

## Funeral, Burial and Cremation Services Act, 2002

### S.O. 2002, CHAPTER 33

**Consolidation Period:** From December 14, 2017 to the [e-Laws currency date](#).

Last amendment: 2017, c. 33, Sched. 5, s. 2, 3.

Legislative History: 2002, c. 33, s. 115; 2006, c. 21, Sched. F, s. 112; 2006, c. 32, Sched. C, s. 21; 2006, c. 34, Sched. D, s. 1-77; 2007, c. 4, s. 33; 2007, c. 8, s. 205; 2009, c. 33, Sched. 10, s. 8; 2012, c. 8, Sched. 11, s. 47; 2012, c. 8, Sched. 18; Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006*; 2016, c. 23, s. 50; 2017, c. 33, Sched. 5, s. 2, 3.

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## PART I DEFINITIONS AND INTERPRETATION

### Definitions

1 (1) In this Act,

“aboriginal peoples” includes the Indian, Inuit and Métis peoples of Canada; (“autochtone”)

“burial site” means land containing human remains that is not a cemetery; (“lieu de sépulture”)

“by-laws”, when used in relation to a cemetery or crematorium, means the rules under which the cemetery or crematorium is operated; (“règlements administratifs”)

“casket” means a container intended to hold a dead human body for funeral, cremation or interment purposes and that is not a vault, burial container or a grave liner; (“cercueil”)

“cemetery” means,

- (a) land that has been established as a cemetery under this Act, a private Act or a predecessor of one of them that related to cemeteries, or
- (b) land that was recognized by the registrar as a cemetery under a predecessor of this Act that related to cemeteries,

and includes,

(c) land that, in the prescribed circumstances, has been otherwise set aside for the interment of human remains, and

(d) a mausoleum or columbarium intended for the interment of human remains; (“cimetière”)

“cemetery services” means services provided by a cemetery operator in respect of the interment of human remains or the scattering of cremated human remains at a cemetery and includes such services as may be prescribed; (“services de cimetière”)

“columbarium” means a structure designed for the purpose of interring cremated human remains in niches or compartments; (“columbarium”)

“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; (“crématoire”)

“crematorium services” means services provided in respect of the cremation of dead human bodies and includes such services as may be prescribed; (“services de crématoire”)

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by adding the following definition:**

“delegated administrative authority” means a corporation prescribed under clause 4 (1) (b) of the *Delegated Administrative Authorities Act, 2012* to administer specified provisions of this Act and the regulations; (“organisme d’application délégué”)

See: 2012, c. 8, Sched. 11, ss. 47 (1), 54 (1).

“embalm” means to preserve and disinfect all or part of a dead human body by any means other than by refrigeration, but does not include religious rites relating to the washing of a body; (“embaumer”)

“employ” means to employ, appoint, authorize or otherwise arrange to have another person act on one’s behalf, including as an independent contractor; (“employer”)

“equity share” means, in respect of a corporation, a share of a class or series of shares of a corporation that carries a voting right either under all circumstances or under circumstances that have occurred and are continuing; (“action participante”)

“funeral establishment” means premises established for the purpose of temporarily placing dead human bodies, and in prescribed circumstances cremated human remains, so that persons may attend and pay their respects; (“résidence funéraire”)

“funeral services” means the care and preparation of dead human bodies, the co-ordination and provision of rites and ceremonies with respect to dead human bodies and the provision of such other services as may be prescribed, but does not include cemetery or crematorium services; (“services funéraires”)

“human remains” means a dead human body or the remains of a cremated human body; (“restes humains”)

“income” means the interest or money earned, including its compounding, by the investment of funds, including any capital gains realized from the investment of funds held in trust for the purposes of section 52 or 56; (“revenu”)

“inter” means the burial of human remains and includes the placing of human remains in a lot; (“inhumer”)

“interment rights” includes the right to require or direct the interment of human remains in a lot; (“droits d’inhumation”)

“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; (“titulaire de droits d’inhumation”)

“investigator” means a person appointed as an investigator under subsection 69 (1); (“enquêteur”)

“licensed services” means cemetery services, crematorium services, funeral services and transfer services and includes interment rights and scattering rights and any other services that are sold or provided by a person licensed under this Act in the normal course of a business regulated under this Act; (“services autorisés”)

“licensed supplies” means caskets and markers and any other supplies that are sold by a person licensed under this Act in the normal course of a business regulated under this Act; (“fournitures autorisées”)

“licensee” means a person who holds a licence issued under this Act; (“titulaire de permis”)

“lot” means an area of land in a cemetery containing, or set aside to contain, interred human remains and includes a tomb, crypt or compartment in a mausoleum and a niche or compartment in a columbarium and any other similar facility or receptacle; (“sépulture”)

“marker” means any monument, tombstone, plaque, headstone, cornerstone or other structure or ornament affixed to or intended to be affixed to a burial lot, mausoleum crypt, columbarium niche or other structure or place intended for the deposit of human remains; (“repère”)

“mausoleum” means a structure, other than a columbarium, used as a place for the interment of human remains in tombs, crypts or compartments; (“mausolée”)

“Minister” means the Minister of Government Services or whatever other member of the Executive Council to whom administration for this Act is assigned under the *Executive Council Act*; (“ministre”)

“Ministry” means the ministry of the Minister; (“ministère”)

“officer” includes the chair and any vice-chair of the board of directors, the president and any vice-president, the secretary and assistant secretary, the treasurer and assistant treasurer and the general manager or assistant general manager of the corporation or a partner or general manager or assistant general manager of a partnership, any other individual designated as an officer by by-law or resolution or any other individual who performs functions normally performed by an individual occupying such office; (“dirigeant”)

“operator” means a person who is licensed to operate a cemetery, crematorium, funeral establishment, casket retailing business, marker retailing business, transfer service or any other business for which a licence may be required by regulation and includes a cemetery owner who is deemed to be a cemetery operator under subsection 5 (2); (“exploitant”)

“person”, with respect to a cemetery, includes,

(a) a board of trustees established for the purpose of operating the cemetery, and

(b) any organization or group of persons organized for the purpose of operating the cemetery; (“personne”)

“plot” means two or more lots in respect of which the rights to inter have been sold as a unit; (“concession”)

“prescribed” means prescribed by the regulations; (“prescrit”)

“private scattering ground” means land within a cemetery that is set aside to be used for the scattering of cremated human remains of only those persons who are related or affiliated in a manner specified in the contract at the time the scattering rights are sold; (“aire de dispersion privée”)

“private structure” means a mausoleum or columbarium situated on a cemetery set aside for the interment of human remains of only those persons who are related or affiliated in a manner specified in the contract at the time the interment rights are sold; (“construction privée”)

“registrar” means the registrar appointed under section 3; (“registrateur”)

“regulations” means regulations made under this Act; (“règlements”)

“scattering ground” means the land within a cemetery that is set aside to be used for the scattering of cremated human remains; (“aire de dispersion”)

“scattering rights” includes the right to require or direct the scattering of cremated human remains on the scattering ground of a cemetery; (“droits de dispersion”)

“scattering rights holder” means the person who holds the scattering rights with respect to a scattering ground whether the person be the purchaser of the rights, the person named in the certificate of scattering or such other person to whom the scattering rights have been assigned; (“titulaire de droits de dispersion”)

“transfer service” means a service to the public with respect to the disposition of dead human bodies, including the transportation of dead human bodies and the filling out of the necessary documentation with respect to the disposition of dead human bodies; (“service de transfert”)

“Tribunal” means the Licence Appeal Tribunal established under the *Licence Appeal Tribunal Act, 1999* or such other tribunal as may be prescribed. (“Tribunal”) 2002, c. 33, s. 1 (1); 2006, c. 34, Sched. D, ss. 1 (1-10).

### **Associated persons**

(2) For the purposes of this Act, one person is associated with another person in any of the following circumstances:

1. One person is a corporation of which the other person is an officer or director.

2. One person is a partnership of which the other person is a partner.
3. Both persons are partners of the same partnership.
4. One person is a corporation that is controlled directly or indirectly by the other person.
5. Both persons are corporations and one corporation is controlled directly or indirectly by the same person who controls directly or indirectly the other corporation.
6. Both persons are members of a voting trust and the trust relates to shares of a corporation.
7. Both persons are associated within the meaning of paragraphs 1 to 6 with the same person. 2006, c. 34, Sched. D, s. 1 (11).

**Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 1 (1-11) - 01/07/2012

2012, c. 8, Sched. 11, s. 47 (1) - not in force

**Application**

**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.

**Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 2 - 01/07/2012

**PART II  
ADMINISTRATION**

**Director**

**2** (1) Subject to subsection (2), the Minister shall appoint one or more directors for the purposes of this Act and may appoint one or more deputy directors. 2002, c. 33, s. 2 (1).

**Director cannot be registrar**

(2) A person appointed as a registrar or a deputy registrar under subsection 3 (1) shall not be appointed as a director or a deputy director under subsection (1). 2002, c. 33, s. 2 (2).

**Deputy director, duties**

(3) A deputy director shall perform such duties as are assigned by the director and shall act as director in his or her absence. 2002, c. 33, s. 2 (3).

**Deputy director**

(4) Where more than one deputy director has been appointed, only one deputy director may act as the director under subsection (3) at any one time. 2002, c. 33, s. 2 (4).

**Note: On a day to be named by proclamation of the Lieutenant Governor, section 2 is amended by adding the following subsection:**

**Delegated administrative authority**

(5) Despite subsection (1), if there is a delegated administrative authority, it may appoint one or more directors and one or more deputy directors under this section for the purposes of the specified provisions of this Act and the regulations. 2012, c. 8, Sched. 11, s. 47 (2).

See: 2012, c. 8, Sched. 11, ss. 47 (2), 54 (1).

**Section Amendments with date in force (d/m/y)**

2012, c. 8, Sched. 11, s. 47 (2) - not in force

## **Registrar**

3 (1) Subject to subsection (2), the deputy minister to the Minister shall appoint one or more registrars for the purposes of this Act and may appoint one or more deputy registrars. 2002, c. 33, s. 3 (1).

### **Registrar cannot be director**

(2) A person appointed as a director or a deputy director under subsection 2 (1) shall not be appointed as a registrar or a deputy registrar under subsection (1). 2002, c. 33, s. 3 (2).

### **Powers and duties**

(3) The registrar shall exercise the powers and perform the duties imposed on him or her under this Act and a deputy registrar shall perform such duties as are assigned by the registrar and shall act as the registrar in the registrar's absence. 2002, c. 33, s. 3 (3); 2009, c. 33, Sched. 10, s. 8 (1).

### **Deputy registrar**

(4) If more than one deputy registrar has been appointed, only one deputy registrar may act as the registrar under subsection (3) at any one time. 2002, c. 33, s. 3 (4).

**Note: On a day to be named by proclamation of the Lieutenant Governor, section 3 is amended by adding the following subsection:**

### **Delegated administrative authority**

(4.1) Despite subsection (1), if there is a delegated administrative authority, it may appoint one or more registrars and one or more deputy registrars under this section for the purposes of the specified provisions of this Act and the regulations. 2012, c. 8, Sched. 11, s. 47 (3).

See: 2012, c. 8, Sched. 11, ss. 47 (3), 54 (1).

### **Transition**

(5) The Minister shall appoint the Registrar appointed under the *Board of Funeral Services Act* as registrar for the purposes of this Act, to exercise all the powers and duties of the registrar under this Act in relation to licensees who are also licensees as defined in section 1 of that Act until the day the *Board of Funeral Services Act* is repealed under section 139. 2002, c. 33, s. 3 (5).

### **Section Amendments with date in force (d/m/y)**

2009, c. 33, Sched. 10, s. 8 (1) - 01/07/2012

2012, c. 8, Sched. 11, s. 47 (3) - not in force

## **PART III PROHIBITIONS AND GENERAL DUTIES RE: OPERATION OF BUSINESSES**

### **Prohibitions respecting cemeteries**

#### **Operating cemeteries**

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. 2002, c. 33, s. 4 (1).

#### **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. 2002, c. 33, s. 4 (2); 2006, c. 34, Sched. D, s. 3 (1, 2).

#### **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). 2002, c. 33, s. 4 (3).

(4) REPEALED. See: Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* – December 31, 2012.

#### **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. 2006, c. 34, Sched. D, s. 3 (3).

### **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. 2006, c. 34, Sched. D, s. 3 (3).

### **Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 3 (1-3) - 01/07/2012

Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* - 31/12/2012

### **Duties in operating cemeteries**

#### **Owner's 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. 2002, c. 33, s. 5 (1).

#### **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. 2006, c. 34, Sched. D, s. 4 (1).

#### **Operator's duties**

(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;
- (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. 2002, c. 33, s. 5 (3).

(4) REPEALED: 2006, c. 34, Sched. D, s. 4 (2).

#### **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. 2002, c. 33, s. 5 (5); 2006, c. 34, Sched. D, s. 4 (3).

### **Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 4 (1-3) - 01/07/2012

### **Prohibitions respecting crematoriums**

#### **Operating crematoriums**

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**

(3) No person shall cremate a human body at a place other than a crematorium operated by a person licensed under subsection (1). 2002, c. 33, s. 6 (3).



**Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 5 (1, 2) - 01/07/2012

**Duties in operating crematoriums**

**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. 2002, c. 33, s. 7 (1).

**Same re: employees, etc.**

- (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. 2002, c. 33, s. 7 (2); 2006, c. 34, Sched. D, s. 6.

**Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 6 - 01/07/2012

**Prohibitions respecting funeral establishments**

**Operating funeral establishments**

8 (1) No person shall operate a funeral establishment, or hold themselves out as the operator of a funeral establishment, unless the person is licensed to do so. 2002, c. 33, s. 8 (1).

**Selling funeral services**

- (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. 2006, c. 34, Sched. D, s. 7.

**Exception**

(3) A licence is not required with respect to rites or ceremonies traditionally provided in a place of worship. 2006, c. 34, Sched. D, s. 7.

(4)-(10) REPEALED: 2006, c. 34, Sched. D, s. 7.

**Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 7 - 01/07/2012

**Duties respecting the operation of funeral establishments**

**Operators**

- 9 (1) The operator of a funeral establishment shall ensure that,
- (a) the funeral establishment is operated in accordance with this Act and the regulations;
  - (b) every licensee that is employed in the funeral establishment carries out his or her duties in compliance with this Act and the regulations; and
  - (c) every other person to whom the operator delegates responsibility carries out that responsibility in compliance with this Act and the regulations. 2002, c. 33, s. 9 (1); 2006, c. 34, Sched. D, s. 8 (1).
- (2)-(6) REPEALED: 2006, c. 34, Sched. D, s. 8 (2).

**Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 8 (1, 2)- 01/07/2012

**10 REPEALED.** See: Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* – December 31, 2012.

**Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 9 (1, 2) - 01/07/2012

Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* - 31/12/2012

**11 REPEALED.** See: Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* – December 31, 2012.

**Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 10 (1, 2)- 01/07/2012

Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* - 31/12/2012

**Operation of 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. 2006, c. 34, Sched. D, s. 11 (1).

**Selling services**

(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. 2006, c. 34, Sched. D, s. 11 (1).

(3) REPEALED: 2006, c. 34, Sched. D, s. 11 (1).

**Operator's duties**

(4) The operator of a transfer service shall comply with this Act and the regulations and 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. 2002, c. 33, s. 12 (4); 2006, c. 34, Sched. D, s. 11 (2).

**Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 11 (1, 2) - 01/07/2012

**Transition**

**13 (1)** If a person was licensed as a cemetery owner under the *Cemeteries Act (Revised)* on the day immediately before section 4 of this Act comes into force, the person shall, beginning on the day that section comes into force, be deemed to be licensed as a cemetery operator under this Act until the person is required to renew the licence under this Act. 2006, c. 34, Sched. D, s. 12.

**Crematorium owner**

(2) If a person was licensed as a crematorium owner under the *Cemeteries Act (Revised)* on the day immediately before section 6 of this Act comes into force, the person shall, beginning on the day that section comes into force, be deemed to be licensed as a crematorium operator under this Act until the person is required to renew the licence under this Act. 2006, c. 34, Sched. D, s. 12.

**Certain operators**

(3) Any person who held a licence as the operator of a funeral establishment or as the operator of a transfer service under the *Funeral Directors and Establishments Act* on the day immediately before section 8 or 12 of this Act comes into force shall be deemed to hold an equivalent licence under this Act until the person is required to renew the licence under this Act. 2006, c. 34, Sched. D, s. 12.

**Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 12 - 01/07/2012

**PART IV  
LICENSING**

**Requirements for licences**

- 14 (1)** An applicant is entitled to a licence or to a renewal of the licence unless,
- (a) the applicant or an interested person in respect of the applicant,
    - (i) is in contravention of this Act or the regulations, or
    - (ii) would be in contravention of this Act, the regulations, another Act or a municipal by-law if the applicant were issued a licence;
  - (b) the applicant is not a corporation and,
    - (i) having regard to the applicant's financial position or the financial position of an interested person in respect of the applicant, the applicant cannot reasonably be expected to be financially responsible in the conduct of business,
    - (ii) the past conduct of the applicant or of an interested person in respect of the applicant affords reasonable grounds for belief that the applicant will not carry on business in accordance with the law and with integrity and honesty, or
    - (iii) the applicant or an employee or agent of the applicant makes a false statement or provides a false statement in an application for a licence or for renewal of a licence;
  - (c) the applicant is a corporation and,
    - (i) the past conduct of officers or directors of the applicant or of an interested person in respect of the applicant affords reasonable grounds for belief that its business will not be carried on in accordance with the law and with integrity and honesty, or
    - (ii) an officer, director, employee or agent of the applicant makes a false statement or provides a false statement in an application for a licence or for renewal of a licence;
  - (d) in the case of an applicant for a licence to operate a cemetery, crematorium, funeral establishment, casket or marker retailing business, transfer service or other bereavement activity for which a licence is required under the regulations, or a renewal of such a licence,
    - (i) in the opinion of the registrar, the applicant or managing employees of the applicant do not have the integrity, honesty, experience and competence required to manage the business in accordance with the law, or having regard for the financial position of the applicant or managing employees, the applicant or managing employees cannot be reasonably expected to be financially responsible in the conduct of the business,
    - (ii) the applicant is unable to provide the resources and facilities required to manage a business, or
    - (iii) the registrar has reasonable grounds to believe that the operation of the business by the applicant creates a risk to public health, safety or decency;
  - (e) in the case of an applicant for a licence to operate a funeral establishment, casket or marker retailing business, transfer service or other bereavement activity for which a licence is required under the regulations, or a renewal of such a licence, the applicant is,
    - (i) a board of trustees established for the purpose of operating a cemetery, except if the applicant is otherwise a person within the meaning of section 87 of the *Legislation Act, 2006* and is applying in that capacity, or
    - (ii) any organization or group of persons organized for the purpose of operating a cemetery, except if the applicant is otherwise a person within the meaning of section 87 of the *Legislation Act, 2006* and is applying in that capacity;
  - (f) the applicant fails to satisfy the other requirements that are prescribed;
  - (g) the applicant or other person that is prescribed has not successfully completed the educational requirements that are prescribed;
  - (h) the applicant is in breach of a condition of the licence; or
  - (i) the applicant fails to comply with a request made by the registrar under section 111. 2006, c. 34, Sched. D, s. 13 (1); 2009, c. 33, Sched. 10, s. 8 (2).

