

MINISTRY OF  
**CONSUMER SERVICES**

MINISTÈRE DES  
**SERVICES AUX CONSOMMATEURS**

## *The Funeral, Burial and Cremation Services Act, 2002*

Education and Training  
**ANGLICAN DIOCESE OF TORONTO**  
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## What will be covered?

This presentation will provide an overview of the FBCSA, highlighting briefly the history of the bereavement sector reform and the key drivers for change; identifying the applicable Acts and regulations and addressing some of the more significant changes including:

- Removal of co-location/co-ownership restrictions – Cemeteries & Funeral Establishments
- Crematoriums allowed to be established off cemetery property
- Municipal approvals and Registrar’s Consent for cemeteries and crematoriums
- Property tax changes including changes to the *Assessment Act*
- New categories of licences: “Operators” of cemeteries, crematoriums, funeral establishments, funeral directors, transfer services, funeral preplanners and sales representatives
- Consumer protection enhancements including increased disclosure prior to and on contracts, and extension of a 30-day cooling off period for interment rights
- Right to refunds and resale of interment rights and scattering rights
- Price lists and by-laws
- Guaranteed contracts in all cases when funds received in advance and who may cancel a contract or receive a refund
- Trust options, record keeping and reporting to the registrar
- Care and Maintenance Fund / Account provisions / Municipalities act as trustees
- Pre-paid trust money
- Regulation of scattering on cemetery land and scattering services for a fee
- Public registers and the Public’s access to information
- Burial Site discoveries
- Assisted burials and cremations
- Neglected and abandoned cemeteries

## What's in a name?

# *Funeral, Burial and Cremation Services Act, 2002, S.O.2002, c.33*

- Describes the subject matter of the Act
- Tells us the statute was passed in 2002. The year is part of the title.
- S.O.2002 is a reference to the Statutes of Ontario for the year 2002
- c.33 tells us the Act is found in chapter 33 of the statutes for 2002
- The Act received Royal Assent December 13, 2002
- It was proclaimed in force on February 9, 2011 to take effect on July 1, 2012
- Balance of slides will refer to it as the FBCSA

## What does the FBCSA do?

- The FBCSA establishes the regulatory framework for most of the bereavement sector
- It sets in place a regulatory framework for cemeteries, funeral establishments, transfer services, crematoriums and staff employed by these businesses.
- The FBCSA provides for the repeal of the *Cemeteries Act (Revised)*
- It renames the *Funeral Directors and Establishments Act* the *Board of Funeral Services Act* and amends that Act to delete the parts that are now found in the FBCSA
- The *Board of Funeral Services Act* continues to retain those provisions necessary to the operation of the Board's administration and its committees and has its jurisdiction extended to include the new class of funeral preplanner licence
- Provisions relating to regulating casket and marker retailers have **not** been proclaimed in force and accordingly, these business remain subject to the *Consumer Protection Act, 2002* rather than being regulated under the *Funeral, Burial and Cremation Services Act, 2002*.

## FBCSA & LGIC Regulation, Minister's Regulation and Minister's Order

- It is important to read the FBCSA and the Regulations together, along with any policy guideline that may have been issued by the registrar.
- A Regulation under the FBCSA may be a **Lieutenant Governor in Council (LGIC) Regulation**. This is a regulation that has received Cabinet approval
  - Example: the General Regulation (O.Reg.30/11 meaning the 30<sup>th</sup> Ontario Regulation of 2011)
- A Regulation may be a **Minister's Regulation**, which is one signed by the Minister only
  - Example: the FBCSA allows the Minister to make regulations regarding assisted burials
- A **Minister's Order** is not a regulation. It is generally authorized for more administrative matters
  - Example: to fix the fees to be paid for a licence application or licence renewal

