

**AN OVERVIEW OF THE
FUNERAL, BURIAL AND CREMATION SERVICES ACT**
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The *Funeral, Burial and Cremation Services Act, 2002* came into effect on July 1, 2012, replacing the *Cemeteries Act* and the *Funeral Directors and Establishments Act*. It is the result of years of consultation with stakeholders.

Consumers in need of bereavement services are often vulnerable due to grief over the recent death of a loved one. As a result, the government of Ontario has strengthened the rights of consumers in this new legislation. It is interesting to note that the government chose not to create a model of self-regulation by the industry as it has done other areas, such as retirement homes.

This article will highlight some of the most significant rights available to consumers.

Contract Requirements

Under the *Funeral, Burial and Cremation Services Act*, every contract for bereavement services made with a cemetery, crematorium, funeral establishment or transfer service must satisfy certain legal requirements. The contract will not be enforceable if these requirements are not met.

The contract must be in writing and signed by both parties. It must be written in plain language and legibly printed in 10 point or larger type. Any written materials must be provided in accessible formats, such as large print or audio, at no additional cost when needed to accommodate a person with disabilities.

All bereavement businesses must also give customers a detailed and current price list of the supplies and services they sell. These must include any package prices, minimum prices and the range of prices for interment and scattering rights.

Interment rights refer to the right to place human or cremated remains in a grave, crypt or niche. Cemeteries do not sell the land that is a lot or plot, but only the rights to be buried in the lot or plot. Scattering rights include the right to direct the scattering of cremated human remains on the designated scattering grounds within a cemetery (if the cemetery offers this service).

The contract must include a statement if the bereavement provider is receiving a commission for recommending certain supplies or services.

The purchaser's cancellation rights under the *Funeral, Burial and Cremation Services Act* must be included in the contract.

Right to Cancel Contracts

The new law also gives consumers a 30-day "cooling-off" period. Within 30 days of making a purchase, a consumer may cancel any purchase contract and receive a full refund on any funeral supplies and services that have not yet been provided. Within the 30-day cooling-off period, the operator may not charge any administrative fees or make any other deductions from any amounts already paid, which are to be refunded in full.

Once the 30-day cooling-off period has expired, a consumer may still cancel any funeral services contract and receive a refund for any unused funeral supplies and services, minus a cancellation fee. The amount of the cancellation fee is limited to 10% of the contract price to a maximum of \$350.

A funeral services operator is not obliged to give any refund whatsoever on funeral supplies and services that have already been used, whether before or after the expiry of the 30-day cooling-off period.

Guaranteed Contracts

Many people prepay their funeral because they want to ease the burden on their family and friends, both emotionally and financially. The *Funeral, Burial and Cremation Services Act* says that all prepaid contracts must be guaranteed. Once a consumer has paid for all funeral supplies and services as set out in a contract, the operator cannot charge any more than the contracted amount, even if prices have increased. However, provincial and/or federal taxes are not guaranteed and will be charged if there has been an increase since the signing of the prepaid contract. Any extra services or supplies that were not included in the prepaid contract will also have to be paid by the consumer.

No Pass-Through of Other Charges

All cemeteries and crematoriums must be licensed, and their sales representatives must also be licensed. In the past, some operators may have included licensing fees in consumer contract or invoices. Under the new law, consumers can only be charged for supplies and services. The payment of

licensing fees and license renewal fees are the responsibility of the funeral services operators, and these costs cannot be passed on as a separate charge to the consumer.

Resale of Unused Interment and Scattering Rights

Interment and scattering rights holders may now resell these rights on the open market, unless the cemetery has enacted a by-law that specifically prohibits the transfer of these rights.

If a cemetery prohibits the sale of interment and scattering rights to a third party, then in addition to any other rights of cancellation, the rights holder may give the cemetery operator written notice requiring the operator to repurchase the interment and scattering rights. A repurchase of rights by the cemetery can be more valuable than the cancellation of a contract to the rights holder because the cemetery operator must pay back either all money that was received by the operator under the contract, or the market value of the interment and scattering rights, whichever amount is greater, minus the amount of the operator's contribution to the cemetery's care and maintenance fund under the contract being cancelled.

If, at the time of repurchase, the price for the interment and scattering rights is not set out on the operator's price list, their market value is deemed to be equal to the value of interment and scattering rights of an equivalent or better lot located in the cemetery to which the cancelled contract relates. Or, if there is no equivalent or better lot in that cemetery, it is valued against another cemetery within the same geographic location that is similar in terms of size, religious or ethnic affiliation and for-profit or not-for-profit operation.

The maximum price that can be charged on a resale of interment or scattering rights is the amount shown for those rights on the cemetery's price list. Any resale and transfer of interment and scattering rights to a third party must be carried out through the cemetery operator who will verify that the transferor has ownership of the rights being sold. A cemetery operator may charge an administrative fee for issuing a new interment and scattering rights certificate, and for providing additional copies of the cemetery by-laws, if they are required.

No person shall purchase interment rights or scattering rights for the sole or primary purpose of reselling the rights with a view to making a profit.

Remedies

Depending on the type of operator, complaints are made to either the Board of Funeral Services or the Cemeteries Regulation Unit. The Board of Funeral Services oversees funeral directors, funeral homes and transfer services. The Cemeteries Regulation Unit, which is part of the Ministry of Consumer Services, oversees cemetery and crematorium operators.

These two bodies have the authority to:

- Require providers to respond to complaints;
- Attempt to mediate or resolve complaints;
- Give the provider a written warning;
- Require the provider to attend educational programs;
- Refer the matter in whole or in part to a discipline committee;
- Revoke or refuse to renew a license; and
- Take such further action as is appropriate.

Consumers with a complaint should send their written complaint to the Board or Unit, along with their contact information, an explanation of the problem(s) and copies of any supporting documentation.

Conclusions

The *Funeral, Burial and Cremation Services Act* should make the law governing funeral services more accessible and understandable. It also provides important new consumer protections that give greater certainty of the cost of funeral services. Furthermore, if a person has already purchased a cemetery plot, but should at some later time change his or her mind, the new law provides much needed flexibility in disposing of funeral and interment services that are no longer wanted.