

CEMETERIES REGISTRAR'S BULLETIN

on the Funeral, Burial and Cremation Services Act
June 2012



REGISTRAR'S MESSAGE

On July 1, 2012, Ontario's *Funeral, Burial and Cremation Services Act, 2002* (FBCSA), comes into force.

The new legislation combines the *Cemeteries Act (Revised)* and the *Funeral Directors and Establishments Act* and is the result of years of consultation with cemetery/crematorium owners, funeral establishment owners, funeral directors and transfer service owners, consumer groups and other industry groups.

This is a very important time of transition for the bereavement sector in Ontario. It is important to understand the individual roles of cemetery and crematorium "operators" so that the sector can continue to provide excellent customer service to clients.

Over the past few months, I have travelled across Ontario, including Thunder Bay, Kenora, Sault Ste. Marie, North Bay, Ottawa, London, Brampton, Niagara-on-the-Lake, Timmins, Kingston and Toronto and met with a number of cemetery and crematorium operators to discuss the new legislation and what it means for the sector. This has also allowed me to take guided tours of several cemeteries like the "Lake of the Woods" municipal cemetery (see picture, top right). I'd like to take this opportunity to say "thank you" for your personal interest and efforts to ensure that the highest degree of respect and dignity is reflected in the cemeteries you maintain.

I am pleased to inform you that information and instructional videos on the key highlights of the FBCSA, and what it means for crematorium and cemetery operators are now available on the Ministry of Consumer Services' website at www.ontario.ca/consumerservices. On the left-hand navigation bar, select the "Businesses and Not-For-Profit" tab and then the "Business Resources" tab for a series of informative videos, highlights of the legislation and a plain-language overview of the legislation and regulations.

The Registrar's Bulletin focuses on the FBCSA as we lead up to July 1, 2012.

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Consumer Services Website



Instructional FBCSA videos



AN OVERVIEW OF THE MAJOR CHANGES UNDER THE FBCSA

The FBCSA allows:

Co-ownership and co-location of all bereavement businesses:

this means that an individual may operate any or all bereavement businesses, including cemeteries, crematoriums, funeral establishments and transfer services (whether on or off cemetery lands). All municipal and environmental approvals must still be obtained before submitting an application for a licence.

Crematoriums can be established on or off cemetery lands:

previously, a crematorium could only be established on cemetery lands. As of July 1, a crematorium can be established off cemetery lands if:

- You have the appropriate zoning approval from the municipality where the crematorium will be located, and
- You have the appropriate environmental approval from the Ministry of the Environment.

Note: An application for a licence to operate a crematorium must include:

- A copy of the Environmental Compliance Approval required under section 9 of the *Environmental Protection Act*, and
- Plans or drawings of the site, building, location of retorts, processing area and body storage area.

Resale of unused interment rights: this is an important change that will directly affect all cemetery operators. The FBCSA allows interment rights holders to resell unused rights at the cemetery operator's current price list amount.

A cemetery operator who intends to prohibit the resale of interment rights on the open market must reflect this restriction in his or her approved by-laws. Should a cemetery's by-laws not reflect this restriction, the law provides that interment rights can be sold on the open market.

If the cemetery is repurchasing the rights when resale is prohibited, it may deduct from the price being paid to the interment rights holder the amount that has already been paid into the care and maintenance fund.

As the minimum care and maintenance contributions are increasing, you may wish to review your current pricing for interment and scattering rights.

Note: All re-sales and transfers of interment rights must be carried out through the cemetery operator, who will:

- Verify the validity of the seller's ownership of the rights
- Confirm that the seller has provided the buyer with a copy of the cemetery's by-laws (if additional copies are provided by the cemetery, a fee may be charged)
- Make sure that the buyer meets any particular restrictions for ownership of the interment rights (the cemetery operator may charge an administrative fee for issuing the new interment rights certificate).

LICENCES FOR CEMETERY AND CREMATORIUM OPERATORS

It is important to remember that the new legislation provides for a **transition period** to the new licensing regime.

This means existing licensees will continue to be licensed as of July 1, 2012.

Operators will continue to remain licensed until required to submit a license renewal application.

The Ministry of Consumer Services' Cemeteries Regulation Unit will, during the transition period, mail out cemetery operator and crematorium operator licence renewal forms and, where applicable, sales representative licence renewal forms.

You should also be aware of additional licensing requirements.

For example, if you currently hold a cemetery owner licence but you also own a crematorium on your cemetery, you will need to be licensed as a cemetery operator as well as licensed as a crematorium operator.

LICENSING EXEMPTIONS FOR THE SALE OF CEMETERY OR CREMATORIUM SUPPLIES AND SERVICES

A person is exempt from being licensed as a sales representative if:

- The person is acting on behalf of a non-commercial cemetery operator selling licensed supplies or services,
- The sale of cemetery or crematorium supplies and services is not the person's primary occupation, and
- No trust money or insurance funding is involved.

All other sales representatives must be licensed and may sell only those supplies and services that their employer is licensed to sell.

In other words, if the employer is licensed as a cemetery operator, the sales representative can sell only cemetery supplies and services.

However, with the employer's knowledge, a sales representative may be licensed to sell for more than one operator.

In other words, a sales representative could be employed by one or more cemetery operators as well as one or more crematorium operators.

CEMETERY LICENSING FEES

It has come to my attention that some operators may be including their licensing fees on consumer contracts or invoices. Under the FBCSA, consumers can only be charged for supplies and services provided to them by the operator. A licensing fee or license renewal fee is neither a supply nor a service provided to consumers. Such fees are the responsibility of the licensee to pay. Licensees must ensure that licensing fees do not appear on consumer contracts or invoices.

WHERE CREMATED HUMAN REMAINS MAY BE INTERRED

The FBCSA prohibits the interment of human remains, including cremated human remains, except in a registered cemetery i.e., a cemetery that is operated by a person licensed as a cemetery operator.

Note: cremated human remains cannot be interred in a "pet" cemetery. An owner of a pet cemetery who allowed interments of cremated remains was recently convicted under the *Cemeteries Act (Revised)* and fined.

CONSUMER PROTECTION PROVISIONS UNDER THE FBCSA

The FBCSA provides important protections for consumers. Among them are the right for consumers to:

Be provided with prescribed information: operators must provide consumers with a price list for services and supplies in printed or electronic format, information on relevant business relationships and a consumer information guide to help consumers know their responsibilities and obligations when making funeral, burial and cremation services arrangements. Operators under the FBCSA must provide consumers with a copy of the consumer information guide prior to the consumer entering into a contract with the operator. Consumer information guides will be mailed out to all cemetery and crematorium and other operators under the FBCSA.

Get information in alternative formats: the FBCSA requires operators to provide written information in accessible formats, such as large print or audio formats. These formats must be provided to consumers when they need it and at no extra cost.

Change their minds after signing a contract: the FBCSA gives consumers up to 30 days to change their minds and get a full refund. After 30 days, a cancellation fee of 10 per cent of the cost of the contract up to a maximum of \$350 may apply.

VISIT US ONLINE

Find out more about the FBCSA on the Ministry of Consumer Services' website. Topics include:

- Ownership disclosure
- By-laws
- Consumer protection requirements
- Co-location, co-ownership and crematoriums
- Resale of interment rights
- Care and maintenance funds
- Neglected cemeteries and burial sites
- A guide to the FBCSA and its regulations.

Visit www.ontario.ca/consumerservices for more. On the left-hand navigation bar, select the "Businesses and Not-For-Profit" tab and then the "Business Resources" to view these materials.

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