## Other Legislation and Regulations: *Assessment Act* and Minister of Finance's Regulation

- Property assessment and taxation are dealt with by the *Assessment Act*, R.S.O.1990, c.A.31
- The *Assessment Act* was amended as a consequence of the FBCSA in order to provide for taxation of cemetery land that is not being used for interment or scattering purposes and to exempt cemetery land used for a crematorium so long as the crematorium was established on or before January 1, 2002
- The Minister of Finance's Minister's Regulation to be made under the *Assessment Act* would address the specifics of **what activity gives rise to tax liability** for example, exempting ancillary use that is necessarily incidental to interment or scattering or small scale and not occupying significant physical space

Note: Property tax changes dealt with in a later slide

## Other Legislation and Regulations: *Insurance Act* Regulation

- O. Reg 347/04 made under the *Insurance Act* is amended to include a new s.17.1. The amendment takes effect July 1, 2012
- The amendment ensures that insurance agents have the same restrictions with respect to selling bereavement supplies and services to vulnerable people
- The amendment also obliges insurance sales people to explain to a purchaser that the purchase of insurance does not constitute a contract for bereavement related supplies or services
- Persons licensed under the *Insurance Act* will be permitted to continue selling insurance used to fund contracts for bereavement supplies and services without having to obtain a separate licence under the FBCSA.

## Summary of legislative and regulatory provisions

1. *Funeral, Burial and Cremation Services Act, 2002*
2. FBCSA General Regulation O.Reg.30/11
3. FBCSA Minister's Regulation: Pending
4. FBCSA Minister's Order: Pending
5. *Assessment Act, R.S.O.1990, c.A.31 (AA)*
6. AA General Regulation O.Reg.282/98: Pending
7. *Insurance Act Agents Regulation O.Reg.347/04*



# Legislation and Regulations

## ***Funeral, Burial and Cremation Services Act, 2002, S.O. 2002, c.33***

<http://www.search.e-laws.gov.on.ca/en/isysquery/b94d7917-d948-4c21-8b45-ef81c8afc67a/1/doc/?search=browseStatutes&context=#hit1>

- General Regulation O.Reg.30/11

<http://www.search.e-laws.gov.on.ca/en/isysquery/b94d7917-d948-4c21-8b45-ef81c8afc67a/2/doc/?search=browseStatutes&context=#hit1>

## ***Board of Funeral Services Act***

## ***Assessment Act, R.S.O. 1990, c.A.31***

<http://www.search.e-laws.gov.on.ca/en/isysquery/86e50b2f-460c-4cd7-b510-9654c0eac343/4/doc/?search=browseStatutes&context=#hit1>

- General Regulation O.Reg.282/98 (PROPOSED AMENDMENTS)

## ***Ministry of Consumer Services***

[www.ontario.ca/consumerservices](http://www.ontario.ca/consumerservices)

# CEMETERY OWNERSHIP IN ONTARIO

- **Currently 5,144 registered cemetery sites in Ontario**
  - Active 2949 sites                      Inactive 2195 sites
  
- **Approximately 2400 cemetery owners:**

■ Commercial:	Corporation	Partnership	Sole Proprietor
	64	4	52
■ Non-commercial:	Ltd. Partnership	Municipal	Ontario Corporation Non-
share	1	406	37
	Religious	Trustee/Volunteer Board	
	1,380	456	
  
- **406 Municipalities own 2,527 sites:**                      819 Active      1,708 Inactive
- **1380 Religious own 1,912 sites:**                      1,606 Active      306 Inactive
  
- **Cemetery owners are categorized by the Cemeteries Regulation Unit, based on a risk related to the size of their Care and Maintenance Trust Fund as:**

■ Very large	106 owners	1,158 sites
■ Large	255 owners	1,001 sites
■ Small	1,616 owners	2,153 sites
■ Inactive	423 owners	832 sites

## Co-location and co-ownership, and crematoriums off cemetery property

To allow for new business opportunities and efficiencies, the FBCSA :

- Removes existing restrictions associated to co-location/co-ownership of funeral establishments, cemeteries and crematoria
- Allows for a Funeral Establishment – Class 1 (aka funeral home) or Funeral Establishment – Class 2 (visitation centers) and Transfer Service on cemetery lands
- Allows for crematoria to be located off cemetery lands. No “consent” required.

