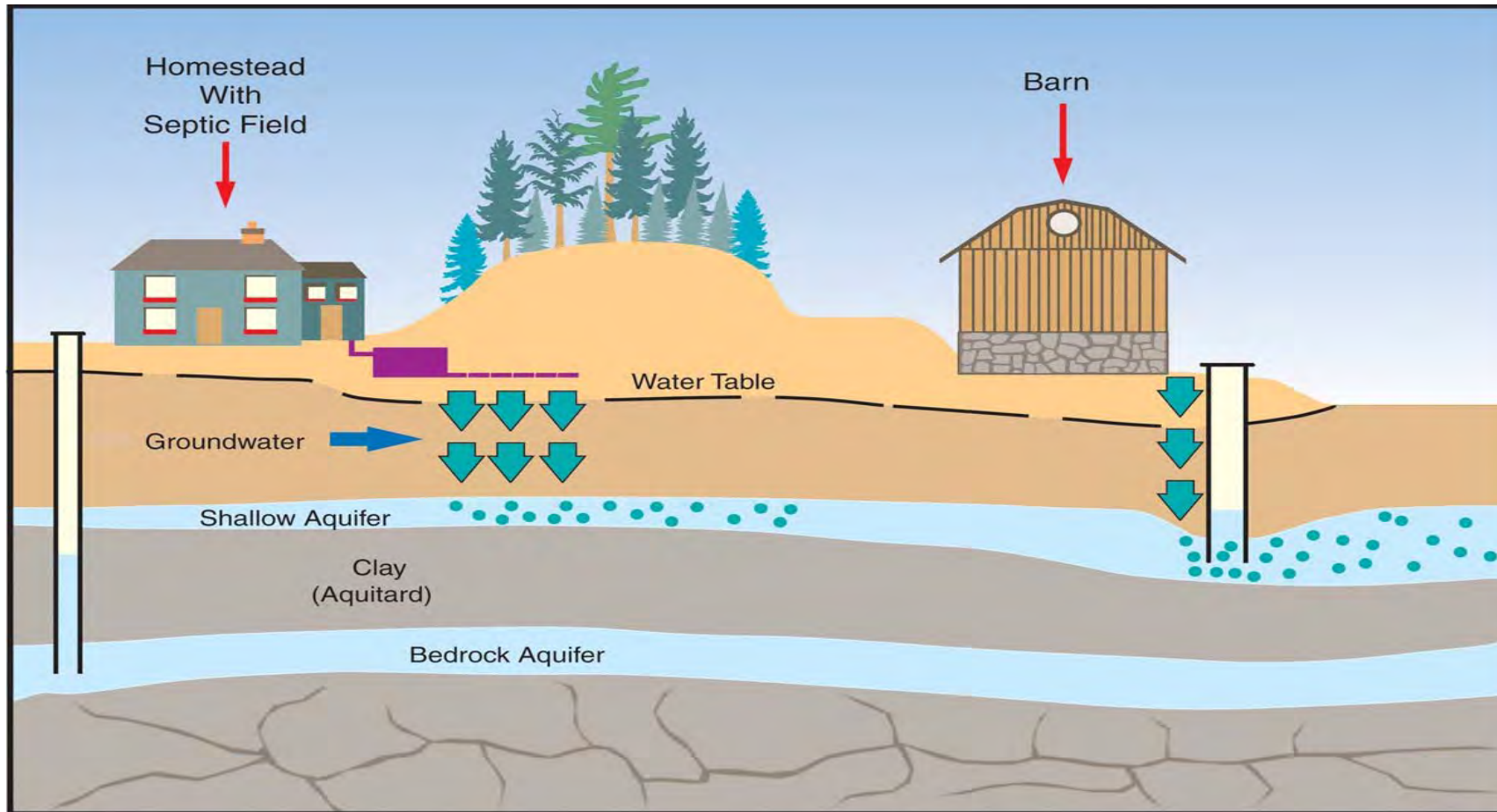
<https://www.ontario.ca/page/protecting-groundwater-protect-health#section-4>

