

2008 Bill 27

First Session, 27th Legislature, 57 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 27

FUNERAL SERVICES AMENDMENT ACT, 2008

MR. JOHNSON

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 27
Mr. Johnson

BILL 27

2008

FUNERAL SERVICES AMENDMENT ACT, 2008

(Assented to , 2008)

HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of Alberta, enacts as follows:

Amends RSA 2000 cF-29

1 The *Funeral Services Act* is amended by this Act.

2 Section 1 is amended

(a) by adding the following after clause (b):

(b.1) “Court” means the Court of Queen’s Bench;

(b) in clause (e) by adding “or services” after “supply of goods”;

(c) by adding the following after clause (h):

(h.1) “inspector” means the Director or an individual appointed as an inspector under section 14;

(d) by adding the following after clause (l):

(l.1) “personal information” means information about an identifiable individual;

(e) by adding the following after clause (m):

Explanatory Notes

1 Amends chapter F-29 of the Revised Statutes of Alberta 2000.

2 Section 1 presently reads in part:

1 In this Act,

- (e) “funeral services” means the care and preparation of human remains and other arrangements necessary for their interment, cremation or other disposition and includes the supply of goods incidental to that purpose and the arrangement and direction of memorial rites or ceremonies, but does not include the sale of interment space;*
- (o) “trust corporation” means a trust corporation or a corporation designated in the regulations.*

(m.1) “regulated person” means a person licensed under this Act or the regulations or a person who is required to be licensed under this Act or the regulations;

(f) by repealing clause (o) and substituting the following:

(o) “trust corporation” means a corporation or trust corporation registered under the *Loan and Trust Corporations Act* or under similar legislation of another province or territory that is designated by the Director as a trust corporation.

3 Section 2 is amended

(a) in subsection (1) by striking out “or to a mutual benefit society”;

(b) in subsection (2)

(i) by adding “by regulation” **after** “Lieutenant Governor in Council may”;

(ii) by adding “terms or” **before** “conditions”.

4 Section 3 is amended by adding the following after subsection (1):

(1.1) No person shall perform the duties and functions of a business manager, as prescribed by the regulations, unless that person holds a business manager licence.

3 Section 2 presently reads:

2(1) This Act does not apply to a fraternal society licensed under the Insurance Act or to a mutual benefit society.

(2) The Lieutenant Governor in Council may exempt

(a) any person or any class of persons, or

(b) any business or any description or class of businesses

from the operation of all or any provisions of this Act or the regulations and may provide for conditions for any such exemption.

4 Section 3 presently reads:

3(1) No person shall, unless that person holds a funeral services business licence, solicit to enter into or enter into a contract under which that person promises to provide, or to arrange for the provision of, funeral services to another person.

(2) No person shall, unless that person holds a funeral director licence, solicit to enter into or enter into a funeral services contract as agent for a person who holds a funeral services business licence.

(3) No person shall, unless that person holds a pre-need salesperson licence, solicit to enter into or enter into a contract under which that person promises to provide, or to arrange for the provision of, funeral services on a pre-need basis.

5 Section 4 is amended

(a) in subsection (1) by adding the following after clause (a):

(a.1) a business manager licence,

(b) by adding the following after subsection (1):

(1.1) The Director may issue a licence if the applicant meets the requirements set out in the regulations.

6 Section 5 is amended

(a) in subsection (1)

(i) by striking out “may be cancelled at any time and without reason” **and substituting** “must be cancelled if the cancellation is requested by any of the following persons.”;

(ii) by striking out “or” **at the end of clause (b);**

(b) by adding the following after subsection (1):

(1.1) A request for cancellation may be made under subsection (1) at any time and without providing a reason.

(4) No person shall embalm human remains pursuant to a funeral services contract unless the person holds an embalmer licence.

(5) Where activities are authorized under a licence referred to in section 4(1)(e), no person shall carry out those activities unless the person holds the licence described in the regulations that authorizes those activities.

5 Section 4 presently reads:

4(1) A person who wishes to apply for

- (a) a funeral services business licence,*
- (b) a funeral director licence,*
- (c) a pre-need salesperson licence,*
- (d) an embalmer licence, or*
- (e) any other licence described in the regulations,*

or to have a licence renewed must apply to the Director in accordance with the regulations.

(2) A licence is valid for the period specified in the regulations or until it is suspended or cancelled by the Director pursuant to Part 2.

6 Section 5 presently reads:

5(1) Notwithstanding any agreement to the contrary, a pre-need funeral services contract may be cancelled at any time and without reason

- (a) by the purchaser on the purchaser's own behalf or on behalf of any other person for whom the funeral services were purchased,*
- (b) by the person for whom the funeral services were purchased, or*
- (c) by the personal representative of the deceased for whom the funeral services were purchased.*

7 Section 7(b) is amended by striking out “has been refunded” and substituting “and all income earned as a result of the investment of that money have been refunded”.

8 Section 8 is amended

- (a) in subsection (3)(a) by striking out “special fund” and substituting “trust fund”;**
- (b) in subsection (5)(a) by striking out “special fund” and substituting “trust fund”;**
- (c) in subsection (6) by striking out “special fund” and substituting “trust fund”.**

(2) A licensee shall not charge any penalty or administration fee or other fee where a pre-need funeral services contract is cancelled within the period specified in the regulations.

(3) Every pre-need funeral services contract must contain a statement in accordance with the regulations concerning the right of cancellation.

