

Frequently Asked Questions

Knowledge Base for Licensed Operators

Bereavement Authority of Ontario

v1.0 – July 2023

By: The BAO Financial Compliance Team

Frequently Asked Questions

Question 1.

Are there guidelines on acceptable expenses for a cemetery care and maintenance fund in Ontario? For example, if an organization conducts a fundraiser, can they accept donations directly into the cemetery fund account and then pay the cost of the fundraiser from the same account?

Answer 1.

According to [Section 93](#) of the Ontario Regulation 30/11, the care and maintenance funds should only be used to maintain, secure and preserve the cemetery, including its grounds, buildings, structures and markers, and the equipment used to maintain, secure and preserve the cemetery. The regulation does not permit the operator to use income from the fund or account to purchase equipment or to apply to any other purpose other than the care and maintenance of the cemetery.

Therefore, under the regulation, you are not permitted to use the funds from the care and maintenance fund to pay for the cost of the fundraiser. It can only be used for the upkeep of the cemetery.

Key Idea:

Purpose of care and maintenance and where it can be used.

Question 2.

If a cemetery gave away two lots 'free of charge', are they required to deposit any funds into their care and maintenance fund? For example, if the selling price of two lots is \$1520 for the cemetery, are they required to deposit \$608 (40% of \$1520) in their care and maintenance account?

Answer 2.

The cemetery operator would be required to deposit the calculated care and maintenance contribution amount of \$608.00 into the trust account within 60 days of the sale of plots. The [Funeral, Burial and Cremation Services Act, 2002](#) ("FBCSA") requires a cemetery operator to pay the amounts specified in [section 168 of O. Reg 30/11](#), into a care and maintenance fund or account for the cemetery within 60 days after the earlier of the day the operator sells or "transfers" interment rights or scattering rights and the day the interment or scattering is carried out.

Key Idea:

Care and maintenance contributions for lots sold/transferred for free.

Question 3.

Can a person pay for all burial charges in advance including the lot and the opening and closing of the grave?

Answer 3.

Yes, a person can pay for all burial charges in advance. The lot is sold to them after 30 days. The opening and closing needs to be placed in the prepaid account. In a cemetery the only supply that can be sold which is not a prepaid supply is the lot/grave/niche/crypt and the related Interment Rights. The sale of Interment Rights IS NOT A PREPAID SUPPLY. Any other supplies and services related to the cemetery can be sold as a prepaid supply or service i.e. grave opening/closing, flowers, receptions etc. However, the money collected for these prepaid supplies and services MUST BE DEPOSITED into a PREPAID TRUST ACCOUNT and the interest etc. must be tracked and a statement must be provided to the purchaser every year. The prepaid supplies and services will be provided at the time of need.

Key Idea:

Prepaid funeral supplies and services

Question 4.

According to the regulation, what documents are required to be submitted annually for the care and maintenance fund/account?

Answer 4.

According to the regulations, for the annual reporting, **three** documents are to be submitted annually as mentioned below.

[O. Reg. 30/11, s. 109 \(5\)](#)

A cemetery operator shall file with the registrar annually or at such other time as is directed by the registrar, in respect of each care and maintenance fund of the operator,

- (a) a statement of account;
- (b) a trust fund statement; and
- (c) an audit report, if,
 - (i) the operator has a cumulative total of \$500,000 or more of care and maintenance money in all the operator's care and maintenance funds, or
 - (ii) there is a funeral establishment on one or more of the cemeteries operated by the operator.

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Key Idea:

Document checklist for yearend reporting

Question 5.

If an operator is conducting an audit, what would be the deadline to submit their Annual Licensure Report Form 2 and/or Report of Prepaid Funds?

Answer 5.

The forms are required to be submitted within 90 days after their fiscal year end and the audited financials are to be submitted within 6 months. However, the Registrar has consented to submit the report and audited financial statements within 6 months after the fiscal year end. The operator would not be expected to submit the form by itself.

Key Idea:

Deadline in case the operator is conducting an audit

Question 6.

Is decreasing the sale price for a columbarium niche at the discretion of the cemetery operator? Is there a limit to how much they may increase or decrease the price at any one time?

Answer 6.

Decreasing the sale price of niches can be at the discretion of the cemetery operator. The cemetery operator must maintain a dated price list. It is expected that the price increases or decreases are reasonable and don't fluctuate "like the price of gas". Decreasing the price of any interment right can result in issues with care and maintenance. If there is a concern raised with the Registrar by a consumer the operator will have to justify the increase/decrease. Since resales of lots is allowed under the *Funeral, Burial and Cremation Services Act, 2002*, and the contribution to the Care and Maintenance Fund is based on the price it is important that the price be justified and maintained so that there is no evidence of any impropriety or misappropriation of the funds. Also, it is important for cemetery operator to take into account the long-term effects of the change in prices before making the decision.

Key Idea:

Rules regarding changing prices for products and services

Question 7.

What would be the acceptable reasons for accessing the capital from the Care and Maintenance Fund?

Answer 7.

The legislation that prohibits access to the capital of the fund remains the same except for a regulatory change as of January 1, 2022, which allows non-commercial cemetery operators to access (borrow) a portion of the capital of the fund, with the consent of the Registrar, Bereavement Authority of Ontario, for the purpose of increasing the capacity of the cemetery by:

1. Purchasing land adjacent to the cemetery to increase the capacity of the cemetery, and or
2. Installing a columbarium or mausoleum on the cemetery lands to increase the capacity of the cemetery.

The release of a part of the capital of the fund for the above and the schedule for repayment of the borrowed funds requires the Registrar's consent and this consent must be obtained prior to any part of the capital being accessed.

Other than the above, the capital of the Care and Maintenance Fund/Account must not be accessed.

Key Idea:

Possible use of care and maintenance fund

Question 8.

"Cemetery operator must re-purchase the rights at market value (the price listed on the operator's current price list) less the amount that was originally paid into the cemetery's care and maintenance fund". Explain based on the BAO presentation provided to AMCTO?

For example, if an individual bought a lot back in 1980 and paid \$40 for care and maintenance. The current list price for the lot is \$540, then what would be the repurchase price?

Answer 8.