### **Licence not transferable**

(2) A licence is not transferable. 2002, c. 33, s. 14 (2).

### **Interested persons**

(3) For the purposes of subsection (1), a person shall be deemed to be an interested person in respect of another person if the person is associated with the other person or if, in the opinion of the registrar,

- (a) the person has or may have a beneficial interest in the other person's business;
- (b) the person exercises or may exercise control either directly or indirectly over the other person; or
- (c) the person has provided or may have provided financing either directly or indirectly to the other person's business. 2002, c. 33, s. 14 (3); 2006, c. 34, Sched. D, s. 13 (2).

### **Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 13 (1, 2) - 01/07/2012

2009, c. 33, Sched. 10, s. 8 (2) - 01/07/2012

### **Disclosure upon application**

**15** (1) Upon applying for a licence or a renewal of a licence, an applicant that is a corporation shall disclose to the registrar the identity of any persons or any persons associated with each other that beneficially own or control 10 per cent or more of the corporation's equity shares issued and outstanding at the time of the application. 2006, c. 34, Sched. D, s. 14 (1).

### **Calculating number of shares**

(2) In calculating the total number of equity shares of the corporation beneficially owned or controlled for the purposes of this section, the total number shall be calculated as the total number of all shares beneficially owned or controlled, but each share that carries the right to more than one vote shall be calculated as the number of shares equalling the total number of votes carried. 2002, c. 33, s. 15 (2).

(3), (4) REPEALED: 2006, c. 34, Sched. D, s. 14 (2).

### **Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 14 (1, 2) - 01/07/2012

### **Conditions**

**16** (1) A licence is subject to such conditions as are consented to by the applicant or licensee, imposed by the registrar under subsection (2), ordered by the Tribunal or prescribed. 2002, c. 33, s. 16 (1); 2006, c. 34, Sched. D, s. 15.

### **Same**

(2) Subject to section 18, the registrar may,

- (a) issue or renew the licence, subject to such conditions as he or she considers appropriate; and
- (b) at any time, attach such conditions as he or she considers appropriate to a licence. 2002, c. 33, s. 16 (2).

### **Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 15 - 01/07/2012

### **Refusal to issue**

**17** (1) Subject to section 18, the registrar may refuse to issue a licence if of the opinion that the applicant is not entitled to a licence under section 14. 2006, c. 34, Sched. D, s. 16.

### **Revocation, refusal to renew, etc.**

(2) Subject to section 18, the registrar may refuse to renew a licence or may suspend or revoke a licence if of the opinion that the licensee is not entitled to a licence under section 14 or the licensee is in breach of a condition of the licence. 2006, c. 34, Sched. D, s. 16.

### **Limitation**

(3) Despite subsection (2), the registrar shall not suspend or revoke a licence to operate a cemetery unless the director has appointed a manager in accordance with section 25 to operate the cemetery instead of the person who is licensed to operate it. 2006, c. 34, Sched. D, s. 16.

### **Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 16 - 01/07/2012

### **Notice and hearing**

**18** (1) The registrar shall notify an applicant or licensee in writing if he or she proposes to,

- (a) refuse to issue or renew a licence;
- (b) suspend or revoke a licence; or
- (c) apply conditions to a licence or renewal of a licence to which the applicant or licensee has not consented. 2002, c. 33, s. 18 (1).

### **Content of notice**

(2) The notice of proposal shall set out the reasons for the proposed action and shall state that the applicant or licensee is entitled to a hearing by the Tribunal if the applicant or licensee mails or delivers, within 15 days after service of the notice, a written request for a hearing to the registrar and to the Tribunal. 2002, c. 33, s. 18 (2).

### **Service**

(3) The notice of proposal shall be served on the applicant or licensee in accordance with section 20. 2002, c. 33, s. 18 (3).

### **Where no request for hearing**

(4) If an applicant or licensee does not request a hearing in accordance with subsection (2), the registrar may carry out the proposal. 2002, c. 33, s. 18 (4).

### **Hearing and order**

(5) If a hearing is requested, the Tribunal shall hold the hearing and may by order direct the registrar to carry out the registrar's proposal or substitute its opinion for that of the registrar and may attach conditions to its order or to a licence. 2002, c. 33, s. 18 (5).

### **Parties**

(6) The registrar, the applicant or licensee and such other persons as the Tribunal may specify are parties to the proceedings under this section. 2002, c. 33, s. 18 (6).

### **Immediate effect pending appeal**

(7) Even if a licensee appeals an order of the Tribunal under section 11 of the *Licence Appeal Tribunal Act, 1999*, the order takes effect immediately but the Tribunal may grant a stay until the disposition of the appeal. 2002, c. 33, s. 18 (7).

### **Immediate suspension**

**19** (1) If the registrar proposes to suspend or revoke a licence under section 17 and if the registrar considers it in the public interest to do so, the registrar may by order temporarily suspend the licence. 2002, c. 33, s. 19 (1).

### **Immediate effect**

(2) An order under subsection (1) takes effect immediately. 2002, c. 33, s. 19 (2).

### **Expiry of order**

(3) If a hearing is requested under section 18,

- (a) the order expires 15 days after the written request for a hearing is received by the Tribunal; or
- (b) the Tribunal may extend the time of expiration until the hearing is concluded, if a hearing is commenced within the 15-day period referred to in clause (a). 2002, c. 33, s. 19 (3).

### **Same**

(4) Despite subsection (3), if it is satisfied that the conduct of the licensee has delayed the commencement of the hearing, the Tribunal may extend the time of the expiration for the order,

- (a) until the hearing commences; and
- (b) once the hearing commences, until the hearing is concluded. 2002, c. 33, s. 19 (4).

### **Service requirements for hearing request**

**20** (1) A request for a hearing under section 18 is sufficiently served if delivered personally or if sent by registered mail or by such other manner as may be prescribed to the registrar and to the Tribunal. 2002, c. 33, s. 20 (1).

### **Same**

(2) If service is made by registered mail, it shall be deemed to be made on the third day after the day of mailing. 2002, c. 33, s. 20 (2).

### **Other methods**

(3) Despite this section, the Tribunal may order any other method of service. 2002, c. 33, s. 20 (3).

### **Voluntary cancellation**

**21** The registrar may cancel a licence upon the request in writing of the licensee and section 18 does not apply to the cancellation. 2002, c. 33, s. 21.

### **Continuation pending renewal**

**22** If, within the time prescribed or, if no time is prescribed, before the expiry of the licensee's licence, the licensee has applied for renewal of a licence and paid the fee required under section 108, the licence shall be deemed to continue,

- (a) until the renewal is granted; or
- (b) if the licensee is served notice that the registrar proposes to refuse to grant the renewal, until the time for requesting a hearing has expired or, if a hearing is requested, until the Tribunal makes its order. 2002, c. 33, s. 22.

### **Information re: cemetery**

**23** (1) Every cemetery operator shall file with the registrar such information as may be prescribed at such time and in such manner as may be prescribed. 2002, c. 33, s. 23 (1).

### **Failure to file information**

(2) An operator who fails to file the information in accordance with subsection (1) shall, upon receiving notice of the failure from the registrar, do or cease to do the prescribed things that the registrar specifies. 2002, c. 33, s. 23 (2); 2006, c. 34, Sched. D, s. 17.

### **Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 17 - 01/07/2012

### **Further application**

**24** A person who is refused a licence or a renewal of a licence or whose licence is revoked may reapply for a licence only if,

- (a) the time prescribed to reapply has passed since the refusal, revocation or refusal to renew; and
- (b) new or other evidence is available or it is clear that material circumstances have changed. 2002, c. 33, s. 24.

### **Appointment of manager**

**25** (1) The director may appoint a manager to operate a cemetery in the place of the person who is licensed to operate the cemetery if,

- (a) the director has reasonable and probable grounds, based on a statement under oath, to believe that the person licensed to operate the cemetery is doing or is about to do something in the operation of the cemetery that,
  - (i) creates or is likely to create a risk to public health, safety or decency, or
  - (ii) is causing or is likely to cause financial loss to members of the public; or
- (b) the licence of the person who operates the cemetery is suspended or revoked. 2002, c. 33, s. 25 (1).

### **Powers of manager**

(2) A manager appointed under subsection (1) has all the powers of the person licensed to operate the cemetery with respect to the operation of the cemetery and may,

- (a) exclude the cemetery operator or the cemetery owner from the premises of the business; or
- (b) if the cemetery operator or the cemetery owner is a corporation, exclude the directors and officers of the corporation from the premises of the business. 2002, c. 33, s. 25 (2).

### **Effect of appointment**

(3) From the time a manager is appointed under subsection (1) until the day the appointment is cancelled, the person licensed to operate the cemetery shall not deal with any assets or trust funds relating to the cemetery and shall not be involved in the operation of the cemetery. 2002, c. 33, s. 25 (3).

### **Cancellation**

(4) Any person affected by an appointment of a manager may apply to a judge of the Superior Court of Justice for an order cancelling the appointment and the order may include such directions and conditions as seems appropriate. 2002, c. 33, s. 25 (4).

### **Notice of transfer of shares**

**26** (1) In addition to the disclosure required under subsection 15 (1), every licensee that is a corporation shall notify the registrar in writing within 30 days after the issue or the transfer of any equity shares of the corporation if the issue or transfer results in,

- (a) any person or any persons that are associated with each other, acquiring or accumulating beneficial ownership or control of 10 per cent or more of the total number of all issued and outstanding equity shares of the corporation; or
- (b) an increase in the percentage of issued and outstanding equity shares of the corporation beneficially owned or controlled by any person, or any persons who are associated with each other, where the person or the associated persons already beneficially owned or controlled 10 per cent or more of the total number of all issued and outstanding equity shares of the corporation before the issue or transfer, unless otherwise prescribed. 2006, c. 34, Sched. D, s. 18.

### **Same**

(2) Despite subsection (1), if a licensee that is a corporation becomes aware of a transfer that otherwise falls into subsection (1) after the transfer has taken place, it shall notify the registrar in writing within 30 days after knowledge of the transfer comes to the attention of its officers or directors. 2002, c. 33, s. 26 (2).

### **Calculation of total number of equity shares**

(3) In calculating the total number of equity shares of the corporation beneficially owned or controlled for the purpose of this section, the total number shall be calculated as the total of all the shares beneficially owned or controlled, but each share that carries the right to more than one vote shall be calculated as the number of shares equalling the total number of votes it carries. 2002, c. 33, s. 26 (3).

### **Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 18 - 01/07/2012

## **PART V CONSUMER PROTECTION**

### **GENERAL**

### **False advertising**

**27** No licensee shall make a false, misleading or deceptive statement in any advertisement, circular, pamphlet or material published or distributed by any means relating to the sale or provision of any licensed supplies or services. 2002, c. 33, s. 27.

### **Order of registrar**

**28** (1) If the registrar believes on reasonable grounds that a licensee is making a false, misleading or deceptive statement in any advertisement, circular, pamphlet, brochure, price list, contract, letterhead or similar material published by any means, the registrar may,

- (a) order the cessation of the use of such material;
- (b) order the licensee to retract the statement or publish a correction of equal prominence to the original publication; or
- (c) order both a cessation described in clause (a) and a retraction or correction described in clause (b). 2002, c. 33, s. 28 (1); 2006, c. 34, Sched. D, s. 19 (1).

### **Notice and hearing**

(2) Section 18 applies with necessary modifications to an order under this section in the same manner as to a proposal by the registrar to refuse to issue a licence. 2002, c. 33, s. 28 (2).

**Effect**

(3) The order of the registrar shall take effect immediately, but the Tribunal may grant a stay until the registrar's order becomes final. 2002, c. 33, s. 28 (3).

**Preapproval**

(4) If the licensee does not appeal an order under this section or if the Tribunal upholds the order or a variation of it, the licensee shall, upon the request of the registrar and subject to subsection (5), submit all statements in any advertisement, circular, pamphlet, brochure, price list, contract, letterhead or similar material to the registrar for approval before publication. 2006, c. 34, Sched. D, s. 19 (2).

**Duration of duty**

(5) The licensee shall submit statements under subsection (4) for a period of time that the registrar designates, which shall not exceed 12 months. 2006, c. 34, Sched. D, s. 19 (2).

**Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 19 (1, 2) - 01/07/2012

**Prohibitions against soliciting****By phone or in person**

**29** (1) No licensee or other person shall contact, by telephone or in person, a person for the purpose of soliciting the making of, or negotiating, a contract for the sale or provision of a licensed supply or service. 2002, c. 33, s. 29 (1).

**Vulnerable persons**

(2) No licensee or other person shall contact, by any means, a person in a hospital, long-term care home, hospice or such other institution as may be prescribed for the purpose of soliciting the making of, or negotiating, a contract for the sale or provision of a licensed supply or service. 2002, c. 33, s. 29 (2); 2007, c. 8, s. 205.

**Exception**

(3) This section does not prohibit a licensee from,

- (a) contacting a person at the request of that person; or
- (b) contacting another licensee or business for the purpose of soliciting the making of, or negotiating, a contract referred to in subsection (1) if the supplies or services sold or provided under the contract are not for the personal use or benefit of the other licensee or business. 2002, c. 33, s. 29 (3); 2006, c. 34, Sched. D, s. 20.

**Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 20 - 01/07/2012

2007, c. 8, s. 205 - 01/07/2012

**False information**

**30** No licensee shall,

- (a) falsify, assist in falsifying or induce or counsel another person to falsify or assist in falsifying any information or document relating to the sale or provision of any licensed supplies or services; or
- (b) make a misleading or deceptive statement, or assist, induce or counsel another person to make a misleading or deceptive statement, in any information or document relating to the sale or provision of any licensed supplies or services. 2002, c. 33, s. 30.

**Furnishing false information**

**31** No licensee shall furnish, assist in furnishing or induce or counsel another person to furnish or assist in furnishing any false, misleading or deceptive information or documents relating to the sale or provision of any licensed supplies or services. 2002, c. 33, s. 31.

**Disclosure by licensee**

**32** (1) A licensee shall disclose such information as may be prescribed to such persons as may be prescribed and shall make the disclosure at such time and in such a manner as may be prescribed. 2002, c. 33, s. 32 (1).



## **Remedies**

(2) If a licensee fails to make a disclosure as required under subsection (1) or fails to do so in a timely way, in addition to any other remedies that may be available, the person to whom disclosure should have been made is entitled to such other remedies as may be prescribed. 2002, c. 33, s. 32 (2).

## **Price list**

**33** (1) Every operator shall maintain a price list of the licensed supplies and services that are provided by the operator in accordance with the regulations. 2002, c. 33, s. 33 (1).

## **Price list available to public**

(2) Every licensee shall make the price list maintained under subsection (1) available to the public in accordance with the regulations. 2002, c. 33, s. 33 (2).

## **Prohibition: exceeding listed price**

**34** (1) No licensee shall charge, collect or receive any amount of money for a licensed supply or service that is more than the price indicated on the price list maintained under section 33. 2002, c. 33, s. 34 (1).

## **Repayment**

(2) A licensee who charges, collects or receives an amount of money for a licensed supply or service that is more than the price indicated on the price list or, if the price for the supply or service sold is not on the price list, more than the price charged for a similar supply or service, shall repay the difference to the purchaser within 30 days. 2002, c. 33, s. 34 (2); 2006, c. 34, Sched. D, s. 21.

## **Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 21 - 01/07/2012

## **Good standing**

**35** (1) No operator shall enter into a contract for the sale or provision of licensed supplies or services unless the operator has made such payments to the prescribed compensation scheme as may be required by regulation. 2002, c. 33, s. 35 (1).

## **Same**

(2) An operator shall ensure that no person enters into a contract for the sale or provision of licensed supplies and services on the operator's behalf unless the operator has made such payments to the prescribed compensation scheme as may be required by regulation. 2002, c. 33, s. 35 (2).

**36., 37** REPEALED: 2006, c. 34, Sched. D, s. 22.

## **Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 22 - 01/07/2012

## **Contract price**

**38** If money is paid under a contract for the sale or provision of licensed supplies and services in advance of the provision of the supplies and services and if, subsequent to the payment but before the provision of the supplies and services, there is an increase in the price of any of those supplies and services, the operator shall not charge the purchaser any additional amount in respect of the increase and may retain only the amounts that are prescribed. 2006, c. 34, Sched. D, s. 23.

## **Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 23 - 01/07/2012

## **Tied selling**

**38.1** No operator shall require, as a condition to selling certain licensed supplies and services to a purchaser, whether or not the condition is set out in a contract, that the purchaser also purchase other supplies and services from the same operator or from a person specified by the operator, unless the operator does so in the circumstances that are prescribed. 2006, c. 34, Sched. D, s. 23.

## **Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 23 - 01/07/2012

### **Storage of supplies**

**39** An operator may, in the prescribed circumstances, agree to store or have stored, in accordance with the regulations, a prescribed licensed supply that is sold, in advance of the use of the supply. 2006, c. 34, Sched. D, s. 23.

### **Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 23 - 01/07/2012

### **Contract requirements**

- 40** (1) A contract for the provision of licensed supplies or services is not enforceable by an operator unless,
- (a) the contract is written, signed by both parties and complies with the regulations;
  - (b) the contract sets out the purchaser's cancellation rights under this Act;
  - (c) the contract sets out all the supplies and services to be provided and the price charged for each of them;
  - (d) the operator delivers a signed copy of the contract to the purchaser in the prescribed manner;
  - (e) in the case of a contract for the purchase of interment 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 to a third party, and
    - (ii) a description of the location of the lot that is purchased;
  - (f) in the case of a contract for the purchase of 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 scattering rights to a third party, and
    - (ii) a description of the location of the scattering ground where the rights may be exercised;
  - (g) 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
  - (h) such other requirements as may be prescribed are met. 2002, c. 33, s. 40 (1).

### **Right of action**

- (2) A purchaser under a contract that does not meet the requirements of clauses (1) (a), (b) or (c) or in respect of which the operator has not complied with the requirements of clauses (1) (d), (e), (f), (g) or (h) may bring an action in a court of competent jurisdiction to recover any amounts paid under the contract together with costs if,
- (a) the purchaser has given the operator notice of cancellation under subsection 41 (1); and
  - (b) the operator has refused to pay the purchaser the amount payable under subsection 41 (2). 2002, c. 33, s. 40 (2).

### **Exception**

(3) Subsections (1) and (2) do not apply to a contract for the provision of licensed supplies or services in the prescribed circumstances. 2006, c. 34, Sched. D, s. 24.

### **Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 24 - 01/07/2012

### **Cancellation, unenforceable contract**

**41** (1) A purchaser under a contract that is not enforceable by the operator under subsection 40 (1) may cancel the contract at any time after it is made by giving the operator written notice of cancellation. 2002, c. 33, s. 41 (1).

### **Refund**

(2) An operator who receives a notice of cancellation under subsection (1) shall, within 30 days of receiving the notice, refund to the purchaser all money received under the contract together with the amounts that are prescribed. 2002, c. 33, s. 41 (2); 2006, c. 34, Sched. D, s. 25 (1).

