

## Reasonable Cemetery Access

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### 1. Purpose

The purpose of this guideline is to define the Bereavement Authority of Ontario's position related to the requirement for a cemetery landowner/operator to provide reasonable access to a cemetery site pursuant to clause 5(3)(c) of the *Funeral, Burial and Cremation Services Act, 2002* (FBCSA).

### 2. Scope

This guideline applies to all licensed cemetery operators in Ontario and landowners upon which cemeteries are located.

### 3. Definitions

Reasonable: based on or using sound judgement and therefore fair, practical, and acceptable.

### 4. Guidelines and Application of the FBCSA

In deciding what is reasonable access to a cemetery, the primary consideration is the provision set out in the FBCSA that every person has reasonable access to a lot or scattering ground at any time except as prohibited by the cemetery by-laws.

A licensed cemetery operator/landowner may have bylaws that provide the hours of access to that cemetery. Note: Cemetery operators who continue to sell Interment Rights and/or conduct interments must have bylaws approved by the Registrar, FBCSA.

The provision is easily applied to active cemeteries whose by-laws have been approved by the Registrar as they will clearly state the hours and days that the cemetery is open to visitors.

For cemeteries located on a portion of private property, the expected compliance with this requirement of the law is less clear. Consideration should be given to the location of the cemetery within the property. If the cemetery is on a part of the property surrounded by areas used by the landowner for residential or other purposes, the landowners must provide reasonable access including a safe pathway to the cemetery.

The landowner may expect cooperation from visitors and suggest the following:

- Visitors to the cemetery may only attend during normal daylight hours.
- Visitors must notify the landowner of their planned attendance, and attendance is subject to approval based on the request's reasonableness.

- Visitors may only access the cemetery with the landowner's consent and the landowner may accompany the visitor to the site.
- Visitors to the cemetery are required to conduct their visit in a quiet and orderly manner, i.e., visitors must get the landowner's consent to hold family/community picnics, parades or other respectful and dignified activities at the site.
- Visitors must not damage the cemetery or the surrounding property (landscaping, crops, buildings, and fences) during their visit.
- Visitors must not leave memorials or other items without the permission of the landowner.

Any official from the BAO must be provided access to the cemetery site, including the identified place of cemetery business, as provided for in the legislation.

## 5. Related Policies

KMS Article: Cemetery Access

## 6. References/Citations

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

Duties in operating cemeteries

Owner's duties

5 (1) An owner of a cemetery shall,

- ensure that the cemetery is operated and maintained by a person who is licensed to operate the cemetery; and
- 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,

- 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;
- 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
- 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).

## **Ontario Regulation 30/11**

**150.** (1) A cemetery operator may make by-laws governing the operation of the cemetery and, in particular, governing rights, entitlements and restrictions with respect to interment and scattering rights. O. Reg. 30/11, s. 150 (1).

(2) 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. O. Reg. 30/11, s. 150 (2).

(3) No cemetery operator shall operate a cemetery except in accordance with the by-laws of the cemetery. O. Reg. 30/11, s. 150 (3).

(4) A cemetery's by-laws shall specify the documentation required in order to carry out an interment, scatterings or the installation of a marker. O. Reg. 30/11, s. 150 (4).

(5) A provision of a cemetery by-law made before the day the Act comes into force that is inconsistent with the Act or regulations is invalid and of no effect and the approval of the registrar of it shall be deemed to be revoked without any further notice. O. Reg. 30/11, s. 150 (5).

### **Approval of by-laws**

**151.** (1) No cemetery by-law or by-law amendment is effective until,

(a) the cemetery operator has filed it with the registrar in a form and manner approved by the registrar and has complied with subsection (3); and

(b) the registrar has approved it, except if subsection (2) does not require it to have the registrar's approval. O. Reg. 30/11, s. 151 (1).

(2) A by-law or by-law amendment filed by a cemetery operator is not required to have the registrar's approval if,

(a) it is a standardized by-law previously filed with and approved by the registrar; and

(b) the cemetery operator filing the by-law or by-law amendment has provided the registrar with details of the standardized by-law. O. Reg. 30/11, s. 151 (2).