Cancelling a Contract for Interment or Scattering Rights:

- Under the FBCSA, consumers have a 30-day cooling off period to cancel a contract, as long as the rights have not been used
- If a contract is cancelled within 30 days the consumer is entitled to a full refund

Cancelling a Contract for Interment or Scattering Rights after 30 days:

- After 30 days, a consumer may be able to either sell their unused rights to a third party or back to the cemetery operator –

If the cemetery operator allows re-sale to a third party:

- A consumer can sell their unused rights to someone else at the market value of the rights

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- Market value is the current price of the rights set out in the cemetery operator's current price list
- The operator will then issue a new certificate to the new buyer
- The operator may charge an administrative fee to complete the transfer of the rights

If the cemetery operator does not allow re-sale to a third party:

- The operator is obligated to re-purchase the unused rights from the consumer at the current price less the amount that was paid into the cemetery's care and maintenance trust fund at the time of the original purchase
 - Example: Repurchase Amount = Selling Price (as per Price List) **less** Care & Maintenance paid at the time of purchase
 - Current Selling Price = \$540
 - Care & Maintenance already paid = \$40
 - Repurchase Amount = \$540 - \$40 = \$500
- Market value is the current price of the rights set out in the operator's current price list
 - Please find the price list sample template; <https://thebao.ca/notice-to-the-profession-bao-recommends-price-list-templates-to-support-operators-and-enhance-transparency-for-consumers/>
- A cemetery operator is not obligated to re-purchase unused interment or scattering rights that are in a plot in which one or more of the rights or lots have been exercised

Key Idea:

Repurchasing the interment right and the math behind

Question 9.

Are the cemetery operators required to obtain approval from the BAO for a price list update?

Answer 9.

A cemetery operator can change the prices on the price list and are not required obtain approval from the BAO. However, the Registrar may request the cemetery operator to submit their price list for review if there is a concern.

Once the cemetery operator decides on the price increases, the cemetery operator should create a new price list with a new effective date. Please find attached a sample price list that can be used. You may also refer to Division E of the [Ontario Reg. 30/11](#) for more information and compliance on the price list.

You are required to provide the updated price list to all monument dealers that have installed monuments in the cemetery in the past twelve months. As a courtesy, you could also share it with the local funeral homes.

The Care & Maintenance contribution changes effective from 1-Jan-2022 can be found here; <https://thebao.ca/wp->

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[content/uploads/2021/04/CemeteryCareMaintenanceFund_AccountContributionAmountIncreases_effectiveJan1_2022EN.pdf](#)

Key Idea:

Approval by the BAO for price list updates

Question 10.

C&M on Flat Markers: Is the Care and Maintenance Fund contribution on a flat marker calculated on the size (sq. inches) of the plaque only (marble, granite, and bronze) or is it to be calculated on the plaque and the surrounding collar?

Answer 10.

As it is a flat marker at ground level, it is to be calculated on the size of the plaque + the surrounding cement collar.

Rationale: Flat markers are meant to be at ground level so that the cost of cutting the grass around them is easier and therefore less expensive. Damage to the collar results in more maintenance costs. Also, a 4 ft high monument can't have a 2 ft high base and then a 4 ft piece stone on that monument.

Again, a flat marker is what you can see. If the collar is visible, it is part of the plaque, and the contribution is based on the entire flat surface.

Key Idea:

Flat Marker care and maintenance contributions- rules and calculations

Question 11.

What options are available when establishing a Care & Maintenance Fund/Account?

Answer 11.

You have 4 options concerning establishing a care and maintenance trust fund/account in compliance with the Funeral, Burial and Cremation Services Act, 2002 (FBCSA): <https://thebao.ca/legislation/>

Establishing Care and Maintenance Trust Fund/Account, 4 options:

1. Establishing a Care and Maintenance Trust Fund
 - a. Must be with an eligible trustee per section 83 of O.Reg 30/11, <https://www.ontario.ca/laws/regulation/110030#BK108>
 - i. Operator must submit the trust agreement for review.
 2. May ask a local municipality to act as the trustee for your care and maintenance fund.
 - a. Pursuant to subsection 53(7) of the FBCSA <https://www.ontario.ca/laws/statute/02f33#BK58>

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3. Establishing a Care and Maintenance Trust Account if the amount in the Care and Maintenance Fund is less than \$50,000.
 - a. Establishment must comply with section 84 of O.Reg. 30/11;
<https://www.ontario.ca/laws/regulation/110030#BK108>
4. Public Guardian and Trustee
 - a. Pursuant to subsection 53 (8) of the FBCSA:
“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.”

Key Idea:

Different options/kinds available when establishing a brand-new C&M fund/account

Question 12.

How is Trust money protected?

Answer 12.

The [Funeral, Burial and Cremation Services Act, 2002](#) (“FBCSA”) requires operators to deposit care and maintenance contributions and pooled prepaid trust money with a corporation registered under the [Loan and Trust Corporations Act](#) or a credit union or league as defined in the [Credit Unions and Caisses Populaires Act, 1994](#).

The above-mentioned laws governing these corporations are intended to secure consumer money. Regarding programs to protect consumer money, please refer to our [Consumer Information Guide](#). Ontario law protects your prepaid money in several ways:

When you prepay, your Provider must give you a contract that states the total amount of money you have paid to date and the terms of payment for any balance you owe and the provider must place that money in a trust account.

If you prepay with a funeral establishment operator for funeral supplies and services or transfer service for transfer supplies and services, your money is protected by a compensation fund which is used to return money to consumers if, in rare cases, their prepaid money is not available when needed. The fund would cover losses only if you prepaid with a licensed funeral establishment or transfer service.

The Provider is required by law to choose only safe investments for prepaid trust funds. You are entitled to ask your Provider at least once each year where and how the money is invested and how much money you have in your trust account.

If you buy an insurance policy to fund your pre-arranged contract, you will pay the insurance company directly. Your money is protected under the Insurance Act.

Key Idea:

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Ways to protect the money in the trust fund/account.

Question 13.

Why does Legislation require a Care and Maintenance Fund (CMF) or Care and Maintenance Trust Account (CMA)? Who is required to establish a CMF/CMA?

Answer 13.

It is required by the legislation for the cemetery operators to establish a CMF/CMA.

The purpose is to generate income for the care and maintenance of the cemetery in perpetuity!

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

Note: This is a requirement not an option!

Key Idea:

Requirement by the legislation to establish a care and maintenance fund/account

Question 14.

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

Answer 14.

It is required by the legislation for the cemetery operators to establish a CMF/CMA.

The purpose is to generate income for the care and maintenance of the cemetery in perpetuity!

A trustee of a CMF/CMA shall pay the income from the fund, after deducting the trustee's fees, to the cemetery operator.

Operators establishing new cemeteries are required to establish a CMF and deposit \$100,000 into the fund (municipalities are exempted from this requirement). Note: It is \$165,000 as of Jan 1, 2022.

Within 60 days after the earlier of the day the operator sells or transfers interment rights or scattering rights and the day the interment or scattering is carried out or a marker is installed. (ss. 87. (2) of O. Reg. 30/11).