### **Where contract performed**

(3) Subject to the regulations, subsections (1) and (2) apply even though the licensed supplies and services provided for under the contract have been delivered or performed. 2002, c. 33, s. 41 (3); 2006, c. 34, Sched. D, s. 25 (2).

### **Repossession or return of supplies**

(4) If licensed supplies were delivered under a contract that is cancelled under this section, the purchaser shall, subject to the regulations,

- (a) permit the supplies to be repossessed by the operator who delivered them;
- (b) return the supplies to the operator; or
- (c) deal with them in such manner as may be prescribed. 2002, c. 33, s. 41 (4).

### **Reasonable care**

(5) If a purchaser cancels a contract under this section, the purchaser shall take reasonable care of the licensed supplies delivered to the purchaser under the contract for the prescribed period. 2002, c. 33, s. 41 (5).

### **Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 25 (1, 2) - 01/07/2012

### **30-day cooling-off period**

**42** (1) If a purchaser enters into a contract for the provision of licensed supplies and services and all of the requirements 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. 2002, c. 33, s. 42 (1).

### **Notice**

(2) A purchaser may cancel a contract under subsection (1) by giving the operator written notice of the cancellation. 2002, c. 33, s. 42 (2).

### **Refund**

(3) An operator who receives a notice of cancellation under subsection (2) shall, within 30 days after receiving the notice, refund to the purchaser all money received under the contract together with the amounts that are prescribed. 2002, c. 33, s. 42 (3); 2006, c. 34, Sched. D, s. 26 (1).

### **Where contract performed**

(4) Subject to section 43, subsections (1), (2) and (3) apply even though the licensed supplies and services provided for under the contract have been delivered or performed. 2002, c. 33, s. 42 (4); 2006, c. 34, Sched. D, s. 26 (2).

### **Repossession or return of supplies**

(5) Subsections 41 (4) and (5) apply with necessary modifications to a purchaser who cancels a contract under this section. 2002, c. 33, s. 42 (5).

### **Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 26 (1, 2) - 01/07/2012

### **Delivery within 30 days**

**43** (1) Except as permitted by the regulations, an operator who enters into a contract for the provision of licensed supplies or services shall not provide any of the licensed supplies and services under the contract within 30 days after the day on which the contract is made. 2006, c. 34, Sched. D, s. 27.

### **Right to cancel**

(2) By giving the operator written notice of cancellation, a purchaser may cancel a contract that includes the provision of licensed supplies or services within 30 days after the day on which the contract is made if the operator has not fully performed the contract. 2006, c. 34, Sched. D, s. 27.

### **Exception**

(3) A right to cancel under subsection (2) does not apply with respect to interment or scattering rights that have been exercised. 2006, c. 34, Sched. D, s. 27.

### **Refund**

(4) An operator who receives a notice of cancellation under subsection (2) shall, within 30 days of receiving the notice, refund to the purchaser,

- (a) all money received under the contract, if none of the licensed supplies and services under the contract have been provided at the time the purchaser cancels the contract and the purchaser cancels the contract within 30 days after the day on which the contract is made; and
- (b) all money received under the contract less the value of those supplies and services that have been provided, if part of the licensed supplies and services have been provided in accordance with the contract at the time the purchaser cancels the contract and the purchaser cancels the contract within 30 days after the day on which the contract is made. 2006, c. 34, Sched. D, s. 27.

#### **Unauthorized delivery**

(5) If the operator provides licensed supplies or services to a purchaser within 30 days after the day on which the contract is made and the regulations do not permit the provision of the licensed supplies or services, the purchaser continues to be entitled to those cancellation rights with respect to the supplies or services that are provided under sections 41 and 42. 2006, c. 34, Sched. D, s. 27.

#### **Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 27 - 01/07/2012

#### **Further cancellation rights**

**44** (1) The purchaser under a contract for the provision of licensed supplies or services, other than interment rights and scattering rights, may cancel the contract at any time if a right to cancel under section 42 or 43 no longer applies and if the operator has not fully performed the contract. 2006, c. 34, Sched. D, s. 28.

#### **Exception**

(2) Subsection (1) does not apply to the portion of a contract relating to private structures or a private scattering ground and the provisions of that portion relating to cancellation do apply. 2006, c. 34, Sched. D, s. 28.

#### **Notice**

(3) A purchaser may cancel a contract under subsection (1) by giving the operator written notice of cancellation. 2006, c. 34, Sched. D, s. 28.

#### **Refund**

(4) An operator who receives a notice of cancellation under subsection (3) shall, within 30 days of receiving the notice, refund to the purchaser,

- (a) all money received under the contract, together with the amounts that are prescribed, less a prescribed amount, if none of the licensed supplies and services under the contract have been provided at the time the contract is cancelled; and
- (b) the amount specified in clause (a), less the value of the supplies and services that have been provided, if part of the licensed supplies and services have been provided in accordance with the contract at the time the purchaser cancels the contract. 2006, c. 34, Sched. D, s. 28.

(5) REPEALED: 2006, c. 34, Sched. D, s. 28.

#### **Customized goods**

(6) Despite subsection (4), the amount of the refund to which a purchaser who cancels a contract under this section is entitled shall not be as provided under subsection (4) but shall be determined in accordance with the regulations if,

- (a) under the terms of the cancelled contract, the operator was required to provide licensed supplies that were customized to the purchaser's specifications; and
- (b) the operator has, at the time of the cancellation, incurred expenses in relation to the provision of the customized supplies. 2002, c. 33, s. 44 (6).

#### **Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 28 - 01/07/2012

#### **Other persons to cancel contract**

**45** The rights to cancel a contract to which a purchaser under the contract is entitled under sections 41, 42, 43 and 44 may also be exercised by such other persons as may be prescribed and the refund payable under those sections may be required to be paid to such other persons as may be prescribed, if the regulations so provide. 2002, c. 33, s. 45; 2006, c. 34, Sched. D, s. 29.

#### **Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 29 - 01/07/2012

#### **Transition**

**46** (1) The cancellation rights under sections 41, 42 and 44 apply to any contracts made under this Act on or after the day these sections come into force. 2002, c. 33, s. 46 (1).

#### **Same**

(2) The cancellation rights provided under any predecessor legislation continue to apply with respect to any contract to which they applied before the day sections 41, 42 and 44 come into force. 2002, c. 33, s. 46 (2).

### INTERMENT AND SCATTERING RIGHTS

#### **Resale of rights**

**47** (1) Despite section 4, 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).

#### **Disclosure to third party**

(2) An interment rights holder or a scattering rights holder who sells interment rights or scattering rights under subsection (1) shall disclose in writing,

- (a) to the third party purchaser, such information as may be prescribed in such manner as may be prescribed; and
- (b) to the cemetery operator, such information as may be prescribed in such a manner as may be prescribed. 2002, c. 33, s. 47 (2); 2006, c. 34, Sched. D, s. 30 (1).

#### **Prohibition against speculating**

(3) Subject to subsection (3.1), no person shall purchase interment rights or scattering rights for the sole or primary purpose of reselling the rights with a view to making a financial gain. 2002, c. 33, s. 47 (3); 2006, c. 34, Sched. D, s. 30 (2).

#### **Exception**

(3.1) Subsection (3) does not apply to an operator who purchases interment rights or scattering rights for the purpose of reselling the rights if the resale is incidental to carrying on the business of a cemetery, crematorium, funeral establishment, casket retailing business, marker retailing business or transfer service. 2006, c. 34, Sched. D, s. 30 (3).

#### **Same**

(4) An interment rights holder or a scattering rights holder who resells rights under this section shall not sell the rights for an amount that is greater than the price of those rights as indicated on the cemetery's price list. 2002, c. 33, s. 47 (4).

#### **If no resale permitted**

(5) Subject to subsections (9) and (10), if the by-laws of a cemetery prohibit an interment rights holder or a scattering rights holder to sell the interment rights or scattering rights to a third party, then, in addition to any rights of cancellation that may exist under section 41 or 42, the rights holder may, at any time, cancel the contract under which the rights were purchased by giving the cemetery operator written notice of the cancellation and require the operator to repurchase the interment rights or the scattering rights, as the case may be. 2002, c. 33, s. 47 (5).

#### **Refund**

(6) If an interment rights holder or a scattering rights holder cancels a contract for the purchase of interment rights or scattering rights under subsection (5), the operator shall pay the rights holder the greater of the following amounts, less a prescribed amount:

1. All money received by the operator under the contract.
2. The market value of the interment rights or scattering rights on the day the operator receives notice of cancellation of the contract, less the amount, if any, owing under the contract as of the day on which the rights holder cancels the contract. 2002, c. 33, s. 47 (6); 2006, c. 34, Sched. D, s. 30 (4).

#### **Market value**

(7) For the purposes of paragraph 2 of subsection (6), the market value of the interment rights or scattering rights shall be,  
(a) if the price for the rights is set out on the operator's price list, the price set out in the price list; and

- (b) if the price for the rights is not set out on the operator's price list, the price determined in accordance with the regulations. 2006, c. 34, Sched. D, s. 30 (5).

#### **Timing**

- (8) A refund under subsection (6) shall be made by the cemetery operator within 30 days of receiving notice of the cancellation. 2002, c. 33, s. 47 (8).

#### **No cancellation right**

- (9) A person who holds interment rights with respect to a lot in a cemetery plot is not entitled to cancel the contract under which the rights were purchased under subsection (5) if interment rights to another lot in the plot have already been exercised. 2002, c. 33, s. 47 (9).

#### **Same: scattering rights**

- (10) A person who holds scattering rights with respect to scattering grounds in a cemetery is not entitled to cancel the contract under which the rights were purchased under subsection (5) if other scattering rights with respect to the same scattering grounds have already been exercised. 2002, c. 33, s. 47 (10).

- (11) REPEALED: 2006, c. 34, Sched. D, s. 30 (6).

#### **Application**

- (12) This section applies to any contract for the provision of interment rights or scattering rights, including any such contract that was made before the day this section comes into force. 2002, c. 33, s. 47 (12).

#### **Same**

- (13) This section applies with necessary modifications to transfers for no consideration of interment or scattering rights. 2006, c. 34, Sched. D, s. 30 (7).

#### **Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 30 (1-7) - 01/07/2012

#### **Other rights**

- 48** (1) 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. 2002, c. 33, s. 48 (1); 2006, c. 34, Sched. D, s. 31 (1, 2).

#### **Same**

- (2) 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. 2002, c. 33, s. 48 (2); 2016, c. 23, s. 50.

#### **Same: scattering rights**

- (3) A scattering rights holder or a person authorized to act on the holder's behalf has the right to,
- (a) scatter any cremated human remains on the scattering ground to which the scattering rights relate in accordance with the cemetery by-laws;
  - (b) erect a marker on the scattering ground to which the scattering rights relate if doing so does not contravene the cemetery by-laws;
  - (c) have reasonable access to the scattering ground to which the scattering rights relate at any time, except as prohibited by the cemetery by-laws; and
  - (d) once the scattering rights have been paid in full, receive a certificate of scattering rights from the operator. 2002, c. 33, s. 48 (3); 2006, c. 34, Sched. D, s. 31 (3-5).

## **Same**

(4) A scattering rights holder and the relatives of any person whose cremated remains are scattered in a cemetery have the right to decorate the scattering ground on which the remains are scattered if the decoration does not contravene the cemetery by-laws. 2002, c. 33, s. 48 (4); 2006, c. 34, Sched. D, s. 31 (6); 2016, c. 23, s. 50.

## **Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 31 (1-6) - 01/07/2012

2016, c. 23, s. 50 - 05/12/2016

## **Declaration of abandonment**

**49** (1) If interment rights or scattering rights are sold and are not exercised within 20 years of the date of sale, the cemetery operator may, after the 20 years has elapsed, apply to the registrar for a declaration that the rights are abandoned. 2002, c. 33, s. 49 (1).

## **Inquiry by registrar**

(2) Upon receiving an application under subsection (1), the registrar shall make such inquiry as seems reasonable in the circumstances and direct the operator of the cemetery to give notice of the application to such persons as seems reasonable in the circumstances. 2002, c. 33, s. 49 (2).

## **Declaration**

(3) Upon being satisfied that the interment rights or scattering rights are abandoned, the registrar shall issue a declaration to that effect. 2002, c. 33, s. 49 (3).

## **Notice**

(4) The registrar shall give notice of the declaration or of a decision not to issue a declaration to the applicant and to every person who has indicated to the registrar an interest in the matter. 2002, c. 33, s. 49 (4).

## **Appeal**

(5) Any person with an interest in the matter may appeal the decision of the registrar to the Tribunal within 30 days after notice of the decision is given under subsection (4). 2002, c. 33, s. 49 (5).

## **Effect of declaration**

- (6) If the registrar has declared interment rights or scattering rights abandoned, the operator of the relevant cemetery may,
- (a) sell the interment rights or scattering rights; and
  - (b) remove any marker that has been erected on the lot or scattering ground in respect of which the interment rights or scattering rights have been declared abandoned. 2002, c. 33, s. 49 (6).

## **Time for sale**

- (7) The operator of a cemetery shall not sell interment rights or scattering rights that have been declared abandoned or remove any marker erected on the lot or scattering ground until,
- (a) if there is no appeal, the end of the time for appeal; or
  - (b) if there is an appeal, the Tribunal has affirmed the declaration of abandonment. 2002, c. 33, s. 49 (7); 2006, c. 34, Sched. D, s. 32.

## **Storage of marker**

(8) The operator of a cemetery who removes a marker under clause (6) (b) shall keep the marker in storage at the operator's expense for a period of at least 20 years. 2002, c. 33, s. 49 (8).

## **Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 32 - 01/07/2012

## **Redress**

**50** (1) A person whose interment rights or scattering rights have been declared abandoned under section 49 may apply to the registrar for an order under subsection (2). 2002, c. 33, s. 50 (1).

## **Order**

(2) Upon receiving an application under subsection (1), the registrar may order,

- (a) if the operator of the cemetery has sold the interment rights or scattering rights to another person,
  - (i) in the case of interment rights that have been sold, that the operator of the cemetery provide the applicant with interment rights with respect to a lot, in the cemetery or in another cemetery operated by the same person, that the applicant considers equivalent to or better than the lot in respect of which the interment rights were declared abandoned,
  - (ii) in the case of scattering rights that have been sold, that the operator of the cemetery provide the applicant with scattering rights with respect to a scattering ground, in the cemetery or in another cemetery operated by the same person, that the applicant considers equivalent to or better than the scattering grounds in respect of which the scattering rights were declared abandoned, or
  - (iii) that the operator of the cemetery reimburse the applicant for the loss of the interment rights or scattering rights in an amount prescribed; or
- (b) if the operator of the cemetery has not sold the interment rights or scattering rights to another person, that the declaration of abandonment be cancelled and that the operator of the cemetery restore the rights to the applicant. 2002, c. 33, s. 50 (2); 2006, c. 34, Sched. D, s. 33.

**Marker restored**

(3) If the registrar orders an operator to provide alternative interment rights or scattering rights or to restore the applicant's interment rights or scattering rights, the operator of the cemetery shall re-erect any marker stored under clause 49 (6) (b) at the appropriate site at the operator's expense. 2002, c. 33, s. 50 (3).

**Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 33 - 01/07/2012

**PART VI  
TRUST ACCOUNTS**

**Trust accounts, funds**

**51** An operator shall maintain such trust accounts or establish such trust funds as may be required by regulation. 2002, c. 33, s. 51.

**Money held in trust**

**52** (1) An operator who receives money in respect of the sale of licensed supplies or services, in advance of the provision of those supplies or services, shall ensure that the money is held in trust if required by the regulations. 2002, c. 33, s. 52 (1); 2006, c. 34, Sched. D, s. 34 (1).

**Money in respect of sale**

(2) For the purposes of subsection (1), money received by an operator in respect of a sale of licensed supplies and services includes any money paid by the purchaser to cover an administrative fee or any disbursements incurred by the operator. 2002, c. 33, s. 52 (2).

**Non-application**

(3) Unless the regulations provide otherwise, this section does not apply to money received by or on behalf of a cemetery operator if the money is required to be paid into an account or a fund under section 53 or 56. 2006, c. 34, Sched. D, s. 34 (2).

**Payments into trust**

(4) A licensee shall pay the money that is required to be held in trust into a trust account within the prescribed time. 2002, c. 33, s. 52 (4).

**Payment out**

(5) Money held in trust under this section and any income from the money shall not be paid out except in accordance with the regulations. 2006, c. 34, Sched. D, s. 34 (3).

**Refunds**

(6) This section does not apply to a refund amount owing under a contract if the amount of the refund is less than a prescribed amount. 2006, c. 34, Sched. D, s. 34 (3).



### **Application**

(7) This section applies to money received by an operator under a contract entered into on or after the day this section comes into force. 2006, c. 34, Sched. D, s. 34 (3).

### **Transition**

(8) An operator who receives money in respect of the sale of licensed supplies or services, in advance of the provision of those supplies or services, under a contract entered into before the day this section comes into force shall ensure that the money is held in trust and disbursed in accordance with the rules established under the *Cemeteries Act (Revised)* or the *Funeral Directors and Establishments Act*, as applicable, even if the operator receives the money on or after the day this section comes into force. 2006, c. 34, Sched. D, s. 34 (3).

### **Same**

(9) Subject to subsection (11), if, immediately before the day this subsection comes into force, an operator was licensed under the *Cemeteries Act (Revised)* or under the *Funeral Directors and Establishments Act* and was holding in trust money under either of those Acts, other than money in a care and maintenance fund, the operator shall,

- (a) continue to hold the money in trust on and after that day in accordance with the rules established under the applicable one of those two Acts that are in force immediately before that day; and
- (b) disburse the money on or after that day, in accordance with the rules established under the applicable one of those two Acts. 2006, c. 34, Sched. D, s. 34 (3).

### **Same, income**

(10) The definition of “income” does not apply to money described in subsection (8) or (9). 2006, c. 34, Sched. D, s. 34 (3).

### **Conflict**

(11) The rules under the *Cemeteries Act (Revised)* and the *Funeral Directors and Establishments Act* prevail with respect to money described in subsection (8) or (9) unless the regulations provide otherwise. 2006, c. 34, Sched. D, s. 34 (3).

### **Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 34 (1-3) - 01/07/2012

### **Cemetery care and maintenance fund or account**

**53** (1) Unless the regulations provide otherwise, 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 human remains in the cemetery shall have a care and maintenance fund or, if the regulations so permit, a care and maintenance account. 2006, c. 34, Sched. D, s. 35.

### **Combinations**

(2) Subsection (1) does not preclude a cemetery operator from having more than one care and maintenance fund or account for a single cemetery, from having a single care and maintenance fund or account for more than one cemetery operated by the operator or from having a combination of both. 2006, c. 34, Sched. D, s. 35.

### **Place**

(3) A care and maintenance fund or account shall be established in a prescribed type of institution. 2006, c. 34, Sched. D, s. 35.

### **Purpose**

(4) The purpose of a care and maintenance fund or account is to generate income for the care and maintenance of the cemetery. 2006, c. 34, Sched. D, s. 35.