**Note:** Any operation of a business remains subject to applicable municipal zoning and by-law requirements as well as any environmental approvals and standards that may be required

- Registrar’s consent is required to establish, alter or increase the capacity of a cemetery
- Consent is also required to establish a crematorium on cemetery lands
- If no consent required for the alteration to a cemetery, the operator must file a detailed plan of the proposed alteration or increase in capacity at least **30** days before commencing the alteration or increase in capacity
- For a crematorium must also provide plans or drawings of the site, building, location of retorts, processing area and body storage areas.

# Current Process to Establish a Crematorium

(Reference - O. Reg 30/11 Section 9, 9.5, 9.7)

- Currently, under the *Cemeteries Act, Revised* (CA) all crematoria must be located on cemetery property. Under the FBCSA this is no longer a requirement, a crematorium may be established on or off cemetery land.
- An application under the CA and after July 1, 2012 under the FBCSA to establish a crematorium must be accompanied by:
  - Evidence of municipal approval (including published notice )confirming that applicable zoning and building requirements have been met
  - Evidence of approval by the Ministry of Environment – a Certificate of Approval - an Environmental Compliance Approval required under s.9 of the Environmental Protection Act which considers any possible adverse impacts on the surrounding environment
- Evidence of municipal approval, published notice and environmental approval must be provided to the Registrar of Cemeteries before an application for a licence to establish a crematorium (on or off a cemetery) will be considered

Note: Crematoriums owners who received “consent” i.e. established prior to January 1, 2002 will remain exempt from property tax

## Municipal approval or Minister of Natural Resources' approval prior to Registrar consent

To ensure that each community makes its own decisions with regard to zoning and planning etc. the FBCSA requires that the process for the establishment of cemeteries and crematoriums and developments within existing cemetery commences with municipal approval so that :

- Location of a crematorium or cemetery can be controlled through the municipal planning process.
- Under the *Planning Act* municipalities are authorized to pass zoning by-laws to achieve many outcomes, including mitigating incompatible uses and protection of the environment.
- Zoning by-laws may be passed by local municipalities regulating the use of land, as well as setbacks, height and size restrictions in relation to the property.
- Guidelines developed by the Ministry of Environment may be of assistance to municipalities as they develop policies for land use compatibility.
- During the planning process municipalities circulate proposed by-laws for comments and input from other departments, agencies and ministries, including Conservation Authorities, Regional municipalities and the Ministry of Environment.
- The Ministry of Environment sets strict emission limits and standards to ensure that the environment is not adversely impacted.

# Property Tax

- Property assessment and taxation are dealt with by the *Assessment Act*, R.S.O.1990, c.A.31
- The *Assessment Act* was amended to provide for taxation of cemetery land that is not being used for interment or scattering purposes and to exempt cemetery land used for a crematorium so long as the crematorium was established on or before January 1, 2002
- The Minister of Finance's Minister's Regulation to be made under the *Assessment Act* would address the specifics of what activity gives rise to tax liability for example, exempting ancillary use that is necessarily incidental to interment or scattering or small scale and not occupying significant physical space
- Crematoriums established prior to January 1, 2002 will remain exempt from property tax
- Bereavement related activity on cemetery land e.g. operating a funeral establishment, may give rise to property tax liability
- For religious or municipal cemeteries, the obligation will be to pay an amount into the cemetery's care and maintenance fund or account, equivalent to any tax payment (as assessed) that would otherwise be payable

# Categories of Specific Licences

(Reference - O. Reg 30/11 Section 18, 30-42)