<https://www.ontario.ca/page/tables-drinking-water-threats#section-0>

Approvals to Establish a Cemetery

FBCSA- Section 4, O. Reg. 30/11-Sections 140

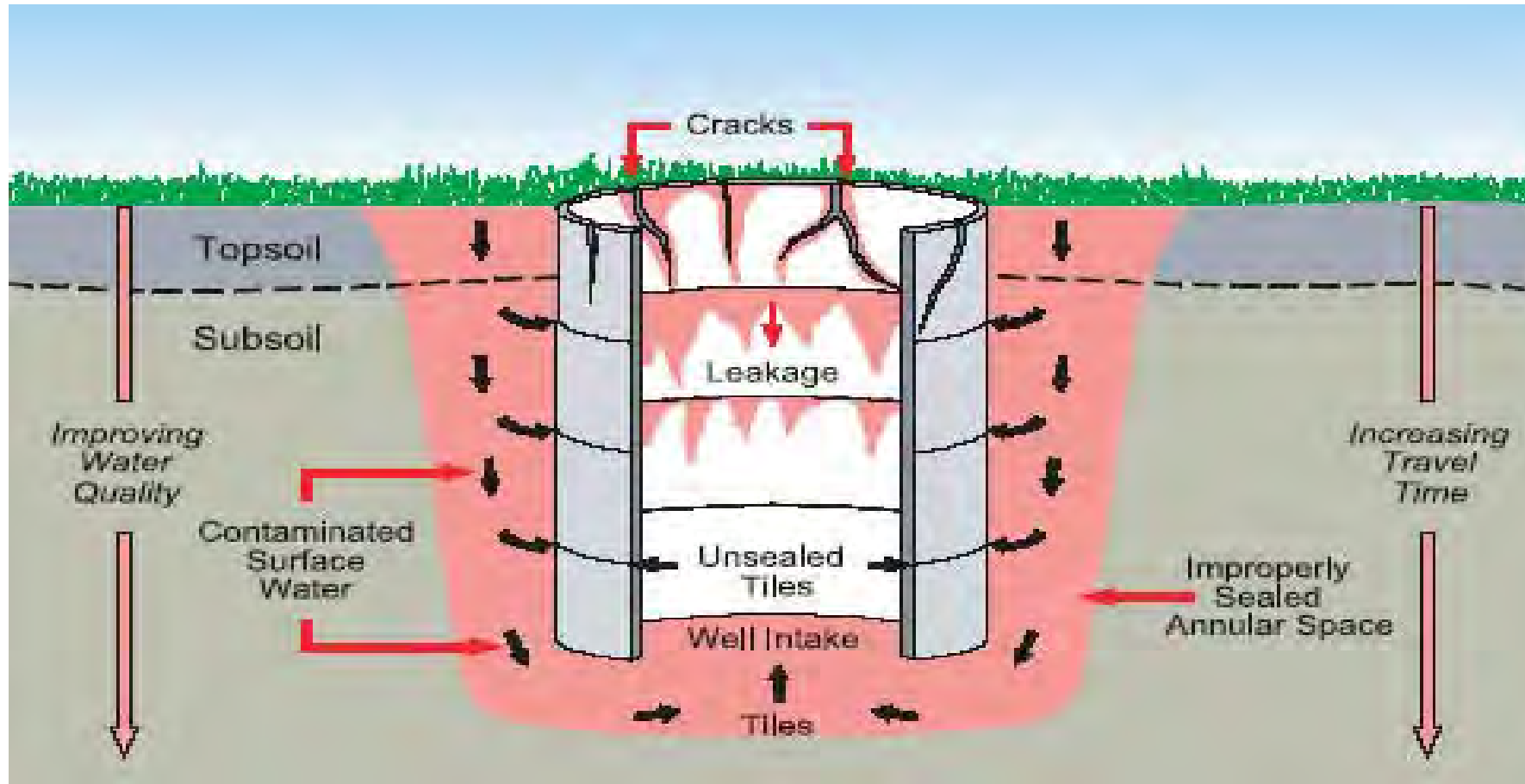
<https://www.ontario.ca/page/protecting-groundwater-protect-health#section-4>



Approvals to Establish a Cemetery

FBCSA- Section 4, O. Reg. 30/11-Sections 140

<https://www.ontario.ca/page/tables-drinking-water-threats#section-0>



World Health Organization (W.H.O.)