### **Trustee of fund**

(5) A care and maintenance fund shall be administered by,

- (a) a trustee who meets the prescribed criteria; or
- (b) a trustee who is employed by a prescribed type of institution. 2006, c. 34, Sched. D, s. 35.

### **Trustee of account**

(6) The cemetery operator shall be the trustee of a care and maintenance account unless the regulations provide otherwise. 2006, c. 34, Sched. D, s. 35.

**Exception, municipal operator**

(7) Despite subsections (5) and (6), a local municipality may act as the trustee for care and maintenance money in the prescribed circumstances. 2006, c. 34, Sched. D, s. 35.

**Exception, Public Guardian and Trustee**

(8) Despite subsections (5) and (6), a prescribed 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 the cemetery. 2006, c. 34, Sched. D, s. 35.

**Marker installation**

(9) Before a marker is installed in a cemetery, the person on behalf of whom the marker is to be installed shall pay the prescribed amount to the cemetery operator. 2006, c. 34, Sched. D, s. 35.

**Payment into fund or account**

(10) Within the prescribed period after a marker is installed in a cemetery, the cemetery operator shall pay the amount prescribed for the purposes of subsection (9) into a care and maintenance fund or account for the cemetery, whether or not the cemetery operator receives that amount under that subsection. 2006, c. 34, Sched. D, s. 35.

**Installation of private structure**

(11) Before a private structure that is constructed or provided by a person other than the cemetery operator is installed in a cemetery on behalf of a person other than the cemetery operator, the person on behalf of whom the structure is to be installed shall pay the prescribed amount to the cemetery operator. 2006, c. 34, Sched. D, s. 35.

**Development of private scattering ground**

(12) Before a private scattering ground that is developed by a person other than the cemetery operator is developed in a cemetery on behalf of a person other than the cemetery operator, the person on behalf of whom the scattering ground is to be developed shall pay the prescribed amount to the cemetery operator. 2006, c. 34, Sched. D, s. 35.

**Payment into fund or account**

(13) If an installation or development described in subsection (11) or (12) occurs, the cemetery operator shall pay the amount prescribed for the purposes of the applicable one of those subsections into a care and maintenance fund or account for the cemetery within the prescribed period, whether or not the cemetery operator receives that amount under the applicable subsection. 2006, c. 34, Sched. D, s. 35.

**Other payments**

(14) In addition to the amounts, if any, paid into a care and maintenance fund or account for a cemetery under subsection (10) or (13) or clause 86 (1) (c), the cemetery operator shall pay the prescribed amounts into a care and maintenance fund or account for the cemetery at the times that are prescribed. 2006, c. 34, Sched. D, s. 35.

**Payments out of fund**

(15) A trustee of a care and maintenance fund for a cemetery shall pay the income from the fund, after deducting the trustee's fees, to the cemetery operator. 2006, c. 34, Sched. D, s. 35.

**Payments out of account**

(16) A trustee of a care and maintenance account for a cemetery shall pay the income from the account to the cemetery operator. 2006, c. 34, Sched. D, s. 35.

**Use of income**

(17) A cemetery operator who receives money under subsection (15) or (16) shall use the money only for the prescribed purposes and in accordance with the prescribed rules. 2006, c. 34, Sched. D, s. 35.

**No use of capital portion**

(18) No trustee of a care and maintenance fund or account shall pay out any of the capital portion of the fund or account except as required or permitted by this Act or the regulations. 2006, c. 34, Sched. D, s. 35.

**Transfer of fund or account**

(19) A trustee of a care and maintenance fund or account may transfer the fund or account to another trustee, with the written consent of the registrar. 2006, c. 34, Sched. D, s. 35.

## **Transition**

(20) A care and maintenance fund that was established under the *Cemeteries Act (Revised)*, a private Act or a predecessor of one of them that related to cemeteries and that exists immediately before the day this subsection comes into force is deemed to be a care and maintenance fund established under this section and to be subject to the provisions of this Act and the regulations relating to care and maintenance funds. 2006, c. 34, Sched. D, s. 35.

### **Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 35 - 01/07/2012

## **Payments into care and maintenance fund or account**

**54** (1) If bereavement related activity, other than interments or scatterings, for which a licence is required under this Act, takes place on cemetery land, the cemetery operator shall, in the prescribed circumstances, in accordance with the prescribed procedures and within the prescribed time, make the payment described in subsection (2) into the care and maintenance fund or account for the cemetery and shall report to the registrar as prescribed. 2006, c. 34, Sched. D, s. 36.

### **Amount of payment**

(2) The payment shall correspond to the property tax that would be payable if the land were liable to assessment and taxation under other Acts and shall be in the prescribed amount or calculated based on the prescribed basis. 2006, c. 34, Sched. D, s. 36.

### **Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 36 - 01/07/2012; 2006, c. 32, Sched. C, s. 21 (1-4) - 01/07/2012

## **Temporary holding in trust**

**55** (1) Unless the regulations provide otherwise, if a cemetery operator receives money that is required under the Act to be paid into a care and maintenance fund or account for the cemetery and does not pay it into the fund or account immediately, the operator shall ensure that the money is held in trust until it is paid into a care and maintenance fund or account for the cemetery or is otherwise paid out in accordance with the regulations. 2006, c. 34, Sched. D, s. 37.

### **Payments into trust**

(2) A cemetery operator shall pay the money that is required to be held in trust under this section into a trust account in accordance with the regulations. 2006, c. 34, Sched. D, s. 37.

### **Payment out**

(3) A cemetery operator shall ensure that money held in trust under this section and any income from the money is not paid out except in accordance with the regulations. 2006, c. 34, Sched. D, s. 37.

### **Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 37 - 01/07/2012

**56** REPEALED. See: Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* – December 31, 2012.

### **Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 38 (1, 2) - 01/07/2012

Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* - 31/12/2012

## **Investment of trust money**

**57** Despite subsection 27 (9) of the *Trustee Act*, no trustee shall make investments with money that this Act requires to be held in trust if the investments would contravene the standard for investments required under subsection 27 (2) of that Act. 2006, c. 34, Sched. D, s. 39.

### **Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 39 - 01/07/2012

## **Information to registrar, Public Guardian and Trustee**

**58** (1) The registrar or the Public Guardian and Trustee may require any licensee or trustee to provide,

- (a) audited financial statements on any trust account or trust fund that is required to be established under this Act; and

(b) any information on trust accounts or trust funds that the licensee or trustee is required to establish under this Act. 2002, c. 33, s. 58 (1).

**Same**

(2) A licensee or trustee who receives a request under subsection (1) shall promptly provide all the information or the statement required. 2002, c. 33, s. 58 (2).

**Passing accounts**

**59** (1) Upon receiving a written direction from the registrar or Public Guardian and Trustee to do so, a person who is required under this Act to establish a trust fund or to hold money in trust shall apply to the Superior Court of Justice to pass the accounts of that trust fund or trust money. 2002, c. 33, s. 59 (1).

**Same**

(2) The court, on passing any account, may review and pass upon any agreement made by a licensee. 2002, c. 33, s. 59 (2).

**Same**

(3) The court, on passing any account, may make any order that it considers necessary to ensure that the trust is carried out. 2002, c. 33, s. 59 (3).

**No compensation to licensee**

**60** No licensee shall charge a purchaser of licensed supplies or services, or receive any compensation or payment from such a purchaser, for establishing or maintaining a trust fund or account. 2002, c. 33, s. 60; 2006, c. 34, Sched. D, s. 40.

**Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 40 - 01/07/2012

**PART VII  
COMPENSATION FUNDS**

**Compensation fund scheme**

**61** (1) A compensation fund scheme shall be established for the purposes of this Act in accordance with the regulations. 2002, c. 33, s. 61 (1).

**Purpose**

(2) The purpose of a prescribed compensation fund shall be to compensate a person who suffers a financial loss due to a failure on the part of a licensee to comply with this Act or the regulations or with the terms of an agreement made under this Act. 2006, c. 34, Sched. D, s. 41.

**Contributions to fund**

(3) A licensee shall make such contributions to a prescribed compensation fund as may be required by regulation at such times and in such a manner as may be prescribed. 2002, c. 33, s. 61 (3).

**Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 41 - 01/07/2012

**PART VIII  
CODE OF ETHICS AND DISCIPLINE**

**Code of ethics**

**62** It is a condition of every licence issued under this Act that a licensee shall comply with such code of ethics as may be established by the Minister under section 112. 2002, c. 33, s. 62.

**Discipline and appeal committees**

**63** (1) The Minister shall establish one or more discipline committees in accordance with the regulations for the purpose of hearing and determining issues concerning whether licensees have failed to comply with a code of ethics established by the Minister under section 112. 2006, c. 34, Sched. D, s. 42 (1).

**Appeals committee**

(2) One or more appeal committees shall be established in accordance with the regulations for the purpose of considering appeals from the discipline committees. 2002, c. 33, s. 63 (2); 2006, c. 34, Sched. D, s. 42 (2).

## Composition

(3) The composition and manner of appointment of the members of a discipline committee and appeal committee shall be as prescribed. 2006, c. 34, Sched. D, s. 42 (3).

**Note: On a day to be named by proclamation of the Lieutenant Governor, section 63 is amended by adding the following subsection:**

### Delegated administrative authority

(4) Despite subsection (1), if there is a delegated administrative authority and a discipline committee or committees are required for the purposes of the specified provisions of this Act and the regulations, the administrative authority shall establish it or them in accordance with the regulations. 2012, c. 8, Sched. 11, s. 47 (4).

See: 2012, c. 8, Sched. 11, ss. 47 (4), 54 (1).

### Section Amendments with date in force (d/m/y)

2006, c. 34, Sched. D, s. 42 (1-3) - 01/07/2012

2012, c. 8, Sched. 11, s. 47 (4) - not in force

## Discipline proceedings

**64** (1) A discipline committee may hear and determine any allegation that a licensee has failed to comply with a code of ethics established by the Minister under section 112 in accordance with the prescribed procedures. 2002, c. 33, s. 64 (1).

## Order

(2) If a discipline committee determines that a licensee has failed to comply with the code of ethics, it may order any of the following as appropriate:

1. Require the licensee to attend a specified educational program or require the licensee to ensure that a person prescribed for the purposes of clause 14 (1) (g) attends a specified educational program.
2. If the licensee is an operator, require the operator to fund educational programs for any person employed by the operator in accordance with the terms that the committee specifies or to arrange and fund such educational programs.
3. Impose such fine as the committee considers appropriate, to a maximum of \$25,000 or such lesser amount as is prescribed, to be paid by the licensee to the Minister of Finance or to such other person as may be prescribed.
4. Suspend or postpone the attending of specified educational programs, the funding or the funding and arranging of educational programs or the imposition of the fine for that period and upon those terms that the committee designates.
5. Fix and impose costs to be paid by the licensee to the Minister of Finance or to such other person as may be prescribed. 2002, c. 33, s. 64 (2); 2006, c. 34, Sched. D, s. 43 (1, 2).

**Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 5 is repealed and the following substituted:**

5. Fix and impose costs to be paid by the licensee to,
  - i. the delegated administrative authority,
  - ii. the Minister of Finance, if there is no administrative authority, or
  - iii. such other person as may be prescribed.

See: 2012, c. 8, Sched. 11, ss. 47 (5), 54 (1).

## Appeal

(3) A party to the discipline proceeding may appeal the decision of the discipline committee to the appropriate appeal committee. 2006, c. 34, Sched. D, s. 43 (3).

### Power of appeal committee

(4) An appeal committee may by order overturn, affirm or modify the order of the discipline committee and may make an order described in subsection (2). 2006, c. 34, Sched. D, s. 43 (3).

### Public access to decisions

(5) Decisions of a discipline committee and an appeal committee shall be made available to the public in the manner that is prescribed. 2006, c. 34, Sched. D, s. 43 (3).

### Payment of fine

(6) The licensee shall pay any fine imposed under subsection (2) or (4),

- (a) if the fine is not the subject of an appeal, on or before the day specified in the order of the discipline committee or, if no day is specified in the order, on or before the 60th day after the date of the order; or
- (b) if the fine is the subject of an appeal, on or before the day specified in the order of the appeal committee or, if no day is specified in the order, on or before the 60th day after the date of the order. 2006, c. 34, Sched. D, s. 43 (3).

**Educational programs**

- (7) A licensee who is required under subsection (2) or (4) to arrange and fund or to fund educational programs shall do so,
  - (a) if the requirement is not the subject of an appeal, on or before the day specified in the order of the discipline committee or, if no day is specified in the order, at the first reasonable opportunity after the date of the order; or
  - (b) if the requirement is the subject of an appeal, on or before the day specified in the order of the appeal committee or, if no day is specified in the order, at the first reasonable opportunity after the date of the order. 2006, c. 34, Sched. D, s. 43 (3).

**Attending educational programs**

- (8) A licensee who is required under subsection (2) or (4) to attend an educational program shall do so,
  - (a) if the requirement is not the subject of an appeal, on or before the day specified in the order of the discipline committee or, if no day is specified in the order, at the first reasonable opportunity after the date of the order; or
  - (b) if the requirement is the subject of an appeal, on or before the day specified in the order of the appeal committee or, if no day is specified in the order, at the first reasonable opportunity after the date of the order. 2006, c. 34, Sched. D, s. 43 (3).

**Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 43 (1-3) - 01/07/2012

2012, c. 8, Sched. 11, s. 47 (5) - not in force

**Transition**

**65** Until the regulations prescribe otherwise, this Part and any regulation made under this Part do not apply to licensees who are subject to disciplinary proceedings under sections 16, 17 and 18 of the *Board of Funeral Services Act*. 2002, c. 33, s. 65; 2006, c. 34, Sched. D, s. 44.

**Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 44 - 01/07/2012

**PART IX  
COMPLAINTS, INSPECTIONS AND INVESTIGATIONS**

**Complaints**

**66** (1) If the registrar receives a complaint about a licensee, the registrar may request information in relation to the complaint from any licensee. 2002, c. 33, s. 66 (1).

**Request for information**

(2) A request for information made under subsection (1) shall indicate the nature of the complaint. 2002, c. 33, s. 66 (2).

**Duty to comply**

(3) A licensee who receives a written request under subsection (1) shall provide the information as soon as practicable. 2002, c. 33, s. 66 (3).

**Powers**

- (4) In handling complaints, the registrar may do any of the following, as appropriate:
  1. Attempt to mediate or resolve the complaint.
  2. Give the licensee a written warning that if the licensee continues with the activity that led to the complaint, action may be taken against the licensee.
  3. Require the licensee to attend a specified educational program or require the licensee to ensure that a person prescribed for the purposes of clause 14 (1) (g) attends a specified educational program.
  4. Refer the matter, in whole or in part, to the discipline committee.

5. Take an action under section 17, subject to section 18.

6. Take further action as is appropriate in accordance with this Act. 2002, c. 33, s. 66 (4); 2006, c. 34, Sched. D, s. 45.

#### **Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 45 (1, 2) - 01/07/2012

#### **Inspection**

**67** (1) The registrar or a person designated in writing by the registrar may conduct an inspection and may, as part of that inspection, enter and inspect at any reasonable time the business premises of a licensee, other than any part of the premises used as a dwelling, for the purposes of,

- (a) ensuring compliance with this Act and the regulations;
- (b) dealing with a complaint under section 66; or
- (c) ensuring the licensee remains entitled to be licensed. 2006, c. 34, Sched. D, s. 46.

#### **Inspection of applicant for licence**

(2) The registrar or a person designated in writing by the registrar may at any reasonable time conduct an inspection of the business premises of an applicant for a licence under this Act, other than any part of the premises used as a dwelling, for the purpose of ensuring the applicant is entitled to be licensed under this Act. 2006, c. 34, Sched. D, s. 46.

#### **Powers**

(3) While carrying out an inspection, an inspector,

- (a) is entitled to free access to all money, valuables, documents, records, equipment, supplies and such other things of the person being inspected that are relevant to the inspection;
- (b) may use any data storage, processing or retrieval device or system used in carrying on business in order to produce information that is relevant to the inspection and that is in any form;
- (c) may, upon giving a receipt for them, remove for examination and testing and may copy anything relevant to the inspection and testing, including any data storage disk or other retrieval device in order to produce information, but shall promptly return the thing to the person being inspected; and
- (d) conduct tests that are reasonably necessary. 2006, c. 34, Sched. D, s. 46.

#### **Identification**

(4) An inspector shall produce, on request, evidence of his or her authority to carry out an inspection. 2006, c. 34, Sched. D, s. 46.

#### **Production and assistance**

(5) An inspector may, in the course of an inspection, require a person to produce a document, record, equipment, supply or such other things that are relevant to the inspection and to provide whatever assistance is reasonably necessary, including using any data storage, processing or retrieval device or system to produce information that is relevant to the inspection and that is in any form, and the person shall produce the things required and provide the assistance. 2006, c. 34, Sched. D, s. 46.

#### **No obstruction**

(6) No person shall obstruct an inspector conducting an inspection or withhold from the inspector or conceal, alter or destroy any money, valuables, documents, records, equipment, supplies or such other things that are relevant to the inspection. 2006, c. 34, Sched. D, s. 46.

#### **Use of force prohibited**

(7) An inspector shall not use force to enter and inspect premises under this section. 2002, c. 33, s. 67 (7).

#### **Admissibility of copies**

(8) A copy of a document or record certified by an inspector to be a true copy of the original is admissible in evidence to the same extent as the original and has the same evidentiary value. 2002, c. 33, s. 67 (8).

#### **Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 46 - 01/07/2012

**68** REPEALED: 2006, c. 34, Sched. D, s. 47.

#### **Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 47 - 01/07/2012

#### **Appointment of investigators**

**69** (1) The director may appoint persons to be investigators for the purposes of conducting investigations. 2002, c. 33, s. 69 (1).

#### **Certificate of appointment**

(2) The director shall issue to every investigator a certificate of appointment bearing his or her signature or a facsimile of the signature. 2002, c. 33, s. 69 (2).

#### **Production of certificate of appointment**

(3) Every investigator who is exercising powers under section 70 shall, upon request, produce the certificate of appointment as an investigator. 2002, c. 33, s. 69 (3).

#### **Search warrant**

**70** (1) Upon application made without notice by an investigator, a justice of the peace may issue a warrant, if he or she is satisfied on information under oath that there is reasonable ground for believing that,

- (a) a person has contravened or is contravening this Act or the regulations or has committed an offence under the law of any jurisdiction that is relevant to the person's fitness to be licensed under this Act; and
- (b) there is,
  - (i) in any building, dwelling, receptacle or place anything relating to the contravention of this Act or the regulations or to the person's fitness to be licensed under this Act, or
  - (ii) information or evidence relating to the contravention of this Act or the regulations or the person's fitness to be licensed under this Act that may be obtained through the use of an investigative technique or procedure or the doing of anything described in the warrant. 2006, c. 34, Sched. D, s. 48 (1).

#### **Powers under warrant**

(2) A warrant obtained under subsection (1) authorizes an investigator,

- (a) to enter or access the building, dwelling, receptacle or place specified in the warrant and to seize, examine and remove anything described in the warrant;
- (b) to use any data storage, processing or retrieval device or system used in carrying on business in order to produce information or evidence described in the warrant in any form;
- (c) to exercise any of the powers specified in subsection (10); or
- (d) to use any investigative technique or procedure or do anything described in the warrant. 2006, c. 34, Sched. D, s. 48 (1); 2009, c. 33, Sched. 10, s. 8 (3).