7 Section 7 presently reads:

7 A licensee who enters into a pre-need funeral services contract holds all money paid under the contract in trust for the purposes for which it has been paid until

(a) the funeral services listed in the contract have been provided in accordance with the contract, or

(b) the money, or any unused portion of the money, has been refunded to

(i) the person who made the payment or payments under the contract, or

(ii) the person for whose benefit the contract was entered into or that person's personal representative.

8 Section 8 presently reads in part:

(3) An authorized trustee

(a) shall deposit money received under subsection (1) in a special fund provided by the authorized trustee by agreement with the licensee, and

(b) may, subject to the regulations, invest the money only in accordance with the regulations.

(5) The financial records required under subsection (4) must show

(a) the amount of principal and income held in the special fund to the credit of each pre-need funeral services contract, and

(b) the name of the person for whose benefit the contract was entered into.

9 Section 9(1), (2), (3) and (4) are amended by striking out “special fund” and substituting “trust fund”.

10 The following is added after section 9:

Unclaimed trust funds

9.1 Any unclaimed trust funds must be accounted for and distributed in accordance with the regulations.

(6) Money that is held in a special fund pursuant to this section is not, while in the fund or while being transferred to or from the fund, liable to demand, seizure or detention under any legal process.

9 Section 9 presently reads in part:

9(1) Money and income held in a special fund under section 8 shall not be paid out of the fund by an authorized trustee except in accordance with this section.

(2) When the funeral services listed in a pre-need funeral services contract have been provided, all money and income held in the special fund to the credit of that pre-need funeral services contract must be paid to the licensee who entered into the contract, on production by the licensee of proof

(a) of the death of the person for whose benefit the contract was entered into, and

(b) that the funeral services have been provided.

(3) When a pre-need funeral services contract is cancelled pursuant to section 5, all money and income held in the special fund to the credit of that pre-need funeral services contract shall be paid to

(a) the person who made the payment or payments under the contract, or

(b) the person for whose benefit the contract was entered into or that person's personal representative.

(4) Notwithstanding subsection (3), if no administration fee has been deducted under section 8(2), an authorized trustee shall pay from the money and income held in the special fund any administration fee owing to the licensee.

10 Unclaimed trust funds.

11 Section 10(2) is amended by striking out “special fund” and substituting “trust fund”.

12 Section 11(2) is amended by striking out “special fund” wherever it occurs and substituting “trust fund”.

13 Section 12(1) is amended

- (a) in clause (a) by adding “or assign a funeral services contract on behalf of” after “with”;**
- (b) in clause (b) by adding “or to assign a funeral services contract on behalf of” after “with”;**
- (c) in clause (c) by adding “or assigning a funeral services contract on behalf of that individual” after “individual”;**

11 Section 10(2) presently reads:

(2) An authorized trustee shall, on request by

- (a) the person who made the payment or payments under a pre-need funeral services contract, or*
- (b) the person for whose benefit a pre-need funeral services contract was entered into or that person's personal representative,*

provide a statement of account concerning the special fund maintained by the authorized trustee in regard to that contract, including a statement of that fund's current balance.

12 Section 11(2) presently reads:

(2) When an assignment of a pre-need funeral services contract is made to a licensee,

- (a) the authorized trustee maintaining the special fund on behalf of the funeral services business shall make all necessary changes in the records and funds in order to make the assignment complete, and*
- (b) if the special fund of the assignee is maintained elsewhere than with that authorized trustee, money held under the assigned pre-need funeral services contract may be transferred to the special fund maintained on behalf of the assignee, on the payment of any charges and fees that may be prescribed by the regulations.*

13 Section 12(1) presently reads:

12(1) No person shall, by telephoning or appearing in person at the home of an individual,

- (a) enter into a funeral services contract with that individual,*
- (b) offer to enter into a funeral services contract with that individual,*
- (c) offer to make an appointment for the purpose of entering into a funeral services contract with that individual, or*

- (d) **in clause (d) by adding** “or the assigning of a funeral services contract on behalf of that individual” **after** “individual”.

14 Section 13 is amended

(a) in subsection (1)

(i) by repealing clause (a);

(ii) by striking out “or” at the end of clause (d) and by adding the following after clause (e):

- (f) to make any representation, statement or claim that is not true or is likely to mislead an individual into entering into a funeral services contract,
- (g) to make any representation when advertising the funeral services that savings, price benefits or advantages exist unless the representation of the savings, price benefits or advantages can be supported with verifiable and accurate data,
- (h) to make any representation when entering into a funeral services contract with an individual that savings, price benefits or advantages exist if they do not exist,
- (i) to make any oral representation regarding a funeral services contract respecting rights or obligations that are not contained in the written funeral services contract,
- (j) to abuse the trust of an individual or to exploit an individual’s fear, lack of experience or knowledge,
- (k) to use undue, excessive or unreasonable pressure on an individual to enter into the funeral services contract, or
- (l) to use threatening, intimidating, abusive or coercive language in discussions with an individual.

(b) by adding the following after subsection (1):

- (d) *solicit in any other way the entering into of a funeral services contract with that individual.*

14 Section 13(1) presently reads:

13(1) It is an unfair practice for any person, before, after or while dealing with an individual in relation to a funeral services contract,

- (a) *to exert undue pressure or influence on the individual to enter into the contract,*
- (b) *to take advantage of the individual as a result of the individual's inability to understand the character, nature, language or effect of the contract or any matter related to the contract,*
- (c) *to enter into the contract if the seller knows or ought to know that there is no reasonable probability that the individual is able to pay the full price for the funeral services listed in the contract,*
- (d) *to represent that funeral services provided for in the contract are required by law or under the bylaws of a cemetery, mausoleum, columbarium or crematorium when that is not the case, or*
- (e) *to carry out any activity that is designated in the regulations as an unfair practice.*

(1.1) It is an unfair practice for any person, in information that is published by any means, to make a statement about any matter related to the operation of a funeral services business that might reasonably be regarded as being misleading or deceptive.