- Cemetery “Operator” licence. No longer a cemetery “Owner” licence
- Application fee is \$500, Licence renewal is \$15 plus \$11 for every burial, cremation interment, scattering and cremation conducted at the cemetery/crematorium.
  - Exemption from renewal fee if less than 10 body burials, cremation interments, scatterings and cremations in total
  - For in-ground burials, mausoleums, columbaria (niches) and scattering gardens or any combination of these
  - New application forms will also require:
    - The name and consent of the owner of the land
    - The name and contact information of the person managing the cemetery site
    - Location of records and storage facilities
- Crematorium operators will be licensed separately from cemetery operators
- Two categories of Funeral Establishment licences:
  - Funeral Establishment Operator - Class 1
    - Is equivalent to today’s funeral establishment licence under the *Funeral Directors and Establishments Act*
  - Funeral Establishment Operator – Class 2
    - Is a licence for visitation centers and similar establishments that offer a room rental for purposes of visitations prior to burial or cremation

## Categories of Specific Licences (contd..)

(Reference - O. Reg 30/11 Section 18, 30-42)

- Two categories of Funeral Establishment licences:
  - Funeral Director – Class 1 Licence:
    - Can offer to sell, sell or provide services if acting on behalf of an operator holding a FE Operator – Class 1 licence
    - May provide services of arterially embalming or restoring dead human bodies
  - Funeral Director – Class 2 Licence:
    - Can offer to sell, sell or provide services if acting on behalf of an operator holding a FE Operator – Class 1 licence
    - Prohibited from providing services of arterially embalming or restoring dead human bodies
  
- Two categories of licences for Transfer Services:
  - Transfer Service Operator – Class 1
    - This licence will permit enhanced services with respect to body preparation – wash and set features but no embalming
  - Transfer Service Operator – Class 2



# Categories of Specific Licences (contd..)

(Reference - O. Reg 30/11 Section 18, 30-42)

## Personal Licences

- Conditions of every personal licence (Sales Representative and Funeral Preplanner):
  - Licensee shall not offer to sell, sell or provide any licensed supplies or services that the operator by whom the licensee is employed is not authorized to offer to sell, sell and provide.
  - Licensee must provide current address of place of residence and name and address of the primary operator that employs the licensee
  - Sales representative licence renewed yearly. Fees: \$250.00, renewal \$200.
  
- Funeral preplanner - New category of personal licence for persons employed by a funeral establishment operator and engaged in dealing with consumers with respect to the purchase of funeral supplies and services in advance of need and sales person licence for Transfer Service Operators
  
- Educational component required for all licensees
- Education component not developed at this time for cemetery operators
  
- Persons licensed under the Insurance Act will be permitted to continue selling insurance used to fund contracts for bereavement supplies and services without having to obtain a separate licence under the FBCSA.

# Consumer Protection Enhancements

Consumer protection enhancements also include:

- Increasing access to a number of services at one location;
- A right to increased disclosure both before entering into a contract and in the contract itself e.g. availability of price lists
- Information on bereavement related businesses owned by the operator within a 100 kilometre range
- Extension of 30-day cooling off period to the purchase of interment or scattering rights entitling consumer to full refund of amounts paid

The benefits for businesses include:

- A level playing field when it comes to property taxes on similar businesses providing similar services with new property tax rules for bereavement businesses operating on cemetery land; and
- The option to access 10 per cent up to a maximum \$350 on prepaid contracts after the 30-day cooling off period. The balance of the prepaid fund would be required to be placed in trust.

## Accessibility for Ontarians with Disability Act – AODA

- The AODA obligation is to provide accessible format or communication supports upon request. (Reference O. Reg. 191/11, s. 12)
  - The person cannot be charged for it and the person should be consulted with in terms of identifying accessible formats and communication supports that might be appropriate.
  - The public should be advised of the availability of accommodation formats and supports.
  - Organization is broadly defined and depending on the type and size of the organization will have different dates by which the obligations under the AODA and its regulation are to be met.
  