Recommendations for Approvals to Establish a Cemetery (continued)

Recommendations to site and design a future well managed cemetery - published in 1998 by the World Health Organization – THE IMPACT OF CEMETERIES ON THE ENVIRONMENT AND PUBLIC HEALTH :

- Human (or animal remains) must not be buried within 250 m of any well, borehole or spring from which potable water supply is drawn. Note: This distance may be greater if the site has a steep hydrogeological gradient or the velocity of the groundwater flow within an aquifer is rapid.
- The place of interment should be at least 30 m away from any other spring or watercourse and at least 10 m from any field drain.
- All burial pits on the site must maintain a minimum of 1 m. of subsoil below the bottom of the burial pit (i.e. the base of the burial must be at least 1 m. above solid rock).
- The base of all burial pits on the site must maintain a minimum of 1 m. clearance above the highest natural water table. (Any variability in the water table should be taken into account).
- Burial excavations should be backfilled as soon as the remains are interred, providing a minimum of 1 m. soil cover at the surface. Note: ss 154.(2) of O. Reg 30/11 requires that human remains are buried at least 0.61m or 2 ft below the natural level of the ground surface.
- The base of all burial pits at cemeteries should be above the highest natural water table to minimize seepage directly into the aquifer during putrefaction of human corpses.
- Should the applicant be required to carry out a hydrogeological assessment of the lands?

World Health Organization (W.H.O.)

Recommendations for Approvals to Establish a Cemetery (continued)

- Cemeteries could also be planted with deep-rooting trees that consume large volumes of groundwater and seepage water passing through the unsaturated zone.
- Most viruses are adsorbed through the depth of soil and some, such as polioviruses, are held near the soil surface. After rainfall these retained viruses may escape from the soil and move into groundwater if the permeability of the soil is high enough.
- The difference in elevation between a cemetery and the surrounding area is another important point. A cemetery should not be located in the lowest part of an area where the rainwater runoff collect and the infiltrated water comes in contact with interred remains. This ultimately, would permit more decomposition products to be carried into groundwater.
- The thickness of the unsaturated zone in the soil is an important factor in determining the impact of cemeteries on the environment. Most of the biodegradation occurs in this zone and it is the most important line of defense against cemetery-derived pollution polluting underlying aquifers.

Approvals to Establish a Cemetery (continued)

FBCSA- Sections 83 - 85, O. Reg. 30/11- Subsection 147. (3)

MEDICAL OFFICE OF HEALTH (MOH) – ONTARIO RECOMMENDATIONS

- Currently, there is no specific regulatory framework and/or guidance documents related to making determinations for siting a cemetery.
- Based on a review of literature (including the WHO’s “The impact of cemeteries on the environment and public health”), dialogue with County officials, a review of the preliminary cemetery plan and a visit of the proposed site, the following recommendations were strongly proposed by a Medical Officer of Health:
 - A setback of at least 75 m. from the perimeter of the cemetery for inground graves – where residences with potable water-wells surround the cemetery
 - Require a hydrogeological assessment of the site
 - Commence initial inground burials as far as possible from the known water sources
 - Cemetery layout plans be reviewed after a 10 year period to address any adverse impacts and consider regulatory adjustments of both legislative and municipal regulations.