For lots and markers sold prior to 1955, if no contributions were collected, a non-commercial cemetery operator may charge care and maintenance at the current price list price (ss. 95. (2) of O. Reg. 30/11)

Requirement for a CMF/CMA also applies to operators of existing "active" cemeteries or, of cemeteries that they intend to "re-activate"

Bequests, Endowments & Donations, that specify or are intended for the long-term care and maintenance of a cemetery, must be deposited in the CMF.

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Failure, refusal, or resistance to collecting/submitting and growing the CMF will eventually result in the abandonment of cemeteries and an additional burden on the community/taxpayer. Note: It is a requirement and not an option!

Key Idea:

The purpose of the care and maintenance trust fund/account

Question 15.

How are the contributions to the CMF/CMA calculated?

Answer 15.

CMF/CMA contributions are based on a prescribed amount or percentage the PRICE of the interment or scattering rights and on the SIZE of the marker or monument. The amount of the contribution is established by the regulation O. Reg 30/11.

The Care & Maintenance contribution changes effective from 1-Jan-2022 can be found here;
https://thebao.ca/wp-content/uploads/2021/04/CemeteryCareMaintenanceFund_AccountContributionAmountIncreases_effectiveJan1_2022EN.pdf

Key Idea:

Math behind the care and maintenance contribution calculations

Question 16.

Who can be the trustee of a Care and Maintenance Fund/Account?

Answer 16.

A Care and Maintenance Fund or account shall be established in a “prescribed type of institution” i.e.: A Corporation registered under the Loan and Trust Corporation Act, or A Credit Union or league as defined in the Credit Unions and Caisses Populaires Act.

And a municipality may act as the trustee of a CMF or a CMA for a:
Cemetery of which the municipality is the owner; or Cemetery of which the municipality is NOT the owner if the cemetery operator requests the municipality to act as trustee. Cemetery operator may enter a Memorandum of Understanding, instead of a Trustee Agreement (Template available), with the municipality

List of Loan and trust companies registered in Ontario: <http://loanandtrust.fSCO.gov.on.ca/>
Ontario Credit Unions and Caisses Populaires Listing: <http://creditunion.fSCO.gov.on.ca/english/>

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All Trustee Agreements and MOUs must be reviewed and approved by the Registrar prior to requesting consent to transfer:

- Trustee must take responsibility for all investments (Subsection 27(5) of the Trustee Act)
- Trust agreement is something more than a custodian agreement
- Capital cannot be released without Registrar's consent
- Cemetery operator cannot be compensated for placing funds with trustee.

Key Idea:

Possible trustees for the care and maintenance fund/account.

Question 17.

Who can be the trustee of a Care and Maintenance Account?

Answer 17.

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

A cemetery operator shall be the trustee of a care and maintenance account (CMA) if:

- Care and maintenance money being held is less than 50K
- The operator is the operator of a non-commercial cemetery, and
- The municipality has declined to hold the operator's funds, and
- The operator has obtained the consent of the Registrar and notify the Registrar in writing prior to using the account

The CMA shall i.e. be:

- maintained at an eligible depository (E.g. Bank)
- designated as the care and maintenance account
- established in the name of the cemetery operator as it appears on the license, as trustee
- used only as a care and maintenance account to hold care and maintenance trust money

Money in the account may be invested in:

- Interest-bearing account
- GIC's, deposit receipt, term deposit etc. issued by an eligible depository

Question 18.

For what purposes can the income from the Care and Maintenance Fund/Account be used?

Answer 18.

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USE OF INCOME - A cemetery operator who receives money i.e. income from the fund/account shall use the money only to maintain, secure and preserve the cemetery, including its grounds, buildings, structures and markers, and the equipment used to maintain, secure and preserve the cemetery

- if the work described above has been completed, to maintain, secure and preserve other cemeteries operated by the same operator, including their grounds, buildings, structures and markers, and the equipment used to maintain, secure, and preserve the other cemeteries, and
- to pay the expenses incurred in establishing and maintaining any of the cemetery's CMF/CMA or to purchase equipment to be used strictly for the care and maintenance of the cemetery, if,

A. the operator is no longer selling interment rights, and is no longer selling scattering rights, for the cemetery, and

B. the cemetery does not generate any revenue from the operation of a funeral establishment, crematorium, or transfer service or from the sale of caskets or markers.

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

More importantly:

No trustee of a CMF/CMA shall pay out any of the capital portion of the fund or account except as required or permitted by the FBCSA or the associated Regulations.

A trustee of a CMF/CMA may transfer the fund or account to another trustee, with the written consent of the registrar

Surplus interest i.e. unused interest, must be redeposited in the CMF/CMA. Interest not released cannot be released or used as a credit or later.

Question 19.

Are the cemetery operators able to access to the Capital of CMF/(CMA)?

Answer 19.

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

- Permit non-commercial cemetery operators to access the capital portion of a cemetery care and maintenance fund or account to increase the capacity of a cemetery subject to approval

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from the Registrar of the Bereavement Authority of Ontario (BAO), under the condition that the capital is paid back into the trust fund or account.

- The cemetery operator shall only use a payment received under subsection (1) to increase the capacity of the cemetery, including,
 - (a) to purchase land adjoining the cemetery in order to enlarge the cemetery;
 - (b) to establish a columbarium or mausoleum in the cemetery;
 - (c) to increase the volume of a columbarium or mausoleum in the cemetery;
 - (d) to establish a lot or scattering ground in the cemetery; and
 - (e) to increase the dimensions of a scattering ground in the cemetery.

Key Idea:

Access to the money from the care and maintenance fund/account.

Question 20.

If a Board decides to proceed with a scattering ground and opt for a scattering ground area PLUS allow the plot Right Holder to scatter ashes on their plot. In both cases, what C&M payments would apply?

1. In the case of a scattering ground for which there will be only one scattering rights holder, the greater of 40 per cent of the price of the scattering rights as set out on the price list and \$115.
2. In the case of a scattering ground for which there will be more than one scattering rights holder, the greater of 15 percent of the price of the scattering rights as set out on the price list and \$30.
3. In the case of a scattering ground for which there will be no scattering rights holders, \$30. O. Reg. 30/11, s. 168; O. Reg. 258/21, s. 10.

Answer 20.

Scattering on a lot/plot owned by an interment rights holder or two or more members of a family (husband/wife, for example), would fall under option 1. View it as a private lot/plot for that family only.

Scattering in a scattering ground for multiple scattering right holders (that are unrelated to each other) would be a public scattering ground that would fall under option 2.

Key Idea:

Scattering and interment rights holders. Scattering ashes and the options available.

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Question 21.