- *12. (1) Except as otherwise provided, every obligated organization shall upon request provide or arrange for the provision of accessible formats and communication supports for persons with disabilities,*
  - *(a) in a timely manner that takes into account the person's accessibility needs due to disability; and*
  - *(b) at a cost that is no more than the regular cost charged to other persons. O. Reg. 191/11, s. 12 (1).*
  
- *(2) The obligated organization shall consult with the person making the request in determining the suitability of an accessible format or communication support. O. Reg. 191/11, s. 12 (2).*
  
- *(3) Every obligated organization shall notify the public about the availability of accessible formats and communication supports.*

# Resale of interment rights

(Reference Section 47 FBCSA , Sec 142.(1) of O. Reg.30/11)

- If cemetery by-laws prohibit resale:
  - The cemetery operator must repurchase at fair market value i.e. cancel the contract for the interment rights and repurchase at current market value – price on price list, and may deduct any amount that was paid into the care and maintenance fund or account in relation to those rights
  - The cemetery operator may chose to pay the full price list amount without deducting the amount that had been paid into the care and maintenance fund. The cemetery may chose to do this for business/customer service reasons
  - Note: As no money may be withdrawn from the C&M capital, if the operator chooses to pay the full list price, it is with the operators money. When the operator resells the rights, it will calculate the amount that must be paid into the C&M on the resale and be given a credit for the amount of the original C & M that was paid into the C&M.

## Resale of interment rights (contd..)

Section 47 FBCSA , Sec 142.(1) of O. Reg.30/11

- Where cemetery by-laws do not prohibit it:
  - Consumers will have the right to sell their interment or scattering rights on the open market.
  - The sale price cannot exceed the fair market value for the rights (determined with reference to the price list that an operator must maintain)
  - The rights holder can sell the right for the full price list amount and is not required to deduct any amount or pay any amount to the cemetery for C and M
  - All resales and transfers must be carried out through the cemetery operator
  - Cemetery operator cannot be compelled to repurchase a lot in a plot if one of the lots has been used. Rights holder may negotiate resale to cemetery operator
  - Cemetery operator may charge an administration fee to record the resale and transfer of interment rights (issue new interment rights certificates etc.)

## Resale of interment rights (contd..)

### Prohibition and exception against speculation

Prohibition and exception against speculation: (O. Reg. 30/11, subsections 47.3, 47.3.1)

- 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
- Exception – An operator who purchases interment or scattering rights to resell, if the resale is incidental to carrying on the business of a cemetery, crematorium, funeral establishment, casket and or marker retailing business or transfer service

Note: The reference to an operator is understood to be an operator licensed under the FBCSA

- Resale price cannot be more than price listed on current price list

# Price Lists

(Reference O. Reg 30/11, Sections 54 – 75)

## Price Lists –

- Operator must have a price list that sets out the prices for supplies and services offered for sale
- Regulations require certain information to appear on the price list in order to facilitate comparison shopping e.g. Identification of Operator, package prices, affiliated services etc.
- For interment rights, depending on how they are priced, the price list may show a range of lowest and highest prices
- Operator shall, on request from the Registrar submit the current price list and any previous price list to the registrar. No requirement for automatic filing when prices change
- Registrar may review for excessive or significantly higher prices, when they are in relation to supplies or services that an operator requires be purchased from it or, if the operator is a cemetery, that must be provided at cost
- The Registrar does not set minimum price amounts
- An operator may appeal a decision to disallow a price

# By-laws

(Reference O. Reg 30/11, sections 150 – 153)

- Approved By-laws required for cemeteries and crematoriums -
  - Should especially address the **RIGHTS, ENTITLEMENTS & RESTRICTIONS** with respect to interments and scattering rights, installation of monuments and markers
  - Indicate allowance or prohibition of re-sales of interment rights as of July 1, 2012
  - By-law may not prohibit an interment rights holder or scattering rights holder from **making arrangements** by telephone or otherwise
  - B-law may still **require consent or confirmation of authority to act** including signatures **prior to providing a supply or service**
  - By-laws must be filed with the registrar for approval. Once approved, the by-laws are valid.