15 The heading to Part 2 is amended by adding “and Inspectors” after “Director”.

16 Section 14 is amended

(a) by adding the following after subsection (1):

(1.1) The Director is an inspector for the purposes of this Act and the regulations.

(b) by adding the following after subsection (4):

(5) The Director may appoint individuals as inspectors for the purposes of this Act and the regulations.

17 Section 15 is amended

(a) in subsections (2) and (3) by striking out “conditions” and substituting “any terms and conditions the Director considers appropriate”;

(b) by repealing subsection (4) and substituting the following:

(4) The Director may refuse to issue or renew a licence, may cancel or suspend a licence or may impose terms and conditions on a licence if

(a) the applicant or licensee does not meet the requirements of this Act and the regulations with respect to the class of licence applied for or held;

15 The heading to Part 2 presently reads:

*Part 2
Director*

16 Section 14 presently reads:

14(1) The Minister may appoint a person to act as the Director for the purposes of this Act and the regulations.

(2) The Director may delegate in writing to any person under the Minister's administration any power, duty or function conferred or imposed on the Director by this Act or the regulations.

(3) The Director may, when delegating a matter, authorize the further delegation of the matter.

(4) A delegation may be made subject to any terms and conditions that the Director considers appropriate.

17 Section 15 presently reads in part:

(2) The Director may issue a licence if the applicant meets all the requirements for that licence set out in the regulations and may issue the licence subject to conditions.

(3) The Director may renew a licence if the applicant meets all the requirements for renewal of that licence set out in the regulations and may renew the licence subject to conditions.

(4) The Director may refuse to issue or renew a licence

(a) for any of the reasons set out in the regulations, or

(b) if, in the Director's opinion, it is not in the public interest to issue or renew the licence.

- (b) the applicant or licensee or any of its employees
 - (i) fails to comply with an order of the Director under this Act or the regulations,
 - (ii) provides false information or misrepresents any fact or circumstance to the Director or an inspector,
 - (iii) fails to comply with an agreement under section 19,
 - (iv) fails to pay an administrative penalty in accordance with a notice under section 34.1,
 - (v) in the Director's opinion, has contravened or is contravening this Act or the regulations,
 - (vi) fails to comply with any other legislation that may be applicable,
 - (vii) fails to pay a fine in respect of a conviction for an offence under this Act or under any criminal or other law in force in Alberta or elsewhere,
 - (viii) fails to comply with an order made in relation to a conviction for an offence under this Act or under any criminal or other law in force in Alberta or elsewhere, or
 - (ix) is convicted of an offence or is serving a sentence imposed in respect of a conviction for an offence under this Act or under any criminal or other law in force in Alberta or elsewhere,

or

- (c) in the Director's opinion, it is in the public interest to do so.

(c) by adding the following after subsection (5):

(5.1) Before refusing to issue or renew a licence or suspending, cancelling or imposing terms and conditions on a licence, the Director shall give the applicant or licensee

- (a) written notice of the proposed refusal, suspension or cancellation of the licence or the proposed terms and conditions to be imposed on the licence, with reasons, and
- (b) an opportunity to make representations to the Director.

(5.2) Despite subsection (5.1), the Director may suspend the licence of a licensee without notice or an opportunity to make representations to the Director if the licensee is being investigated under this Act and the Director is of the opinion that the licensee has misappropriated or will misappropriate funds that the licensee is required to hold in trust.

18 Section 16 is amended

(a) in subsection (1)(b) by adding “terms and” before “conditions”;

(b) by adding the following after subsection (1):

(1.1) A notice of appeal referred to in subsection (1) must be in writing and must set out

- (a) the appellant’s name,
- (b) the appellant’s address for service,
- (c) the decision or order being appealed, and
- (d) a brief description of the grounds for the appeal.

(1.2) The Minister is responsible for appointing members to an appeal board.

(c) by repealing subsection (2) and substituting the following:

(2) The Minister shall, within 30 days after being served with a notice of appeal under subsection (1) and payment of the fee for the appeal as established by the regulations, refer the appeal to an appeal board appointed under subsection (1.2) or to an appeal board designated under subsection (5).

18 Section 16 presently reads in part:

16(1) A person

(b) whose licence is made subject to conditions,

may appeal the decision by serving the Minister with a notice of appeal within 30 days after being notified of the Director's decision.

(2) The Minister shall, within 30 days after being served with a notice of appeal under subsection (1), appoint an appeal board to hear the appeal.

(4) The following persons shall not be members of an appeal board:

(a) the Director;

(b) a delegate, agent or employee of the Director;

(c) a member of a regulatory board.

(6) The Minister may set the time within which an appeal board is to hear an appeal and make a decision, and may extend that time.

(7) An appeal board that hears an appeal under this section may, by order, do any one or more of the following:

(a) confirm or quash the decision;

(b) direct that a licence be issued or that a licence be renewed;

(2.1) When the Minister appoints members to an appeal board under subsection (1.2) or designates an appeal board under subsection (5), the Minister shall specify the appeal or appeals for which the appeal board is responsible.