If a cemetery has a fee for residents and non residents and an individual is purchasing a niche for their parents who are deceased that were residents, then if she herself purchasing the niche is not a resident would she then be purchasing the niche as a non resident although her parents were residents? What would the correct way to proceed be?

Answer 21.

These are issues that arise and should have/could have been addressed in the by-laws to ensure everyone is treated equally. We suggest that you explain to the purchaser that if she wishes to purchase at the resident price then she can pay for the rights, but the Interment Rights Holders will be listed as her parents. You might consider naming all three as the Interment Rights Holders i.e., name the parents and her as the Interment Rights Holders then charge the resident price. It can further be finalized with the input from your legal counsel.

Key Idea:

Residents v/s Non-residents as Interment rights holder and the fees/costs associated

Question 22.

After 30 days/60 days when the C&M amount is in Trust, what can be refunded? What are “prescribed amounts” that can be withheld from refunds (from Act)?

Answer 22.

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. 23.

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

- If someone comes on day 31 and wants to get a refund on a lot then there are two options that a cemetery operator must make, and it must be specified in their by-laws
 - Resale to a third party. The transfer must be done through the cemetery operator. It cannot be sold for more than the current price list price. The cemetery operator must verify the holder of the plot before a sale is complete. The cemetery operator can charge an administrative fee for this. It can be included in the by-laws and price list.
 - Selling the plot back to the cemetery operator
 - Regarding prescribed amounts, this is referring to C&M and the related prescribed amounts of making contributions to the C&M fund/account.

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Key Idea:

Refund on sales after 30 day period and its effect on the care and maintenance

Question 23.

Services and Supplies monies paid for in advance of need (excluding above), including interest earned from Trust can be withdrawn at time of need/burial. Any interest earned more than the current cost of the burial is to be returned to purchaser/designee/estate (unless less than \$50 is owed). Any regulations on what can be done if interest does not cover the current cost of the burial?

Answer 23.

As of July 1, 2012, if someone has paid for supplies and services in full, it is guaranteed they will receive enough for the costs at the time of need.
Related to the difference of paying instalments and paying in full.

Key Idea:

Covering cost of burial in cases of prepaid services

Question 24.

If a cemetery offers 12–24-month installment payment plans for each payment, the applicable % (40/20/15) portion of each installment for property C&M is paid into the C&M trust within 60 days. Is this considered compliant? (e.g. installment payment is \$100/ month and each month \$40 goes to C&M Trust (40%) and \$60 goes to our general account.

Answer 24.

Yes, 40% of each instalment payment would go into C&M.

Key Idea:

Instalment plans and its effect on care and maintenance contributions

Question 25.

For Monument and Marker Trust, we do not sell Monuments/Markers, we only pour and provide foundation settings. Per a previous inquiry, “applicable amounts for C&M should be put in Trust

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when poured.” If it is paid in installment plans, this is still the case? It does not go into C&M Trust when it’s paid in full but when it’s poured.

Answer 25.

- There is no C&M on the foundation. It is on the monument or marker itself.
- The direct cost of the foundation can only be a direct cost to the cemetery operator. (Cost of the material, and cost of labour to pour that foundation in)
- If a marker is damaged, it is not the cemetery’s responsibility to replace it. Instead, they must keep it stable. If a cemetery does not have enough funds to stabilize it, they would have to instead lay the marker/monument flat.

Key Idea:

Foundation of the marker/monument and related care and maintenance contributions

Question 26.

Should an operator maintain separate trust accounts for monuments and plot sales?

Answer 26.

There is no requirement on the number of trust accounts that an operator should maintain. It is upon the operator to decide what makes sense for their cemetery. Though it would make more sense to have separate accounts to track the money but if it is a burden to the operator then one combined account is fine as well.

Key Idea:

Required number of trust accounts

Question 27.

Would an operator be required to collect C&M fee on memorial benches since they are not considered markers?

Answer 27.

The operator would be required to collect the care and maintenance fee on these benches since they would require care in perpetuity.

Key Idea:

Care and Maintenance requirements for Memorial Benches

Question 28.

With the rising interest rates, it is anticipated that the income from the C&M Fund may soon exceed the permitted expenses of a given cemetery. If such a situation arises, can the cemetery operator receive the income and then return it to the Fund after the annual reconciliation, or should they defer receipt of the income till they know the required amount?

Answer 28.

- a. Surplus interest i.e. unused interest, must be redeposited in the C&M.
- b. Interest not released by the permitted date cannot be released or used as a credit later.

Key Idea:

Affects of rising interest rates on C&M income

Question 29.

What can the care and maintenance expenses be used for? If a cemetery is planning to increase the money on grounds maintenance, essentially to bring it up to the standard of some of the large cemeteries. Would that be allowed?

Answer 29.

Yes, O. Reg. 30/11, s. 93 provides guidance on the allowable maintenance expenses. I have provided the excerpts below;

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

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- f. the operator is not permitted to use income from the fund or account to pay a worker wages or benefits for office work, sales work or engaging in, or supervising, the opening or closing of lots.

Key Idea:

Allowable care and maintenance expenses

Question 30.

If in the past years there was insufficient income, the cemetery had maintenance expenses more than the available income and the excess expense was documented in past financial reports. Would the cemetery be permitted to recover these funds as future income permits?

Answer 30.

Unfortunately, this is not permitted. Any income is to be utilized as per O. Reg. 30/11, s. 93. All surplus income should be reinvested as capital into the C&M.

Key Idea:

Use of surplus income as future income

Question 31.

Recently, that cemeteries have been able to apply to the Registrar to withdraw funds to purchase adjacent land for expansion purchases but if the adjacent land is not available, is there any possibility to use funds to purchase non-adjacent cemetery land?

Answer 31.

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

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

Frequently Asked Questions

(e) to increase the dimensions of a scattering ground in the cemetery.

Unfortunately, purchasing land with C&M money which is not adjoining the cemetery is currently not permitted.

Key Idea:

Use of borrowed capital for cemetery expansion other than adjacent land.

Question 32.

Does a funeral home have to give a financial accounting for money paid for a prepaid funeral?

Answer 32.

A home operator is required to report the financials for the monies received for prepaid funerals. The requirement is in accordance with the section 109 of the Ontario Regulation 30/11 ([Funeral, Burial, and Cremation Services Act, 2002](#)) as below.

109. (1) An operator that has established an individual trust account or a pooled trust fund for prepaid trust money shall file with the registrar annually, in respect of the trust money,

- (a) a statement of account;
- (b) a trust fund statement, in the case of a pooled trust fund; and
- (c) a review engagement report or an audit report. O. Reg. 30/11, s. 109 (1).

(2) Clause (1) (c) does not apply to a pooled trust fund where the amount held in trust did not exceed \$100,000 at any time during the reporting year. O. Reg. 30/11, s. 109 (2).

