

# Post-mortem and Funerary Law in Ontario — A Summary

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## Introduction:

What is found herein is based on Ontario's *Funeral, Burial and Cremation Services Act*, 2002. <https://www.ontario.ca/laws/statute/02f33> The primary purpose of the Act is to protect the purchaser of funeral and cemetery supplies and services. It does not concern itself directly about religious rites. Traditional Orthodox Christian burial societies as long as they do not receive money for the services they provide, can do so without a license. N.B. anyone providing embalming services must be licensed.

Since this Summary is written with the traditional Orthodox funeral service in mind, it does not address aspects of the Act that fall outside that parameter, e.g. cremations. Most of the Summary is word for word from the Act itself, or taken directly from the website of the Bereavement Authority of Ontario, <https://thebao.ca> the office that oversees funeral establishments, transfer services and cemeteries.

Please note that what is found herein is only general information, subject to change by regulations issued by the Lieutenant Governor of Ontario in Council (Ontario Cabinet). It does not replace the Act. Readers are encouraged to retain qualified and independent legal counsel as needed.

The Summary is divided into three areas: funeral laws; cemetery laws; and laws that pertain to both funeral matters and cemeteries.

## Funeral Laws:

1. Who has the legal authority to make funeral arrangements?  
Only certain people have the legal authority to decide what will happen to the body of the deceased person. **In order of priority**, they are:
  - a) An estate trustee usually referred to as the executor. This person is named in the will of the deceased or is appointed by the court.
  - b) A spouse.
  - c) Adult children.
  - d) Parents of the deceased.

Expect to provide photo ID and proof of your authority before you make arrangements.

2. What are human remains?  
This is the term that the Act uses to refer to a dead human body.
3. What is a funeral establishment?  
Funeral establishment means premises established for the purpose of temporarily placing dead human bodies so that persons may attend and pay their respects.
4. What are funeral services?  
Funeral services means the care and preparation of dead human bodies, the co-ordination and provision of rites and ceremonies with respect to dead human bodies and the provision of such other services as may be prescribed, but does not include cemetery services.
5. Who may provide funeral services?  
Funeral services in which the provider receives payment for such services may be provided only by those licensed to provide such services. If no payment is made family, friends and burial societies may provide funeral services.
6. What is a transfer service?  
Transfer service means a service to the public with respect to the deposition of dead human bodies, including the transportation of dead human bodies and the filling out of the necessary documentation with respect to the deposition of dead human bodies.
7. Must a service provider such as a funeral establishment or a transfer service be used?  
No. You do not have to use a funeral establishment or transfer service. A family member of the deceased, friends or a burial society can arrange funeral services without a license if he/she/they is not being paid. **The death must first be registered before a burial permit can be issued and a burial permit is needed for a burial.**

8. What is defined as a casket?  
Casket means a container intended to hold a dead human body for funeral or interment purposes, and that is not a vault, burial container or a grave liner.
9. Must a casket be purchased from a funeral establishment?  
No. It can be purchased from another supplier even one who is not licensed but check with the funeral establishment to see if they will accept the casket. The funeral establishment is not permitted to charge you for accepting the casket. If you purchase a casket from a licensed provider e.g. a funeral establishment, they must offer their full range of caskets.
10. Is a casket required for interment?  
No. The law in Ontario does not require a casket but the by-laws of a particular cemetery may. While a casket makes it easy to transport the body, the use of a bier and a burial shroud would be suitable. It is important that the body remains secure at all times in order that it is treated with dignity and respect.
11. What does embalm refer to?  
Embalm means to preserve and disinfect all or part of a dead human body by any means other than by refrigeration, but does not include religious rites relating to the washing of a body.
12. Who may provide embalming?  
Only those persons who are licensed may provide this service. A funeral establishment is licensed to perform embalming.
13. Is embalming required?  
No. It is not required in Ontario. However, if a body is being transported out of the Province of Ontario check both with the place it is being transported to, and with the provider of the transportation, as either of them may require embalming.
14. What is the protocol for moving the deceased out of province?  
If a body is being moved out of Ontario, a certificate from a coroner is needed. One must adhere to the laws not only in Ontario but also in the province or country that is receiving the human remains. One is best to consult with a funeral establishment or transfer service to handle such a move.
15. What can be used in place of embalming?  
Funeral establishments generally have refrigeration on site. In the church, dry ice can be used to keep the human remains cool.