Details - Process to Licence a Cemetery Operator

FBCSA- Sections 86 - 87, O. Reg. 30/11- Sections 146-149

- Application for Registrar's Consent to Establish and for a Licence to Operate once Municipal Approval received:
- Completed application must also include:
 - In the case of a licence to operate a cemetery, crematorium, funeral establishment or transfer service, the application shall be accompanied by confirmation from the local municipality that the proposed use is a permitted use and is in accordance with applicable municipal by-laws and that the plans have been approved by the local municipality.
 - **A general plan of the cemetery drawn to scale showing compass bearing, lot numbers and the location and dimensions of every lot, scattering ground, walk, fence, road, watercourse, building and adjoining road in the portion of the cemetery to be available for interments or scattering.
 - **A general plan:
 - prepared by an Ontario Land Surveyor or from a deposited reference plan of survey of the cemetery, and
 - certified by the applicable local municipality or Minister of Natural Resources and Forestry as having been approved by the municipality or the Minister.
 - ** Submit in duplicate
 - A copy of any site plan agreement under the *Planning Act*, R.S.O. 1990, CHAPTER P.13 that is relevant to the cemetery.
 - A certificate of the Medical Officer of Health stating that the land is suitable for use as a cemetery.
 - Any designation under the *Ontario Heritage Act*
- Note: The cemetery operator must keep a copy of the general plan available for public inspection during regular business hours.

Details - Process to Licence a Cemetery Operator (Continued)

FBCSA- Sections 86 - 87, O. Reg. 30/11- Sections 146-149

- Completed application must also include:
 - A copy of the cemetery operators proposed by-laws governing the operation, governing rights, entitlement and restrictions etc., for approval by the Registrar
 - Proof of notice in newspaper i.e. actual tear sheet
 - Photos of posted notice
 - A copy of the operator's price list
 - A copy of the contract and certificate of interment rights
 - Proof the establishment of a \$100,000 Care and Maintenance Fund with a trustee or proof of an exemption from this requirement. Note: \$165,000 as of January 1, 2022.
- On submission of the application, required documents and evidence of a Care and Maintenance Fund having been established, a cemetery operator is licensed to operate a cemetery.
- The Certificate of Consent with respect to the cemetery that is issued by the registrar must be registered in the Land Registry Office. Upon registration the lands described become cemetery lands.
- Educational Requirements: Operator expected to ensure staff are appropriately trained to ensure Consumer Protection and FBCSA compliance. On-line and in-person (workshops, seminars) for Sales Representatives and operations staff.

Note: A cemetery operator cannot sell any form of interment or scattering rights to a consumer until such time as the operator receives a licence and until the interment or scattering rights being sold are immediately available for use. Map and lay outs must have been filed and returned stamped "Filed". Pre-sales of interment or scattering rights are prohibited in Ontario!!

What Is A Crematorium? – Flame Based



Approval to Establish a Crematorium

FBCSA- Section 1, 1.1.(2) - Definitions, O. Reg. 30/11-Sections

NOTE: Any person considering establishing a Crematorium is encouraged to contact the BAO first!!

- **Crematorium:**
 - Crematorium means a building that is fitted with appliances for the purpose of cremating human remains and that has been approved as a crematorium or established as a crematorium in accordance with the requirements of this Act or a predecessor of it and includes everything necessarily incidental and ancillary to that purpose;
- **Crematorium locations:**
 - May be located on or off cemetery designated lands.
- **Crematorium services:**
 - crematorium services” means services provided in respect of the cremation of dead human bodies and includes such services as may be prescribed;
- **Alternative dispositions of human remains:**
 - Subject to the regulations, the provisions of this Act dealing with crematoriums, cremation and crematorium services apply, with necessary modifications, to establishments that provide alternative processes or methods of disposing of human remains and to those processes or methods.
- **Crematorium Operator:** “Person” licensed to operate a Crematorium i.e. Offers or Sells interment rights for lots within the cemetery.
- **Prescribed circumstances:** Required by Ontario Regulation 30/11, 184/12 & 306/16

Application of the Legislation for Licensing of Crematoriums & Alternative Disposition Facilities

Application

Section 1.1 and 6. (1),(2) & (3) - FBCSA

1.1 (1) This Act applies to all transactions relating to licensed supplies and services even if the purchaser in the transaction or the person engaging in the transaction with the purchaser is located outside of Ontario when the transaction takes place. 2006, c. 34, Sched. D, s. 2.