Key Idea:

Financial accounting and the math for prepaid funeral services

Question 33.

How can a licensee find out the reporting periods for the locations that have been closed, sold, or acquired, over the last few years and the names of the signing managers for each of the location? For example, SCIC.

Answer 33.

The Report of Prepaid Funds (RPF) is to be submitted within 90 days of the operator's fiscal year end.

Frequently Asked Questions

If SCIC has closed or sold a licensed funeral establishment (FE), the RPF could be submitted within 90 days of the closure or sale date OR within 90 days of SCI's fiscal year end, whichever makes more sense for you.

In the case of a purchase of an existing funeral establishment, there should be no gap in reporting periods with respect to the RPF. There are two scenarios to consider - asset purchase and sale (P&S) and share P&S:

- When someone is selling the assets of their FE, we expect the former owner to submit an RPF for their final reporting year. The new owner reports from their first ownership date to their fiscal year end.
- When someone is selling the shares of their FE, the seller and purchaser must determine who will be reporting on the outstanding period from the former owners' prior fiscal year end to closing date of the P&S; ideally, the former owner would submit an RPF for the time they owned the business, and the purchaser would just pick up from closing date of the P&S.

Key Idea:

Closed funeral homes and how to find information related to them

Question 34.

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

Answer 34.

Anytime, so long as the supplies and services have not been provided. However, the timing of the cancellation will affect the amount of the refund.

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

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

Note: None of the supplies or service have been used or provided i.e. under waiver

E.g. Interment rights used, cremations etc.

Request for cancellation must be in writing

Operator who receives notice of cancellation must refund all money together with amounts that are prescribed within 30 days of receiving the notice.

Key Idea:

Cancellation of contracts and the timeline

Question 35.

What are the exemptions from being licensed as a Sales Representative?

Answer 35.

The regulation provides an exemption from being licensed as a sales representative if 7. (1)(a) applies together with 7. (1)(a) or 7. (1)(b). In other words, a person is exempt if;

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

A commercial cemetery operator includes “not-for-profit” and “for profit” operators

AND

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

AND

The person is not selling or indicating that they are available to sell licensed supplies and service when:

1. The money paid by the consumer (for the contract) is required to be held in trust (i.e. pre-paid money) or
2. The payment for the contract is to be made by the proceeds of an annuity or insurance contract, including group insurance.

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

Key Idea:

Exemptions to being a licensed sales representative

Question 36.

What is the regulation regarding the Unclaimed Cremated Human Remains?

Answer 36.

An operator who has possession of unclaimed cremated remains that were not for the purpose of scattering or interment shall retain them until they are claimed or interred in a cemetery

If the cremated remains are not claimed within one year from the date of cremation and the operator has made reasonable efforts to contact the purchaser of the cremation service or personal representative/family member of the deceased the operator may have the remains reinterred in a cemetery, including in a common lot in a cemetery

Frequently Asked Questions

If the cremated remains are claimed before they are interred i.e. less than a year since the cremation was conducted, the operator shall refund any refundable deposit charged for the interment
The maximum amount that an operator may specify on the price list as a refundable deposit to inter unclaimed cremated remains is,
If the operator is NOT also a cemetery operator, \$350; or
If the operator is also a cemetery operator, the lesser of \$350 AND the minimum amount the operator charges for the interment of cremated remains in a common lot in the cemetery.

Key Idea:

Unclaimed Cremated Human Remains

Question 37.

What is an Interment Right?

Answer 37.

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

Question 38.

Who is “the” Interment Rights Holder?

Answer 38.

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

Question 39.

Who can apply to increase the size of the cemetery or to close a part of the cemetery?

Answer 39.

Only the landowner can apply to increase the size of a cemetery or to close a part of the cemetery! It has an impact on Municipalities (road widenings/development) when they are the licensed operator but are not the owner of the land. The municipalities cannot apply to close a part of the cemetery.

Question 40.

Is the license required to be displayed on the front entrance of a cemetery/crematorium?

Answer 40.

There is no requirement for a cemetery, crematorium, funeral establishment, and transfer service operators (bereavement service operators) to display their license or a copy of it near the main entrance of their establishment. However, it is required that every bereavement service operator who maintains or makes use of a website to promote, or to enter contracts for, the sale or provision of a licensed supply or service to make available in a clearly visible place on that website their license number and a description of their type of license.

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

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

Question 41.

What are the requirements for licensing for the operators and sales representatives?

Answer 41.

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

Frequently Asked Questions

(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 license and is acting on behalf of a cemetery operator; or
(b) the person is licensed as a cemetery operator.

Interring remains

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

Land for scattering

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

Fee for scattering

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

Question 42.

What are the duties and responsibilities of the owner and operator in operating their cemetery?

Answer 42.

Owner's (Landowner) duties

(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 the Act and the regulations.

Owner

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

Operator's duties

(3) A cemetery operator shall ensure that the cemetery is operated in accordance with the 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 always maintained in the cemetery.

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

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

Operator's duties re: employees, etc.

(5) A cemetery operator shall ensure that,

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

Frequently Asked Questions

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

Question 43.

If an operator is looking to change their fiscal year end, are there any documents required by the BAO to make the required changes?

Answer 43.

If an operator is looking to change their FYE, no paperwork is required on our end. They would have to deal with their accountant and advise us in writing when it has been changed. Ideally, we should be requesting a notice in writing from their accountant, either directly from the accountant or forwarded to us from the operator, regarding the FYE change.

Question 44.

What is the regulation regarding public access to information?

Answer 44.

Cemeteries must maintain a public register with information such as the name and address of interment rights holders, who is interred/scattered and the location of the lot or scattering ground... and more

Crematoriums must maintain a public register with information such as the name of person cremated, the date of cremation and the information on the metal tag – personal identifier for the body & name of crematorium operator.

Licensees are obligated to provide the registrar, within the time that the registrar specifies, the information that the registrar requests. This may include verification by affidavit.

The registrar is required to make available to the public, without charge, by electronic or other means information regarding a licensee such as the licensee's address and any disciplinary action taken against the licensee.

Question 45.

What are the obligations of the cemetery and crematorium operators?

Answer 45.

Frequently Asked Questions

1. Every operator shall provide, without charge a copy of a price list to every person who requests it.
Price list and Consumer Information Guide (As of July 1, 2021):
Requirement that every bereavement service operator who maintains or makes use of a website to promote, or to enter contracts for, the sale or provision of a licensed supply or service to make available in a clearly visible place on that website:
a free, printable electronic version of the operator's price list; and
a link to the consumer information guide prepared by the Registrar of the BAO.
2. Every operator of a cemetery or crematorium shall provide a copy of the by-laws to every person who requests it.
3. Every operator shall ensure that, before a contract for the sale of licensed supplies and services is entered, a prospective purchaser has also received:
 - A copy of the Consumer Information Guide
 - A copy of the operator's price list
 - Disclosure related to the contract (See section 113 of O. Reg. 30/11)

Question 46.