(2.2) The Minister may appoint an Administrator to assist with administrative matters in respect of appeals whether or not an appeal board exists, and the Minister may designate the Administrator as chair of an appeal board.

(d) in subsection (4) by adding the following after clause (b):

(b.1) any person holding a subsisting licence issued under this Act or the regulations;

(e) in subsection (6) by striking out “make a decision” and substituting “provide the appellant with the appeal board’s written decision”;

(f) in subsection (7)(a) by adding “vary,” before “confirm”;

(g) by repealing subsection (9) and substituting the following:

(9) The Minister may set the rates of remuneration for and provide for the payment of reasonable living and travelling expenses to the members of an appeal board.

(h) in subsection (10)

(i) by striking out “of Queen’s Bench”;

(ii) by striking out “under subsection (7)”;

(i) by adding the following after subsection (10):

(10.1) An appeal under this section is a new trial of the issues that resulted in the decision or order being appealed.

(j) by repealing subsection (11).

- (c) reinstate a suspended or cancelled licence;*
- (d) substitute a suspension for a cancellation or a cancellation for a suspension;*
- (e) add, vary or delete conditions on a licence;*
- (f) order the appellant to pay all or part of the investigation costs;*

and may make the order subject to any terms and conditions that it considers appropriate.

(9) Fees and reasonable living and travelling expenses may be paid to the members of an appeal board in accordance with the regulations.

(10) The Director or a person who appeals to an appeal board under subsection (1) may appeal the decision of the appeal board by filing an originating notice with the Court of Queen's Bench within 30 days after being notified in writing of the decision of the appeal board, and the Court may make any order that an appeal board may make under subsection (7).

19 The following is added after section 16:

Effect of appeal

16.1(1) Subject to subsection (2), an appeal under section 16 does not affect the status or enforceability of the decision or order being appealed.

(2) A person who is appealing a decision under section 16(1)(b), (c) or (d) may apply to the chair of the appeal board to stay the decision being appealed until the appeal board provides the appellant with the appeal board's written decision on the appeal.

(3) On application under subsection (2) and after allowing the Director to make representations, the chair may, if the chair considers it appropriate, order a stay of the decision being appealed until the appeal board provides the appellant with its written decision on the appeal.

Powers of appeal board

16.2 For the purposes of appeals before an appeal board,

- (a) the appeal board has the same power as is vested in the Court for the trial of civil actions
 - (i) to summon and enforce the attendance of witnesses,
 - (ii) to compel witnesses to give evidence on oath or otherwise,
 - (iii) to compel witnesses to give evidence in person or otherwise, and
 - (iv) to compel witnesses to produce any record, object or thing that relates to the matter being heard;
- (b) the appeal board may take evidence under oath;
- (c) any member of the appeal board may administer oaths for the purpose of taking evidence;
- (d) the appeal board may reconsider a previous decision made by the appeal board.

Director as party

16.3 The Director is a party to every appeal.

19 Effect of appeal; powers of appeal board; director as party; appeal hearings; appeal without hearing; evidence; rules of court; decision of appeal board; protection from liability.

Appeal hearings

16.4(1) Unless section 16.5 applies, the appeal board responsible for hearing an appeal shall send a notice of the time and place of the hearing of the appeal to the appellant's address for service and to the Director.

(2) An appeal board may grant an adjournment of a hearing for any period of time and on any terms it considers appropriate if the appeal board is satisfied that

- (a) there are compelling reasons for granting the adjournment, or
- (b) not granting the adjournment would amount to a denial of fairness to one or more of the parties to the appeal.

(3) The parties to an appeal have a right to attend all hearings held in respect of the appeal.

(4) A person appearing before an appeal board may be represented by a lawyer or other agent.

(5) A hearing before an appeal board is open to the public unless the chair of the appeal board considers it to be in the public interest to direct that the hearing be closed to the public.

(6) If a party to an appeal fails to appear in person or by lawyer or other agent within one hour from the time set out in the notice given under subsection (1), the appeal may be dismissed or the hearing conducted and determined in that person's absence, whichever option the appeal board considers proper in the circumstances.

Appeal without hearing

16.5(1) An appeal may be conducted without a hearing with the consent of all of the parties.

(2) Where an appeal is conducted without a hearing, all matters concerning the appeal must be submitted to the appeal board in writing, or as otherwise directed by the appeal board, not more than 30 days after the parties provide their consent under subsection (1).

Evidence

16.6(1) An appeal board is not bound by the rules of evidence in judicial proceedings.

(2) Evidence may be given before an appeal board in any manner that the appeal board considers appropriate.

Rules of Court

16.7 The provisions of the Alberta Rules of Court relating to the payment of conduct money and witness fees apply to appeals.

Decision of appeal board

16.8(1) An appeal board shall give its decision on an appeal not more than 45 days after the conclusion of the hearing or, if the appeal is conducted without a hearing under section 16.5(1), not more than 30 days after the parties provide their submissions to the appeal board under section 16.5(2).

(2) The time periods provided for in subsection (1) are subject to any time period set by the Minister under section 16(6).

(3) The decision of an appeal board must be in writing and must include reasons.

(4) After an appeal board makes a decision, the appeal board shall promptly provide a copy of the decision, with reasons, to the parties to the appeal.

Protection from liability

16.9 No action or other proceeding for damages may be commenced against an appeal board, a member or employee of an appeal board or a person appointed or engaged to perform a duty or exercise a power for an appeal board

- (a) for any act done in good faith in the performance or intended performance of any duty or the exercise or intended exercise of any power under this Act or the regulations, or
- (b) for any omission or default in the performance of the duty or exercise of the power in good faith.