## By-laws (Contd..)

(Reference O. Reg 30/11, Sections 150 – 153)

- Standardized by-laws created by an organization may be submitted to the registrar for approval.
- Once the bylaw has been approved it may be adopted by an operator, who is a member in good standing of that organization.
- Note: If a cemetery/crematorium owner intends to use a standardized bylaw they must still follow the Public Notice provisions. These provisions include the obligation to ensure the notice of the filing of the by-law for approval is “conspicuously” posted on a sign at the entrance to the cemetery
- Obligation with respect to the posting of the notice is for the cemetery operator to “make reasonable efforts to ensure” that the posted notice remains posted for four weeks (or later if appeal of refusal to approve)
- Registrar continues to retain authority to revoke by-law if not in the public interest or the effect of the by-law is to give the cemetery operator an unreasonable or unfair competitive advantage over another supplier

## Guaranteed Contracts

### Contract Requirements (Reference O. Reg 30/11, Sections 120 – 133)

- The FBCSA provides that if money is paid under a contract in advance and there is a price increase before the supplies and services are delivered, the operator is prohibited from charging the purchaser any additional amount
- Operators are not obliged to guarantee contracts. It is a business choice. But, if funds are received under a contract, in advance of providing the supplies and services, and at the time of need, the amounts owing under the contract have been paid in full, the operator may not request additional money from the purchaser. The current price list is used in determining how much the operator may retain of the funds. Excess funds are paid to the purchaser or the purchaser's estate

## Guaranteed Contracts (Contd..)

Who may cancel and who can receive a refund? (Contract Requirements – Reference O. Reg 30/11, Sections 137 – 144)

- Purchaser may, in the contract, designate another person who may cancel the contract and receive the refund, for example the person for whom the supplies and services are intended (recipient)
- O.Reg.30/11, Section 144 sets out the rules that apply if the contract does not provide otherwise:
  - Before the death of the recipient, the purchaser or the person designated in the contract may cancel the contract and receive the refund
  - Before the death of the recipient but after the death of the purchaser, the recipient or the recipient's personal representative may cancel the contract and the recipient is entitled to receive the refund
  - After the death of the recipient, the recipient's personal representative may cancel the contract at any time and receive the refund

## Trusting options, Record keeping and Reporting to registrar

Trusting Options: (Contract Requirements - Reference O. Reg 30/11, Sections 76 - 82)

- All operators will have the option of holding trust money in individual trust accounts or pooling the funds into one trust fund. If funds are pooled, operators must still be able to account on an individual contract basis
- Purchasers may request a statement once a year, setting out the current value of the holding that relates to their money and if the money is in an individual trust account, who is holding it and the type of investments the funds are in
- A cemetery that is not a commercial cemetery, and that has less than \$50,000 in care and maintenance money may be permitted to hold the funds in an account (rather than a trust fund that incurs trustee fees) if:
  - The local municipality has been asked and has declined to act as trustee of the care and maintenance money and
  - The registrar is satisfied that it would not be contrary to the public interest to permit the use of an account with a bank, credit union or loan and trust corporation.

## Trusting options, Record keeping and Reporting to registrar (Contd..)

Record keeping: (Reference O. Reg 30/11, Sections 96 - 109)

- If an operator has more than one licensed business or location, records must be compiled separately
- If kept in electronic form, must be able to produce hard copy on request
- A record of cremated remains in the possession of the operator must be kept
- Records relating to a contract are kept for 6 years from date contract performed or cancelled
- Price lists kept for 6 years from date price list last in effect

## Trusting options, Record keeping and Reporting to registrar (Contd..)

Reporting to registrar:(Reference O. Reg 30/11, Sections 103 - 109)