What are the annual reporting requirements to the registrar?

Answer 46.

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

Question 47.

What are the rules/requirements related to the by-laws of a cemetery?

Answer 47.

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

By-laws are a vital requirement for a contract to be valid i.e.:

- in the case of a contract for the purchase of interment or scattering rights, the operator delivers to the purchaser,
- a copy of the by-laws of the cemetery and written notice as to whether the by-laws of the cemetery permit the purchaser to resell the interment rights or scattering rights to a third party, and
- a description of the location of the lot or scattering ground that is purchased.
- in the case of a contract for the purchase of crematorium supplies and services, the operator delivers to the purchaser a copy of the crematorium's by-laws; and

By-laws are an integral requirement for the resale of Interment Rights i.e.:

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

Question 48.

What are the rules/requirements related to the by-laws of a crematorium?

Answer 48.

- A crematorium operator may make by-laws governing the operation of the crematorium, including any rights or entitlements of purchasers of crematorium services or restrictions on the rights or entitlements of such purchasers
- No crematorium operator shall operate a crematorium except in accordance with the by-laws of the crematorium
- No crematorium operator shall cremate animal remains unless the by-laws of the crematorium authorize it
- The by-laws of a crematorium shall specify the documentation required by the operator in order for a cremation to be carried out
- The by-laws of a crematorium shall provide that, without the written and signed consent of the purchaser of the cremation services, the operator is prohibited from,
 - (a) cremating the remains of more than one person at once;
 - (b) cremating human remains together with animal remains; and
 - (c) co-mingling cremated remains

Question 49.

What is the submission procedure for approval of the by-laws?

Answer 49.

NO CEMETERY &/OR CREMATORIUM BY-LAW OR BY-LAW AMENDMENT IS EFFECTIVE UNTIL THE REGISTRAR, FBCSA, BAO, HAS APPROVED IT

The exception to obtaining the registrar's approval applies to a standardized by-law previously approved by the registrar. however, the notice provisions still apply

Notice of filing must be:

- a. Published once in a newspaper with general circulation in the locality in which the cemetery is located.
- b. Conspicuously posted on a sign (for 4 weeks) at the cemetery entrance.
- c. Delivered to each supplier of markers who has delivered a marker to the cemeteries during the previous twelve-month period

The notice shall state that the owner will allow interested parties access to the proposed by-law to make copies of it and that all proposed by-laws are subject to the Registrar's approval

The owner shall allow interested persons to inspect and make copies of the proposed by-law.

Frequently Asked Questions

The Licensing Officer, BAO will therefore require the following:

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

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

PROVIDING COPIES OF BY-LAWS

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

Question 50.

What are the submission procedures for approval of Standardized By-laws?

Answer 50.

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

Question 51.

What are the conditions of the approval or revocation of by-laws by Registrar?

Answer 51.

Approval

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

Revocation

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

Question 52.

How are the Unlicensed, Neglected and Abandoned Cemeteries dealt with?

Answer 52.

Neglected Cemeteries:

A municipality may order a cemetery operator who does not keep the cemetery in good order and repair to restore it to good order and repair

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

Abandoned Cemeteries:

An application to declare a cemetery abandoned may be made to a judge of the Superior Court of Justice, if the owner of the cemetery,

- a. cannot be found or is unknown; or
- b. is unable to maintain it; or
- c. is not a licensed operator and there is no licensed operator

The application may be made by the Crown, the local municipality, the owner or operator, or the Registrar, FBCSA, Ministry of Government and Consumer Services

Frequently Asked Questions

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

Question 53.

How does the municipalities support the cemeteries?

Answer 53.

Proactive support of Municipalities:

The BAO seeks the assistance of Municipalities to:

to proactively offer support and assume responsibility of cemeteries – community, family and volunteer run etc., by providing maintenance and materials, and/or administrative assistance so that those cemeteries can continue to serve their communities without having to resort to complete abandonment

locate/identify cemetery sites within the jurisdiction which are not currently licensed under the FBCSA.

Unlicensed Cemetery Sites:

All landowners in Ontario are required by the FBCSA to be licensed as the operators of these important historic, heritage cemeteries

Municipalities can assist by either providing the landowners with the contact information of the BAO or providing the BAO with the contact information and addresses/location of these cemetery sites.

Question 54.

What sort of approvals are required to establish a new cemetery?

Frequently Asked Questions

Answer 54.

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

Question 55.

What is the process to license a Cemetery Operator?

Answer 55.

- Application for Registrar’s Consent to Establish and for a License to Operate once Municipal Approval received:
- Completed application must also include:
- In the case of a licence to operate a cemetery, crematorium, funeral establishment or transfer service, the application shall be accompanied by confirmation from the local municipality that the proposed use is a permitted use and is in accordance with applicable municipal by-laws and that the plans have been approved by the local municipality.
- **A general plan of the cemetery drawn to scale showing compass bearing, lot numbers and the location and dimensions of ever lot, scattering ground, walk, fence, road, watercourse, building and adjoining road in the portion of the cemetery to be available for interments or scattering.

**A general plan:

Frequently Asked Questions

- prepared by an Ontario Land Surveyor or from a deposited reference plan of survey of the cemetery, and
- certified by the applicable local municipality or Minister of Natural Resources and Forestry as having been approved by the municipality or the Minister.

**** Submit in duplicate**

- A copy of any site plan agreement under the Planning Act, R.S.O. 1990, chapter P.13 that is relevant to the cemetery.
- A certificate of the Medical Officer of Health stating that the land is suitable for use as a cemetery.
- Any designation under the Ontario Heritage Act

Note: The cemetery operator must keep a copy of the general plan available for public inspection during regular business hours.

Completed application must also include:

- A copy of the cemetery operators proposed by-laws governing the operation, governing rights, entitlement, and restrictions etc., for approval by the Registrar
- Proof of notice in newspaper i.e. actual tear sheet
- Photos of posted notice
- A copy of the operator's price list
- A copy of the contract and certificate of interment rights
- Proof the establishment of a \$100,000 Care and Maintenance Fund with a trustee or proof of an exemption from this requirement. Note: \$165,000 as of January 1, 2022.

On submission of the application, required documents and evidence of a Care and Maintenance Fund having been established, a cemetery operator is licensed to operate a cemetery.