20 Section 17 is amended by striking out “of Queen’s Bench”.

21 Section 18 is repealed and the following is substituted:

Investigations and inspections

18(1) An inspector may conduct an inspection or investigation with respect to any matter for any purpose related to the administration of this Act or the regulations.

(2) An inspector who enters any premises or place under the authority of this Act shall, on request,

- (a) produce a document that identifies the person as an inspector under this Act, and
- (b) explain the inspector’s reason for entering the premises or place.

Inspections

18.1(1) An inspector may enter a regulated person’s premises and inspect the premises and the records of a regulated person to ensure compliance with this Act and the regulations.

(2) An inspection under subsection (1) must be conducted at a reasonable time.

(3) A regulated person and an employee or agent of a regulated person shall co-operate with an inspector during an inspection.

20 Section 17 presently reads:

17 If a person who is required to be licensed under this Act in respect of the carrying on of a business or activity carries on that business or so acts

- (a) without being licensed,*
- (b) while the person's licence is suspended or cancelled, or*
- (c) in contravention of this Act or the regulations,*

the Director or a delegate of the Director may apply to the Court of Queen's Bench for an order restraining the person and the person's employees and agents from carrying on business or so acting until the person holds a valid and subsisting licence and complies with this Act and the regulations.

21 Section 18 presently reads:

18(1) The Director may investigate and inquire into any matter for any purpose related to the administration of this Act or the regulations.

- (2) During an investigation or inquiry, the Director may, at any reasonable time,*
 - (a) inspect, audit or examine the records of a person required to keep records under this Act or the regulations and any document of that person or of any other person that relates or may relate to the information that is or should be in the records of the person required to keep records under this Act, and*
 - (b) require the production for inspection, audit or examination of all records or documents that are or may be relevant to the investigation or inquiry.*
- (3) For the purposes of an investigation or inquiry under this section, the Director may, if the Director has reasonable grounds to believe that records or documents described in subsection (2) are likely to be found in any premises or place,*
 - (a) enter the premises or place, subject to subsection (7), and*

(4) An inspector may in the course of an inspection require a regulated person or an employee or agent of a regulated person to

- (a) give written or oral replies to questions,
- (b) produce any books, records, reports, documents or other items requested by the inspector,
- (c) provide any other information requested by the inspector, and
- (d) give the inspector all reasonable assistance.

(5) An inspector may in the course of an inspection require the presence of the owner or business manager at the premises during the inspection.

(6) An inspector may in the course of an inspection inspect, examine and make copies of or temporarily remove books, records, reports, documents or other items that are relevant to the inspection to determine whether there is compliance with this Act and the regulations.

(7) When an inspector removes any books, records, reports or documents or other items under subsection (6), the inspector

- (a) shall give a receipt for them to the person from whom they were taken,
- (b) may make copies of, take photographs of or otherwise record them,
- (c) on request, shall provide a copy of the books, records, reports or other documents removed to the person from whom they were taken or to a person who is entitled to custody of them, and
- (d) shall, within a reasonable period of time, return them to the person to whom the receipt was given when they have served the purposes for which they were taken.

Inspections by court order

18.2(1) If entry under section 18.1 is refused or a regulated person or an employee or agent of a regulated person refuses to co-operate with, interferes with or hinders the inspector's

(b) *require the owner or manager of the premises or place and any other person on the premises or at the place to give the Director all reasonable assistance and to make reasonable efforts to answer all proper questions relating to the administration of this Act and, for that purpose, require the owner or manager to attend at the premises or place with the Director.*

(4) *The Director may in the course of an investigation or inquiry inspect, examine and make copies of or temporarily remove books, records or documents or other things that are relevant to determine if there is compliance with this Act and the regulations.*

(5) *When the Director removes any books, records, documents or other things under subsection (4), the Director*

(a) *must give a receipt for them to the person from whom they were taken,*

(b) *may make copies of, take photographs of or otherwise record them, and*

(c) *must, within a reasonable time, return them to the person to whom the receipt was given.*

(6) *If, on an ex parte application by the Director, a judge of the Court of Queen's Bench is satisfied by information on oath that*

(a) *there are reasonable grounds to believe that there are in any premises or place, other than a dwelling house, records or documents described in subsection (2), and*

(b) *entry into the premises or place is necessary for the administration of this Act,*

the judge may issue a warrant authorizing a person named in the warrant to enter the premises or place and to exercise any of the powers referred to in subsections (1) to (3), subject to the conditions specified in the warrant.

(7) *If the premises or place is a dwelling house, the Director may not enter that dwelling house without the consent of the occupant except under the authority of a warrant under subsection (8).*

(8) *If, on an ex parte application by the Director, a judge of the Court of Queen's Bench is satisfied by information on oath*

performance of duties under this Act, the inspector may apply to the Court by way of originating notice for an order

- (a) authorizing the inspector to enter the premises at any reasonable time and inspect the premises and records,
- (b) directing a regulated person or an employee or agent of a regulated person to allow the inspector to enter the premises or other place occupied or controlled by the regulated person or an employee or agent of the regulated person,
- (c) directing a regulated person or an employee or agent of a regulated person to produce, for the inspector's examination, books, records, reports, documents or other items relevant to the inspection,
- (d) authorizing the inspector to copy or remove the books, records, reports, documents or other items on any terms and conditions that the Court considers appropriate,
- (e) directing a regulated person or an employee or agent of a regulated person to co-operate with the inspector on any terms and conditions that the Court considers appropriate, and
- (f) directing a peace officer to accompany the inspector, if requested by the inspector, while the inspector carries out the powers and duties of an inspector under this Act,

and the Court may, on being satisfied that the order is necessary for the purposes of this Act, make any order that it considers appropriate.