#### **Entry of dwelling**

(2.1) Despite subsection (2), an investigator shall not exercise the power under a warrant to enter a place, or part of a place, used as a dwelling unless,

- (a) the justice of the peace is informed that the warrant is being sought to authorize entry into a dwelling; and
- (b) the justice of the peace authorizes the entry into the dwelling. 2006, c. 34, Sched. D, s. 48 (1).

#### **Conditions on warrant**

(3) A warrant obtained under subsection (1) shall contain such conditions as the justice of the peace considers advisable to ensure that any search authorized by the warrant is reasonable in the circumstances. 2002, c. 33, s. 70 (3).

#### **Expert help**

(4) The warrant may authorize persons who have special, expert or professional knowledge to accompany and assist the investigator in respect of the execution of the warrant. 2002, c. 33, s. 70 (4).

(5) REPEALED: 2006, c. 34, Sched. D, s. 48 (2).



**Time of execution**

(6) An entry or access under a warrant issued under this section shall be made between 6 a.m. and 9 p.m., unless the warrant specifies otherwise. 2002, c. 33, s. 70 (6); 2006, c. 34, Sched. D, s. 48 (3).

**Expiry of warrant**

(7) A warrant issued under this section shall name a date of expiry, which shall be no later than 30 days after the warrant is issued, but a justice of the peace may extend the date of expiry for an additional period of no more than 30 days, upon application without notice by an investigator. 2002, c. 33, s. 70 (7); 2006, c. 34, Sched. D, s. 48 (4).

**Use of force**

(8) An investigator may call upon police officers for assistance in executing the warrant and the investigator may use whatever force is reasonably necessary to execute the warrant. 2002, c. 33, s. 70 (8); 2006, c. 34, Sched. D, s. 48 (5).

**Obstruction**

(9) No person shall obstruct an investigator executing a warrant under this section or withhold from the investigator or conceal, alter or destroy any thing relevant to the investigation being conducted pursuant to the warrant. 2006, c. 34, Sched. D, s. 48 (6).

**Assistance**

(10) An investigator may, in the course of executing a warrant, require a person to produce the evidence or information described in the warrant and to provide whatever assistance is reasonably necessary, including using any data storage, processing or retrieval device or system to produce, in any form, the evidence or information described in the warrant and the person shall produce the evidence or information or provide the assistance. 2006, c. 34, Sched. D, s. 48 (6).

**Return of seized things**

(11) An investigator who seizes any thing under this section or section 70.1 may make a copy of it and shall return it within a reasonable time. 2006, c. 34, Sched. D, s. 48 (6).

**Admissibility**

(12) A copy of a document or record certified by an investigator as being a true copy of the original is admissible in evidence to the same extent as the original and has the same evidentiary value. 2002, c. 33, s. 70 (12).

**Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 48 (1-6) - 01/07/2012

2009, c. 33, Sched. 10, s. 8 (3) - 01/07/2012

**Seizure of things not specified**

**70.1** An investigator who is lawfully present in a place pursuant to a warrant or otherwise in the execution of his or her duties may, without a warrant, seize anything in plain view that the investigator believes on reasonable grounds will afford evidence relating to a contravention of this Act or the regulations. 2006, c. 34, Sched. D, s. 49.

**Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 49 - 01/07/2012

**Search in exigent circumstances**

**71** (1) An investigator may exercise any of the powers described in subsection 70 (2) without a warrant if the conditions for obtaining the warrant exist but by reason of exigent circumstances it would be impracticable to obtain the warrant. 2006, c. 34, Sched. D, s. 50 (1).

**Dwellings**

(2) Subsection (1) does not apply to a building or part of a building that is being used as a dwelling. 2006, c. 34, Sched. D, s. 50 (1).

**Use of force**

(3) The investigator may, in executing any authority given by this section, call upon police officers for assistance and use whatever force is reasonably necessary. 2002, c. 33, s. 71 (3).

### **Applicability of s. 70**

(4) Subsections 70 (4), (9), (10), (11) and (12) apply with necessary modifications to a search under this section. 2006, c. 34, Sched. D, s. 50 (2).

### **Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 50 (1, 2) - 01/07/2012

## **PART X ENFORCEMENT**

### **Freeze order, licensee**

72 (1) If the conditions in subsection (2) are met, the director may in writing do one or more of the following:

1. Order any person having on deposit or controlling any money or asset of a licensee or former licensee to hold the money or asset.
2. Order a licensee or former licensee to refrain from withdrawing any money or asset from a person having it on deposit or controlling it.
3. Order a licensee or former licensee to hold any money or asset of a customer or other person in trust for the person entitled to it. 2006, c. 34, Sched. D, s. 51.

### **Conditions**

(2) The director may make an order under subsection (1) if the director believes that it is advisable for the protection of the customers of a licensee or former licensee and,

- (a) a search warrant has been issued under this Act; or
- (b) criminal proceedings or proceedings in relation to a contravention under this Act or any other Act are about to be or have been instituted against the licensee or former licensee in connection with or arising out of the business in respect of which the licensee or former licensee is or was licensed. 2006, c. 34, Sched. D, s. 51.

### **Limitation**

(3) An order made under subsection (1) against a bank or authorized foreign bank within the meaning of section 2 of the *Bank Act* (Canada), a credit union within the meaning of the *Credit Unions and Caisses Populaires Act, 1994* or a loan or trust corporation applies only to the offices and branches named in the order. 2006, c. 34, Sched. D, s. 51.

### **No order**

(4) The director may not make an order under subsection (1) if the licensee or former licensee files with the director, in the manner and amount that the director determines,

- (a) a personal bond accompanied by collateral security;
- (b) a bond of an insurer licensed under the *Insurance Act* to write surety and fidelity insurance;
- (c) a bond of a guarantor accompanied by collateral security; or
- (d) another prescribed form of security. 2006, c. 34, Sched. D, s. 51.

### **Release**

(5) The director may consent to the release of any particular money or asset from the order or may wholly revoke the order. 2006, c. 34, Sched. D, s. 51.

### **Application to court**

(6) If the director makes an order under subsection (1), any one of the following persons may apply to a judge of the Superior Court of Justice for a determination in respect of the disposition of any money or asset that is the subject of the order:

1. A person who receives the order if the person is in doubt as to whether the order applies to the money or asset.
2. A person who claims an interest in the money or asset. 2006, c. 34, Sched. D, s. 51.

### **Notice registered against land**

(7) If the director makes an order under subsection (1), the director may register, in the appropriate land registry office, a notice that the director has made the order and that the order may affect land belonging to the person specified in the notice,

and the notice has the same effect as the registration of a certificate of pending litigation, except that the director may in writing revoke or modify the notice. 2006, c. 34, Sched. D, s. 51.

#### **Cancellation or discharge**

(8) A licensee or former licensee in respect of which an order has been made under subsection (1) or any person having an interest in land in respect of which a notice is registered under subsection (7) may apply to the Tribunal for cancellation in whole or in part of the order or for discharge in whole or in part of the registration. 2006, c. 34, Sched. D, s. 51.

#### **Disposition by Tribunal**

(9) The Tribunal shall dispose of the application after a hearing and may cancel the order or discharge the registration in whole or in part if the Tribunal finds,

- (a) that the order or registration is not required in whole or in part for the protection of customers of the applicant or of other persons having an interest in the land; or
- (b) that the interests of other persons are unduly prejudiced by the order or registration. 2006, c. 34, Sched. D, s. 51.

#### **Parties**

(10) The applicant, the director and the other persons that the Tribunal specifies are parties to the proceedings before the Tribunal. 2006, c. 34, Sched. D, s. 51.

#### **Application to court**

(11) After making an order under subsection (1) or registering a notice under subsection (7), the director may apply, without notice to any other party, to a judge of the Superior Court of Justice for directions or a determination in respect of the disposition of any money, asset or land that is affected by the order or the notice. 2006, c. 34, Sched. D, s. 51.

#### **Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 51 - 01/07/2012

#### **Freeze order, non-licensee**

**73** (1) The director may make an order described in subsection (2) in respect of money or assets of a person if,

- (a) the director receives an affidavit in which it is alleged that the person is not licensed under this Act and,
  - (i) is subject to criminal proceedings or proceedings in relation to a contravention under this Act or any other Act that are about to be or have been instituted against the person in connection with or arising out of conducting business for which a licence is required under this Act, or
  - (ii) owns a building, dwelling, receptacle or place, or carries on activities in a building, dwelling, receptacle or place, in respect of which a warrant has been issued under section 70;
- (b) the affidavit sets out facts supporting the allegation mentioned in clause (a); and
- (c) the director, based on the affidavit, finds reasonable grounds to believe that,
  - (i) in the course of conducting business for which a licence is required under this Act, the person has received money or assets from customers, and
  - (ii) that the interests of those customers require protection. 2006, c. 34, Sched. D, s. 51.

#### **Order**

(2) In the circumstances described in subsection (1), the director may, in writing,

- (a) order any person having on deposit or controlling any money or asset of the person who is the subject of the allegation mentioned in clause (1) (a) to hold the money or asset; or
- (b) order the person who is the subject of the allegation mentioned in clause (1) (a),
  - (i) to refrain from withdrawing any money or asset from a person having it on deposit or controlling it, or
  - (ii) to hold any money or asset of a customer or other person in trust for the person who is entitled to it. 2006, c. 34, Sched. D, s. 51.

#### **Application of other subsections**

(3) Subsections 72 (3) to (11) apply with necessary modifications to an order made under this section. 2006, c. 34, Sched. D, s. 51.

**Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 51 - 01/07/2012

**74.-76 REPEALED:** 2006, c. 34, Sched. D, s. 51.

**Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 51 - 01/07/2012

**Appointment of receiver and manager**

**77** (1) The director may apply to the Superior Court of Justice for the appointment of a receiver and manager to take possession and control of the business of an operator if,

- (a) an investigation of the operator has been undertaken under this Act;
- (b) the director has made or is about to make an order under section 72;
- (c) the director has reasonable grounds to believe that the operator has failed or is about to fail to provide contracted and paid for supplies or services to a customer;
- (d) the director is advised that the registrar has proposed to suspend or revoke a licence under section 17 or to temporarily suspend a licence under section 19; or
- (e) the director is advised that an investigation under section 5.1 of the *Ministry of Consumer and Business Services Act* has been ordered. 2002, c. 33, s. 77 (1), 115 (3); 2006, c. 34, Sched. D, ss. 52 (1, 2).

**Order to appoint**

(2) The court may make an order for the appointment of a receiver and manager if it is satisfied that it is in the public interest to have a receiver and manager take control of an operator's business. 2002, c. 33, s. 77 (2).

**Notice**

(3) The court may make an order under subsection (2) without notice, or if it considers that notice should be given, upon such notice as the court stipulates. 2002, c. 33, s. 77 (3).

**Duties**

- (4) The duties of the receiver and manager include,
  - (a) taking possession and control of the assets of the operator's business;
  - (b) conducting the operator's business; and
  - (c) taking the steps that are, in the opinion of the receiver and manager, necessary for the rehabilitation of the business. 2006, c. 34, Sched. D, s. 52 (3).
- (5), (6) REPEALED: 2006, c. 34, Sched. D, s. 52 (3).

**Powers**

(7) The receiver and manager has all the powers of the board of directors of the corporation, if the operator is a corporation, or of a sole proprietor or all partners if the operator is not a corporation. 2002, c. 33, s. 77 (7).

**Exclusion of directors**

(8) Without limiting the generality of subsection (7), the receiver and manager may exclude the directors, officers, employees and agents of the business, interested persons in respect of the business and any other persons connected with the business from the premises and property of the business. 2002, c. 33, s. 77 (8).

**Interested persons**

(9) Subsection 14 (3) applies to this section except that the opinion as to whether a person is deemed to be interested in respect of another person is that of the receiver and manager. 2002, c. 33, s. 77 (9).

**Application for directions**

(10) A receiver and manager may apply at any time to a judge of the Superior Court of Justice for directions with respect to the duties or powers of the receiver and manager. 2006, c. 34, Sched. D, s. 52 (4).

**Section Amendments with date in force (d/m/y)**

2002, c. 33, s. 115 (3) - 01/07/2012

2006, c. 34, Sched. D, s. 52 (1-4) - 01/07/2012

### **Restraining orders**

**78** (1) If it appears to the director that a person is not complying with this Act or the regulations or an order made under this Act, the director may apply to the Superior Court of Justice for an order directing that person to comply, and, upon the application, the court may make such order as the court thinks fit. 2002, c. 33, s. 78 (1).

### **Same**

(2) Subsection (1) applies in addition to any other procedures that may be available to the director, whether or not the director has exercised his or her rights under such procedures. 2002, c. 33, s. 78 (2).

### **Appeal**

(3) An appeal lies to the Divisional Court from an order made under subsection (1). 2002, c. 33, s. 78 (3).

### **Offence**

**79** (1) A person is guilty of an offence who,

- (a) furnishes false information in any application under this Act or in any statement or return required under this Act;
- (b) fails to comply with any order, other than an order made under section 64, direction or other requirement under this Act; or
- (c) contravenes or fails to comply with any section of this Act or the regulations, other than a code of ethics established by the Minister under section 112. 2002, c. 33, s. 79 (1); 2006, c. 34, Sched. D, s. 53.

### **Corporations**

(2) An officer or director of a corporation is guilty of an offence who fails to take reasonable care to prevent the corporation from committing an offence mentioned in subsection (1). 2002, c. 33, s. 79 (2).

### **Penalties**

(3) An individual who is convicted of an offence under this Act is liable to a fine of not more than \$50,000 or to imprisonment for a term of not more than two years less a day, or both, and a corporation that is convicted of an offence under this Act is liable to a fine of not more than \$250,000. 2002, c. 33, s. 79 (3).

### **Limitation**

(4) No proceeding under this section shall be commenced more than two years after the facts upon which the proceeding is based first came to the knowledge of the director. 2002, c. 33, s. 79 (4).

### **Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 52 (3) - 01/07/2012

### **Orders for compensation, restitution**

**80** (1) If a person is convicted of an offence under this Act, the court making the conviction may, in addition to any other penalty, order the person convicted to pay compensation or make restitution. 2002, c. 33, s. 80 (1).

### **Compensation already paid, etc.**

(2) If the court makes an order in favour of a person under subsection (1) and the person has already received compensation or restitution,

- (a) the person ordered to pay the compensation shall deliver the amount of the compensation paid to the person who paid it; or
- (b) the person ordered to make the restitution shall deliver the things received in restitution to the person who made the restitution. 2006, c. 34, Sched. D, s. 54.

### **Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 54 - 01/07/2012

### **Disclosure of default in payment of fine**

**81** (1) If a fine payable as a result of a conviction for an offence under this Act is in default for at least 60 days, the director may disclose to an agency that provides credit reports the name of the defaulter, the amount of the fine and the date the fine went into default. 2002, c. 33, s. 81 (1); 2006, c. 34, Sched. D, s. 55 (1).

### **Where payment made**

(2) Within 10 days after the director has notice that the fine has been paid in full, the director shall inform the agency of the payment. 2002, c. 33, s. 81 (2); 2006, c. 34, Sched. D, s. 55 (2).

### **Transition**

(3) If a fine is payable as a result of a conviction under the *Cemeteries Act (Revised)*, the *Funeral Directors and Establishments Act* or the *Board of Funeral Services Act*, the director may treat the fine as if it is payable as a result of a conviction under this Act, in which case subsections (1) and (2) apply to the fine. 2006, c. 34, Sched. D, s. 55 (3).

### **Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 55 (1-3) - 01/07/2012

### **Liens and charges**

**82** (1) If a fine payable as a result of a conviction for an offence under this Act is in default for at least 60 days, the director may by order create a lien against the property of the person who is liable to pay the fine. 2002, c. 33, s. 82 (1).

#### **Liens on personal property**

(2) If the lien created by the director under subsection (1) relates to personal property,

- (a) the *Personal Property Security Act*, except Part V, applies with necessary modifications to the lien, despite clause 4 (1) (a) of that Act;
- (b) the lien shall be deemed to be a security interest that has attached for the purposes of the *Personal Property Security Act*; and
- (c) the director may perfect the security interest referred to in clause (b) for the purposes of the *Personal Property Security Act* by the registration of a financing statement under that Act. 2002, c. 33, s. 82 (2).

#### **Liens and charges on real property**

(3) If the lien created by the director under subsection (1) relates to real property, the director may register the lien against the property of the person liable to pay the fine in the proper land registry office and, on registration, the obligation under the lien becomes a charge on the property. 2002, c. 33, s. 82 (3).

#### **Initiation of sale proceedings prohibited**

(4) The director shall not initiate sale proceedings in respect of any real property against which he or she has registered a lien under subsection (3). 2002, c. 33, s. 82 (4).

#### **Proceeds of sale**

(5) If a lien is perfected by registration under subsection (2) or is registered against real property under subsection (3) and the related real or personal property is sold, the director shall ensure that the funds he or she receives as a result of the sale are used to pay the fine. 2002, c. 33, s. 82 (5).

#### **Discharge of lien**

(6) Within 10 days after the director has knowledge of the payment in full of the fine, the director shall,

- (a) discharge the registration of any financing statement registered under clause (2) (c); and
- (b) register a discharge of a charge created on registration of a lien under subsection (3). 2002, c. 33, s. 82 (6).

## **PART XI**

### **SPECIAL PROVISIONS RE: CEMETERIES, CREMATORIUMS AND BURIAL SITES**

#### **ESTABLISHMENT OF CEMETERY OR CREMATORIUM**

#### **Conditions to establishment, etc.**

**83** (1) If this Act or the regulations require the registrar's consent for establishing, altering or increasing the capacity of a cemetery, no person shall do so without obtaining the registrar's consent and,

- (a) the approval of the local municipality, if the cemetery is situated in a local municipality or if it is proposed to establish the cemetery in the local municipality or to enlarge the cemetery to include land of a local municipality within the cemetery; or

- (b) the approval of the Minister of Natural Resources, if the cemetery is situated on Crown land in territory without municipal organization or if it is proposed to establish the cemetery on such land or to enlarge the cemetery to include such land within the cemetery. 2006, c. 34, Sched. D, s. 56.

#### **Obtaining registrar's consent**

(2) A person who requires the registrar's consent for establishing, altering or increasing the capacity of a cemetery shall not request the consent until after having obtained the approval of the local municipality or the Minister of Natural Resources, as the case may be. 2006, c. 34, Sched. D, s. 56.

#### **Crematorium**

- (3) No person shall establish a crematorium without,
  - (a) the approval of the local municipality in which the crematorium is to be located; or
  - (b) the approval of the Minister of Natural Resources if the crematorium is to be located on Crown land in territory without municipal organization. 2006, c. 34, Sched. D, s. 56.