Alternative dispositions of human remains

(2) Subject to the regulations, the provisions of this Act dealing with crematoriums, cremation and crematorium services apply, with necessary modifications, to establishments that provide alternative processes or methods of disposing of human remains and to those processes or methods. 2006, c. 34, Sched. D, s. 2.

In addition to burial there are currently 2 licensed methods for disposing of human remains:

Crematoriums (flame-based) using oil, propane or natural gas

And

Alternative Disposition Facilities (Hydrolysis) using alkaline (Sodium or Potassium Hydroxide)

Note: In this presentation references to “Crematoriums” in this presentation apply to Alternative Disposition Facilities (Hydrolysis) as well.

What is a Hydrolysis (Alternative Disposition) Facility?



Approvals To Establish A Crematorium

FBCSA - Sections 83.(3),84.(1.1), 4.(B) - 85, O. Reg. 30/11-sections 146-149, 185

Approval & Public Notice Processes start with the landowner/operator getting Municipal Approval

- Municipal Approval for a crematorium (on or off cemetery lands) is required prior to the Registrar consenting to issue a licence to operate the crematorium
 - Municipality - if the crematorium is to be situated within the local municipality
 - Minister of Natural Resources – if the crematorium is to be situated on Crown land in territory without municipal organization. May be referred to the MNR District office.
- Municipality “shall grant” approval, in a reasonable time, if, in the Municipality’s opinion, it is in the Public Interest.
- When a decision is made (by Municipal Council) to approve or refuse request for approval the Municipality **shall:**
 - Send a copy of the decision, identifying “public interest” reasons, to the Registrar and the applicant making the request. **Registrar must be provided reasons in order to decide whether or not to appeal!! NO REASONS IS GROUNDS FOR AN APPEAL!!**
 - Publish notice of the decision in a local newspaper (consider website as well)
- Note: Though section 185 of O. Reg 30/11 provides that “A building permit issued by a local municipality for a crematorium is evidence of the approval of the municipality to the establishment of the crematorium”; it does not eliminate the requirement for a public notice”.

Notice Of Municipal Approval

Sample Notice of Municipal Decision to be incorporated/adapted into standard municipal notices FBCSA subsection 84.(4)(b) and section 85 (See specifics for sample notice on next page)

FUNERAL, BURIAL AND CREMATION SERVICES ACT, 2002 **NOTICE OF MUNICIPAL COUNCIL DECISION**

[Name of Municipality]

TAKE NOTICE that on [*date of approval*] Council of the [*Name of Municipality*] approved the [*establishment of a crematorium at/address*] to permit [*the cremation/disposition of dead human remains*]

AND FURTHER TAKE NOTICE that the applicant, Registrar or any person with an interest therein may, within 15 days after publication of this notice refer the municipality's decision to the Local Planning Appeal Tribunal (previously the Ontario Municipal Board) for a hearing.

Further information may be obtained from [*name of municipality's contact who will provide further information*]

Dated at [*Name of Municipality*] this [*date*][*day*]of[*month*][*year*]

Some Criteria for Municipal Approval

FBCSA- Sections 83 - 85, O. Reg. 30/11-Sections 146-149

Criteria which may constitute “Municipal Approval” and satisfy the “Public Interest”?

- Who makes the decision to Approve?
 - Planning department? and/or Building department?
 - By-law department? and/or Sewer use by-law department?
 - Location complies with municipality’s development plan?
 - Proposed use complies with municipal by-laws i.e. Zoning bylaws
 - Amendments to the zoning by-law to allow establishment – i.e. non-confirming use – **Usually an issue.**
- Criteria to consider re: Compliance with Zoning by-laws:
 - Does the proposed establishment fit the definitions within the by-law or does the zoning by-law need to be amended to include the establishment? E.g. Most municipalities in Ontario do not define a Crematorium in their zoning by-law
 - Does an establishment meet the zoning requirement if that particular establishment is not specifically identified in the by-law?
 - Can a “Flame-based” crematorium be considered an ancillary use to a Funeral Home?
 - Can a standard car garage be retro-fitted as a crematorium?
 - Consider the various developments and structures to be located within the crematorium
 - Will the crematorium impact or be impacted by the surrounding residences, establishments?
 - Vehicular traffic access and sight lines to the crematorium.