## Cemetery Laws:

1. Where must dead human bodies be buried?  
They must be buried or interred in a licensed cemetery that is currently registered under the “Funeral, Burial and Cremation Services Act of 2002.” They may not be interred anywhere else, including private or crown land.
2. Must all cemeteries accept any dead human body for burial?  
While most cemeteries in Ontario accept any dead human remains for burial, some cemeteries are established for a particular religion and according to their by-laws will only accept for burial members of their own religion.
3. What is a cemetery lot?  
Lot means an area of land in a cemetery containing, or set aside to contain, interred human remains and includes a tomb, crypt or compartment in a mausoleum and any other similar facility or receptacle.
4. What is a cemetery plot?  
Plot means two or more lots in respect of which the rights to inter have been sold as a unit.
5. What is a mausoleum?  
Mausoleum means a structure, other than a columbarium, used as a place for the interment of human remains in tombs, crypts or compartments.
6. Does one purchase a part of the cemetery when one buys a lot?  
No. One does not purchase land in a cemetery. The purchaser acquires burial rights to a specific lot. These rights are for perpetuity unless transferred to another person before an interment has taken place.
7. What is a cemetery care and maintenance fund or account?  
It is a trust fund. All cemeteries must maintain such an account. It is to generate income (interest only) for the care and maintenance of the cemetery. Currently a minimum of 40% of the sale price for interment rights for a lot must be placed into the fund.
8. What are cemetery by-laws?  
By-laws when used in relation to a cemetery refer to the written rules under which the cemetery is operated. By-laws differ from cemetery to cemetery. **Read the by-laws before purchasing burial rights or any cemetery supplies or services.**
9. What is a cemetery marker?  
Marker means any monument, tombstone, plaque, headstone, cornerstone or other structure or ornament affixed to, or intended to be affixed to a burial lot,

mausoleum, crypt, or other structure or place intended for the deposit of human remains. **The cemetery by-laws will determine the size, use, placement, and materials, etc. of markers as well as what can or cannot be placed on them.**

10. What must I do to place a marker on a lot?

A marker cannot be placed on a lot or plot without the prior permission of the cemetery. Usually the cemetery will require a detailed drawing of the marker before giving permission for its placement. Cemeteries generally restrict the placement of markers to the summer months when the ground is stable, and then, only on a foundation provided by the cemetery.

11. If I have a marker installed in a cemetery is there a fee?

Besides the **cost of the marker**, which may be purchased independently from the cemetery, there will be a fee for the cemetery providing **a foundation for the marker**.

The cemetery pours a cement foundation corresponding to the size of the base of the marker. It is placed in the ground to a depth reaching below the frost line to prevent the marker from sinking or toppling.

You will also have to pay a fee into the **trust fund for the marker**. The fee will depend on the size of the marker. This fee is prescribed by a government regulation and must be listed in the cemetery's price list.

12. What are the purchaser's rights in regards to flowers and plantings?

Such rights will be given in detail in the cemetery's by-laws. They will determine what can be placed on a lot, for what time period, the maximum size of plantings, etc. The right of the cemetery to remove flowers and plantings will also be determined in the by-laws. **Read the section of the by-laws pertaining to flowers and plantings before signing a contract.**

13. Can I decorate a lot in any manner that I so desire?

No. The contract binds the interment rights holder to the cemetery by-laws. These will determine the size and type of marker, flowers, plantings, as well as mentioning prohibited items. Cemeteries take no responsibility for unapproved items and usually discard them.

14. Must a cemetery operator be licensed?

Yes. They are licensed by and must report to the Bereavement Authority of Ontario.

15. Can visits be made to a cemetery at any time of day?

No. Visits are subject to the by-laws. This is usually from sunrise to sunset. The by-laws may also restrict the days and times of interments.

16. Can I resell interment rights to a third party if they have not been used?  
Yes, unless the cemetery by-laws exclude this. If the by-laws exclude reselling to a third party, the cemetery must buy back the interment rights. If the by-laws permit the reselling of interment rights, the price cannot be higher than the price listed by the cemetery. **Consult the Act §47 for obligations on the part of the seller.**
17. Can I purchase interment rights with the purpose of making a financial gain?  
No person shall purchase interment rights for the sole or primary purpose of reselling the rights with the view to making a financial gain. **It is prohibited to speculate on re-sales.** If you must sell them to the cemetery, they must withhold any payments that were made to the care and maintenance fund at the time of purchase. (This is a minimum of 40% of the sale price and is non-refundable.)
18. Can burial rights be lost?  
Yes. If after 20 years the rights are not exercised, the cemetery can initiate a process to declare that the rights have been abandoned. This process is detailed in §49 of the Act. You or your estate must be given notice if such an action is initiated. It would be very unusual for an operating cemetery to commence such an action. Only after the government registrar is satisfied that the rights have been abandoned can the cemetery reclaim the lot.
19. If the cemetery sells my lot to someone else what recourse do I have?  
The cemetery must offer you an equivalent or better lot at no cost to you.
20. Is it possible to disinter human remains and move them from one cemetery to another?  
Yes. Permission must first be obtained from the local Medical Officer of Health. Disinterment should be left to professionals only. Family and friends should not attend until the re-interment is complete.