#### **Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 56 - 01/07/2012

#### **Encumbrances on cemetery land**

**83.1** (1) No encumbrance on land of a cemetery is enforceable unless,

- (a) it is given as security for money borrowed for,
  - (i) the purpose of improving the facilities provided on the land,
  - (ii) the purpose of acquiring the land, or
  - (iii) a purpose that the registrar approves and that relates to the operation of the cemetery; and
- (b) the encumbrance contains an affidavit made by the encumbrancer stating that it complies with clause (a). 2006, c. 34, Sched. D, s. 56.

#### **Dealing by encumbrancer**

(2) No encumbrancer claiming an interest in land of a cemetery may deal with the land except in accordance with this Act. 2006, c. 34, Sched. D, s. 56.

#### **Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 56 - 01/07/2012

#### **Municipal approval**

**84** (1) A local municipality that receives a request for an approval to establish, alter or increase the capacity of a cemetery in the municipality shall grant the approval if, in the municipality's opinion, it is in the public interest. 2006, c. 34, Sched. D, s. 57 (1).

#### **Same, crematorium**

(1.1) A local municipality that receives a request for an approval to establish a crematorium in the municipality shall grant the approval if, in the municipality's opinion, it is in the public interest. 2006, c. 34, Sched. D, s. 57 (1).

#### **Public hearing**

(2) A local municipality may hold a public hearing to determine if the approval is in the public interest. 2002, c. 33, s. 84 (2); 2006, c. 34, Sched. D, s. 57 (2).

#### **Timing of decision**

(3) A local municipality shall give or refuse its approval within a reasonable time after receiving a request for an approval. 2002, c. 33, s. 84 (3); 2006, c. 34, Sched. D, s. 57 (2).

#### **Notice of decision**

- (4) Upon deciding to approve or refuse a request for an approval, a local municipality shall,
  - (a) send a copy of the decision together with the reasons for it to the registrar and to the person making the request; and
  - (b) publish notice of the decision in a local newspaper. 2002, c. 33, s. 84 (4); 2006, c. 34, Sched. D, s. 57 (2).

#### **Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 57 (1, 2) - 01/07/2012

#### **Appeal to Municipal Board**

**85** (1) The applicant, registrar or any person with an interest in a decision of a local municipality under section 84 may appeal the decision to the Ontario Municipal Board within,

- (a) 15 days after the day of publication in a local newspaper; or
- (b) if the appeal is brought by the applicant or registrar and that person receives a copy of the municipality's decision after the day it was published in a local newspaper, 15 days after the day the applicant or registrar, as the case may be, receives a copy of the decision. 2002, c. 33, s. 85 (1); 2006, c. 34, Sched. D, s. 58.

#### **Hearing**

(2) The Ontario Municipal Board shall hold a hearing and the registrar is entitled to make representations at any such hearing. 2002, c. 33, s. 85 (2).

#### **Decision**

(3) The Ontario Municipal Board may reverse the decision appealed from and substitute its own decision which is final. 2002, c. 33, s. 85 (3).

#### **Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 58 - 01/07/2012

#### **Registrar's consent**

**86** (1) Upon application made by a person described in subsection (2), the registrar shall consent to the establishment, alteration or increase in the capacity of a cemetery if the applicant,

- (a) pays the fee required under section 108;
- (b) submits the prescribed documents showing the layout of the cemetery and the location of existing or proposed plots, lots, scattering grounds, structures and fixtures;
- (c) pays a deposit in a prescribed amount into a care and maintenance fund or account in the prescribed circumstances;
- (d) is licensed to operate the cemetery and is, and will be upon granting the consent, in compliance with the requirements of this Act and the regulations and the laws intended for the protection of the environment and of health;
- (e) where applicable, has received the approval of a local municipality or of the Minister of Natural Resources; and
- (f) submits the other documents that are prescribed. 2002, c. 33, s. 86 (1); 2006, c. 34, Sched. D, s. 59 (1-5).

#### **Applicant**

(2) An application for the registrar's consent to the establishment, alteration or increase in the capacity of a cemetery shall be made by,

- (a) the owner of the land on which the cemetery is to be established, if the application relates to the establishment of a cemetery; or
- (b) the owner of the cemetery, if the application relates to an alteration or an increase in the capacity of a cemetery. 2006, c. 34, Sched. D, s. 59 (6).

#### **Same**

(3) Despite subsection (1), in the case of an application 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). 2002, c. 33, s. 86 (3); 2006, c. 34, Sched. D, s. 59 (7).

#### **Same**

(4) If an applicant proposes to establish, alter or increase the capacity of a cemetery on land that is situated in territory without municipal organization, but not on Crown land, the registrar shall consent to the application only if he or she is satisfied that the consent is in the public interest. 2002, c. 33, s. 86 (4); 2006, c. 34, Sched. D, s. 59 (8).



### **Certificate of consent**

(5) If the registrar consents to the establishment, alteration or increase in the capacity of a cemetery, the registrar shall give the applicant a certificate of consent. 2002, c. 33, s. 86 (5); 2006, c. 34, Sched. D, s. 59 (9).

### **Same, cemeteries**

(6) A certificate of consent issued with respect to a cemetery shall contain a sufficient description of the cemetery so that it may be registered in the appropriate land registry office. 2002, c. 33, s. 86 (6).

### **Registration of consent**

(7) Upon registration in a land registry office of a certificate of consent issued with respect to a cemetery, the land described in the certificate becomes a cemetery. 2002, c. 33, s. 86 (7).

### **Notice of refusal to consent**

(8) The registrar, on refusing to consent to an application under this section, shall advise the applicant in writing of,

- (a) the reasons for the refusal; and
- (b) the applicant's right to appeal. 2002, c. 33, s. 86 (8).

### **Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 59 (1-9) - 01/07/2012

### **Appeal to Tribunal**

**87** (1) An applicant who receives a notice of the registrar's refusal to consent to an application under subsection 86 (8) may appeal to the Tribunal within 15 days after receiving the notice. 2002, c. 33, s. 87 (1).

### **Order by Tribunal**

(2) If the Tribunal finds that the applicant is in compliance with subsection 86 (1) and, where applicable, that giving the consent is in the public interest, the Tribunal shall order the registrar to issue a certificate of consent with the description of cemetery lands as set out in the application for consent or with such modifications to the description as the Tribunal may consider necessary. 2002, c. 33, s. 87 (2).

### **Compliance by registrar**

(3) Upon receiving an order under subsection (2), the registrar shall issue the certificate as ordered. 2002, c. 33, s. 87 (3).

## **CLOSING CEMETERY**

### **Cemetery closing**

**88** (1) A cemetery owner may apply to the registrar for an order to close a cemetery. 2006, c. 34, Sched. D, s. 60 (1).

### **Notice of proposed closing**

(2) The registrar shall not make an order under subsection (1) until the prescribed persons have given notice of the application to close the cemetery to the prescribed persons in the prescribed manner. 2006, c. 34, Sched. D, s. 60 (1).

### **Exception**

- (3) A person is not required to give notice under subsection (2) if,
- (a) no interments or scatterings have been made in the cemetery to be closed; and
  - (b) the consent of all affected interment and scattering rights holders has been obtained. 2006, c. 34, Sched. D, s. 60 (1).

### **Content of notice**

(4) A notice under subsection (2) shall inform the person receiving the notice of the proposed closing and of the person's right to make a submission to the registrar in accordance with subsection (5). 2002, c. 33, s. 88 (4).

### **Submissions**

(5) A person who receives notice of a cemetery closure or any other interested person may make submissions relating to the proposed closure within such time as is prescribed. 2002, c. 33, s. 88 (5).

### **Public interest test**

(6) After the time for making submissions has elapsed and after considering any submissions that are made, the registrar may order the cemetery to be closed if the registrar believes that the closing is in the public interest. 2002, c. 33, s. 88 (6).

## **Order**

- (7) In an order to close a cemetery, the registrar shall,
- (a) declare that the cemetery is to be closed and that no other interments or scattering of cremated human remains shall be carried out in the cemetery;
  - (b) order the person named in the order to,
    - (i) disinter all human remains in the cemetery in the manner specified in the order and either reinter the remains in the place and in the manner specified in the order or deal with the remains in whatever other manner that the order specifies,
    - (ii) deal with scattered cremated human remains in the manner specified in the order,
    - (iii) remove any markers and relocate them to a specified place,
    - (iv) provide to any interment rights holders who hold unused interment rights in the cemetery equivalent interment rights in another cemetery and, if necessary, acquire equivalent rights for the purpose,
    - (v) provide to any scattering rights holders who hold unused scattering rights in the cemetery equivalent scattering rights in another cemetery and, if necessary, acquire equivalent rights for the purpose,
    - (vi) do whatever other things the registrar determines are necessary to ensure the dignity and respect of the human remains; and
  - (c) direct, in accordance with the Act and regulations, how money held in a care and maintenance fund or account is to be dealt with. 2002, c. 33, s. 88 (7); 2006, c. 34, Sched. D, s. 60 (2).

## **Notice of order**

- (8) The registrar shall give notice of an order to close a cemetery to every person who made a submission under subsection (5) and advise the person of their right of appeal under section 89. 2002, c. 33, s. 88 (8).

## **Effective date of order**

- (9) Unless there is an appeal of the order under section 89, an order to close a cemetery takes effect on the later of,
- (a) the day that is 30 days after the day the order is made;
  - (b) 30 days after the last day on which notice was given to a person under subsection (8); or
  - (c) the day set out in the order. 2002, c. 33, s. 88 (9).

## **Effect of order**

- (10) Once an order to close an cemetery under this section takes effect, no interments of human remains shall be carried out in the cemetery. 2002, c. 33, s. 88 (10).

## **Order for partial closing**

- (11) The registrar may make an order to close a part of a cemetery under this section and subsections (1) to (10) apply with necessary modifications to an application to close a part of a cemetery. 2002, c. 33, s. 88 (11); 2006, c. 34, Sched. D, s. 60 (3).

## **Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 60 (1-3) - 01/07/2012

## **Appeal**

- 89** (1) An appeal of an order to close a cemetery or a part of a cemetery may be made to the Tribunal by a person who receives notice of the order or by any other person with an interest in the matter at any time before the day the order takes effect under subsection 88 (9). 2002, c. 33, s. 89 (1).

## **Appeal of refusal to make order**

- (2) If a person requested that the registrar make an order closing a cemetery or a part of a cemetery and the registrar refused to make the order, a person with an interest in the matter may appeal the refusal to the Tribunal. 2006, c. 34, Sched. D, s. 61.

## **Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 61 - 01/07/2012

### **Certificate of closing, cemeteries**

**90** (1) The registrar shall issue a certificate certifying that a cemetery or a part of a cemetery is closed if satisfied that all things that were required to be done under subsection 88 (7) have been carried out. 2002, c. 33, s. 90 (1).

#### **Description of land**

(2) A certificate of closing shall include a legal description of the land involved. 2002, c. 33, s. 90 (2).

#### **Registration**

(3) A certificate of closing may be registered in the appropriate land registry office. 2002, c. 33, s. 90 (3).

#### **Effect of registration**

(4) Upon registration of a certificate of closing, the land described in the certificate ceases to be a cemetery. 2006, c. 34, Sched. D, s. 62.

#### **Transition**

(5) If a cemetery was ordered closed under the *Cemeteries Act (Revised)* or under a predecessor to that Act but on the day this section comes into force a certificate of closure with respect to the cemetery has not yet been registered in the appropriate land registry office, a person may apply to the registrar for a certificate under this section and the registrar shall issue the certificate upon being satisfied that the cemetery had in fact been ordered closed under the *Cemeteries Act (Revised)* or the predecessor Act, as the case may be. 2006, c. 34, Sched. D, s. 62.

#### **Application**

(6) Subsections (2), (3) and (4) apply with necessary modifications to a certificate issued under subsection (5). 2002, c. 33, s. 90 (6).

#### **Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 62 - 01/07/2012

#### **Transfer of money and rights**

**91** (1) If the registrar makes an order described in subsection (2), the trustee of the care and maintenance fund or account of the cemetery that is to be closed shall, subject to the regulations, transfer the money in the fund or account to the trustee of the care and maintenance fund or account of the other cemetery. 2006, c. 34, Sched. D, s. 63.

#### **Same**

- (2) The order mentioned in subsection (1) is an order that a cemetery be closed and that,
- (a) the human remains interred in the cemetery be reinterred in another cemetery or the scattered cremated human remains in the cemetery be removed and placed in another cemetery; or
  - (b) the interment rights holders or scattering rights holders be given equivalent rights in the other cemetery. 2006, c. 34, Sched. D, s. 63.

#### **Credit**

(3) The amount transferred under subsection (1) is a credit against the amount required to be paid into the fund or account by the operator of the other cemetery. 2006, c. 34, Sched. D, s. 63.

#### **Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 63 - 01/07/2012

#### **Other trust money**

**92** (1) If the registrar orders that a cemetery be closed and that the interment rights holders and scattering rights holders of the cemetery be given equivalent rights in another cemetery, the registrar shall direct that the money described in subsection (2) be transferred to the operator of the other cemetery and held in trust by that operator or on behalf of that operator in order to ensure the provision in that cemetery of the licensed supplies and services contracted for by the person who purchased the rights. 2006, c. 34, Sched. D, s. 64.

#### **Same**

- (2) The direction made by the registrar under subsection (1) applies to any money that is not money to which section 91 applies and that,
- (a) is held in trust by or on behalf of the operator of the cemetery that is being closed; or

- (b) was received by or on behalf of the operator in order to ensure the provision of licensed supplies and services in connection with the interment rights or scattering rights in respect of which equivalent rights are to be provided in another cemetery. 2006, c. 34, Sched. D, s. 64.

**Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 64 - 01/07/2012

**Appeal to Tribunal**

**93** (1) If an appeal is made to the Tribunal under section 87 or 89, the Tribunal shall appoint a time for and hold a hearing. 2002, c. 33, s. 93 (1).

**Order**

- (2) After holding a hearing, the Tribunal may,
  - (a) in the case of an appeal under section 87 make such order as may be made in accordance with subsection 87 (2); or
  - (b) in the case of an appeal under section 89, by order direct the registrar to order the closing of the cemetery or a part of the cemetery or not to do so or to take such action as the Tribunal considers that the registrar ought to take and for such purposes the Tribunal may substitute its opinion for that of the registrar. 2002, c. 33, s. 93 (2).

**Conditions**

(3) The Tribunal may attach such conditions to its order or to the licence as it considers necessary. 2002, c. 33, s. 93 (3).

**Parties**

(4) The registrar, the cemetery operator, the appellant and such other person as the Tribunal may specify are parties to the appeal. 2002, c. 33, s. 93 (4).

BURIAL SITES

**Disturbing burial site prohibited**

**94** No person shall disturb or order the disturbance of a burial site or artifacts associated with the human remains except,

- (a) on instruction by the coroner;
- (b) pursuant to a site disposition agreement; or
- (c) if the disturbance is carried out in accordance with the regulations. 2002, c. 33, s. 94; 2006, c. 34, Sched. D, s. 65.

**Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 65 - 01/07/2012

**Unmarked burial sites**

**95** Any person discovering or having knowledge of a burial site shall immediately notify the police or coroner. 2002, c. 33, s. 95.

**Investigation into origins of site**

**96** (1) The registrar may order the owner of land on which a burial site is discovered to cause an investigation to be made to determine the origin of the site. 2002, c. 33, s. 96 (1).

**Non-application**

(2) Section 94 does not apply to a person investigating the nature or origin of the site who is disturbing the site in the course of the investigation. 2002, c. 33, s. 96 (2).

**Minimal disturbance**

(3) A person conducting an investigation shall do so with the minimum disturbance to the site that is reasonable in the circumstances. 2002, c. 33, s. 96 (3).

**Where registrar investigates**

(4) If the registrar is of the opinion that an investigation under subsection (1) would impose an undue financial burden on the land owner, the registrar shall undertake the investigation. 2002, c. 33, s. 96 (4).

**Definitions**

**97** In sections 98 to 100,

“aboriginal peoples burial ground” means land set aside with the apparent intention of interring in it, in accordance with cultural affinities, human remains and containing remains identified as those of persons who were one of the aboriginal peoples of Canada; (“cimetière autochtone”)

“burial ground” means land set aside with the apparent intention of interring in it, in accordance with cultural affinities, human remains and containing remains identified as those of persons who were not one of the aboriginal peoples of Canada; (“lieu d’inhumation”)

“irregular burial site” means a burial site that was not set aside with the apparent intention of interring human remains in it. (“lieu de sépulture irrégulier”) 2006, c. 34, Sched. D, s. 66.

**Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 66 - 01/07/2012

**Declaration**

**98** As soon as the origin of a burial site is determined, the registrar shall declare the site to be,

- (a) an aboriginal peoples burial ground;
- (b) a burial ground; or
- (c) an irregular burial site. 2006, c. 34, Sched. D, s. 66.

**Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 66 - 01/07/2012

**Site disposition agreement**

**99** (1) Unless the regulations provide otherwise, the registrar, on declaring a burial site to be an aboriginal peoples burial ground or a burial ground, shall serve notice of the declaration on the persons or class of persons that are prescribed. 2006, c. 34, Sched. D, s. 66.

**Negotiations**

(2) Unless the regulations provide otherwise, all persons served with the notice shall enter into negotiations with a view of entering into a site disposition agreement. 2006, c. 34, Sched. D, s. 66.

**Arbitration**

(3) Unless the regulations provide otherwise, if the persons served with the notice do not make a site disposition agreement within the prescribed time, the registrar shall refer the matter to arbitration. 2006, c. 34, Sched. D, s. 66.

**Deferring arbitration**

(4) Unless the regulations provide otherwise, despite subsection (3), the registrar, if of the opinion that an agreement may be reached, may defer referring the matter to arbitration so long as there appears to be a reasonable prospect of an agreement being reached. 2006, c. 34, Sched. D, s. 66.

**Arbitrated settlement**

(5) The persons named in an arbitrated settlement who have been given the opportunity to fully participate in the arbitration process are bound by the settlement whether they chose to participate or not. 2006, c. 34, Sched. D, s. 66.

**Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 66 - 01/07/2012

**Irregular burial site**

**100** (1) Unless the regulations provide otherwise, an owner of land that contains an irregular burial site shall ensure that the remains found in the site are interred in a cemetery. 2002, c. 33, s. 100 (1); 2006, c. 34, Sched. D, s. 67 (1).

**Charges**

(2) Unless the regulations provide otherwise, no owner of a cemetery interring human remains for an owner of land to whom this section applies may charge more than the prescribed amount for the interment. 2002, c. 33, s. 100 (2); 2006, c. 34, Sched. D, s. 67 (2).

**Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 67 (1, 2) - 01/07/2012

## WAR GRAVES

### **Removal, etc., of war graves**

**101** (1) No person shall alter or move the remains or marker of a Canadian or Allied veteran or a Commonwealth War Burial without the agreement of the Department of Veterans Affairs (Federal), the Commonwealth War Graves Commission or such other persons and associations as are prescribed. 2002, c. 33, s. 101 (1).

### **Application**

(2) Subsection (1) applies with respect to the alteration or removal of the remains or a marker of a Canadian or Allied veteran only if the Department of Veterans Affairs (Federal) contributed to the cost of the interment. 2002, c. 33, s. 101 (2).