- The Certificate of Consent with respect to the cemetery that is issued by the registrar must be registered in the Land Registry Office. Upon registration the lands described become cemetery lands.
- Educational Requirements: Operator expected to ensure staff are appropriately trained to ensure Consumer Protection and FBCSA compliance. On-line and in-person (workshops, seminars) for Sales Representatives and operations staff.

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

Question 56.

What sort of approval is required to establish a crematorium?

Answer 56.

Frequently Asked Questions

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

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

Prescribed circumstances: Required by Ontario Regulation 30/11, 184/12 & 306/16

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

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

Question 57.

What risks are to be considered in a crematorium?

Answer 57.

Risks that should be considered:

- Identification of deceased prior to cremation i.e. human remains at point of pick-up
- Correct identification of cremated remains and verification of after cremation and prior to release of cremated remains to family

- Fire Safety: In the last 5 years, 3 large crematoriums experienced large destructive fires
- Concerns raised by these 2 recent occurrences relate to:
 - Injury to persons – Employees, Witnesses to cremations, Fire Department personnel etc.
 - Loss of deceased’s remains
 - Loss of, and damage to records
 - Damage to small columbaria located near cremator/retorts can result in upset to families, replacement cost of sentimental objects placed in niche and more importantly loss of remains and cost of temporary storage and replacement.

Question 58.

What is the process to license a crematorium operator?

Answer 58.

- Must apply for a license to operate a crematorium & for Registrar’s Consent if the crematorium is to be established on a cemetery
- The application for a license to operate a crematorium must include:
 - a complete Bereavement Authority of Ontario application form and fee of \$500
 - confirmation from the local municipality that:
 - the proposed use is a permitted use and is in accordance with applicable municipal by-laws
 - the plans have been approved by the local municipality.
 - a copy of the Environmental Compliance Approval (“ECA”), from the Ministry of Environment and Climate Change (MOECC), required under section 9 of the Environmental Protection Act, for the discharge of contaminants (including noise) to the air outside of the facility.
 - Two (2) copies of plans or drawings (architectural drawings with an engineer’s/architect’s seal) of the site, building, location of cremation chambers, processing area, and body storage areas.
 - Two (2) copies of the proposed crematorium by-laws
 - Copy of published notice from newspaper i.e. tear sheet
 - Photo of posted sign.

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- Evidence of educational requirements: Operator of equipment and all staff handling cremation must attend the Crematorium Operator's Certification Training (2-day in class + 50 Cremations) offered once a year by the Ontario Association of Cemetery and Funeral Professionals.

Question 59.

What are some of the recommendations for the crematorium operators under FBCSA- Sections 86 – 87 and O. Reg. 30/11- Sections 146-149?

Answer 59.

- Recommendations to ensure public safety when licensing technologies for the disposition of human remains in a flame-based Crematorium.
- Submissions/details to be provided or indicated in the application for a Crematorium Operator's Licence:
- Description and design of the equipment – cremation chamber, stack etc. and materials used:
 - Refractory lined stack – Insulating fire brick or castable (like concrete) material to insulate to 1000 degrees Celsius
 - Stainless steel stack – Insulate from 800 to 1000 degrees Celsius
 - Details of stack clearances – proper set back from stack; usually required by the manufacturer of the equipment
 - Recommend non-combustible materials lined with cement board with necessary clearances from the stack. E.g. Steel walls, roof trusses etc.
 - Fire rated glass for any windows and doors in proximity of cremation chamber
 - Prohibit family members from coming into immediate area of Unit
 - Prohibit access to the front of viewing window on unit as radiant heat may be a concern.
- Mandatory use of Personal Protective Equipment per Ministry of Labour guidelines
- Ensure loading doors have safety device
- Use of remote starters
- Description and design of the Viewing Room:
 - Glass – Fire rated glass with automatic steel shutters
 - Concrete non-combustible flooring.
- Description and design of any elevating/lift devices used as part of the operations and requirement for regular inspections.
- Description and design of the Holding Room:
 - Cooler should be fire rated
 - Non-combustible and fireproof- Masonry block, metal, cement board.
 - Inspected and approved by Technical Standards and Safety Authority
 - MOL review and inspections re: Safety and working conditions of staff

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- TSSA approvals for fuels and their supply and storage
- ESSA &/or CSA approval for electrical equipment
- MOE approvals for emissions.

Question 60.

What are some Prohibitions & Concerns related to Cremation under O. Reg 30/11, Sections 31 (2)(2.1)(3), O. Reg. 412/19 Section 1?

Answer 60.

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

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

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

1. The Coroner's Certificate to Cremate &
2. Coroner's Certificate to Transport a dead human body out of the province.

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

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

- (a) it is at least two years after the day the body received the implant; or
- (b) a lesser time has passed since the body received the implant, and it is safe to cremate the body. O. Reg. 412/19, s. 1. (See proposed guidance in next slide)

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

Question 61.

What is the process for a hydrolysis license?

Answer 61.

Alternative dispositions of human remains;

1.1.(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

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processes or methods of disposing of human remains and to those processes or methods.

Hydrolysis (also called Alkaline Hydrolysis, aquamation, biocremation, resomation, flameless cremation, or water cremation) is a process for the disposal of human remains using lye – either potassium hydroxide or sodium hydroxide, water, and heat. The process is being marketed as an alternative to the traditional options of burial or cremation.

Recommendations to ensure public safety when licensing technologies for the disposition of human remains by alkaline hydrolysis liquification:

- Submissions/details to be provided or indicated in the application for a Crematorium Operator License.

Question 62.

What are the steps involved in transferring the responsibility of a cemetery to a municipality when the board folds?

Answer 62.

If the current cemetery operator just abandons the cemetery, the cemetery will have to be legally declared abandoned by the Superior Court. This can take a couple of years in which case, at the end, the Court automatically deeds the cemetery to the municipality and appoints that municipality as the licensed operator. That is worst-case scenario. You can review the abandonment process in the [Funeral, Burial and Cremation Services Act, 2002, S. 101.1](#).

It is better if the municipality is willing to take responsibility of the cemetery by mutual agreement. The BAO does not currently have an application for transfer of a cemetery.

The BAO collects documentation from both transferor and transferee.

From the cemetery operator we will need;

1. A letter requesting the transfer;
2. A letter authorizing the transfer (these can be in one letter); and
3. A map or survey depicting the burials and lot layout.

From the municipality we will need:

1. A letter accepting responsibility of the cemetery; and
2. Land Registry Abstract (if the land is deeded to the municipality).

If all reports are up to date Financial Compliance will facilitate the transfer of the C & M Funds. Once that is complete the Licensing Department transfers the site.