(2) Before entering a private dwelling or a part of premises used as a private dwelling to carry out powers and duties under this Act, an inspector shall

- (a) obtain the consent of the owner or occupant of the private dwelling, or
- (b) obtain an order from a judge of the Court.

(3) If the consent required under subsection (2) is refused or cannot reasonably be obtained, a judge of the Court may, on the

- (a) that there are reasonable grounds to believe that a dwelling house is the premises or a place referred to in subsection (3)(a),*
- (b) that entry into the dwelling house is necessary for any purpose relating to the administration of this Act, and*
- (c) that entry into the dwelling house has been refused or that there are reasonable grounds to believe that entry into it will be refused,*

the judge may issue a warrant authorizing a person named in the warrant to enter that dwelling house, subject to the conditions specified in the warrant.

(9) If the judge is not satisfied that entry into the dwelling house is necessary for any purpose relating to the administration of this Act, the judge may

- (a) order the occupant of the dwelling house to provide reasonable access to a person named in the order to any records or documents that are being or should be kept in the dwelling house, and*
- (b) make any other order that is appropriate in the circumstances to carry out the purposes of this Act.*

(10) In executing a warrant issued under this section, the person named in the warrant may not use force unless specifically authorized to do so in the warrant.

(11) No person may interfere with any person doing anything that is authorized by or pursuant to this section or prevent or attempt to prevent any person from doing that thing and, notwithstanding any other law to the contrary, a person must, unless unable to do so, do everything the person is required to do by or pursuant to this section.

application of the inspector by way of originating notice, issue an order

- (a) authorizing the inspector to enter the private dwelling or the part of premises used as a private dwelling to carry out the powers and duties of an inspector under this Act,
- (b) directing the owner or occupant to allow the inspector to enter the private dwelling or the part of the premises used as a private dwelling,
- (c) directing the owner or occupant of the private dwelling to produce, for the inspector's examination, books, records, reports, documents or other items relevant to the inspection,
- (d) authorizing the inspector to copy or remove the books, records, reports, documents or other items on any terms and conditions that the Court considers appropriate,
- (e) directing the owner or occupant of the private dwelling to co-operate with the inspector on any terms and conditions that the Court considers appropriate, and
- (f) directing a peace officer to accompany the inspector, if requested by the inspector, while the inspector carries out the powers and duties of an inspector under this Act.

(4) No force may be used in enforcing an order granted under this section unless a person identified in the order is specifically authorized by the order to use force.

(5) An application under subsection (1) or (3) may be made ex parte if the Court considers it appropriate.

Retaining documents

18.3 If an administrative process is commenced as a result of an inspection, an inspector may retain books, records, reports, documents or other items removed in the course of the inspection until the administrative process has been concluded.

Commencing an investigation during an inspection

18.4 If in the course of an inspection reasonable grounds are found to indicate that a regulated person has committed an

offence under this Act or the regulations, the inspection may be discontinued and an investigation may be commenced.

Investigations

18.5(1) An inspector who has reasonable grounds to believe that a regulated person has committed an offence under this Act or the regulations may enter the regulated person's premises with the consent of the regulated person and inspect the premises and the records of the regulated person for the purposes of carrying out an investigation.

(2) An investigation under subsection (1) must be conducted at a reasonable time.

(3) An inspector may in the course of an investigation request a regulated person or an employee or agent of a regulated person to

- (a) give written or oral replies to questions,
- (b) produce any books, records, reports, documents or other items requested by the inspector, and
- (c) provide any other information requested by the inspector.

(4) In the course of an investigation an inspector may, with the consent of the regulated person, inspect, examine and make copies of or temporarily remove books, records, reports, documents or other items that are relevant to the investigation to determine if an offence has been committed under this Act or the regulations.

(5) When an inspector removes any books, records, reports, documents or other items under subsection (4), the inspector

- (a) shall give a receipt for them to the person from whom they were taken,
- (b) may make copies of, take photographs of or otherwise record them,
- (c) on request, shall provide a copy of the books, records, reports or other documents removed to the person from whom they were taken or to a person who is entitled to custody of them, and

(d) shall, within a reasonable time, return them to the person to whom the receipt was given when they have served the purposes for which they were taken.

(6) During an investigation, an inspector

(a) may retain or copy any books, records, reports, documents or other items already in the inspector's possession as a result of an inspection, and

(b) shall, within a reasonable time, return them to the person to whom the receipt was given when they have served the purposes for which they were retained.

Investigations by court order

18.6(1) If entry under section 18.5 is refused or there are reasonable grounds to believe an offence has been committed under this Act or the regulations, the inspector may apply to the Court by way of originating notice for an order

(a) directing the regulated person or an employee or agent of the regulated person to allow the inspector to enter the premises, including a private dwelling, or any other place occupied or controlled by the regulated person, or employee or agent of the regulated person,

(b) directing the regulated person or an employee or agent of a regulated person to produce, for the inspector's examination, books, records, reports, documents or other items relevant to the investigation,

(c) authorizing the inspector to copy or remove the books, records, reports, documents or other items on any terms and conditions that the Court considers appropriate,

(d) authorizing the inspector to retain books, records, reports, documents or other items on any terms and conditions that the Court considers appropriate,

(e) directing the regulated person or an employee or agent of a regulated person to co-operate with the investigation on any terms and conditions that the Court considers appropriate, and

- (f) directing a peace officer to accompany the inspector, if requested by the inspector, while the inspector carries out the powers and duties of an inspector under this Act

and the Court may, on being satisfied that the order is necessary for the purposes of this Act, make any order that it considers appropriate.