Crematorium—Risks & Fire Code

Recent Concerns & Need to Reduce Risks

- **Risks that should be considered:**
 - **Identification of deceased prior to cremation i.e. human remains at point of pick-up**
 - **Correct identification of cremated remains and verification of after cremation and prior to release of cremated remains to family**
- **Fire Safety: In the last 5 years, 3 large crematoriums experienced large destructive fires**
- **Concerns raised by these 2 recent occurrences relate to:**
 - **Injury to persons – Employees, Witnesses to cremations, Fire Department personnel etc.**
 - **Loss of deceased's remains**
 - **Loss of, and damage to records**
 - **Damage to small columbaria located in close proximity to cremator/retorts can result in upset to families, replacement cost of sentimental objects placed in niche and more importantly loss of remains and cost of temporary storage and replacement.**

Requirements For Licensing – Operator & Sales Reps

Section 1.1 and 6. (1),(2) & (3) - FBCSA

Operating crematoriums (and Alternative Disposition Facilities (Hydrolysis))

6 (1) No person shall operate a crematorium, or hold themselves out as the operator of a crematorium, unless the person is licensed to do so. 2002, c. 33, s. 6 (1).

Selling services

(2) No person shall sell or offer to sell crematorium services to the public, or hold themselves out as available to sell crematorium services to the public, unless,

(a) the person holds a prescribed licence and is acting on behalf of a crematorium operator; or

(b) the person is licensed as a crematorium operator. 2002, c. 33, s. 6 (2); 2006, c. 34, Sched. D, s. 5.

Cremating remains (Locations)

(3) No person shall cremate a human body at a place other than a crematorium operated by a person licensed under subsection (1).

Educational requirements for all licensees - Cemetery, Crematorium & Alternative Disposition Facilities (Hydrolysis), Funeral Establishment and Transfer Service Operators, Pre-planners and Sales Representative licences.

Process To Licence A Crematorium Operator

FBCSA- Sections 86 - 87, O. Reg. 30/11- Sections 146-149

- Must apply for a **licence to operate** a crematorium & for Registrar's **Consent** if the crematorium is to be established on a cemetery
- The application for a licence to operate a crematorium must include:
 - a complete Bereavement Authority of Ontario application form and fee of \$500
 - confirmation from the local municipality that:
 - the proposed use is a permitted use and is in accordance with applicable municipal by-laws
 - the plans have been approved by the local municipality.
 - a copy of the Environmental Compliance Approval (“ECA”), from the Ministry of Environment and Climate Change (MOECC), required under section 9 of the *Environmental Protection Act*, for the discharge of contaminants (including noise) to the air outside of the facility.
 - Two (2) copies of plans or drawings (architectural drawings with an engineer's/architect's seal) of the site, building, location of cremation chambers, processing area, and body storage areas.
 - Two (2) copies of the proposed crematorium by-laws
 - Copy of published notice from newspaper i.e. tear sheet
 - Photo of posted sign.
- Evidence of educational requirements: Operator of equipment and all staff handling cremation must attend the Crematorium Operator's Certification Training (2-day in class + 50 Cremations) offered once a year by the Ontario Association of Cemetery and Funeral Professionals.