### **Funeral & Cemetery Laws:**

1. Are clergy licensed under the Act to provide religious services at funerals or cemeteries?  
No, they are not licensed. The Act does not regulate religious services or rites at funerals or cemeteries. Religious cemeteries in their by-laws might have restrictions as to what rites can take place and who can preside at them.
2. What does the Act mean by operator?  
This is a person who is licensed to operate a cemetery, crematorium, funeral establishment, casket retailing business, marker retailing business, transfer service or any other business for which a license may be required.

3. What are licensed supplies?  
These are caskets and markers and any other supplies that are sold by a person licensed under the Act in the normal course of business regulated by the Act.
4. Who can sell licensed supplies?  
Only those who are licensed under the Act may sell such supplies. However, you can provide a casket purchased elsewhere, and a funeral home if they choose to accept it, must do so without charge.
5. Does the Act extend to purchases of supplies or services beyond Ontario?  
Yes it does. If the purchaser is in Ontario and buys out of province for use in the province or the seller is out of province but the sale is to someone in the province for use in the province, the Act applies.
6. Can someone charge for funeral or cemetery services or supplies if they are not licensed?  
No. They must be licensed to charge for such supplies or services. Orthodox Burial Societies if not licensed cannot charge for supplies or services.
7. Are purchasers protected from false advertising?  
If a licensee shall make a false, misleading or deceptive statement in any advertisement, circular, pamphlet, price list, contract, letterhead or similar material, the purchaser shall have recourse to the Bereavement Authority of Ontario.
8. Can funeral establishments or cemeteries solicit by phone or in person?  
No. And this includes contacting by any means a person in a hospital, long-term care home, hospice or such other institution for the purpose of soliciting the making of, or negotiating a contract for the sale or supply of services. **The purchaser must first request the contact.**
9. Must funeral homes and cemeteries maintain a price list?  
Yes. It must include all supplies and services offered. They are not permitted to charge more for a supply or service than what is listed.
10. If I have bought funeral or cemetery supplies and services before need, and the price subsequently is increased, must the supplier provide such supplies and services at the original price paid?  
Yes. The supplier must provide all the supplies and services at the original price.
11. If I purchase one supply or service must I purchase another supply or service?  
No. If the purchaser bought a casket from a funeral home they are not required to purchase embalming, transfer services, etc. from the same supplier. Nor are they required to purchase any supply or service unless required to by law, e.g. burial in a cemetery. It is not permitted to bundle supplies or services.

12. What is required by a contract for supplies or services to make the contract enforceable?
- It must be written, signed by both parties and comply with the Act and its regulations.
  - It must set out the purchaser's cancellation rights under the Act.
  - It must set out all the supplies and services to be provided and the price for each.
  - The operator of the funeral home or cemetery must deliver a signed copy 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 to a third party.
  - A description of the location of the lot that is purchased. There should be a row and lot number, and possibly a section number e.g. Section 5, Row 25, Lot 37.
13. What recourse does a purchaser have if a contract is not fulfilled?
- Speak with the supplier to resolve the matter.
  - Then speak to the Bereavement Authority of Ontario.
  - Finally seek legal counsel.
14. Can a purchaser cancel a contract that is unenforceable?  
A purchaser under a contract that is not enforceable by the operator may cancel the contract at any time after it is made by giving the operator written notice of cancellation.
15. Is a refund due to the purchaser?  
The operator must refund within 30 days upon receiving a written notice of cancellation for supplies or services not used.
16. What is the 30-day cooling-off period?  
If a purchaser enters into a contract for the provision of licensed supplies and services and all the requirements of the contract are met, the purchaser is entitled to cancel the contract at any time within 30 days. If an interment has taken place, the contract cannot be cancelled.
17. What if I need financial assistance for the funeral and cemetery costs?  
You can apply to your local municipality for assistance if you do not have enough money to pay for funeral, transfer service, burial or cemetery costs.

**You must apply before you enter into a contract with a service provider, as you may not be eligible for assistance afterwards.**

In these situations, there are **usually financial limits** associated with your choice of casket, funeral services, and cemetery lots and services.