(2) No force may be used in enforcing an order granted under this section unless a person identified in the order is specifically authorized by the order to use force.

(3) An application under this section may be made ex parte if the Court considers it appropriate.

(4) The following persons may apply to the Court for an order varying or cancelling an order made under subsection (1):

- (a) a person to whom the order is directed;
- (b) a person under investigation who is named in the order;
- (c) any other person who is otherwise affected by the order.

(5) On an application under subsection (4), the Court may vary or cancel an order on any terms and conditions the Court considers just if the Court finds that

- (a) all or a part of the order is not required for the protection of persons who are dealing with a person under investigation named in the order, or
- (b) one or more affected persons are unduly prejudiced by the order.

Special circumstances

18.7(1) Despite any provision of this Act, an inspector may, during an investigation under this Act, enter premises and seize or make copies of any books, records, reports, documents or other items if the inspector has reasonable grounds to believe that

- (a) an offence under this Act or the regulations has been committed,

- (b) the books, records, reports, documents or other items will provide evidence of the commission of the offence, and
- (c) the delay involved in obtaining an order under section 18.2 or 18.6 could result in the loss or destruction of evidence.

(2) An inspector, on seizing any books, records, reports, documents or other items under this section,

- (a) shall inform the person, if any, from whom the books, records, reports, documents or other items were seized of the reason for the seizure,
- (b) shall give a receipt for the books, records, reports, documents or other items to the person, if any, having physical possession of the books, records, reports, documents or other items when they are seized, and
- (c) may make copies of, take photographs of or otherwise record the books, records, reports, documents or other items.

(3) An inspector who seizes any books, records, reports, documents or other items pursuant to this section shall deal with them in the same manner as if the books, records, reports, documents or other items were seized pursuant to an order.

(4) No force may be used by an inspector while exercising the inspector's powers under this section.

22 Section 19 is amended by striking out “a settlement of” and substituting “an agreement respecting”.

22 Section 19 presently reads:

19 If in the course of an investigation or inquiry under section 18 the Director discovers that a licensee has contravened this Act or the regulations, the Director may, instead of acting pursuant to section 15, enter into a settlement of the matter with the licensee where in the Director's opinion it is in the public interest to do so, subject to any terms and conditions the Director considers appropriate, including payment of all or part of the investigation costs by the licensee.

23 The following is added after section 20:

Trust corporations

20.1 The Director may designate trust corporations for the purposes of this Act and the regulations.

24 Section 21 is amended

(a) in subsection (1)

- (i) by adding “, including personal information,” after “information”;**
- (ii) in clause (b) by adding “or an administrative penalty imposed” after “taken”;**

(b) by adding the following after subsection (1):

(1.1) The Director shall maintain a public record of agreements entered into under section 19, Director’s orders made under section 15 and restraining orders issued by the Court under section 17 and any other prescribed documents or information, including personal information.

(1.2) The Director may determine the form of the public record referred to in subsection (1.1) and which documents or information must or may be included.

(1.3) The Director may publish any of the following information, including personal information, for the purpose of assisting the public in choosing whom to do business with:

- (a)** information obtained in an investigation under this Act about persons required to be licensed under this Act or the regulations;
- (b)** information about agreements entered into under section 19;
- (c)** a list of licensees and information relating to their licence status, including suspensions and cancellations, if any;

23 Trust corporations.

24 Section 21 presently reads:

21(1) The Director may disclose any information relating to

(a) the refusal, cancellation or suspension of a licence issued under the regulations, or

(b) a disciplinary action taken under this Act or the regulations.

(2) If there is an inconsistency or conflict between subsection (1) and the Freedom of Information and Protection of Privacy Act, subsection (1) prevails.

- (d) information relating to disciplinary action taken or administrative penalties imposed under this Act or the regulations;
- (e) decisions of appeal boards;
- (f) any other information prescribed by regulation.

(1.4) No liability attaches to the Director for any information published under subsection (1.3) in good faith.

(c) by repealing subsection (2).

25 Section 24(1) is amended

- (a) by striking out “and” at the end of clause (b);**
- (b) in clause (c)**
 - (i) by striking out “a settlement” and substituting “an”;**
 - (ii) by adding “, and” after “section 16(7)(f)”;**
- (c) by adding the following after clause (c):**
 - (d) the payment of administrative penalties to a regulatory board on the Director’s behalf.

26 The following is added after section 26:

Protection from liability

26.1 No action or other proceeding for damages may be commenced against a regulatory board, a member or employee of a regulatory board or a person appointed or engaged to perform a duty or exercise a power for a regulatory board

- (a) for any act done in good faith in the performance or intended performance of any duty or the exercise or intended exercise of any power under this Act or the regulations, or
- (b) for any omission or default in the performance of the duty or exercise of the power in good faith.