- Statement of account document used for prepaid trust money and care and maintenance trust money held in a trust account
- A trust fund statement is used for trust money held in a pooled trust fund
- An audited report or review engagement report must be filed by an operator (but not required if pooled trust funds less than \$100,000)
- Cemetery operators required to file licensure report - requested annually
- For care and maintenance accounts, operators file statement of account and statement from depositary
- For care and maintenance funds, operators file statement of account, trust fund statement, and audit report if funds over \$500,000 or there is a funeral establishment on one of the operator's cemeteries

# Care and Maintenance Fund/ Account provisions

Care and Maintenance Fund and Account provisions: (Reference O. Reg 30/11, section 168)

- \$100K deposit requirement into C& M to establish a cemetery
- Contribution levels to the C& M Fund have changed:
  - In-ground grave (24 sq. ft. or larger) – the greater of 40% and \$250
  - In-ground grave (smaller than 24 sq. ft.) – the greater of 40% and \$150
  - Crypts, tombs – the greater of 20% and \$500
  - Niches – the greater of 15% and \$100
  - Scattering ground – one scattering rights holder – the greater of 40% and \$100
  - Scattering ground – more than one scattering rights holder – the greater of 15% and \$25
  - Scattering ground – no scattering rights holder – \$25

Note: For lots and markers sold prior to 1955, if no trust funds were collected, a Non-commercial cemetery operator may charge C&M at the current price/rates (O. Reg 30/11, subsection 95.2)

## Care and Maintenance Fund/ Account provisions (Contd..)

- Care and Maintenance Fund and Account provisions for Marker installation:

Contribution levels to the C& M Fund have changed:

- \$0 for a flat marker less than 1,116.13 sq.. cm (173 sq.. inches)
- \$50 for a flat marker at least 1,116.13 sq.. cm (173 sq.. inches)
- \$100 for an upright marker measuring 1.22 m (4 ft..) or less in height and 1.22 m (4ft.) or less in length, including the base
- \$200 for an upright marker measuring more than 1.22 m (4 ft..) in either height or length, including the base

Note: No contribution if the marker is installed to replace a marker that has been damaged and cannot be repaired (O. Reg 30/11, subsection 95.2)



## Care and Maintenance Funds held in Account or by a Municipality

- FBCSA introduces capacity for Municipalities to act as Trustees of Care and Maintenance Funds. As such a local Municipality may act as a Trustee of another cemetery operator's C&M if the funds are less than 50K
- A template Memorandum of Understanding has been developed that will assist with situations where a municipality agrees to hold the care and maintenance funds on behalf of a cemetery
- Care & Maintenance Funds that are less than 50K may be held in a Care and Maintenance account if the cemetery operator (i) is a non-commercial cemetery operator, (ii) has obtained the Registrar's consent and (iii) the Municipality has declined to hold the funds for the cemetery

Trust Agreements must be reviewed by Registrar

- Trustee must take responsibility for all investments
- 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

## Pre-paid Trust Money

Pre-need funds are funds paid in advance of need:

- Pre-need Assurance Fund is now referred to as “Prepaid trust money” under FBCSA
- Trusting obligations remain in place currently and are retained in the FBCSA
- Prepaid trust money from consumers will be permitted to be held in a single “pooled trust fund” so long as records permit the tracking and reporting on an individual contract basis
- FBCSA regulations will introduce a change with respect to prepaid funds. On or after the 30<sup>th</sup> day after a contract is made an operator will be permitted to elect to retain an amount not exceeding the lesser of 10% or \$350.00 with the balance being placed in trust

## Scattering of Cremated Remains

### Interment and Scattering Rights (O. Reg 30/11, Sections 161 – 164)

- 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 will be 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 Funeral, Burial and Cremation Services Act, 2002
- Family members and others may continue to scatter the cremated remains of their loved ones where the scattering is permitted by the land owner.