### **Application for direction**

(3) If an agreement is not reached, the person who wants to make the alteration or move may apply to the registrar for directions. 2002, c. 33, s. 101 (3).

### **Notice**

(4) When an application is made under subsection (3), the registrar shall instruct the applicant to give notice of the application to such persons and associations as the registrar considers may have an interest in the matter. 2002, c. 33, s. 101 (4).

### **Submissions**

(5) All persons and associations receiving a notice under subsection (4) may make submissions on the matter to the registrar in such form and manner as the registrar instructs. 2002, c. 33, s. 101 (5).

### **Direction**

(6) After considering all submissions made, the registrar shall direct the applicant on the manner of dealing with the remains or marker in question. 2002, c. 33, s. 101 (6).

### **Non-application**

(7) Subsection (1) does not apply to a person altering or moving remains or markers in accordance with the direction of the registrar. 2002, c. 33, s. 101 (7).

## ABANDONED CEMETERIES

### **Applications for declaration**

**101.1** (1) A person set out in subsection (2) may apply to have a judge of the Superior Court of Justice declare a cemetery abandoned if the owner of the cemetery,

- (a) cannot be found or is unknown;
- (b) is unable to maintain it; or
- (c) is not a licensed operator and there is no licensed operator for the cemetery. 2006, c. 34, Sched. D, s. 68.

### **Who can apply**

- (2) The application may be made by,
- (a) the Crown if the cemetery is on land that is situated in territory without municipal organization;
  - (b) the local municipality within whose geographic boundaries the land of the cemetery is located;
  - (c) the owner or operator of the cemetery; or
  - (d) the registrar. 2006, c. 34, Sched. D, s. 68.

### **Notice of application**

(3) An applicant shall give notice of the application to the following persons or entities, but is not required to give the notice to the applicant:

1. The owner or operator of the cemetery.
2. The local municipality within whose geographic boundaries the land of the cemetery is located, if there is one.
3. The Crown, if there is no local municipality within whose geographic boundaries the land of the cemetery is located.
4. The registrar. 2006, c. 34, Sched. D, s. 68.

### **Maintenance**

(4) When an application is made to declare a cemetery abandoned, the local municipality within whose geographic boundaries the land of the cemetery is located or the Crown, if there is no such local municipality, shall be responsible for the maintenance of the cemetery until the application is disposed of. 2006, c. 34, Sched. D, s. 68.

### **Costs of application**

- (5) The costs of the application, including the cost of a survey of the land involved, are the responsibility of,
- (a) the owner or operator of the cemetery if the owner or operator makes the application and a judge of the court does not declare the cemetery abandoned; or
  - (b) the local municipality within whose geographic boundaries the land of the cemetery is located or the Crown, if there is no such local municipality, in all other cases. 2006, c. 34, Sched. D, s. 68.

### **Order**

(6) Upon being satisfied that the applicant has established the circumstances justifying an order of abandonment, a judge to whom an application is made shall, by order, declare the cemetery to be abandoned. 2006, c. 34, Sched. D, s. 68.

### **Registration of order**

(7) When an order declaring that a cemetery is abandoned is registered in the appropriate land registry office, the local municipality within whose geographic boundaries the land of the cemetery is located or the Crown, if there is no such local municipality, becomes the owner of the cemetery with all the rights and obligations in respect of the cemetery and the assets, trust funds and trust accounts related to it that the previous owner or operator had. 2006, c. 34, Sched. D, s. 68.

### **Exemption**

(8) An order made under subsection (6) may exempt the new owner of the cemetery from any provision of the Act and regulations to which it would be inappropriate in the circumstances for the new owner to be subject. 2006, c. 34, Sched. D, s. 68.

### **Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 68 - 01/07/2012

## GENERAL

### **Prohibition: interfering with cemetery**

**102** No person shall cause or commit a nuisance in a cemetery or willfully and unlawfully disturb persons assembled for the purpose of interring human remains in a cemetery. 2002, c. 33, s. 102.

### **Disinterment or removal of human remains**

**102.1** (1) Despite anything in this Act, if a court in which a judicial proceeding is pending considers it necessary to disinter or to remove human remains for the purpose of the proceeding, the court may direct the disinterment or the removal of the remains subject to those conditions as to reinterment or placement of the remains that the court considers proper. 2006, c. 34, Sched. D, s. 69.

### **Powers of Attorney General or Solicitor General**

(2) If the Attorney General, the Solicitor General or a lawful delegate of either of them considers it in the interest of justice for the purpose of an inquiry as to the cause of death or for the purpose of a criminal investigation or proceeding that human remains should be disinterred or removed, the Attorney General, the Solicitor General or the delegate, as the case may be, may exercise the powers of direction mentioned in subsection (1). 2006, c. 34, Sched. D, s. 69.

### **Powers of coroner**

(3) A coroner who has issued his or her warrant to proceed to take possession of human remains for the purpose of a coroner's investigation may direct the disinterment or the removal of the remains. 2006, c. 34, Sched. D, s. 69.

### **Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 69 - 01/07/2012

### **Liability**

**103** (1) Any person who, in a cemetery, damages or moves any tree, plant, marker, fence, structure or other thing usually erected, planted or placed in a cemetery is liable to the cemetery operator and any interment rights holder who, as a result, incurs damage. 2002, c. 33, s. 103 (1).

**Same**

(2) In any action under subsection (1), the amount of damages shall be the amount required to restore the cemetery to the state that it was in before anything was damaged or moved by the person liable. 2002, c. 33, s. 103 (2).

**Same**

(3) Any person collecting damages under this section shall use the full amount collected to restore the cemetery. 2002, c. 33, s. 103 (3).

**Municipal power to expropriate**

**104** (1) A municipality may expropriate,

- (a) a cemetery or part of a cemetery, whether the cemetery exists within or outside the municipality; or
- (b) land on which to establish or enlarge a cemetery. 2002, c. 33, s. 104 (1).

**By-laws**

(2) A council of a municipality may pass by-laws authorizing,

- (a) the purchase of a cemetery or part of it that is situated within the municipality;
- (b) the acquisition of land within the municipality or in an adjacent township or territory without municipal organization for a cemetery or for the enlargement of an existing cemetery owned by the municipality; or
- (c) the sale, transfer or lease of a cemetery or part of a cemetery. 2002, c. 33, s. 104 (2); 2006, c. 34, Sched. D, s. 70.

**Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 70 (1, 2) - 01/07/2012

**Act prevails**

**105** This Act prevails over Part VI of the *Ontario Heritage Act*. 2002, c. 33, s. 105.

**PART XII  
MISCELLANEOUS**

**Confidentiality**

**106** (1) A person who obtains information in the course of exercising a power or carrying out a duty related to the administration of this Act or the regulations shall preserve secrecy with respect to the information and shall not communicate the information to any person except,

- (a) as may be required in connection with a proceeding under this Act or in connection with the administration of this Act or the regulations;
- (b) to a ministry, department or agency of a government engaged in the administration of legislation similar to this Act or legislation that protects consumers or to any other entity to which the administration of legislation similar to this Act or legislation that protects consumers has been assigned;
- (c) to a prescribed entity or organization if the purpose for the communication is consumer protection;
- (d) to a law enforcement agency;
- (e) to counsel of the person communicating the information; or
- (f) with the consent of the person to whom the matter relates. 2006, c. 34, Sched. D, s. 71.

**Testimony**

(2) Except in a proceeding under this Act, no person shall be required to give testimony in a civil proceeding with regard to information obtained in the course of exercising a power or carrying out a duty related to the administration of this Act or the regulations. 2006, c. 34, Sched. D, s. 71.

**Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 71 - 01/07/2012

2007, c. 4, s. 33 - 01/07/2012



## **Service**

**107** (1) Any notice, order or request is sufficiently given or served if it is,

- (a) delivered personally;
- (b) sent by registered mail; or
- (c) sent by another manner if the sender can prove receipt of the notice, order or request. 2002, c. 33, s. 107 (1).

## **Deemed service**

(2) If service is made by registered mail, the service shall be deemed to be made on the third day after the day of mailing unless the person on whom service is being made establishes that the person did not, acting in good faith, through absence, accident, illness or other cause beyond the person's control, receive the notice, order or request until a later date. 2002, c. 33, s. 107 (2).

## **Exception**

(3) Despite subsections (1) and (2), the Tribunal may order any other method of service it considers appropriate in the circumstances. 2002, c. 33, s. 107 (3).

## **Publication of notice**

**107.1** (1) If this Act or the regulations require that a person give notice by publishing it in a newspaper, the person may give the notice using another method if the person has obtained the approval of the registrar. 2006, c. 34, Sched. D, s. 72.

## **Other method**

(2) The registrar may approve another method for giving the notice if satisfied that the other method is equivalent to publishing the notice in a newspaper. 2006, c. 34, Sched. D, s. 72.

## **Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 72 - 01/07/2012

## **Fees**

**108** (1) The Minister may by order establish fees that are payable under this Act in respect of the issuing or renewal of a licence, late filings and other administrative matters. 2002, c. 33, s. 108 (1).

## **Payee**

(1.1) An order made under this section shall specify the person to whom the fee shall be paid. 2006, c. 34, Sched. D, s. 73.

## **Non-application of the *Regulations Act***

(2) An order made under this section is not a regulation for the purposes of the Part III (Regulations) of the *Legislation Act, 2006*. 2002, c. 33, s. 108 (2); 2006, c. 21, Sched. F, s. 112.

## **Exception, fees established by Board of Funeral Services**

(3) If a memorandum of understanding made by the Minister and the Board of Funeral Services under section 3.1 of the *Board of Funeral Services Act* is in effect, subsections (1), (1.1) and (2) do not apply with respect to the categories of fees specified in the memorandum. 2012, c. 8, Sched. 18, s. 1.

## **Section Amendments with date in force (d/m/y)**

2006, c. 21, Sched. F, s. 112 - 01/07/2012; 2006, c. 34, Sched. D, s. 73 - 01/07/2012

2012, c. 8, Sched. 18, s. 1 (1, 2) - 01/07/2012

## **Certificate as evidence**

**109** (1) For all purposes in any proceeding, a statement purporting to be certified by the director is, without proof of the office or signature of the director, admissible in evidence as proof in the absence of evidence to the contrary, of the facts stated in it in relation to,

- (a) the issuing of a licence to any person or the refusal to issue a licence to any person;
- (b) the filing or non-filing of any document or material required or permitted to be filed with the registrar;
- (c) the time when the facts upon which the proceedings are based first came to the knowledge of the director;

- (c.1) the granting of the registrar's consent to the establishment, alteration or increase in the capacity of a cemetery or the refusal of the registrar to grant such a consent; or
- (d) any other matter pertaining to licensing of any person or the refusal to license any person or to filing or non-filing of information. 2002, c. 33, s. 109 (1); 2006, c. 34, Sched. D, s. 74.

#### **Proof of document**

(2) Any document made under this Act that purports to be signed by the director or a certified copy of the document is admissible in evidence in any proceeding as proof, in the absence of evidence to the contrary, that the document is signed by the director without proof of the office or signature of the director. 2002, c. 33, s. 109 (2).

#### **Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 74 - 01/07/2012

#### **Information to the public**

**110** (1) If the regulations so require, the registrar shall make available to the public the names of licensees and former licensees under this Act and predecessor legislation to it and other information that is prescribed in respect of licensees and former licensees and other prescribed persons. 2006, c. 34, Sched. D, s. 75.

#### **Same**

(2) The registrar shall make available the information mentioned in subsection (1) in the prescribed form and manner and with whatever other information is prescribed. 2006, c. 34, Sched. D, s. 75.

#### **Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 75 - 01/07/2012

#### **Information to the registrar**

**111** A licensee shall provide the registrar, within the time that the registrar specifies, with the information that the registrar requests, including at the registrar's request, verification, by affidavit or otherwise, of any of the information requested. 2006, c. 34, Sched. D, s. 75.

#### **Section Amendments with date in force (d/m/y)**

2006, c. 34, Sched. D, s. 75 - 01/07/2012

## **PART XIII REGULATIONS**

#### **Minister's regulations**

**112** (1) The Minister may make regulations,

- (a) establishing one or more codes of ethics for the purposes of section 62 and determining to which licensees or classes of licensees each code of ethics applies;
- (b) governing the jurisdiction and procedures of any committee established under this Act;
- (c) respecting any matters that may be delegated by the Lieutenant Governor in Council under section 113. 2002, c. 33, s. 112 (1).

#### **Delegation**

(2) If one or more administrative authorities are designated under the *Safety and Consumer Statutes Administration Act, 1996* for the purposes of administering this Act, then despite subsection 3 (4) of that Act, the Minister may, in writing, delegate to the board of a designated administrative authority the power to make some or all of the regulations under this section, subject to the approval of the Minister. 2002, c. 33, s. 112 (2).

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is repealed. See: 2012, c. 8, Sched. 11, ss. 47 (6), 54 (1).**

#### **Approval**

(3) The Minister may approve or refuse to approve the regulations but approval shall not be given unless, in his or her opinion, they have been made in accordance with the consultation process and criteria set out in the administrative agreement described in subsection 4 (1) of the *Safety and Consumer Statutes Administration Act, 1996*. 2002, c. 33, s. 112 (3).

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (3) is repealed. See: 2012, c. 8, Sched. 11, ss. 47 (6), 54 (1).**

## Revocation, transition

(4) The Minister may, in writing, revoke the delegation under subsection (2), but the revocation does not result in the revocation of the regulations, which remain valid and may be amended or revoked by the Minister. 2002, c. 33, s. 112 (4).

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (4) is repealed. See: 2012, c. 8, Sched. 11, ss. 47 (6), 54 (1).**

## Residual authority to act

(4.1) Despite any delegation under this section to the board of an administrative authority designated under the *Safety and Consumer Statutes Administration Act, 1996* and without having to revoke the delegation, the Minister continues to have authority to make regulations in respect of the matter that is the subject of the delegation. 2009, c. 33, Sched. 10, s. 8 (4).

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (4.1) is repealed. See: 2012, c. 8, Sched. 11, ss. 47 (6), 54 (1).**

## Conflicts

(5) If there is a conflict between a regulation made under clause (1) (c) and a regulation made by the Lieutenant Governor in Council under section 113, the latter prevails. 2002, c. 33, s. 112 (5).

(6) REPEALED: 2017, c. 33, Sched. 5, s. 2.

## Section Amendments with date in force (d/m/y)

2009, c. 33, Sched. 10, s. 8 (4) - 01/07/2012

2012, c. 8, Sched. 11, s. 47 (6) - not in force

2017, c. 33, Sched. 5, s. 2 - 14/12/2017

## Lieutenant Governor in Council regulations

**113** (0.1) The Lieutenant Governor in Council may make regulations prescribing provisions of this Act that bind the Crown, in addition to those that specifically bind the Crown. 2006, c. 34, Sched. D, s. 76 (1).

## Same

- (1) The Lieutenant Governor in Council may make regulations,
1. prescribing classes of licences for the purposes of this Act and conditions that apply to each class;
  2. governing applications for licences and for their renewal and requiring that applications contain the information and be accompanied by the documentation that the registrar specifies, that is in the form that the registrar specifies and that is submitted in the manner that the registrar specifies;
  3. prescribing practices or actions that are evidence of incompetence or lack of honesty and integrity for the purposes of clause 14 (1) (c);
  4. prescribing requirements for purposes of clause 14 (1) (f);
  5. governing educational requirements for applicants for a licence, applicants for renewal of a licence, licensees and prescribed persons under clause 14 (1) (g), including,
    - i. authorizing the registrar to set educational requirements, including different educational requirements for different classes of persons,
    - ii. prescribing rules for setting the educational requirements,
    - iii. governing the educational requirements that the registrar sets,
    - iv. requiring that a description of the educational requirements be made available to the public free of charge on request,
    - v. requiring applicants for a licence, applicants for renewal of a licence, licensees and prescribed persons under clause 14 (1) (g) to meet the educational requirements that the registrar sets under subparagraph i, to complete a program of studies that the registrar designates or to take one or more courses that the registrar designates,
    - vi. authorizing the registrar to designate organizations that are authorized to provide the programs and courses required to meet the educational requirements set under subparagraph i or designated under subparagraph v,
    - vii. establishing a certification process in respect of a class of persons,
    - viii. authorizing the registrar in specified circumstances to exempt an applicant for a licence, an applicant for a renewal of a licence, a licensee or a prescribed person under clause 14 (1) (g) from any of the educational

- requirements, specifying the circumstances and authorizing the registrar to impose conditions on the exemption, and
- ix. authorizing the registrar in specified circumstances, to require an applicant for a licence, an applicant for a renewal of a licence, a licensee or a prescribed person under clause 14 (1) (g) to complete any educational requirements again or to complete the other educational requirements that the registrar specifies and specifying the circumstances;
- 6. prescribing the conditions of licences;
  - 7. governing the expiry of licences;
  - 7.1 regulating, controlling and prohibiting the use of terms, titles or designations by licensees and other persons;
  - 7.2 prohibiting activities, other than those for which a licence is already required in this Act, that relate to, or occur in the course of operating a cemetery, crematorium, funeral establishment, transfer service, casket or marker retailing business or a related business unless the activities are carried out by specific persons and prescribing those persons as well as any conditions that apply to them;
  - 7.3 governing the availability and display of licensed supplies;
  - 8. prescribing the time within which a person may reapply for a licence under section 24 and providing that the time prescribed may be abridged if specified circumstances exist;
  - 9. governing the administration and operation of licensed businesses;
  - 10. governing duties of operators and other licensees;
  - 10.1 prescribing and governing additional duties and powers of the registrar;
  - 11. governing the documents, records and information that licensees and former licensees must keep, including the manner and location at which the persons must keep them and the period for which the persons must keep them, and authorizing the registrar to allow the persons to keep the documents, records and information at a location, in a manner or for a period that the registrar specifies, subject to conditions specified in the regulation or imposed by the registrar;
  - 12. prescribing documents or information that persons must provide to the registrar and the time within which the persons must provide them and prescribing the content of the documents or information and requirements that the documents or information must meet, including,
    - i. requiring that specified information be verified by affidavit,
    - ii. authorizing the registrar to specify the content of the documents or information and to specify requirements that the documents or information must meet, and
    - iii. authorizing the registrar to specify the form and manner in which the persons must provide the documents or information;
  - 12.1 prescribing amounts, or the minimum amount, by which the shareholdings of a person or of persons who are associated with each other must increase in order to constitute an increase for the purposes of clause 26 (1) (b);
  - 13. prescribing information that prescribed persons shall provide to the public, any person or any class of persons and prescribing the manner of providing that information and the circumstances in which a fee may be charged and the manner of determining the fee;
  - 14. governing the keeping of books and records by licensees, including prescribing the types and classes of information to be retained by licensees and time periods for retaining types and classes of information;
  - 15. prescribing the information that licensees must disclose to a customer concerning a sale of licensed supplies or services and the time or times when disclosures must be made;
  - 16. requiring licensees to provide proof of their licence to customers and prescribing the nature of the proof and the manner in which it is to be provided;
  - 17. governing advertising and representations or promises intended to induce the purchase, sale or exchange of licensed supplies and services;
  - 18. providing for the posting of bonds and prescribing amounts of bonds;
  - 19. providing for the forfeiture of posted bonds and for the distribution of the proceeds of forfeited bonds;