25 Section 24(1) presently reads:

24(1) The Minister may make regulations respecting

- (a) the collection of fees by a regulatory board on the Government's behalf and their remittance to the Minister,*
- (b) the payment of a commission to a regulatory board for its services under this subsection, and*
- (c) the use and application of money received as payment of investigation costs due to a settlement agreement under section 19 or an order of an appeal board under section 16(7)(f).*

26 Protection from liability.

27 Section 27(1) is amended

- (a) by renumbering it as section 27;**
- (b) in clause (m) by striking out “special funds” and substituting “trust funds”;**
- (c) in clause (o) by striking out “appointed under section 16”;**
- (d) by repealing clause (q) and substituting the following:**
 - (q) respecting agreements entered into under section 19, including the kinds of agreements that may be entered into, records of agreements, the procedure to vary or cancel an agreement, and the effect of variation or cancellation of an agreement;
- (e) in clause (cc)(v)**
 - (i) by striking out “of Queen’s Bench”;**
 - (ii) by striking out “that Court” and substituting “the Court”;**
- (f) by adding the following after clause (ee):**
 - (ff) prescribing documents or information, including personal information, that must be maintained by the Director in the public record;
 - (gg) prescribing information, including personal information, that may be published by the Director;
 - (hh) prescribing the form and contents of notices of administrative penalties for the purposes of section 34.1;
 - (ii) prescribing contraventions of this Act or the regulations in respect of which an administrative penalty may be imposed by the Director;
 - (jj) prescribing the amounts, or the manner of determining the amounts, of the administrative penalties that may be imposed;
 - (kk) respecting any other matter necessary for the administration of the system of administrative penalties;

27 Section 27 presently reads in part:

27(1) The Minister may make regulations

- (m) respecting the assignment of funeral services contracts under section 11(1), including the giving of notice to the authorized trustee that holds the special funds relating to the contracts;*
- (o) respecting the payment of fees and reasonable living and travelling expenses to members of an appeal board appointed under section 16;*
- (q) respecting settlements under section 19, including the kinds of settlement undertakings that may be entered into, records of undertakings, procedure to vary or cancel an undertaking, and the effect of variation or cancellation of an undertaking;*
- (cc) where money is received by a licensee and held in trust pursuant to sections 7 and 8,*
- (v) specifying the circumstances and procedures under which all or any part of the trust money is to be paid by the trustee to the persons for whose benefit it is held or into the Court of Queen's Bench to be dealt with as a judge of that Court directs;*

- (ll) respecting how unclaimed trust funds are to be accounted for and distributed;
- (mm) establishing fees for appeals;
- (nn) respecting items that are required to be placed in caskets or with cremated remains;
- (oo) modifying the licensing requirements for funeral directors and embalmers in the event of a pandemic;
- (pp) defining terms that are used but not defined in this Act.

28 Section 29 is amended

- (a) in clause (d) by striking out** “or a delegate of the Director” **and substituting** “, a delegate of the Director or an inspector”;
- (b) in clause (e)**
 - (i) by striking out** “or a delegate of the Director” **and substituting** “, a delegate of the Director or an inspector”;
 - (ii) by striking out** “investigation” **and substituting** “inspection”;
- (c) in clause (f) by striking out** “with an undertaking under this Act” **and substituting** “with the terms of an agreement entered into under section 19”.

29 Section 34 is amended by striking out “investigation or inquiry” **and substituting** “inspection or investigation”.

28 Section 29 presently reads in part:

29 Any person who

(d) furnishes false information or misrepresents any fact or circumstance to the Director or a delegate of the Director,

(e) fails to co-operate with the Director or a delegate of the Director in an investigation under this Act, or

(f) fails to comply with an undertaking under this Act,

is guilty of an offence.

29 Section 34 presently reads:

34 A copy of a document made during an investigation or inquiry under this Act and certified to be a true copy by the person who conducted the inspection or investigation is admissible in evidence in any proceeding as proof, in the absence of evidence to the contrary, of the document without proof of the signature or appointment of the person who signed the certificate.

30 The following is added after section 34:

Administrative penalties

34.1(1) Where the Director is of the opinion that a person has contravened a provision of this Act or the regulations, the Director may, by notice in writing given to that person, require that person to pay to the Director an administrative penalty.

(2) A person who pays an administrative penalty in respect of a contravention may not be charged under this Act with an offence in respect of that contravention.

(3) Where a person fails to pay an administrative penalty in accordance with a notice under subsection (1), the Director may recover the amount owing in respect of the penalty in an action in debt.

(4) A notice of an administrative penalty under this Act may not be issued more than 3 years after the date on which the contravention to which the notice relates occurred.

Appeal of administrative penalty

34.2(1) A person to whom a notice to pay an administrative penalty is given under section 34.1(1) may, within 30 days after receipt of the notice, by serving a written notice of appeal on the Minister, appeal the decision to an appeal board.

(2) A notice of appeal under subsection (1)

- (a) must describe the administrative penalty appealed from and state the reason for the appeal, and
- (b) must set out the appellant's name and address for service.

(3) The Minister shall, within 30 days after being served with a notice of appeal under subsection (1) and the receipt of payment of the fee for the appeal as established by the regulations, refer the appeal to an appeal board appointed under section 16(1.2) or designated under section 16(5).

(4) The appeal board on an appeal may vary, quash or confirm the decision of the Director.

(5) The appeal board's decision under this section is final.

30 Administrative penalties; appeal of administrative penalty.

(6) Sections 16(1.2), (2.1), (2.2), (3), (4), (5), (6), (8), (9) and (10.1) and 16.2 to 16.9 apply, with all necessary modifications, to the proceedings of an appeal board under this section.

31 This Act comes into force on Proclamation.

31 Coming into force.

RECORD OF DEBATE

Stage	Date	Member	From	To
		Questions and Comments	From	To
		Questions and Comments	From	To
		Questions and Comments	From	To
		Questions and Comments	From	To