Recommendations For Crematorium Operators

FBCSA- Sections 86 - 87, O. Reg. 30/11- Sections 146-149

- **Recommendations to ensure public safety when licensing technologies for the disposition of human remains in a flame-based Crematorium.**
- **Submissions/details to be provided or indicated in the application for a Crematorium Operator's Licence:**
- **Description and design of the equipment – cremation chamber, stack etc. and materials used:**
 - **Refractory lined stack – Insulating fire brick or castable (like concrete) material to insulate to 1000 degrees Celsius**
 - **Stainless steel stack – Insulate from 800 to 1000 degrees Celsius**
 - **Details of stack clearances – proper set back from stack; usually required by the manufacturer of the equipment**
 - **Recommend non-combustible materials lined with cement board with necessary clearances from the stack. E.g. Steel walls, roof trusses etc.**
 - **Fire rated glass for any windows and doors in close proximity of cremation chamber**
 - **Prohibit family members from coming into immediate area of Unit**
 - **Prohibit access to the front of viewing window on unit as radiant heat may be a concern.**

Recommendations For Crematorium Operators

Continued

FBCSA- Sections 86 - 87, O. Reg. 30/11- Sections 146-149

- **Mandatory use of Personal Protective Equipment per Ministry of Labour guidelines**
- **Ensure loading doors have safety device**
- **Use of remote starters**
- **Description and design of the Viewing Room:**
 - **Glass – Fire rated glass with automatic steel shutters**
 - **Concrete non-combustible flooring.**
- **Description and design of any elevating/lift devices used as part of the operations and requirement for regular inspections.**
- **Description and design of the Holding Room:**
 - **Cooler should be fire rated**
 - **Non-combustible and fire proof - Masonry block, metal, cement board.**
 - **Inspected and approved by Technical Standards and Safety Authority**
- **MOL review and inspections re: Safety and working conditions of staff**
- **TSSA approvals for fuels and their supply and storage**
- **ESSA &/or CSA approval for electrical equipment**
- **MOE approvals for emissions.**

Identification & Prohibitions - Continued

O. Reg 30/11, Sections 31

An operator shall not, without the written and signed consent of the purchaser of the cremation/alternative disposition services,

- (a) Cremate or dispose of the remains of more than one person at once;**
- (b) cremate/alternatively dispose human remains together with animal remains; or**
- (c) co-mingle cremated/alternatively disposed of remains**

An operator shall ensure that a metal identification tag accompanies a dead human body and is placed in the container that contains the resulting reduced remains until the remains are released to the purchaser or the purchaser's representative.

The metal identification tag shall contain a personal identifier for the body and the name of the crematorium operator.

NOTE: A crematorium operator cannot provide - offer or sell transfer services i.e. pick up a deceased body and transfer it to the crematorium, unless the crematorium operator is also licensed as a Transfer Service Operator.

Operator's & Employee's Duties - Flame based

FBCSA - Section 7. (1)(2) , O. Reg. 6. (4)

Operator's duties

7 (1) A crematorium operator shall ensure that the crematorium is operated in accordance with this Act and the regulations and shall ensure that all cremations in the crematorium are carried out in a decent and orderly manner and that quiet and good order are maintained in the crematorium at all times.

Employee's duties

(2) A crematorium operator shall ensure that,

(a) every licensee that the operator employs carries out his or her duties in compliance with this Act and the regulations; and

(b) every other person to whom the operator delegates responsibility carries out that responsibility in compliance with this Act and the regulations.

Operators are responsible to ensure that they and their staff have been adequately trained to handle human remains and related equipment when providing these services.

Who else can sell or offer to sell cremations ?

(4) The licence of a funeral director is a prescribed licence for the purposes of clause 6 (2) (a) of the Act if the funeral director has received written authorization to act as a sales representative on behalf of a crematorium operator.

Operator's & Employee's Duties - Alkaline Hydrolysis

FBCSA - Section 7. (1)(2) , O. Reg. 6. (4)

Operator's duties

An Alternative Disposition Facilities (Hydrolysis) Operator shall ensure that the facility is operated in accordance with this Act and the regulations and shall ensure that all alkaline hydrolysis dispositions are carried out in a decent and orderly manner and that quiet and good order are maintained in the facility at all times. Must employ a licensed Funeral Director to handle the deceased human remains.

Employee's duties

(2) A Alternative Disposition Facilities (Hydrolysis) operator shall ensure that,

- (a) every licensee that the operator employs carries out his or her duties in compliance with this Act and the regulations; and
- (b) every other person to whom the operator delegates responsibility carries out that responsibility in compliance with this Act and the regulations.