Typically Financial Compliance will send an [Application to Transfer Care & Maintenance Funds](#) to the transferor, however, you may use this link to submit the application with your other documentation.

Question 63.

Does the operator of the cemetery have to allow public access to a cemetery? Does this have to be a paved road? Does the cemetery have to be fenced?

Answer 63.

- The cemetery operator must allow members of the public to have reasonable access to the cemetery.
- The cemetery operator may set rules regarding hours of operation, visitation or access to the cemetery. These rules must be outlined in the cemetery operator's by-laws.
- The operator is not required to construct a paved road into the cemetery or a fence.
- An interment rights holder, which is the holder of the rights to a specific grave/lot, plot, niche or crypt in the cemetery, has the right to reasonable access to the grave/lot, plot, niche or crypt to which his/her interment rights relate.

Key Idea:

cemetery operator access and visitation by-laws in a cemetery

Question 64.

We have been asked by a few funeral homes if we are able to give reimbursements or commissions for the business they bring us. As they are getting commissions back from other crematoriums they use.

Please let us know if this is allowed or not and if so how we depict this on a contract for the family to see.

Answer 64.

With regard to your request for clarification on giving reimbursements or commissions for business brought by a funeral home, the Act does not prohibit a crematorium operator from giving consideration and benefits to another operator or person by reason of recommendations. Please note however, that section 113 of Ontario Regulation 30/11, made under Funeral, Burial and Cremation Services Act, 2002, sets out disclosure requirements of an operator before a contract is made.

Specifically, section 113(1)(k) states that if consideration and benefits are due to the operator or another person by reason of recommendations made to the purchaser with respect to particular supplies or services that the purchaser will contract for with a third party other than the operator, a

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statement to that effect shall be included in the contract. In addition, section 121(3)9 requires that that information appear in the contract along with the name of the person providing the benefit.

The Bereavement Authority of Ontario encourages all operators to seek legal advice regarding their contracts and the disclosure requirements to prospective purchasers.

It is important to note that the price list can only reflect a price for the services and cannot include a fee for any commission or benefit payable.

Key Idea:

Considerations and benefits

Question 65.

What should I do when human remains are discovered outside of a cemetery?

Answer 65.

- The FBCSA outlines a process for handling the discovery of human remains, at a burial site. A burial site is land outside of a cemetery where human remains have been buried.
- Burial sites are usually discovered:
 - o Accidentally by someone who is digging or excavating during home renovation or construction
 - o During development activities, like building or road widening
 - o During an archaeological assessment
- Anyone who discovers human remains must immediately stop all work and notify the police or coroner, who will investigate the discovery. Once the police and/or coroner complete their investigation, the discovery must be reported to Ontario's Registrar of Cemeteries. During this process, the land owner is required to secure and protect the site.
- After forensic interest is ruled out, the land owner is required to have an archaeological investigation done by a licensed archaeologist to determine the origin and nature of the site. An archaeologist will try to determine the age of the burial site and the cultural origin of the remains.
- Based on the archaeologist's report, the Registrar will declare the site to be an aboriginal peoples' burial ground, a burial ground or an irregular burial site (i.e. a site where there is no evidence of an intention to bury the human remains at that specific place). The Registrar will also use the information from the archaeologist's report to determine the most appropriate representatives of the person or persons buried at the site and notify these representatives of the discovery.

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- The landowner and the representatives of those buried at the site will be sent a Notice of Declaration. This notice will identify the owner of the land and the representatives involved. These individuals will negotiate how the site and the remains are to be dealt with. The agreement made between the parties is set out in a document called a Site Disposition Agreement.
- For example:
 - o The burial site may be established as a cemetery
 - o The remains may be disinterred and reinterred in a registered cemetery within the municipality
 - o If the remains are aboriginal, they may be disinterred and reinterred in a First Nation Reserve
- The Site Disposition Agreement provides a legal description of the location of the burial site and outlines the style and manner in which the human remains shall be disinterred and reinterred, the time frame involved, the provisions for future maintenance of the site, the allocation of the costs involved and any other matters the parties agree to.
- If a site disposition agreement cannot be reached, the matter may be referred to arbitration. A decision made by arbitration is binding.

Key Idea:

Human remains discovery outside of a cemetery

Question 66.

How do I establish a cemetery or a crematorium in Ontario?

Answer 66.

- To establish a cemetery (which includes a columbarium, mausoleum or scattering ground) in Ontario, the applicant must first obtain municipal approval. The applicant may also require zoning, planning or environmental approvals.
- Once municipal approval is obtained, the applicant must obtain consent from the Registrar of Cemeteries and Crematoria to establish the cemetery. The applicant must complete a consent application and include the required supporting documents listed on the application, including municipal approval, plans, surveys, the proposed by-laws. There is no fee for this application.
- The applicant must include additional information, as noted on the application, if the applicant is establishing a columbarium, mausoleum or crematorium on the cemetery.
- To establish a cemetery, the applicant must also establish a care and maintenance trust fund and deposit an initial amount of \$100,000 into this fund. The purpose of the fund is to generate income/interest that can be used to maintain the cemetery in perpetuity. A copy of

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the trust fund agreement, a statement showing the account information and confirmation that the initial amount of \$100,000 has been deposited into the fund is required before consent can be given.

- The applicant is required to obtain a cemetery operator's license by completing a cemetery operator's license application. The fee for the license is \$500.
- If the applicant will be establishing a crematorium on the cemetery, the applicant must also complete a crematorium operator's license application. The fee for the license is \$500.

Key Idea:

Establishing a new cemetery

Question 67.

How do I establish a crematorium off cemetery land in Ontario?

Answer 67.

- To establish a crematorium in Ontario that will not be located on cemetery land, the applicant is required to obtain a crematorium operator's licence. The fee for the licence is \$500.
- The licence application may be downloaded from the Bereavement Authority of Ontario website at www.bereavementauthorityontario.ca. Click on "Industry Resources" and then "Cemetery and Crematorium Professionals" and then "Forms". You can also access the FBCSA through the BAO's website. Contact the BAO directly if you would like an application mailed to you.
- The applicant must include the following supporting documentation with the application:
 - Evidence of municipal approval – a building permit is evidence of municipal approval
 - Copy of the published newspaper notice confirming the municipality's decision
 - Copy of the environmental compliance approval issued under s. 9 of the *Environmental Protection Act* from the Ministry of the Environment
 - 2 copies of the plans or drawings of the site and building showing the location of the retorts, processing areas and storage areas
 - 2 copies of the proposed crematorium by-laws
 - A statement from the operator regarding the completion of a crematorium operator's training program or the intent to complete a crematorium operator's training program

Key Idea:

Establishing a crematorium off a cemetery land

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