- 20. governing contracts for the sale of licensed supplies or services and respecting the terms and conditions of any contract or class of contract;
- 20.1 for the purposes of subsection 43 (1), governing contracts under which an operator may provide licensed supplies or services under the contract within 30 days after the day on which the contract is made;
- 20.2 prohibiting prescribed practices in relation to the sale of licensed supplies and services;
- 20.3 prescribing the circumstances in which an operator may require that customers purchase supplies or services from the operator or from another person specified by the operator, and prescribing supplies and services that an operator may require a customer to purchase from the operator or from another person specified by the operator;
- 21. governing remedies for failure to meet prescribed conditions of contracts for the sale of licensed supplies and services and governing remedies available to a purchaser if a licensee fails to disclose prescribed information or fails to disclose it in a timely fashion;
- 22. governing price lists of licensed supplies and services that an operator is required to maintain under section 33, respecting the type of supplies and services that must be included on the list and the manner in which and times at which the price list must be made available to the public;
- 22.1 requiring operators to submit their price lists to the registrar upon request;
- 22.2 granting the registrar power to disallow a price for a supply or service if,
  - i. the price is for a supply or service that the operator required a purchaser to purchase from the operator or from another person specified by the operator in accordance with section 38.1, and
  - ii. in the opinion of the registrar, the price is excessive or significantly higher than the current market price for the supply or service in question;
- 22.3 providing for an appeal process from the registrar's decision to disallow a price under paragraph 22.2;
- 22.4 providing for the reimbursement of prescribed amounts, or of amounts that shall be determined in a prescribed manner, to customers in prescribed circumstances and requiring operators to provide the registrar with evidence of having paid the reimbursement;
- 22.5 prescribing specifications and minimum requirements for supplies and services to be offered, performed or supplied by a licensee;
- 23. governing the obligations of a purchaser who cancels a contract for the purchase of licensed supplies and services with respect to supplies that were delivered before cancellation and prescribing the circumstances in which the purchaser must make the supplies available for repossession by the operator or return the supplies to the operator;
- 24. respecting what constitutes supplies that are customized to the purchaser's specifications for the purposes of subsection 44 (6) and governing the determination of the amount of a refund to which a purchaser is entitled under subsection 44 (6);
- 25. prescribing amounts for the purposes of subsection 47 (6) and prescribing different amounts in respect of different classes of contracts;
- 25.1 governing alternative processes and methods of disposing of human remains;
- 26. governing the establishment, maintenance and operation of trust accounts and trust funds that a licensee is required to maintain under this Act;
- 26.1 governing the rules that apply to funds held in trust to which subsection 52 (8) or (9) applies;
- 26.2 prescribing the maximum refund amount that need not be held in trust, for the purposes of subsection 52 (6);
- 27. governing the payment of money into and out of trust accounts and trust funds, including the time within which and the circumstances under which payments are to be made;
- 28. governing the disbursements of capital gains realized from the investments of money held in trust under this Act;
- 29. prescribing records and information on trust accounts and trust funds to be provided to purchasers of licensed supplies and services;
- 30. prescribing fees that may be retained by trustees in respect of any type of trust fund;

31. governing a compensation fund scheme for the purposes of this Act, establishing one or more compensation funds and determining which licensees or classes of licensees shall be participants in each compensation fund;
32. providing for the payment of contributions to any compensation fund established by regulation, requiring licensees or classes of licensees to contribute to specified funds and prescribing the amounts and timing of the contributions;
33. respecting the maintenance of any compensation fund established by regulation, establishing a committee or board to administer each fund, providing for the selection or appointment of members of the committee or board and of its chair, respecting the powers and duties of the members, the operation of the committee or board and procedures before the committee or board;
34. requiring that a compensation fund be kept in trust and respecting the selection of the trustee of the fund;
35. governing the investing of compensation fund money;
36. governing payments out of a compensation fund and providing for appeals from a refusal to pay out of a compensation fund;
37. governing procedures and obligations if a participant is in default in making a payment to a compensation fund;
38. respecting the removal of an operator as a participant in a compensation fund and the obligations of operators on ceasing to be participants in a compensation fund;
39. respecting the borrowing of money to supplement a compensation fund;
40. governing the procedures to be followed in cases of over-capitalization of a compensation fund;
41. requiring licensees to maintain business premises that comply with prescribed rules;
42. governing the establishment of one or more discipline committees and appeal committees for the purpose of enforcing the codes of ethics established by the Minister under section 112 against licensees or classes of licensees, respecting the appointment of members of those committees and the composition of the committees;
43. governing procedures in relation to matters brought before a discipline or appeal committee;
44. respecting the manner in which and the frequency with which decisions of the discipline committee and appeal committee are made available to the public;
45. governing complaints under section 66, including procedures relating to those complaints;
46. respecting inspections, inquiries and investigations under this Act;
47. varying the manner in which a notice under section 73 or a lien under subsection 82 (3) is registered in order to provide for registration that is suitable to technological or electronic changes in the filing of documents in the land registry office;
48. governing the maintenance of registers of persons who are licensed under this Act, prescribing the form and content of such registers and governing its circulation and inspection by the public or others;
49. governing standards of practice and operation for licensees;
50. prescribing rules relating to addresses for service under the Act;
51. governing procedures for hearings held by the Tribunal and providing for the responsibility for the payment of witness fees and expenses at proceedings before the Tribunal and prescribing the amounts of the fees and expenses;
52. requiring that any information required under this Act be in a form approved by the director, the registrar or the Minister, as specified in the regulations;
53. governing the sale of insurance policies or products in relation to the sale of licensed supplies and services;
- 53.1 authorizing the registrar, operators and other licensees to charge fees, including fixed amounts and amounts determined based on a prescribed formula reflecting volume, time and other criteria, in order to recuperate the cost of doing something that is required under this Act and the regulations and requiring prescribed persons to pay the fees;
54. exempting any person, class of person or class of licensee from any provision of this Act or the regulations and attaching conditions to the exemption, including making an exemption subject to the condition that the registrar first declare that the exemption is not contrary to public interest;
55. delegating to the Minister the power to make regulations with respect to any matter that may be the subject of a regulation under this subsection or subsection (2), (3), (4) or (4.1);

56. REPEALED: 2006, c. 34, Sched. D, s. 76 (13).
57. prescribing any matter or thing that may be or is required to be prescribed in this Act and respecting any matter that is required by this Act to be done in accordance with the regulations;
58. governing the application of the *Electronic Commerce Act, 2000* or any part of that Act to this Act.
59. prescribing circumstances in which the documentation under the *Vital Statistics Act* is not required;
60. defining, for the purposes of this Act and the regulations, any word or expression that is used in this Act but not defined in this Act. 2002, c. 33, s. 113 (1); 2006, c. 34, Sched. D, s. 76 (2-14); 2017, c. 33, Sched. 5, s. 3 (1).

**Same, cemeteries**

- (2) The Lieutenant Governor in Council may make regulations in respect of cemeteries, including regulations,
  1. prescribing classes of cemeteries;
  2. governing the administration, operation, care and maintenance of cemeteries;
  3. prohibiting operators from charging interment rights holders and scattering rights holders or persons authorized to act on their behalf for the costs associated with the maintenance of the cemetery except in the prescribed circumstances;
  4. governing cemetery by-laws, including,
    - i. respecting the procedure for operators to make or revoke by-laws,
    - ii. prescribing by-laws that apply to cemeteries or classes of cemeteries,
    - iii. requiring that the by-laws be approved by the registrar and prescribing the criteria that the registrar shall use in approving them,
    - iv. providing that the registrar may revoke the by-laws and respecting the notice that the registrar must give of a revocation,
    - v. providing for an appeal process if the registrar refuses to approve the by-laws or gives notice of revoking a by-law,
    - vi. requiring cemetery operators and other persons to whom the by-laws apply to comply with the by-laws;
  5. respecting the standards of care that apply to the care and maintenance of a cemetery and in the provision of cemetery supplies and services and requiring cemetery operators to comply with the standards;
  6. permitting such persons as may be prescribed to scatter cremated human remains at a place other than at a scattering ground for the purposes of subsection 4 (4) and prescribing the circumstances under which, the place at which and the manner in which the scattering shall be carried out;
  7. respecting the circumstances in which a cemetery owner shall be deemed to be a cemetery operator under subsection 5 (2), prescribing such circumstances, respecting the length of time for which an owner may be deemed to be the cemetery operator and the conditions under which the owner ceases to be deemed to be the cemetery operator;
  8. governing neglected cemeteries, requiring operators of neglected cemeteries to comply with the prescribed standards, allowing municipalities to make orders requiring the operators to comply with the standards or to perform the necessary repairs and maintenance and be reimbursed by the operator and providing for an appeal of the orders;
  9. governing applications to court for a declaration that a cemetery is abandoned, respecting the procedures that govern such applications, prescribing the circumstances under which a cemetery may be declared abandoned and respecting the effect of such a declaration;
  10. governing the interment, disposition and removal of human remains;
  - 10.1 governing the disinterment or removal of human remains, prescribing circumstances in which the consent of interment or scattering rights holders to the disinterment or removal is or is not required, prescribing circumstances in which the registrar may substitute his or her consent for that of an interment or scattering rights holder, providing for notice of disinterment or removal to prescribed persons and providing for an appeal process from the decision of the registrar to consent to a disinterment or removal;
  11. governing the preparation of disinterred human remains for transportation including prescribing the design and material of container to be used;

12. prescribing standards for the construction, installation, stabilization, repair, removal and preservation of markers and other cemetery supplies and requiring compliance with the standards;
13. prescribing requirements and standards for the placing and spacing of interments, markers, fixtures, fences or other structures in a cemetery;
14. prescribing the minimum depth of coverage for in-ground burials;
15. prescribing the drains, sewers and other structures for the flow of water required in a cemetery;
16. governing mausoleums, columbariums and other structures on or in a cemetery and establishing construction standards;
17. prescribing the form of certificates of interment and scattering rights, the use of such certificates and the information to be included in the certificates;
- 17.1 governing the establishment, maintenance and operation of care and maintenance trust funds and accounts that a licensee is required to maintain;
- 17.2 exempting cemeteries or a class of cemeteries from section 53 and attaching conditions to the exemptions;
- 17.3 prescribing cemetery operators for the purposes of subsection 53 (8);
18. governing the uses to which cemetery operators may apply income from care and maintenance funds;
19. governing mortgages, encumbrances and charges on land on which a cemetery is located and restricting the cemetery operator's ability to borrow money against such land;
20. requiring cemetery operators, at the request of a delivery agent, to provide licensed supplies and services and to permit the scattering of remains of specified persons and respecting payments for such supplies and services;
21. defining "delivery agent" for the purposes of a regulation made under paragraph 20;
22. requiring that prescribed supplies and services related to a cemetery must be sold at a price that does not exceed the cost of the cemetery operator or another person in providing them;
23. granting the registrar the power,
  - i. to require cemetery operators to provide evidence of the costs that they or other persons incur in providing the supplies and services that they must provide at cost, and
  - ii. to disallow prices if the price is in relation to a supply or service that the operator or other person must provide at cost and if the price exceeds the costs of the operator or other person relating to providing the supply or service;
24. providing for an appeal process from the registrar's decision to disallow a price under paragraph 23;
- 24.1 governing the giving of notice for the purposes of subsection 88 (2);
- 24.2 governing the distribution of care and maintenance trust money on a cemetery closure;
- 24.3 prescribing matters and procedures to be followed in dealing with burial sites;
- 24.4 prescribing circumstances and procedures regarding disturbing a burial site for the purposes of section 94;
25. governing arbitration in the absence of a site disposition agreement and requiring compliance with prescribed procedures;
26. prescribing the subject-matters to be contained in a site disposition agreement or arbitration settlement and requiring their inclusion;
27. prescribing the classes of persons to whom notice is required to be given in respect of a declaration regarding a burial site under section 98;
28. prescribing the time within which a site disposition agreement must be made under section 98;
29. prescribing the maximum amount that a cemetery owner or operator may charge in respect of interment of human remains removed from a burial site;
30. governing the term of interment rights or scattering rights;
31. prescribing requirements an operator shall comply with for the sale of future interment or scattering rights, including the information that the operator must provide to the registrar;



32. prescribing the circumstances under which land that has been set aside for the interment of human remains will be treated as a cemetery for the purposes of this Act. 2002, c. 33, s. 113 (2); 2006, c. 34, Sched. D, s. 76 (15-24).

**Same, crematoriums**

- (3) The Lieutenant Governor in Council may make regulations in respect of crematoriums, including regulations,
  1. prescribing classes of crematoriums;
  2. governing the administration and operation of crematoriums;
  3. governing crematorium by-laws including,
    - i. respecting the procedure for making and revoking by-laws by operators,
    - ii. prescribing by-laws that apply to crematoriums or classes of crematoriums,
    - iii. requiring that the by-laws be approved by the registrar and prescribing the criteria that the registrar shall use in approving them,
    - iv. providing that the registrar may revoke the by-laws and respecting the notice that the registrar must give of a revocation,
    - v. providing for an appeal process if the registrar refuses to approve the by-laws or gives notice of revoking a by-law,
    - vi. requiring crematorium operators and other persons to whom the by-laws apply to comply with the by-laws;
  4. respecting the standards of care that apply in the provision of crematorium supplies and services and requiring crematorium operators to comply with the standards;
  5. governing the manner of conducting cremations and dealing with cremated remains and prescribing conditions for performing cremations;
  6. permitting crematorium operators to require deposits in order to pay for disposing of cremated human remains if they are not claimed, prescribing the amount of the deposit or method of determining the amount, respecting the handling of the trust money and the conditions for the return or forfeiture of the deposit;
  7. REPEALED: 2006, c. 34, Sched. D, s. 76 (26).
  8. requiring crematorium operators to cremate the remains of specified persons at the request of a delivery agent and respecting the payment for such cremations;
  9. defining “delivery agent” for the purposes of a regulation made under paragraph 8. 2002, c. 33, s. 113 (3); 2006, c. 34, Sched. D, s. 76 (25-28).

**Same, funeral establishments**

- (4) The Lieutenant Governor in Council may make regulations in respect of funeral establishments, including regulations,
  1. prescribing classes of funeral establishments;
  2. governing the administration and operation of funeral establishments;
  3. respecting the methods and materials that may be used in providing funeral services;
  4. governing the construction, location, equipment, maintenance, repairs, additions and alterations to funeral establishments and governing the information, plans and materials to be furnished to the registrar in that respect;
  5. governing the equipment and practices, including hygienic practices, with respect to the embalming, transportation, preparation and disposal of human remains;
  6. authorizing persons to perform specified acts relating to the providing of funeral services under the supervision or direction of a prescribed person;
  7. prescribing licensed supplies and services that a person may offer to sell or sell for the purposes of clause 8 (2) (c);
  8. REPEALED: 2006, c. 34, Sched. D, s. 76 (31).
  9. prescribing circumstances under which a person may manage or supervise the operation of more than one funeral establishment. 2002, c. 33, s. 113 (4); 2006, c. 34, Sched. D, s. 76 (29-32).

### **Same, transfer services**

- (4.1) The Lieutenant Governor in Council may make regulations in respect of transfer services, including regulations,
1. prescribing classes of transfer services;
  2. governing the administration and operation of transfer services;
  3. respecting the methods and material that may be used in providing transfer services;
  4. governing the equipment and practices, including hygienic practices, with respect to the holding, preparation, transportation and disposal of human remains;
  5. governing the construction, location, equipment, maintenance, repairs, additions and alterations to holding rooms and governing the information, plans and materials to be furnished to the registrar in that respect;
  6. prescribing licensed supplies and services that an operator of a transfer service is authorized to offer to sell, sell or provide. 2006, c. 34, Sched. D, s. 76 (33).

### **Same, transition**

- (4.2) The Lieutenant Governor in Council may make regulations,
1. in respect of transition matters required or authorized under this Act;
  2. providing for transition matters,
    - i. to facilitate the implementation of this Act or any provision of it, or
    - ii. to deal with problems or issues arising as a result of the repeal of all or part of the *Cemeteries Act (Revised)*, the *Funeral Directors and Establishments Act* or successor Acts to them. 2006, c. 34, Sched. D, s. 76 (33).

### **Same, transition**

- (4.3) Without limiting the generality of subsection (4.2), a regulation made under that subsection may,
- (a) provide that one or more provisions of the *Cemeteries Act (Revised)*, the *Funeral Directors and Establishments Act* or successor Acts to them or the regulations made under them apply, with or without modifications, for the purposes or in the circumstances specified in the regulation;
  - (b) provide that one or more provisions of this Act or the regulations apply, with or without modifications, for the purposes or in the circumstances specified in the regulation;
  - (c) provide that a licence under the *Cemeteries Act (Revised)*, the *Funeral Directors and Establishments Act* or successor Acts to them shall be deemed, for the purposes specified in the regulation, to be a licence issued under this Act; and
  - (d) provide for how and when a deeming mentioned in clause (c) is terminated. 2006, c. 34, Sched. D, s. 76 (33).

### **Conflict**

- (4.4) If there is a conflict between a regulation under subsection (4.2) and any other regulation, the regulation under that subsection prevails. 2006, c. 34, Sched. D, s. 76 (33).

### **Residual authority to act**

- (5) Despite any delegation to the Minister under this section and without having to revoke the delegation, the Lieutenant Governor in Council continues to have authority to make regulations in respect of the matter that is the subject of the delegation. 2002, c. 33, s. 113 (5).

### **Revocation, transition**

- (6) The Lieutenant Governor in Council may, in writing, revoke a delegation to the Minister under this section, but the revocation shall not result in the revocation of any regulation made by the Minister under the delegation and the regulation remains valid and may be amended or revoked by regulation made by the Lieutenant Governor in Council. 2002, c. 33, s. 113 (6).

### **Making regulation not a revocation**

- (7) The making of a regulation to which subsection (5) applies by the Lieutenant Governor in Council shall not constitute the revocation of a delegation to the Minister unless the regulation specifies that the delegation is revoked. 2002, c. 33, s. 113 (7).

## Classes

(8) A regulation may create different classes of persons, businesses, contracts, accounts or funds and may establish different entitlements for or relating to each class or impose different requirements, conditions or restrictions on or in relation to each class. 2002, c. 33, s. 113 (8).

(9) REPEALED: 2017, c. 33, Sched. 5, s. 3 (2).

### Section Amendments with date in force (d/m/y)

2006, c. 34, Sched. D, s. 76 (1-33) - 01/07/2012

2017, c. 33, Sched. 5, s. 3 (1, 2) - 14/12/2017

**114-153** OMITTED (AMENDS OR REPEALS OTHER ACTS). 2002, c. 33, ss. 114-153; 2006, c. 34, Sched. D, s. 77.

### Section Amendments with date in force (d/m/y)

2006, c. 34, Sched. D, s. 77 - 20/12/2006

**154** OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS ACT). 2002, c. 33, s. 154.

**155** OMITTED (ENACTS SHORT TITLE OF THIS ACT). 2002, c. 33, s. 155.

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