Operators are responsible to ensure that they and their staff have been adequately trained to handle human remains and related equipment when providing these services.

Who must handle human remains in order to initiate and carry out a Alternative Disposition (Hydrolysis) ?

- Only a licensed Funeral Director (Class 1 or 2) can have contact with the dead human remains before and during the Hydrolysis disposition.

Prohibitions & Concerns related to Cremation

O. Reg 30/11, Sections 31 (2)(2.1)(3), O. Reg. 412/19 Section 1 – January 1, 2020

31. (2) An operator shall not permit the cremation of a dead human body if:

a) the operator has not received a certificate issued by the coroner authorizing the cremation

Note: As of October 2016 the Office of the Chief Coroner has implemented an on-line cremation certificate application for the issuance of:

1. The Coroner's Certificate to Cremate &

2. Coroner's Certificate to Transport a dead human body out of the Province.

b) the body has a pacemaker or radioactive implant, is in a casket that consists of or has on or in it material made of or containing non-flammable or hazardous material or chlorinated or fibre-reinforced plastic, other than incidental metal used in the construction of the casket or accompanying material. O. Reg. 30/11, s. 31 (2).

(2.1) The condition in clause (2) (b) that a crematorium operator shall not permit the cremation of a dead human body if the body has a radioactive implant does not apply if,

(a) it is at least two years after the day the body received the implant; or

(b) a lesser time has passed since the body received the implant, and it is safe to cremate the body. O. Reg.

412/19, s. 1. (See proposed guidance in next slide)

(3) The crematorium operator may contract out or arrange for the removal of a pacemaker or radioactive implant from a dead human body if the person carrying out the removal is a person described in section 52. O. Reg. 30/11, s. 31 (3).

Prohibitions & Concerns - Radioactive Implants

O. Reg 30/11, Sections 31 (1). Continued

Cremation of dead human bodies with Microscopic Radio Active Implants – Maybe?

- As of the early 2000's approximately 4000 breast and prostate cancer patients have been treated with Brachytherapy
- Brachytherapy involves the implanting of about 100 microscopic radioactive "seeds" in close proximity to the area of the body to be treated
- The treatment is usually provided when the patient has at least a 7 -10 year life expectancy
- The seeds cannot be easily removed by surgery

Note: Not all Seed or microscopic Implants are Radioactive Implants

On some occasions gold seeds are implanted as markers around an area where infected tissues are to be treated by other means. These are NOT radioactive implants.

Also, an individual who has had Radiation treatment may NOT be radioactive at the time of death and may be cremated.

1. Ask the authorized person making the application for cremation if the deceased has had any medical treatment that included the implanting of "RADIOACTIVE" implants.
2. Document the response.

The cremation of a dead human body with these radioactive seed implants (or any other radioactive implants) IS NOT PROHIBITED under certain conditions.

Thank you / BAO handy links / Q&A



[TheBAO.ca](https://thebao.ca)



Beyond online magazine

<https://thebao.ca/beyond-bao-magazine/>



Consumer Information Guide

<https://thebao.ca/for-consumers/consumer-information-guide/>



For General Inquiries

Info@TheBAO.ca

647-483-2645

Toll-Free: +1 844-493-6356



Contact Information

**Michael D'Mello, Deputy Registrar
Bereavement Authority of Ontario
100 Sheppard Ave. East. Suite 505
Toronto, ON M2N 6N5
(647) 483-2645 Ext 205**

- E-mail: Michael.DMello@thebao.ca

Bereavement Authority of Ontario website: www.thebao.ca

Agenda



1. **Who is the BAO?**
2. **Municipal approvals, obligations & the FBCSA:**
3. **Care and Maintenance Trust Fund/Account (CMFA)**
4. **Annual renewal and C&M reporting requirements**
5. **Impacting Cemeteries – Rezoning, Severances & Disturbing burials**
6. **Recent important Legislative amendments**
7. **Cemetery Inspections - BAO**
8. **Q & A at the end**