# Public's Access to Information

(Reference 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
- 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
- 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

## Burial Site Discoveries

(Reference Sec. 94-100, O. Reg 145.1, 174-184)

- Discovery of human remains outside a cemetery setting must be reported to the Police/Coroner. Site must be protected and cannot be disturbed
- Once Forensic interest is ruled out the site is under the jurisdiction of the Registrar of Cemeteries
- Following an archaeological assessment or investigation by a licensed archaeologist Registrar will:
  - Notify appropriate representatives if remains are Aboriginal in origin
  - Publish Notice in newspaper with general circulation
  - Declare the burial site to be a:
    - Aboriginal peoples burial ground
    - Burial ground
    - Irregular burial site

# Assisted Burials and Cremations

(Reference - **ONTARIO REGULATION 184/12**)

- 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.
  
- 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

# Assisted Burials and Cremations

(Reference - **ONTARIO REGULATION 184/12**) Contd...

- The regulation has set the maximum amount that may be charged for the service:
  - 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
- The maximum amount that an operator of a cemetery may specify on a price list for receiving human remains from an irregular burial site is the lesser of,
  - (a) \$650; and
  - (b) the lowest price charged by the operator for the purchase of interment rights and opening and closing services
- The maximum amount that an operator may specify on a price list for providing an assisted cremation is the lesser of,
  - (a) \$500 for all services that the operator provides with respect to the cremation; and
  - (b) the price charged by the operator for the services described in clause (a) as shown on the price list.

# Neglected and abandoned cemeteries

(Reference O. Reg 30/11, Section 170)

## Neglected Cemeteries:

- 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 thereof from the operator

## Abandoned cemeteries:

- An application to declare a cemetery abandoned may be made to a judge of the District Court if the owner of the cemetery,
  - (a) cannot be found or is unknown;
  - (b) is unable to maintain it;
  - (c) Is not a licensed operator and there is no licensed operator
- The application may be made by the Crown, local municipality, the owner or operator or the Registrar.



## Neglected and abandoned cemeteries (contd..)

- An application to declare a cemetery abandoned may be made by the owner of the cemetery, the municipality or the Registrar
- The municipality is responsible for the cost of an application under this section including the cost of a survey of the land involved
- 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 a declaration that a cemetery is abandoned being registered in the appropriate land registry office, the municipality becomes the owner of the cemetery with all the rights and obligations in respect to the cemetery and the assets, funds and trust accounts related thereto that the previous owner had
- Upon an application being made to declare a cemetery abandoned, the municipality within which the cemetery is situated is responsible for the maintenance of the cemetery until the application is disposed of

## Important cemetery & crematorium obligations

- No owner shall inter human remains in a lot, other than the remains of the interment rights holder, without the written consent of the interment rights holder
- No person shall disinter any human remains without,
  - (a) the prior consent of the interment rights holder; and
  - (b) notifying the proper medical officer of health
- Consent is not required if ordered by,
  - (a) a court of competent jurisdiction;
  - (b) a coroner appointed under the *Coroners Act*;
  - (c) the Attorney General or Solicitor General for Ontario; or
  - (d) the Registrar under section 9
- No person shall disinter any cremated human remains without,
  - (a) the prior consent of the interment rights holder

## Important Obligations - Municipalities

- Approval process for establishing, altering or increasing the capacity of a cemetery:
  - Once the municipality has made a decision to approve or refuse an application, the municipality **must** publish notice of their decision in the local newspaper and **may** hold public hearing to determine if the approval is in the public interest
  - Proof of municipal approval for establishing or expanding a cemetery may be in the form of a resolution, by-law passed by Council or approval by the Committee of adjustment
  - A building permit is acceptable as proof of municipal approval for a mausoleum, columbarium (over 15 cubic metres in volume) and a crematorium only, but does not eliminate the requirement for a public notice
  - The notice must be published even though a building permit has been issued
- The Registrar recommends that a municipality, prior to issuing a building permit, require an Archaeological Assessment if there is any knowledge of the site being of archaeological significance or there is a history of the land being a cemetery.